



William Hopkin

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"In court, he is able to readily get to the crux of the issue and his well-reasoned and sensible litigation style is well received by the judge and opposition alike. He is exceptionally talented at offering pragmatic and cost-effective advice"

Legal 500 2022

"He is exceptionally skilled at identifying the crux of an issue, finding a sensible and pragmatic resolution to cases."

Legal 500 2021

"His advice is first rate, commercially minded, and pragmatic."

Legal 500 2020

Practice Overview

William Hopkin is an expert in the business of companies, charities and public bodies.

He is 'exceptionally skilled at identifying the crux of an issue, finding a sensible and pragmatic resolution to cases'. In contentious matters, William is 'able to disarm the most aggressive opponents' and has been described as a 'great orator', whose 'litigation style is well-received by the Judge'. (Legal 500)

Recently, William has appeared in the leading authority on fiduciary relations in commercial transactions tainted by bribes (*Wood & Pengelly v Commercial First* [2021] EWCA Civ 471), acted as independent investigator for a national charity and advised in a range of notable matters combining charity, trust and company law.

He is commended for the clarity and focus that he brings to difficult matters, with solicitors describing him 'extremely able at assimilating complex information quickly' and 'very astute'. (Legal 500).

William acts for a spectrum of organisations including private enterprise, schools and universities, national charities, public bodies and foundations. Over the last 20 years, he has served on the board of a number of organisations.

William strives to combine practicality and innovation, with legal accuracy, in his advisory work. 'He is exceptionally talented at offering pragmatic and cost-effective advice' and it has been noted that 'his advice is first rate, commercially minded, and pragmatic'. (Legal 500)

His service is enriched by his breadth of experience across a spectrum of commercial, humanitarian and international activity.

Charities

William Hopkin is a leading charity specialist at the Bar. His clients include national charities, philanthropists, schools and universities, public bodies, specialist organisations and ancient foundations.

Recent highlights include:

- His appointment as independent investigator to conduct a fact-finding exercise into alleged impropriety at a national charity
- Advising on company and charity issues in respect of a high-profile legacy to charity
- Providing a structure for the enforcement of a major public grant-making programme
- Advising as to the validity of a trust holding prime real estate for a community body
- Successfully concluding "charity proceedings" centred on a dispute between rival trustee bodies

He is author of the forthcoming practitioner text 'Charities as Companies'.

William was co-chair of the Charity Law Association ['CLA'] Annual Conference in 2017 and 2018. He has sat on the CLA's Executive Committee and chaired a number of sector working parties.

He has intimate knowledge of the practical workings of charities from his long experience as a trustee.

William's expertise covers:

- Complex registrations
- Charities operating as companies, associations and trusts
- Construction of governing documents, wills and historic bequests
- Dispute resolution
- Charitable structures and arrangements (including drafting)
- Trustee duties and conflicts
- Application of property
- Trading and commercial arrangements

William has excellent technical knowledge and is focussed on delivering sensible, practical advice to enable charities and social purpose organisations to fulfil their objectives.

He is a member of the Charity Law Association.

Commercial Litigation

William provides expert advice, advocacy and drafting in commercial matters. His contentious practice includes the Commercial Court and Court of Appeal, whilst his advisory work embraces contractual and trust arrangements of complexity and value.

Recent highlights include:

- Successfully appearing in the Court of Appeal in what is now the leading authority on fiduciary relations in commercial transactions tainted by bribes (*Wood & Pengelly v Commercial First* [2021] EWCA Civ 471).
- Advising as to the enforcement of a £10 million per year grant programme, including as to common law and equitable remedies
- Setting aside, as trial, a guarantee on the basis of undue influence between company shareholder and domestic partners
- Advising as to the legal basis of the holding of a £20 million site by linked organisations
- Reaching settlement terms in a long-running dispute as to the alleged misappropriation of funds in a joint venture to develop retail and residential properties

He takes a practical and constructive approach, which combines attention to detail, technical expertise and

business sense.

William's expertise covers:

- All aspects of serious commercial litigation

- Injunctions and urgent applications

- Asset-tracing and recovery

- Advice and drafting in relation to commercial arrangements

A broad spectrum of commercial activity, including:

- Agency

- Guarantees

- Joint ventures, partnerships and SPV's

- Financial services and mortgages

- Construction

- Public sector contracts

- Trusts

- Associated professional negligence and property matters (separate CV available on request)

- Cooperatives, unincorporated associations and clubs

He is a member of Combar.

Company & Partnership

William Hopkin has considerable experience and expertise across a range of company, partnership and insolvency matters.

As well as contentious business, William advises in relation to transactions and corporate arrangements, often as part of a multi-disciplinary team.

Recent highlights include:

- Successfully concluding proceedings for the acquisition of shares on the basis of deadlock provisions - a case that included allegations of unfair prejudice and breach of directors' duties.

- Advising as to the remedial steps required in relation to the erroneous payment of dividends from a capital redemption reserve.

- Providing solutions to a cooperative, registered under the Companies Acts, in respect of entrenched provisions (involving mutuals' legislation).

- Advising as to breach of directors' duties in the context of companies whose value passed under a high-profile will.

- Advising as to the existence and operation of an unwritten partnership in respect of an agricultural estate.

William's company expertise covers:

- All aspects of serious company litigation

- Shareholder and director disputes

- Company register and share issues

- Corporate and personal insolvency

- Claims against directors of insolvent companies

- Partnership litigation and advice

He has advised, and litigated, in a number of sectors, including mining, technology, investments, healthcare and railways.

William is available to provide advice at short notice in relation to interim remedies and emergency action. He is author of the forthcoming practitioner text 'Companies as Charities'.

Directory Recommendations

'Very astute and a great orator' (Legal 500, 2019).

'Extremely able at assimilating complex information quickly' (Legal 500, 2017)

'[He] has an ability to disarm the most aggressive opponents with his frank, considered and calm approach' (Legal 500, 2016).

Additional Information

Qualifications / Education

Bar Vocational Course, College of Law: Very Competent

Graduate Diploma in Law, College of Law: Commendation

BA Hons, University of Exeter

Magdalen College School

Awards

Poland Prize Scholar – Inner Temple

Duke of Edinburgh Exhibitioner – Inner Temple

Prize for Civil Litigation – Bar Vocational Course, College of Law

Professional Appointments

Executive Committee of the Charity Law Association (2016-2019)

Memberships

Charity Law Association

Commercial Bar Association

Philanthropy Impact

Public Access

Yes

ADR

Extensive mediation experience

Cases

Charities: ethical investments update

Reference:

Date: 12 May 2022

Court:

Judgment was handed down in the *Butler-Sloss & others v Charity Commission & Attorney General* [2022] EWHC 974 (Ch) case on 29.04.22.

Mr Justice Michael Green summarised (at [78]) the law in relation to charity trustees taking into account non-financial considerations, when exercising their powers of investment. I add my comments in *red* to the Judge's 10 points.

(1) Trustees' powers of investment derive from the trust deeds or governing instruments (if any) and the Trustee Act 2000. *The trust deed may tailor the power of investment, including (as below) excluding specific investments.*

(2) Charity trustees' primary and overarching duty is to further the purposes of the trust. *This was stressed as the fundamental principle, and was at the heart of the power of investment, rather than maximising financial returns, per se – see below.* The

power to invest must therefore be exercised to further the charitable purposes.

(3) That is normally achieved by maximising the financial returns on the investments that are made; the standard investment criteria set out in s.4 of the Trustee Act 2000 requires trustees to consider the suitability of the investment and the need for diversification; applying those criteria and taking appropriate advice is so as to produce the best financial return at an appropriate level of risk for the benefit of the charity and its purposes.

(4) Social investments or impact or programme-related investments are made using separate powers than the pure power of investment.

(5) Where specific investments are prohibited from being made by the trustees under the trust deed or governing instrument, they cannot be made. *To avoid the below discretionary exercise, consideration could be given to specific exclusions in the trust deed. That said the interpretation of the exclusion, in a changing world and diverse market-place, could create difficulties.*

(6) But where trustees are of the reasonable view that particular investments or classes of investments potentially conflict with the charitable purposes, the trustees have a discretion as to whether to exclude such investments and they should exercise that discretion by 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 from the exclusion of such investments. *The main issue in the case was whether a charity was prohibited from having investments which conflicted with its objects. (cf. Harries v Church Commissioners for England [1992] 1 WLR 1241). Such an approach was found to be too rigid, and one which would lead to substantial practical difficulties. The Judge was able to provide a sensible, workable framework.*

(7) In considering the financial effect of making or excluding certain investments, the trustees can take into account the risk of losing support from donors and damage to the reputation of the charity generally and in particular among its beneficiaries.

(8) However, trustees need to be careful in relation to making decisions as to investments on purely moral grounds, recognising that among the charity's supporters and beneficiaries there may be differing legitimate moral views on certain issues. *This was another theme of the Judgment – that trustees expressing their own moral sentiments (also in the context of ex gratia payments) was controlled by the law.*

(9) Essentially, trustees are required to act honestly, reasonably (with all due care and skill) and responsibly in formulating an appropriate investment policy for the charity that is in the best interests of the charity and its purposes. Where there are difficult decisions to be made involving potential conflicts or reputational damage, the trustees need to exercise good judgment by balancing all relevant factors in particular the extent of the potential conflict against the risk of financial detriment. This balancing exercise is typical of trustee decision-making, and expert advice may well be required (cf. s.5 Trustee Act 2000).

(10) If that balancing exercise is properly done and a reasonable and proportionate investment policy is thereby adopted, the trustees have complied with their legal duties in such respect and cannot be criticised, even if the court or other trustees might have come to a different conclusion. *It is perhaps unlikely that there will be further blessing applications in this area. Whilst adopting a radical new investment policy could be considered a 'momentous' decision, such applications are costly and the law, as to investments, is flexible. It is noted that the Commission was concerned as to the level of the level of costs incurred in this case – a point not supported by the Judge.*

Judge:

Practice Area: Charities

Zedra Part II: no new mega-fund for charity

Reference:

Date: 01 Feb 2022

Court:

Overview:

The High Court has directed that a £600 million fund be paid to the government to reduce the national debt, rather than be used as major new endowment for charity in the UK: see the judgment of Zacaroli J in *Attorney General v Zedra Fiduciary Services (UK) Limited [2022] EWHC 102* (Ch) delivered on 21.01.2022.

Facts:

In 1928 an anonymous donor, now revealed to be the banker Gasper Farrer, settled over £500,000 to establish a "National Fund". This was to be invested and, at a future date, be used (whether alone or with other contributions) to discharge the National Debt. The fund is now worth £600 million, whilst the National Debt had risen to £2,277 billion in the Autumn of 2021.

In an earlier judgment of 09.11.20 ([2020] EWHC 2988 (Ch), Zacaroli J declared that there was a valid charitable trust, but also, importantly, that the Court had jurisdiction to make a scheme to apply the fund cy-près on the grounds that:

- 1) The original purposes of the charitable trust cannot be carried out and have ceased to provide a suitable and effective method of using the trust property: s.62(1)(a)(ii) and (e)(iii) of the Charities Act 2011, respectively; and
- 2) There has been a subsequent (and not initial) failure of those purposes.

The decision as to any scheme was deferred, to take into account further evidence and submissions – to a hearing in December 2021.

The Attorney General proposed the immediate application of funds to reduce the National Debt. The present trustee proposed the incorporation of a new company to hold the fund on trust for charitable purposes, to be applied at the discretion of the trustee, with the aim to benefit the whole of the UK.

Decision-making:

The Court (by s.67(2)&(3) of the Act) is able to direct that a fund is applied for such charitable purposes as it considers appropriate, having regard to:

- a) The spirit of the original gift,
- b) The desirability of securing that the property is applied for charitable purposes which are close to the original purposes, and
- c) The need for the relevant charity to have purposes which are suitable and effective in the light of current social and economic circumstances.

His Lordship considered these matters in turn.

“The spirit of the original gift”

The "spirit of the gift" means "the basic intention underlying the gift or the substance of the gift rather than the form of the words used to express it or conditions imposed to effect it": in *Varsani v Jesani* [1999] 2 Ch 219, Chadwick LJ said (at p.238C):

The need to have regard to the spirit of the gift requires the court to look beyond the original purposes as defined by the objects specified in the declaration of trust and to seek to identify the spirit in which the donors gave property upon trust for those purposes. That can be done, as it seems to me, with the assistance of the document as a whole and any relevant evidence as to the circumstances in which the gift was made.

The Court considered (fascinating) evidence from the date of original gift, including correspondence on behalf of Mr Farrer with the then Chancellor of the Exchequer, Winston Churchill. The essence of the correspondence was that Mr Farrer wished to benefit the nation in an out of the ordinary way (“dull” as he described it), by elimination of the National Debt.

The Judge found that the spirit of the gift was not as broad as benefiting the nation generally (and indeed this may not have been charitable), and stressed the importance of the National Debt to the exercise.

The Judge had found, in his original judgment, there to be a general charitable intention to benefit the nation beyond the specific purpose of discharging the National Debt – this perhaps indicates the particular nature of the “spirit of the gift” test.

Desirability that the property is applied for purposes close to the original purposes

The Judge found that that it is always desirable for the property to be applied for charitable purposes which are close to the original purposes – and that this is something that the Court must have regard to.

His Lordship referred to *Attorney-General v Ironmongers' Company* (1844) 10 Cl & Fn 908, as to the importance of staying close to the original gift:

We may look at his disposition in the will to see what his charitable inclinations were, and, having ascertained them, then we must provide something corresponding with our opinion of those charitable inclinations. You cannot talk of his intention with respect to something that he never contemplated. The true mode is, to consider what he did, and from what he did to collect what were his inclinations with regard to charity.

Need for suitable and effective purposes in light of current social & economic circumstances

Zacaroli J explained the reference to “need” in that one of the triggering events for an application of charitable property cy-près is where the original purposes have ceased to provide a suitable and effective method of using the property, having regard to the spirit of the gift and the prevailing social and economic circumstances. There would be no point in applying the property to new purposes, if those were similarly unsuitable and ineffective. His Lordship concluded that this factor does not “trump” the others, in the sense that the scheme adopted must be that which is most suitable and effective in the current social and economic circumstances.

Outcome:

The Judge evaluated the s.67(3) factors in respect of the rival proposals as to the scheme proposals (see above):

- a) The “spirit of the gift” inevitably pointed towards the Attorney General’s scheme as this involved addressing the National Debt;
- b) The proximity of the charitable purpose again favoured that scheme, as “applying the fund in reduction of the National Debt is clearly close to applying it in discharge of the National Debt”;
- c) Taking account of current social and economic circumstances did not tip the balance in favour of the Trustee’s scheme, despite this being a matter of some concern to the Judge:

[70] The more difficult question relates to the third factor. There is considerable force in Mr Pearce's argument that to apply the National Fund in discharge of the National Debt would make nothing but a miniscule dent in the overall volume of the National Debt. He submitted that far from being a suitable and effective use of the funds, application of the National Fund in accordance with the Attorney-General's scheme would be "a futile, symbolic gesture". I also have sympathy with the contention that a great deal of good could be done if the National Fund were applied to particular charitable causes.

The Court directed that the fund be paid to the government to reduce the National Debt.

Judge:

Practice Area:

Articles

Date	Title	Contributors
17 Feb 2021	Kids Company: Important Directors Disqualification Case in a Charity Context Published in	William Hopkin
14 Sep 2020	Charities - Internal Disputes Published in	William Hopkin
14 Sep 2020	Springboard injunctions: the principles Published in	William Hopkin

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