

The Charities Act 2022

Failed Charity Appeals

The problem

Charities often make appeals to raise money for a particular project. For instance, for a new minibus or a particular project. If they raise too much money, how should the charity deal with the extra funds -known as a Surplus Case? Or perhaps they don't raise enough, known as an Initial Failure, and the minibus cannot be purchased or the project not undertaken, what should the charity then do with these funds?

The Charity Act 2022 aims to reduce the cumbersome and time-consuming procedures.

For instance, currently, where there is an initial failure, the starting position is that the funds belong to the donor and need to be returned. The Charity Commission can make a cy-prèsⁱ schemeⁱⁱ to change the purposes the funds can be used for, but only after toing and froing for permissions, the charity contacting each donor, placing advertisements, making inquiries and at the end of it giving donors 6 months to contact the charity to ask for the return of their donation before finally receiving Charity commission consent to repurpose those donations.

Another option is for donors to complete a disclaimer form, saying that they are happy for the donation to be used for other purposes. How feasible is this in practice? Especially given some speedy ways of donating, like text.

For small surplus funds the rules are simpler, but essentially still requires gaining charity commission permission and the possible use of a Scheme for larger sums.

The new rules

We will need to wait until the Charity Commission is able to put the new law into practice to fully know how the new rules will be applied, but trustees, in line with certain conditions, will be able to apply the funds for new purposes, rather than having to ask the Charity Commission for a cy-près scheme.

Surplus

Where the fund exceeds £1,000 Charity Commission consent will be required for the trustee resolution to take effect. If the fund is £1,000 or below, the administrative burden will be lifted and Charity Commission consent is not required. Do ensure that the trustees resolution to use these funds for similar purpose is discussed and recorded.

The trustees will need to have regard that the purposes are, as so far as is reasonably practicable, similar to the specific charitable purposes for which the money was given.

Initial Failure

In the case of initial failures the process will remain more complicated, though less so. Before the trustees can use this new power, there are some additional requirements to be met. These will allow the funds to be applied cy-près for new purposes if:

The donations are small – up to £120 in a year per donor (unless the donor has specifically stated otherwise);

The trustees take reasonable steps (*agreed in advance with the Charity Commission*) to contact donors to offer to return their donation (i.e. the current complicated advertising and inquiry requirements are scrapped and there is no longer a need for donors to sign a formal disclaimer).

The donations are raised through a cash collection or from a lottery, competition or similar (this is the same as the current position).

The Charity Commission decides it would be unreasonable to take steps to contact the donors – because the cost would be disproportionate to the amounts returned, or it would be unreasonable for the donors to expect it to be returned, perhaps because it was a long time ago (this is the same as the current position).

Donors will no longer have the six month period to re-reclaim their donation which currently applies after a scheme is made.

What to do.

Tell donors from the get-go, what will happen to their donation in the event of raising insufficient or surplus funds.

It has long been the advice to charity's launching a fundraising appeal that the best course of action is to avoid the issues of failed or over successful appeals by preparing the fundraising literature carefully.

Make it clear to donors that if the appeal raises too little or too much then the funds will be used for other purposes, like buying more equipment, or the charity's work generally. Add this information (a short sentence or two would be fine) to any fundraising literature, your donor page and any promotion you run on your website. This is a recommendation of the Charity Commission and a requirement under the Code of Fundraising Practice for specific appeals.

Finally

Revisit your procedures when the Charity Commission produces its guidance based upon the changes to legalisation as a result of this Act.

ⁱ 'cy-près': a fancy Norman French word meaning 'as near as'. It means that the Charity Commission can through a scheme allow the funds to be directed to alternative, but similar, charitable purposes.

ⁱⁱ 'scheme': a device which can be used by the Charity Commission to alter the purposes for which the funds can be used.

Websites used to create this document and recommended additional reading

<https://bateswells.co.uk/updates/the-charities-bill-explained-failed-charity-appeals/>

<https://www.stoneking.co.uk/literature/e-bulletins/charities-act-2022>

<https://www.legislation.gov.uk/ukpga/2022/6/enacted>