Administrative Schemes for Charities

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Administrative schemes; Charity Commission for England and Wales; Cy-pres schemes

This article aims to set out in one place the key principles which apply to the making of administrative schemes for charities. This article first explains the difference between an administrative scheme and a cy-près scheme. It then discusses the test for making an administrative scheme, the evidence which the court and the Charity Commission will consider, and the terms which may be included in the scheme. Finally, it discusses the future of administrative schemes.

Introduction

In charity law, a scheme is essentially a document which amends a charity's governing document.[1] There are two types of scheme:

- A cy-près scheme, which amends a charity's purposes; and
- An administrative scheme, which amends one or more of the administrative provisions of a charity's constitution.

A few sources refer to administrative schemes as "regulatory schemes"[2] or "managerial schemes",[3] but this article will use the more common phrase "administrative schemes".

The doctrine of cy-près has a long and well-documented history. Examples of what we would now call cy-près schemes can be found in Roman law,[4] medieval England,[5] and reported cases from the 17th century onwards.[6] Entire books have been written on the subject.[7]

In contrast, administrative schemes have received less attention. One key reason for this is the dearth of reported cases. There are very few reported cases because since 1860 the Charity Commission has made most administrative schemes out of court.[8] As the Charity Commission no longer publishes its

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1 *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [37] per Deputy Master Henderson.

2 *Varsani v Jesani (Cy Pres)* [1999] Ch. 219 at 236; [1999] 2 W.L.R. 255 per Chadwick LJ and *Attorney General v Hyde* [2002] W.T.L.R. 1419 at [42] per Lawrence Collins J.

3 *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [37] per Deputy Master Henderson and W. Henerson et al, *Tudor on Charities*, 11th edn (London: Sweet & Maxwell, 2022), Ch.10.

4 Justinian's Digest, 33.2.16, quoting Modestinus' *Responses, Book IX*, which was cited in *The Attorney General, at the Relation of the University of Cambridge v Lady Downing*, 97 E.R. 1 at 33; (1767) Wilm. 1 at 13 per Lord Wilmott CJ.

5 As far back as 1313, there are records which show that executors were given the power to apply estate assets *"for the good of his soul in such pious works as they shall think best according to God and good conscience"*: Sir F. Pollock and F. W. Maitland, *The History of English Law before the Time of Edward I* (Cambridge University Press, 1895), Vol.II, p.362.

6 Possibly the earliest reported case in the modern era is *Fisher v Hill* (1612) Duke 82, the full report of which says: *"When no use is mentioned or directed in a deed, it shall be decreed to the use of the poor, although the [trustees] be gentlemen living out of the town and no inhabitants within the town"*.

7 Example, L. A. Sheridan and V. T. H. Delany, *The Cy-Près Doctrine* (London: Sweet and Maxwell, 1959), and R. P. Mulheron, *The Modern Cy-Près Doctrine* (London: UCL, 2006).

8 Pursuant to its powers in Charitable Trusts Act 1860 s.2, Charities Act 1960 s.18(1)(a), Charities Act 1993 s.16(1)(a) and Charities Act 2011 s.69(1)(a). Both the court and the Charity Commission have the power to make an administrative scheme in relation to any type of charity: Charities Act 2011 ss.69(1)(a) and 75ZA.

Operational Guidance on its scheme-making jurisdiction, charity trustees and charity lawyers are left without easily accessible guiding principles.

This article aims to set out in one place the key principles which apply to administrative schemes. It aims to synthesise the key historic English authorities, the recent judgment in *Dasji v Bhudia*,[9] and the larger number[10] of persuasive[11] Australian reported cases.[12] This article has five parts. First, it explains the difference between the two main types of schemes in more detail. Secondly, it discusses the test which the court and the Charity Commission must apply when considering whether to make an administrative scheme. Thirdly, it explains what evidence the court and the Charity Commission will consider. Fourthly, it explains what terms may be included in an administrative scheme. Fifthly, it discusses the future of administrative schemes.

What is the difference between an administrative scheme and a cy-près scheme?

For many centuries, the answer to this question was not entirely clear because the courts did not properly distinguish administrative schemes from cy-près schemes.[13] In fact, the phrase "administrative scheme" is only a relatively recent innovation. Nevertheless, the difference between administrative schemes and cy-près schemes is now clear.

In simple terms, a cy-près scheme may alter the *substance* or *nature* of the charity's purposes whereas an administrative scheme may only alter anything else.[14] But this merely shifts the debate to the meaning of a charity's "purposes". So, what are a charity's "purposes"?

It has been held that *"the purposes of a charitable gift would ordinarily be understood as meaning those charitable objects on which the property given is to be applied"*.[15] Purposes are to be distinguished from *"the mechanics of how the property devoted to charitable purposes is to be distributed"*.[16] In short, *"it is the difference between ends and means"*.[17]

In most cases, the charity's purposes will be defined clearly and exclusively in the objects clause in the governing document. However, this is not always the case. For example, a charity's purposes may also extend to:

[9] *Dasji v Bhudia* [2026] EWHC 455 (Ch).

[10] There are more reported cases in Australia because the Australian Charities and Not-for-profits Commission does not have the power to make a scheme and the state Attorney Generals only have limited powers to make a scheme: I. Murray and J. Picton, "The Reform of Charitable Constitutional Purposes" [2024] 35 *Kings Law Journal* 46, 55–56 and 59. The position in Canada is an unusual mix: there are only a handful of reported cases even though only the court has the power to make an administrative scheme: D. W. M. Waters (ed.), *Waters' Law of Trusts in Canada*, 5th edn (Thompson Reuters Canada, 2021), p.854.

[11] It is submitted that the Australian authorities are a useful guide in this jurisdiction. This is for two reasons. First, much of Australian charity law can be traced back to English law: G. E. Dal Pont (ed.), *Halsbury's Laws of Australia: Charities* (LexisNexis, 2025), Vol.75, para.[75-1], and *Re Niall* [2019] V.S.C. 423; (2019) 60 V.R. 1 at [47] per McMillan J. Secondly, in general, authorities from Commonwealth jurisdictions are persuasive in the English courts: A. Zuckerman (ed.), *Halsbury's Laws of England: Volume 11, Civil Procedure* (LexisNexis, 2020), para.39, and *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [81.4] per Deputy Master Henderson.

[12] Many of the Australian cases cited in this article involved the application of Australian legislation which allows the court to confer a new power on charity trustees if it is *"expedient"*: e.g. Trustee Act 1925 (ACT), s.81, Trustee Act 1925 (NSW), s.81, Trustee Act 1893 (NT), s.50A, Trusts Act 1973 (Qld), s.94, Trustee Act 1936 (SA), s.59B, Trustee Act 1898 (Tas), s.47, Trustee Act 1958 (Vic), s.63, and Trustees Act 1962 (WA), s.89. This test is materially identical to the English common law test.

[13] W. Henderson et al, *Tudor on Charities*, 11th edn (London: Sweet & Maxwell, 2022), para.10-005, and *Re Niall* [2019] V.S.C. 423; (2019) 60 V.R. 1 at [49] per McMillan J.

[14] Charity Commission, Operational Guidance 500, s.B2.1 (now withdrawn).

[15] *Re J W Laing Trust* [1984] Ch. 143 at 149; [1983] 3 W.L.R. 886 per Peter Gibson J, applied in *Attorney General v Zedra Fiduciary Services (UK) Ltd* [2020] EWHC 2988 (Ch); [2020] W.T.L.R. 1287 at [42] per Zacaroli J.

[16] *Re J W Laing Trust* [1984] Ch. 143 at 153 per Peter Gibson J. However, confusingly, this is apparently not the same distinction as the distinction between purposes and administration in taxation law: *Attorney General v Zedra Fiduciary Services (UK) Ltd* [2020] EWHC 2988 (Ch); [2020] W.T.L.R. 1287 at 151.

[17] *Corish v Attorney General of New South Wales* [2006] N.S.W.S.C. 1219 at [19] per Campbell J.

- *"a condition… which limits the main purpose of the charity"*.[18] For example, the definition of the class of persons who may benefit from the charity is likely to be part of the charity's purposes,[19] as is the charity's area of benefit.[20]
- The subject matter of the gift itself may form part of the charity's purposes *"where the qualities of the property which is the subject matter of the gift are themselves the factors which make the purposes of the gift charitable"*.[21] For example, this might cover charitable gifts of historically important buildings or paintings.

Ultimately, whether a particular provision in a governing document amounts to a purpose or not is a question of interpretation which must be decided in line with the standard principles of interpretation.[22] Although it may not always be entirely easy to tell whether a provision is part of the charity's purposes, it is crucial that this question is tackled before any claim for a scheme is made. Otherwise, the applicant risks asking for the wrong remedy.

What is the test for making an administrative scheme?

The fundamental test which the court and the Charity Commission must apply when deciding whether to make an administrative scheme was set out in *Re J W Laing Trust*[23] and approved and applied in *Dasji v Bhudia*.[24] The question is *"whether [a scheme] is expedient to regulate the administration of the charity"*.[25,26] This is the same as the well-known test *"expedient in the interests of the charity"*,[27] which the Charity Commission must apply when considering whether to direct or authorise a charity or trustee to take certain action,[28] and which trustees must apply if they wish to use the statutory power to amend their charity's governing document.[29]

Importantly, when deciding whether to make an administrative scheme, neither the court nor the Charity Commission is limited to the list of cy-près occasions in s.62 Charities Act 2011.[30] The administrative scheme jurisdiction is wider, and the test is easier to satisfy. As one Australian authority put it: *"the notion of expediency… is a criterion of the widest and most flexible kind"* and *"the ordinary natural grammatical meaning of the word expedient [is] that of 'advantageous', 'desirable', and 'suitable to the circumstances of the case'"*.[31]

[18] *Oldham BC v Attorney General* [1993] Ch. 210 at 221; [1993] 2 W.L.R. 224 per Dillon LJ.
[19] *Re J W Laing Trust* [1984] Ch. 143 at 152 per Peter Gibson J, citing *Re Dominion Students Hall Trust* [1947] Ch. 183; 63 T.L.R. 90 and *Re Lysaght (Deceased)* [1966] Ch. 191; [1965] 3 W.L.R. 391.
[20] *Hunter Region SLSA Helicopter Rescue Services Ltd v Attorney General of New South Wales* [2013] N.S.W.S.C. 1749; (2013) 9 A.S.T.L.R. 308 at [31] per White J.
[21] *Oldham BC v Attorney General* [1993] Ch. 210 at 222 per Dillon LJ.
[22] *Attorney General v Zedra Fiduciary Services (UK) Ltd* [2020] EWHC 2988 (Ch); [2020] W.T.L.R. 1287 at [43]–[44] per Zacaroli J.
[23] *Re J W Laing Trust* [1984] Ch. 143 at 153 per Peter Gibson J.
[24] *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [39] and [68] per Deputy Master Henderson.
[25] It is possible that this test of expediency can be traced back to the headnote of *Clephane v Lord Provost of Edinburgh* (1866-69) L.R. 1 Sc. 417; (1869) 7 M. (H.L.) 7, which says *"although a Court of equity cannot change the object of a charity, it may vary the means for attaining that object when circumstances render a change expedient"*. This part of *Clephane* is cited in *Andrews v McGuffog* (1886) 11 App. Cas. 313 at 316; (1886) 13 R. (H.L.) 69 per Lord Watson, and in *Re Royal Society's Charitable Trusts* [1956] Ch. 87 at 92; [1955] 3 W.L.R. 342 per Vaisey J. However, Lord Westbury's exact words in *Clephane* at 15 were: *"the Courts of Equity have always exercised the power of varying the means of carrying out the charity from time to time, according as by that variation they can secure more effectually the great object of the charity, namely, the benefit of the beneficiary"*.
[26] For comparison, it appears that the test for making an administrative scheme in Canada is whether *"administrative change would better accomplish the charitable purpose"*: *Re Sprott Estate* [2011] N.S.S.C. 327; 307 N.S.R. (2d.) 107 at [30] per Kennedy CJ, and *Re Killam Estate* (1999) 38 E.T.R. (2d.) 50 at [84] per Kennedy CJ.
[27] *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [39] and [68] per Deputy Master Henderson.
[28] Charities Act 2011 ss.84(2) and 105(1) (respectively). The Charity Commission interprets this test to mean *"the decision of the trustees to take the proposed action is within the range of decisions which a reasonable body of trustees might make"*: Operational Guidance 501, s.B2.7 (now withdrawn).
[29] Charities Act 2011 ss.280A(2) and 280C(2).
[30] *Re J W Laing Trust* [1984] Ch. 143 at 153 per Peter Gibson J.
[31] *Re Lutheran Laypeople's League of Australia Inc* [2016] S.A.S.C. 106 at [32] per Hinton J. Similarly, in *Re Royal Society's Charitable Trusts* [1956] Ch. 87 at 91, Vaisey J implied that the question is whether *"the proposal is, on the whole, advantageous"*.

Before we move on, it is important to consider two propositions which it is submitted are *not* part of the test for an administrative scheme.

First, the Charity Commission's old Operational Guidance described the test as whether an administrative scheme *"is both necessary and expedient for the administration of the charity"*.[32] For three reasons, it is respectfully submitted that the reference to necessity is incorrect. *First*, none of the recent reported cases suggest that the test is one of necessity. *Secondly*, a strict test of necessity would run contrary to the court's general facilitative approach to charities.[33] *Thirdly*, if necessity were introduced to the test for administrative schemes, the Charity Commission would need to apply different tests to the sanctioning of an action and the introduction of a clause into a governing document which achieve the same outcome (e.g. the appointment of a corporate trustee). This would not make sense.

Secondly, in *Re Royal Society's Charitable Trusts*, Vaisey J said that the jurisdiction to make an administrative scheme should *"be exercised sparingly, and not indiscriminately"*.[34] This passage his been cited in two English cases,[35] one Canadian case,[36] three Australian cases,[37] and one of the leading charity law textbooks.[38] Nevertheless, it is respectfully submitted that Vaisey J's statement is an inaccurate statement of the law. This is for three reasons. *First*, Vaisey J's proposition comes from an ex-tempore judgment which did not cite any authorities or give any reasons for any inherent restriction on the use of administrative schemes. *Secondly*, the proposition has been doubted in the only case to consider it in any detail.[39] Thirdly, a non-interventionist approach would be inconsistent with the court's general facilitative approach to charities.

Therefore, it is submitted that the test for an administrative scheme remains whether it would be expedient in the interests of the charity to make one.

What evidence will the court and the Charity Commission consider?

The applicant bears the burden of proving why the court or the Charity Commission should make an administrative scheme. If the applicant fails to produce sufficient evidence, a scheme will be refused.[40] The key message for applicants is thus to try to get it right first time.

Ultimately, the test of expediency is one of judgment.[41] Naturally, the court and the Charity Commission must *"take into account all the circumstances of the charity"*.[42] In practice, it is submitted that two factors should be given careful consideration in every case.

The first key factor is the intentions of the founder(s), settlor(s) and donor(s) of the charity. This is because *Re J R Laing Trust* held that in every case *"the court should always be slow to thwart a donor's wishes"*.[43] Similarly, *Dasji v Bhudia* held that the court should be slow to thwart the settlors' or founders' intentions.[44]

This simple proposition raised three important questions:

[32] Charity Commission for England and Wales, Operational Guidance 500, s.F9 (now withdrawn).

[33] W. Henderson et al, *Tudor on Charities*, 11th ed (London: Sweet & Maxwell, 2022), paras 3-007−3-019.

[34] *Re Royal Society's Charitable Trusts* [1956] Ch. 87 at 93.

[35] *Vernon (Trustees of the Employees Fund of William Vernon & Sons) v Inland Revenue Commissioners* [1956] 1 W.L.R. 1169 at 1179; [1956] 3 All E.R. 14 at 20 per Upjohn J, and *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [70] per Deputy Master Henderson.

[36] *Re Baker* [1984] 47 O.R. (2d.) 415. A similar point was made in *Sidney and North Saanich Memorial Park Society v Attorney General of British Columbia* [2016] B.C.S.C. 589 at [56] per Dardi J.

[37] *Robinson v Attorney General of New South Wales* [2022] N.S.W.S.C. 996; (2022) 22 A.S.T.L.R. 276 at [83] per Kunc J.

[38] W. Henderson et al, *Tudor on Charities*, 11th ed (London: Sweet & Maxwell, 2022), para.10-111.

[39] *Robinson v Attorney General of New South Wales* [2022] NSWSC 996; (2022) 22 A.S.T.L.R. 276 at [84] per Kunc J.

[40] Example, *University of Adelaide v Attorney General of South Australia* [2018] S.A.S.C. 82; (2018) 18 A.S.T.L.R. 11 at [46]–[48] per Stanley J.

[41] *R. (on the application of O'Callaghan) v Charity Commission for England and Wales* [2007] EWHC 2491 (Admin); [2008] W.T.L.R. 117 at [42] per Knox J (discussing the materially-identical statutory test to make a sanctioning order).

[42] *Re J W Laing Trust* [1984] Ch. 143 at 154 per Peter Gibson J, applied in *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [39] and [68] per Deputy Master Henderson.

[43] *Re J W Laing Trust* [1984] Ch. 143 at 153 per Peter Gibson J.

[44] *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [39], [68], [69] and [74] per Deputy Master Henderson.

- Who are the "donors", "founders" and "settlors" of a charity?
- What evidence can the court consider of their intentions?
- What weight should be given to those intentions?

Forty years on from *Re J W Laing*, *Dasji v Bhudia* answers these questions.[45]

As to the first question, the "founders", "settlors" and "donors" of a charity are the people *"who provided property or money to the charity at or around the time of its creation"* and the people who *"were the principals who executed or on whose behalf the [governing] documents were executed"*.[46] This definition means that the first trustee(s) of the charity are not founders or settlors.[47] Nevertheless, as part of the circumstances of the charity more generally, the court may also take into account the intentions of the charity's subsequent benefactors and main volunteers.[48] Where there are several settlors or founders with differing intentions, the court will need to decide how to balance those intentions. It may do this by giving greater weight to the intentions of the majority or to the intentions of those people who were involved in the charity closest in time to its creation.[49]

As to the second question, subject to one caveat, *"there [is] no restriction on the type of evidence which may be admitted in relation to the intentions of the settlors… though the weight (if any) to be attached to that evidence will vary with the circumstances"*.[50] The caveat is that the court may not take account of evidence from a witness as to what he or she thought the settlor *might* have wanted had they been alive because that is simply speculation.[51] In practice:[52]

> "the primary and most important source for ascertaining those intentions is the governing document of the charity by which the original settlors or founders chose formally to specify their intentions, and on the terms of which, in the absence of evidence to the contrary, subsequent contributors to the charity can be presumed to have made their contributions."

As to the third question, ultimately, the weight which should be given to the settlor's intentions will of course depend on all the circumstances.[53] However, four specific principles may be identified:

- "At one extreme, if the particular administrative means specified by the settlor were integral to his or her design the court would be very slow to alter them.[54] At the other extreme if the impractical provisions were plainly ancillary (an example might be an outdated power of investment), expediency would be more important than the original intentions".[55]
- Greater weight should be given to the terms of the governing document than to any other evidence of the settlors' or founders' intentions.[56]

[45] The full discussion is at *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [74]–[89] per Deputy Master Henderson.

[46] *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [82] per Deputy Master Henderson.

[47] *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [84] per Deputy Master Henderson.

[48] *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [83] per Deputy Master Henderson.

[49] *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [83] per Deputy Master Henderson.

[50] *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [88] per Deputy Master Henderson.

[51] *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [75], [80.7] and [81] per Deputy Master Henderson, disagreeing with and declining to follow *Phillips v Roberts* [1975] 2 NSWLR 207 at 212 per Hutley JA.

[52] *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [89]. The same approach is taken in Australia: *Boyd v Talbot* [2021] QSC 99; (2021) 20 ASTLR 480 at [49]–[62] per Bond J.

[53] *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [72], [76], [79] and [87] per Deputy Master Henderson.

[54] This sentence derives from *Re Niall* [2019] VSC 423; (2019) 60 VR 1 at [53] per McMillan J, which was cited to the court in *Dasji v Bhudia*. A similar point was suggested in P. Luxton, "In pursuit of purpose through section 13 of the Charities Act 1960" [1985] Conv. 313, 314. If the administrative means specified by the settlor are so integral to the operation of the charity, an amendment to them may require a cy-près scheme rather than an administrative scheme: *Sidney and North Saanich Memorial Park Society v Attorney General of British Columbia* [2016] BCSC 589 at [51] and [55] per Dardi J.

[55] *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [72] per Deputy Master Henderson.

[56] *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [89] per Deputy Master Henderson.

- The larger and the earlier a contribution made by a donor, the greater the weight given to their intentions.[57] Thus, the intentions of a person who gives a small sum of money to a large and long-established charity are unlikely to be given any weight.
- Once the court decides that a scheme is required, there will need to be at least some departure from the settlors' or founders' intentions, and it will therefore usually be appropriate to place greater weight on expediency and practicability than intentions.[58]

At the start of this section, it was submitted that two factors should be given careful consideration in every application for an administrative scheme. The first factor, just discussed, is the intentions of the founder. The second factor is whether and how the charity's circumstances have changed since it was founded.[59] In other words, the applicant must persuade the court or the Charity Commission that the current terms of the governing document are causing problems which cannot otherwise be resolved. If the trustees can continue to administer the charity, albeit with difficulty, the court or the Charity Commission may refuse to make a scheme.[60] In short, mere convenience to the trustees is not enough.[61] An applicant for an administrative scheme must therefore explain carefully why a scheme is now the only appropriate action.

What terms can an administrative scheme include?

The terms of any administrative scheme will of course be tailored to the facts of the particular charity in question. Nevertheless, it is possible to deduce some general principles. There are two main, but not mutually exclusive, situations in which an administrative scheme is used.[62]

The first situation is where a donor has expressed a charitable[63] intention in general terms and an administrative scheme is needed to supply the particular destination of the funds.[64] For example, the courts have made administrative schemes to direct the application of gifts given for *"charitable purposes"*,[65] *"the promotion of education"*,[66] *"the work of the Lord"*,[67] and *"cancer research"*.[68] Similarly, if by their will a donor leaves money on trust for *"such charity or charities as John Smith shall select"*, and John Smith predeceases the donor, the court may make an administrative scheme to define the recipients.[69] However, if it is impossible to carry out the vaguely-stated objects, the court would need to make a cy-près scheme.

The second situation is where the donor has prescribed specific charitable purposes but has omitted to provide sufficient machinery for the charity to be operated. In this context, *"the Court has an unlimited power and discretion or nearly so"* over the terms of the scheme.[70] As a result, there is no limit on the extent of the changes which an administrative scheme may make to the governing document, save that it cannot be used to alter the nature or substance of the charity's purposes. For example, the court or the

[57] *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [72] and [87] per Deputy Master Henderson.

[58] *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [69] per Deputy Master Henderson.

[59] The court will make *"such a scheme for the purpose of furthering the intentions of the founder, as may have been rendered necessary by the altered state of circumstances and the increased civilization of the country"*: *Attorney General v Dedham School* (1857) 23 Beav. 350 at 356; 53 ER 138 at 140 per Sir John Romilly MR.

[60] *Nash v Morley* (1842) 5 Beav. 177 at 185; 49 E.R. 545 at 548 per Lord Langdale MR.

[61] *Re Mashakov-Korjakin* [2011] VSC 372 at [62]–[67] per Mukhtar J.

[62] G. E. Dal Pont, *Law of Charity*, 2nd edn (Australia: LexisNexis Butterworths, 2010), para.[14.10]. Cf. *Re Mason's Orphanage and London & North Western Railway Co* [1896] 1 Ch. 54 at 57–58 per Stirling J.

[63] If the gift does not provide sufficient public benefit to be charitable, an administrative scheme cannot be used to widen the objects of the gift to supply the missing public benefit: *Re Lowin (Deceased)* [1967] 2 NSWR 140 at 151 per Asprey JA.

[64] A scheme in this context is properly understood as an administrative scheme and not a cy-près scheme: W. Henderson et al, *Tudor on Charities*, 11th ed (London: Sweet & Maxwell, 2022), para.8-002.

[65] *Sumner v Sumner* (1884) 10 V.L.R. (E.) 261.

[66] *Chesterman v Federal Commissioner of Taxation* (1923) 32 C.L.R. 362 at 395–396 per Higgins J.

[67] *Re Brooks Estate* (1969) 4 D.L.R. (3d.) 694.

[68] *Re Simpson (Deceased)* [1961] Q.W.N. 50.

[69] *Re Willis* [1921] 1 Ch. 44 at 51–52 per Warrington LJ.

[70] *Philpott v St George's Hospital* (1859) 27 Beav. 107 at 111; 54 E.R. 42 at 44 per Sir John Romilly MR.

Charity Commission may make an administrative scheme which takes the form of a trust deed which provides *all* of the charity's administrative provisions in one go.[71]

However, it will rarely be necessary for the court or the Charity Commission to replace or introduce *all* of a charity's administrative provisions in one go. It is much more likely that only some provisions, or even only one provision, will need changing. It is impossible to list every conceivable term of an administrative scheme. But the reported cases to date may fairly be grouped into five main, but not mutually exclusive, categories.

First, an administrative scheme may in practice operate *between* charities. For example, a scheme may appoint a single body of trustees to administer a number of charities which serve a common area and have overlapping purposes. This is known as a "scheme uniting charities".[72]

Secondly, an administrative scheme may modernise the wording of a governing document, including the charity's objects.[73] This is most likely to be relevant to older charities.

Thirdly, an administrative scheme may make changes to the operation of the charity generally. For example, a scheme may:

- (Somewhat surprisingly[74]) restrict the trustees to acting only in ways which maintain the charity's tax-exempt status,[75] or facilitate tax savings for donors;[76]
- Remove a requirement for a scholarship to be awarded every year,[77] or permit a biannual scholarship to be awarded annually;[78]
- Remove a requirement for a headmistress of a charitable school to be a member of the Church of England to enable that school to receive government grants;[79] or
- Amend the dissolution clause,[80] or even direct that the charity be wound up.[81]

Fourthly, an administrative scheme may make changes to the trustees' powers over the charity's property. For example, a scheme may:

- Introduce a power of sale (except for specie land);[82]
- Introduce or expand the trustees' powers of investment;[83] or

[71] *College of Law Pty Ltd v Attorney General of New South Wales* [2009] NSWSC 1474; (2009) 4 ASTLR 66 (where the College of Law lacked a governing document because it was found by the court to hold its property on a constructive charitable trust) and *Dasji v Bhudia* [2026] EWHC 455 (Ch) at [315] per Deputy Master Henderson (where the existing constitution was so poorly drafted that it would be more helpful for the scheme to contain an entirely new constitution).

[72] *Report of the Charity Commissioners for England and Wales for the year 1969* (1970), paras 32–35. For a broadly similar recent example, see the Charity Commission's scheme which united the Dudley Central Mosque and Muslim Community Centre and The Muslim Community Centre and Mosque 1977, *https://www.gov.uk/government/news/regulator-exercises-legal-powers-to-tackle-years-of-governance-concerns-at-dudley-mosque* and *https://apps.charitycommission.gov.uk/Details.aspx?PDFName=054448* [both accessed 16 March 2026].

[73] *Macdonald Trustees, Petitioners* [2008] CSOH 116; 2009 S.C. 6 and *Re The University of Adelaide* [2023] SASC 8 at [22]–[25] per AJ Dart. The Tribunal has been critical of the Charity Commission's previous practice of restating objects in administrative schemes: *Maidment and Lennox Ryan v Charity Commission*, CA/2009/0001 and 0002 at [5.9(iv)]. As a result, the Charity Commission now advises trustees to consider carefully the consequences of any proposed modernisation in wording.

[74] Cf. the general reluctance of the court to make amendments to private trusts for tax reasons: *Re Chapman's Settlement Trusts* [1954] A.C. 429 at 468; [1954] 2 W.L.R. 723 per Lord Morton.

[75] *Corish v Attorney General of New South Wales* [2006] NSWSC 1219 at [18] per Campbell J.

[76] *Re Lutheran Laypeople's League of Australia Inc* [2016] SASC 106 at [57] per Hinton J.

[77] *Re Sprott Estate* [2011] NSSC 327; 307 NSR (2d) 107.

[78] *Royal Botanic Gardens and Domain Trust v Attorney General of New South Wales* [2018] NSWSC 1666; (2018) 17 ASTLR 390.

[79] *Re Queen's School, Chester* [1910] 1 Ch. 796.

[80] *Corish v Attorney General of New South Wales* [2006] NSWSC 1219 at [34]–[36] per Campbell J, and *Re Lutheran Laypeople's League of Australia Inc* [2016] SASC 106 at [72] per Hinton J.

[81] *Robinson v Attorney General of New South Wales* [2022] NSWSC 996; (2022) 22 ASTLR 276 at [67] and [94] per Kunc J.

[82] Cf. *Baddeley v Sparrow* [2015] UKUT 420 (TCC) at [75] per Warren J.

[83] *Maidment and Lennox Ryan v Charity Commission*, CA/2009/0001 and 0002 at [3.9] and [5.9(iii)] (introduce) and *Trustees of the British Museum v Attorney General* [1984] 1 W.L.R. 418; (1984) 81 L.S.G. 585 (expand). One reported case in Canada concluded that the introduction of a total return on investment approach could only be made in a cy-près scheme (*Re Stillman Estate* [2003] O.T.C. 1148), but this has been doubted in *Re Sprott Estate* [2011] NSSC 327; 307 N.S.R. (2d.) 107.

- Introduce or remove a direction that a charity's property should be distributed within a certain period.[84]

Fifthly, an administrative scheme may make changes in relation to the charity's trustees. For example, a scheme may:

- Enable the charity to have a corporate trustee and transfer legal title to the charity's assets to that trustee;[85]
- Appoint specific trustees;[86]
- Amend the power to appoint trustees, including by giving one or more third parties the power to appoint new trustees;[87]
- Amend the governing document to permit certain trustee benefits;[88] or
- Introduce a new code of conduct for managing conflicts of interest.[89]

As the above survey shows, the administrative scheme jurisdiction is very wide. However, there are some limits to the administrative scheme jurisdiction. For example, the court or the Charity Commission may make the administrative scheme temporary, whether that is for a fixed period or until a certain event occurs.[90] Furthermore, an administrative scheme cannot be used to interfere with or reverse a reasonable decision taken by the charity's trustees (e.g. compelling them to sell a particular investment).[91] So the key point is that although the administrative scheme jurisdiction is very wide indeed, it is not unlimited.

What is the future of administrative schemes?

Despite the length of this article and the number of cases cited in it, the fact remains that fewer and fewer charities will ever need to apply for an administrative scheme.[92] As a result of the changes brought in by the Charities Act 2022, charity trustees will now very often be able to amend their charity's governing document themselves using one of the statutory powers of amendment.[93] In most cases, trustees will be content to use those powers. Even where trustees would like the reassurance of a scheme, the Charity Commission is unlikely to give it because the Charity Commission will usually only make a scheme if there is no other option available to the trustees.[94]

Nevertheless, administrative schemes remain important in a number of cases. For example, an administrative scheme may still be the most appropriate outcome if:

- The trustees cannot use any express or statutory powers to amend;
- Multiple charities wish to be coordinated under one governing document;

[84] *Re JW Laing Trust* [1984] Ch. 143 (remove) and *Public Trustee (G D Butler Medal Trust) v Attorney General of South Australia* [2019] SASC 21; (2019) 132 SASR 574 at [28] per Hinton J (introduce).

[85] Charity Commission for England and Wales, Operational Guidance 500, s.B3 (now withdrawn), and *Bartley v Charity Commission CA/2013/0016*.

[86] *Re Fraser* (1883) L.R. 22 Ch. D 827.

[87] *Sparrow v Charity Commission*, CA/2013/0006 at [50] per Judge Peter Hinchliffe.

[88] *Thomas v Charity Commission*, CA/2012/0001 and *Corish v Attorney General of New South Wales* [2006] NSWSC 1219 at [19] per Campbell J.

[89] Cf *Maidment and Lennox Ryan v Charity Commission* CA/2009/0001 and 0002 at [5.25]–[5.35].

[90] *Attorney General v Price* (1908) 24 TLR 761 (scheme in effect only while the charity's land was not used as a public elementary school) and *Re Royal Naval and Royal Marine Children's Homes, Portsmouth* [1959] 1 W.L.R 755 at 756–757; (1959) 103 S.J. 676 per Roxburgh J (scheme in effect only until Parliament passed certain legislation).

[91] W. Henderson et al, *Tudor on Charities*, 11th edn (London: Sweet & Maxwell, 2022), para.10-114.

[92] Law Commission, *Technical Issues in Charity Law* (Law Com No.375, 2017), para.4.141, and *The Charities Acts Handbook 2024: A Practical Guide to the Charities Act* (LexisNexis Butterworths, 2024), paras [15.2], [15.4] and [15.8].

[93] See Charities Act 2011 ss.224–227 (for charitable incorporated organisations), Charities Act 2011 (for unincorporated charities) ss.280A–280B, Charities Act 2011 (for royal charter charities) s.280C, and Companies Act 2006 ss.21–27 (for charitable companies). Sections 280A–280C were introduced by Charities Act 2022 ss.3–4.

[94] Charity Commission, Operational Guidance 500, policy statement (now withdrawn).

- The need for, or terms of, the amendment are hotly contested;[95] or
- The matter relates to an ambiguous will.

In those cases, and no doubt others, the points discussed in this article should continue to be of use to charity trustees and charity lawyers.

[95] The Charity Commission cannot make an administrative scheme in any case which is better adjudicated by the court because of the contentious character of the case, any special question of law or fact, or any other reason: Charities Act 2011 s.70(8). Hotly contested amendments may therefore end up being settled by the court rather than the Charity Commission. This is what happened in *Dasji v Bhudia* [2026] EWHC 455 (Ch).