UBS

Investing for Charities

Court provides clarity on values investing for charities.

Do charity trustees have to seek maximum financial returns from their investments?

On 29 April the High Court made a significant ruling in the case of Butler-Sloss v The Charity Commission, confirming that charity trustees may prioritize climate change outcomes of their investments even if this means that they are not maximizing profit from their portfolios.

This decision reframed existing charities law which had been static since the Bishop of Oxford case 30 years ago and also represents the law catching up with how many charities are thinking about their portfolio.

The Bishop of Oxford Case

The previous leading case *Harris v The Church Commissioners* in 1992. In this case, the plaintiff applied to the Court to obtain relief that, in managing investments, the Church Commissions should have regard to its broader charitable purpose of advancing the Christian faith and not therefore be bound by the principle of looking to maximise profit.

The Court held that the trust would be best served by trustees seeking to obtain maximum return, subject to "comparatively rare" instances where it might be appropriate to consider other factors, but these instances were not particularly well defined and therefore many trustees have shied from taking flexibility on this point.

Butler-Sloss v Charity Commission: a revised approach

An important piece of context is to consider the charities bringing the application. In this instance, the charities involved (Ashden Trust and the Mark Leonard Trust) had principal charitable purposes of the protection of the environment. The judge began by noting that trustees' investment powers must be exercised to further their charitable purposes, which would normally mean maximizing the financial return.

The judge then went on to say that where trustees are of a reasonable view that particular investments could conflict with charitable purposes, the trustees have discretion to exclude those investments "reasonably balancing all relevant factors including, in particular, the likelihood and seriousness of the potential conflict and the likelihood and seriousness of any potential financial effect".

This is a broad discretion for trustees to exercise, and trustees may exercise their discretion by considering factors such as the risk of losing support from donors and potential reputational damage to the charity.

Practical Implications

There are three key points to take away from this case.

1. Trustees may invest in alignment with a charity's purpose while accepting that they may limit the profits which can be made through their portfolios.

   This is the key clarification provided by the case, but note the distinction between alignment of values with broader moral considerations, as caution should still be exercised with the latter approach.

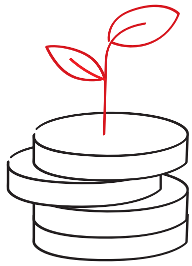
2. A balance should be struck between the seriousness of the potential conflict and the risk of financial underperformance.

   This links back to the six core trustee duties which include managing your charity's resources responsibly and acting with reasonable care and skill.

3. Documentation will be key. It is important for trustees to be clear why they took certain decisions and how they were in the best interest of the charity.

   This can most easily be achieved by a clear investment policy supported by comprehensive minutes. In this case the judge noted the quality of the investment policies, which is my view is the most important practical point for an investment committee.

As a final point, the Charity Commission will be publishing updated guidance following this case and broader consultation with the industry later this year. This will reframe the existing CC14 guidance and provide further clarity on the Commission's approach.



How UBS can help

We are experienced in working with our clients in formulating investment policies and implementing investment approaches in a way which aligns portfolios with values while looking to deliver the desired investment returns.

If you would like to discuss how you could benefit from a different approach to your investments please contact Tom Dupernex, Head of Charities & Foundations.

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