Charities

Appointing a Receiver Over a Charity

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For over 300 years the High Court has assumed that it has the power to appoint a receiver over a charity, but until recently the grounds on which it would do so were unclear. Now the court has given clear guidance on when it will do this, and the present article is thought to be the first extended discussion of this power.

Introduction

For over 300 years the High Court has assumed that it has the power to appoint a receiver over a charity. However, until recently, no reported judgment had ever set out in detail when such an appointment would be made. Now in the recent case of *Jaffer* Ms Nicola Rushton KC, sitting as a Deputy High Court Judge, clearly defined when the court will appoint a receiver over a charity.[1]

As draconian as appointing a receiver may be, it is likely that this power will become increasingly relevant. First, many charities are under growing financial pressure due to an increase in demand for their services and an increase in the cost of providing those services. To try to assist the sector, the Charity Commission published guidance in December 2022 on how charity trustees should deal with financial difficulties.[2] However, the unfortunate reality is that no matter how hard they try some charity trustees will not be able to save their charity. For example, 2023 saw a record number of companies which specialise in social work going into insolvency.[3] The second reason why the power to appoint a receiver matters is that the Charity Commission has increasingly focussed on appropriate governance procedures in charities, including financial controls and the management of conflicts of interest.[4] Even if a charity is not actually in financial difficulty, a failure of governance could lead to intervention by the Charity Commission or the court. One outcome of such intervention could be the appointment of a receiver.

This article will have four parts. First, it will explain the historic position at common law. Second, it will explain the Charity Commission's analogous statutory power to appoint an interim manager. Third, it will explain the new law in *Jaffer* and compare it to the previous position. Fourth, it will seek to justify that new law.

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[1] *Jaffer v Jaffer* [2024] EWHC 135 (Ch) ("*Jaffer*"). The Court of Appeal has refused permission to appeal the decision of the High Court.

[2] Charity Commission for England and Wales, "Manage financial difficulties in your charity arising from cost of living pressures", *https://www.gov.uk/guidance/manage-financial-difficulties-in-your-charity-arising-from-cost-of-living-pressures*.

[3] Business Rescue Expert, "Why are more charities in financial difficulty now, after the pandemic?", *https://www.businessrescueexpert.co.uk/why-are-more-charities-in-financial-difficulty-now-after-the-pandemic/*.

[4] See Stone King, "Charity Commission: 2023 review of statutory inquiries", *https://www.stoneking.co.uk/literature/e-bulletins/charity-commission-2023-review-statutory-inquiries*.

The historic common law position

In general terms, a receiver is an impartial individual who is appointed to collect, protect and receive assets.[5] The power to appoint a receiver is one of the oldest remedies of the Court of Chancery.[6] However, for many centuries, "[t]he court's inherent jurisdiction to appoint a person to be the receiver and manager of a charitable trust was rarely exercised".[7] Furthermore, as far as this author can tell, no textbook or article attempts to collate the limited number of reported cases in which a receiver has been appointed over a charity. This section will attempt to do so. It will be seen that over the last 300 years only seven reported cases refer to the appointment of a receiver over a charity itself.[8] None of those judgments discusses in any depth the jurisdiction to appoint a receiver over a charity. The inevitable conclusion is that *Jaffer* was both necessary and timely.

The historic case law

The first reported example of a receiver being appointed over a charity of which this author is aware is *The Mayor etc of Coventry v Attorney General*.[9] In 1542 Sir Thomas White gave £1,400 to the mayor of Coventry to purchase lands and use the income to make grants and loans to impoverished locals. In 1552 the income from the lands was £70. Accordingly, the mayor agreed to distribute £70 each year in various ways. By 1695 the income from the lands had grown to £988 a year but still only £70 a year was being distributed to impoverished locals; the rest was being used by the mayor for general non-charitable purposes in Coventry. Some local aldermen objected to this course. In 1702, the House of Lords held that the surplus ought to have been applied for charitable purposes.[10] In 1705, a Master decided that the mayor ought to account for the surplus from 1702 onwards. That judgment is unreported, but according to a law report from 1715 the corporation of Coventry was at some point ordered to pay over £2,000 to charity.[11] However, the Corporation either could not or did not pay. As a result, at some point, the underlying lands were sequestered and in 1710 the trustees were removed from office and replaced with new trustees. Both of those judgments are also unreported. However, in the law report for an appeal to the House of Lords in 1720, it is stated that in 1705 "a receiver was appointed, and the corporation were enjoined from receiving any of the profits of the estate for the future".[12] No explanation is given of why the appointment was appropriate, especially so given that the court replaced the trustees just five years later.

The second reported example of the court appointing a receiver over a charity is found in the remarkable facts of *Attorney General v The Haberdashers' Company*.[13] In 1708 the Court of Chancery appointed a receiver over the Free Grammar School in Monmouth (now part of the Haberdashers' Schools) at the request of private individuals ("relators") rather than the Attorney General. For nearly 150 years the relators' solicitors and their successors acted as receivers of the charity. In or around 1850, the Attorney General first became aware of the longstanding receivership. The Attorney General presented a petition in the Court of Chancery for "some order, which may have the effect of putting a stop to these and similar

[5] T. Robinson and P. Walton, *Kerr & Hunter on Receivers and Administrators*, 21st edn (London: Sweet & Maxwell, 2020), para.2-1.
[6] *Attorney General v Schonfeld* [1980] 1 W.L.R. 1182, 1187 per Sir Robert Megarry V-C.
[7] D. Cracknell et al, *Charities: The Law and Practice* (London: Sweet & Maxwell), para.J.59.
[8] There are other situations in which a charity might have to work with a receiver. For example, a receiver may be appointed over the income in a deceased person's estate to determine which assets are to be inherited by a charity and which are to be inherited by the heir: *Attorney General v Day* (1817) 2 Madd. 246; 56 E.R. 325; *Attorney General v Bowyer* (1798) 3 Ves. Jr. 714; 30 E.R. 1235; *Bays v Bird* (1726) 2 P. Wms. 397; 24 E.R. 784. Alternatively, a receiver may be appointed over a lease held by the tenant of a charity: *Official Custodian for Charities v Mackay* [1985] Ch. 168; [1984] 3 W.L.R. 915. However, in these cases the receiver was not appointed over the charity itself.
[9] *The Mayor, Bailiffs and Commonality of the City of Coventry v Attorney General ("Coventry No.3")* (1720) 7 Bro. P.C. 235; 3 E.R. 153 HL.
[10] *Attorney General v The Mayor etc of Coventry ("Coventry No.1")* (1702) Colles 280; 1 E.R. 286 HL.
[11] *Attorney General v The Mayor etc of Coventry ("Coventry No.2")* (1715) 2 Vern. 713; 23 E.R. 1069.
[12] *Coventry No.3* (1720) 7 Bro. P.C. 235, 237; 3 E.R. 153, 154. It is possible that the sequester and the receiver were different people, appointed at different times: D. Berkley KC, "Receivers" in *Halsbury's Laws of England* (London: LexisNexis, 2019), Vol.88, para.59.
[13] *Attorney General v The Haberdashers' Company* (1852) 15 Beav. 397; 51 E.R. 591.

proceedings".[14] There is no report of the original order from 1708 or the judgment which preceded it. However, Sir John Romilly MR declared that the appointment of the receivers was "irregular and improper".[15] The judge gave two reasons for this conclusion. First, a receivership of this length was inappropriate because it was "productive of very great abuses". Second, "[n]othing has been brought to my attention, in this case, to shew that a receiver is necessary".[16] This case therefore appears to set a very high threshold for appointing a receiver: necessity.

The third reported example of the court appointing a receiver over a charity is *Du Pre v Duncombe*.[17] This involved long running litigation in the Court of Chancery concerning the fees to be paid to the master and usher of the Free School of King Edward the Sixth, in Berkhamsted (now part of Berkhamsted School). The law report notes that on an undisclosed date between 1753 and 1829, a receiver was appointed over the school to receive the rents and profits from the lands which funded the school, and pay the salaries of the master and usher of the school.[18] Mr Du Pre was an usher who claimed that the receiver, Mr Duncombe, had not paid him his full salary. The claim was brought more than six years after the salary was due. Sir James Knight-Bruce V-C dismissed the claim on the grounds of limitation. Yet again, the court did not discuss why it was originally appropriate to appoint a receiver over the charity for many years.

The fourth reported example of the court appointing a receiver over a charity is found in the *Attorney General v St Cross Hospital* litigation. The Attorney General issued proceedings against the trustees of an ancient hospital charity in Winchester for the correction of alleged abuses in the management of the charity and the making of a scheme. The Earl of Guildford was the master of the hospital at the time. In 1853, Sir John Romilly MR held that the Earl was only required to account for rents which he had received after the claim was issued. According to a judgment in 1854 delivered by the same judge in the same dispute, in 1853 the court also appointed a receiver over the hospital charity "to preserve the rights of all persons interested in it".[19] However, unusually, the word "receiver" does not appear in the report of the 1853 judgment.[20] It is unlikely that Sir John Romilly MR was mistaken about the order that he had made just ten months earlier. Nevertheless, neither report contains a discussion of why it was appropriate to appoint a receiver over the charity.

The fifth reported example of the court appointing a receiver over a charity is *Attorney General v Christ Church, Oxford*.[21] By his will dated 3 February 1689, Edward Careswell left various lands in Shropshire on trust to fund 18 scholarships at Christ Church College, Oxford University, for students from six schools. In 1890 the Charity Commissioners contacted the governors of the various schools to take steps to establish a new scheme pursuant to s.9 of the Endowed Schools Act 1869. The governors disputed the Charity Commission's jurisdiction. In the summary of the facts, there is a reference to an earlier scheme which was approved by the Court of Chancery on 11 February 1861. The first paragraph of that scheme provided "that the entire net income of the charity property should be applied by the receiver in the cause, first, in paying …"[22] The 1861 judgment which preceded that scheme is not reported. There is also no explanation in the later report of the nature of the 1861 dispute or why it was appropriate to appoint a receiver.

The sixth reported case in which a receiver was appointed over a charity is the most well-known. *Attorney General v Schonfeld* concerned a dispute over the management of five Jewish schools which

[14] *The Haberdashers' Company* (1852) 15 Beav. 397, 404; 51 E.R. 591, 594.
[15] *The Haberdashers' Company* (1852) 15 Beav. 397, 407; 51 E.R. 595.
[16] *The Haberdashers' Company* (1852) 15 Beav. 397, 405; 51 E.R. 594.
[17] *Du Pre v Duncombe* (1845) 2 Holt Eq. 399; 71 E.R. 922.
[18] *Du Pre* (1845) 2 Holt Eq. 399 at 399–400; 71 E.R. 922.
[19] *Attorney General v St Cross Hospital* (1854) 18 Beav. 601, 605; 52 E.R. 236, 238 per Sir John Romilly MR. For a different description of the same order, see *Attorney General v St Cross Hospital* (1856) 8 De G. M. & G. 38, 41; 44 E.R. 303, 305.
[20] *Attorney General v St Cross Hospital* (1853) 17 Beav. 435; 51 E.R. 1103.
[21] *Attorney General v Christ Church, Oxford* [1894] 3 Ch. 524.
[22] A receiver in the cause is appointed to hold assets which are the subject of a dispute pending the determination of who is entitled to receive those assets: *Delany v Mansfield* (1825) 1 Hog. 234, 235 per Sir William MacMahon MR (an Irish case cited in *Re Hoare* [1892] 3 Ch. 94, at 98–99 per Stirling J).

were run by a charity called the Jewish Secondary Schools Movement. Dr Solomon Schonfeld was the chairman of the charity. On 4 July 1979, the Attorney General issued a claim for a scheme to (re)define the administration, regulation and management of the two secondary schools run by the charity. On 13 July 1979 Walton J appointed a receiver over the charity. Walton J's order and judgment are unreported, but they can be reconstituted in part from later judgments in the claim.

On 4 December 1979, the receiver applied for directions permitting him to advertise for and appoint a new head teacher. On 28 February 1980, Sir Robert Megarry V-C gave a reported judgment in that application.[23] The judgment says that Walton J's order appointed the receiver to "collect get in and receive all the assets property and effects belonging to the charity" and "to manage the affairs of the said charity until after the substantive hearing of the originating summons or further order in the meantime".[24] Sir Robert Megarry V-C did not discuss why the receiver was appointed, but he said, "I do not doubt the power of the court to make such an order in a suitable case such as this".

Dr Schonfeld appealed both the decision of Walton J (appointing the receiver) and the decision of Sir Robert Megarry V-C (giving directions to the receiver). The unreported ex tempore judgment of the Court of Appeal is available on Westlaw (only).[25] Dr Schonfeld appeared in person. The Court of Appeal dismissed his appeal against both judgments without hearing from the other parties. As a result the judgment is of limited weight. Nevertheless, Templeman LJ, giving the judgment of the Court of Appeal, summarised Walton J's conclusions as follows:

> "First of all he said that it was clear that the affairs of the charity could not be allowed to drift on in their then state. Secondly, summing up the evidence, he said that the continued existence of the charity was at that moment in grave danger and that in the circumstances 'the only possible way of holding the ring and getting the affairs of the Charity back on an even keel is to appoint a receiver and manager' and 'there cannot be any question at all but that in the state of affairs I have described a receiver and manager must be appointed …'."

Having reviewed the evidence in some detail Templeman LJ noted the *"serious deficiencies"* in the management of the schools and said there was "a very serious question with regard to the viability of both schools under the present management". Accordingly Templeman LJ concluded that "in the state of the evidence that was before Mr Justice Walton, he had no choice but to make the order which he did".

It therefore appears that *Schonfeld* is only authority for the proposition that a receiver may be appointed pending the trial of charity proceedings where there is no other way of preserving the charity.

The seventh and final reported case which mentions the appointment of a receiver over a charity is *Attorney General v Wright*.[26] The nature of the underlying claim is unclear. What is known is that the Attorney General sought an injunction against the headmaster of Slindon College to prevent him from disposing of any properties or assets in his name which belonged to the College. Ten days after the claim was issued, Mervyn-Davies J made an order which, among other things, appointed a receiver and manager of the charity. However, the order and any judgment which preceded it are unreported. The only reason the appointment is known is because Hoffmann J later gave a reported judgment on whether the Attorney General was required to give a cross-undertaking in damages. In his judgment Hoffmann J did not explain why a receiver was appointed. Given that the underlying facts of this claim are unclear, *Wright* gives no guidance at all on when a receiver will be appointed over a charity.

[23] *Attorney General v Schonfeld* [1980] 1 W.L.R. 1182; (1980) 124 S.J. 542.
[24] *Schonfeld* [1980] 1 W.L.R. 1182, 1184.
[25] *Schonfeld* unreported 28 July 1980 CA (Civ Div).
[26] *Attorney General v Wright* [1988] 1 W.L.R. 164; [1987] 3 All E.R. 579.

The textbooks

Like the cases just discussed, most leading textbooks only offer a brief analysis of the court's power to appoint a receiver over a charity. For example, the latest edition of *Tudor on Charities* merely states that "[i]n some cases the court will appoint a receiver and manager for a charity".[27] Similarly, the volume on receivers in *Halsbury's Laws of England* merely says "[a] receiver may be appointed against charity trustees in a suitable case".[28] Both works only cite *Schonfeld* in support of the limited commentary.

As far as this author is aware, only one textbook goes any further. *Kerr and Hunter on Receivers and Administrators* cites *Schonfeld* and argues that:

> "[t]he principles relating to the preservation of property pending litigation apply as much to charities as to other bodies, where there is either: (a) such dispute between the known officials themselves that they cannot carry on the business of their organisation in a proper manner; or (b) that their identity is for any reason in dispute, so that it is not known for certain who is entitled to act on behalf of the body they should be managing."[29]

While these are plausible reasons for appointing a receiver, it is respectfully submitted that neither is found in any of the reported cases decided before the textbook was published.

Summary of the historic position

In summary, over the last 300 years the courts have very occasionally appointed a receiver over a charity. None of the cases purports to lay down any general principles, and there are no reliable or detailed discussions in the relevant textbooks. Nevertheless, it is possible to discern three general trends in the seven historic cases:

(1) The threshold for appointing a receiver is very high. For example, in *The Haberdashers' Company* the court said the test was "necessity" and in *Schonfeld* the court suggested that there must be no other way of preserving the charity's assets.

(2) Most commonly, a receiver is only appointed pending a trial: *Wright*, *Schonfeld* and *St Cross Hospital*. Similarly, in *The Haberdashers' Company* the court expressly disapproved of long-term receiverships.

(3) It seems that the court has previously been persuaded to appoint a receiver to reduce the possibility that the defendant would dissipate charity assets, as may have occurred in *Coventry* and *Du Pre*.

However, it is readily accepted that there is only a modest amount of authority to support any of those propositions.

The Charity Commission's statutory powers

The main reason for the dearth of recent reported cases on court-appointed receivers is that in 1992 the Charity Commission was given the power to appoint an interim manager to act as receiver and manager of a charity.[30]

[27] W. Henderson et al, *Tudor on Charities*, 11th edn (London: Sweet & Maxwell, 2022), para.15-161.

[28] *Halsbury's Laws of England* (2019), Vol.88, Receivers, para.33.

[29] Robinson and Walton (eds), *Kerr & Hunter on Receivers and Administrators*, 21st edn (2020), para.6-120. The equivalent paragraph in an earlier edition of this textbook was cited in *Sengthong v Lao Buddhist Society of NSW Incorporated* [2016] NSWSC 1408 at [173] per Lindsay J.

[30] Charities Act 1960 s.20A, introduced on 1 November 1992 by Charities Act 1992 s.9 and replaced just 10 months later by Charities Act 1993 ss.18(1)(vii) and 19. The law is now contained in Charities Act 2011 ss.76–78.

This is not the place for a full discussion of the Charity Commission's powers.[31] However, a summary of the law will provide a useful comparison.

In short, the Charity Commission may only appoint an interim manager if, after instituting an inquiry, one of the following conditions is met:

(1) There has been a failure to comply with an order of the Charity Commission;
(2) There has been a failure to remedy any breach specified in an official warning;[32]
(3) There has been any other "misconduct or mismanagement in the administration of the charity"; or
(4) It is "necessary or desirable to act" for the purpose of protecting the property of the charity or securing the proper application of the charity's property.[33]

These are necessary but not sufficient conditions. In other words, even if one of the above requirements is met, the Charity Commission (and the First-tier Tribunal on appeal) retains a discretion not to appoint an interim manager.[34]

In practice, the terms "misconduct and mismanagement" have given rise to most of the litigation in relation to interim managers. Since the earliest cases under the Charities Act 1993, "misconduct" and "mismanagement" have been given their ordinary meanings.[35] Now, both the Charities Act 2011[36] and the Charity Commission's guidance give examples of misconduct and mismanagement.[37] However, these are no more than examples. Fundamentally, the question is whether the act(s) or omission(s)—

> "… complained of in their totality [are] of some substance to justify the appointment of an interim manager rather than the alternative which would involve the use of some or all of the other statutory tools within the Commission's armoury."[38]

As a result the Charity Commission uses its statutory powers sparingly and as a last resort. For example, between 1992 and 2006, the Charity Commission appointed only 51 interim managers (i.e. fewer than four appointments a year on average).[39]

Any appointment by the Charity Commission is on a temporary basis and must be reviewed periodically by the Charity Commission.[40] Typically, the Charity Commission will appoint an interim manager for up to two years.

There are three similarities between the historic common law approach and the Charity Commission's approach. First, both the court and the Charity Commission will not usually appoint a receiver/interim manager if there is any other alternative. In other words, in both cases the test is one of "necessity". Second, both the common law and statute allow the protection of charity property to be a justification for the appointment of a receiver. Third, both the common law and statute seek to limit the length of time for which a receiver may be appointed. It is submitted that all three similarities are sensible and justifiable principles for the law to maintain and apply.

[31] For a more detailed discussion see Henderson et al, *Tudor on Charities*, 11th edn (2022) paras 15-098–15-113.
[32] Issued pursuant to Charities Act 2011 s.75A.
[33] Charities Act 2011 s.76(3)(a).
[34] *The Knightland Foundation v Charity Commission of England and Wales* [2021] UKFTT 365 (GRC) at [103] per Judge O'Connor.
[35] *Scargill v Charity Commission*, unreported, Chancery Division, 4 September 1998, Neuberger J.
[36] Employing someone for excessive remuneration: Charities Act 2011 s.76(2).
[37] The Charity Commission gives a long list of examples in its Operational Guidance 117-12, s.3.2.1. In 2023 the Charity Commission published shorter guidance entitled "Charity Commission power to appoint an Interim Manager for a charity", *https://www.gov.uk/government/publications/how-the-charity-commission-appoints-interim-managers/charity-commission-power-to-appoint-an-interim-manager-for-a-charity*.
[38] *Mountstar (PCT) Ltd v Charity Commission* CA/2013/0001 & 0003 at [138].
[39] The Charity Commission, Interim Managers: 2005/06, *https://data.parliament.uk/DepositedPapers/Files/DEP2008-1120/DEP2008-1120.pdf*.
[40] Charities Act 2011 s.76(6).

The new law: Jaffer

The historic common law section of this article must now be read subject to the recent decision in *Jaffer*.[41] This case concerned the World Federation of the Khoja Shia Ithna-Asheri Muslim Communities ("the Charity"). The judgment is nearly 100 pages long and covers many factual and legal issues, so only the briefest of summaries will be given. References in square brackets are to the paragraph numbers of the judgment.

The facts

The Khojas are a community of followers of the Shia Ithna-Asheri Muslim faith. They organise themselves into "jamaats", which are akin to mosques. Each jamaat is its own organisation with a constitution and governing body etc. There are approximately 123 jamaats worldwide. All but one of the jamaats are members of one of five regional federations (e.g. the jamaats in Europe are members of the Council of European Jamaats). Those regional federations are also standalone institutions with constitutions and governing bodies etc. The five regional federations are the five members of the Charity. In other words, there is a three-tier system in the Khoja community: local jamaats, regional federations, and the worldwide Charity.

The claimant is a member of the Mombasa jamaat and one of the Charity's governing bodies. His claim had two main parts. First, he disputed the validity of the 2020 election for president of the Charity, which the 1st defendant won. Second, the claimant was concerned by the Charity's receipt and use of very substantial donations from one of its donors in the middle east. In relation to those claims, the claimant asked the court to appoint a receiver over the Charity to run the 2024 presidential election for the Charity (rather than allow the Charity to run its own election) and to investigate the financial affairs of the Charity relating to the middle eastern donor.

The judge's conclusions

The court emphatically rejected both claims. After a detailed discussion of the evidence and the arguments, the judge concluded that the 1st defendant was eligible to stand for election for president in accordance with the Charity's governing documents.[42] The court then rejected all 14 of the claimant's complaints about the conduct of the 2020 election on one or more of three grounds: (a) the Charity's rules were complied with; (b) any non-compliance with the Charity's rules was non-material; and/or (c) any non-compliance was within the reasonable range of actions open to the fiduciaries who conducted the election.[43] Overall, the judge concluded that the 2020 election was run with a high degree of competence, practicality and respect, and that there was nothing to suggest that the 2024 election would not be run effectively.[44] There was therefore no need to appoint a receiver to conduct the 2024 election.[45]

Turning to the financial matters, the judge started by discussing the Charity trustees' duties to investigate the conduct of their predecessors.[46] The judge went on to discuss the payments that were made by the Charity, whether those payments were within the scope of the Charity's objects, and whether the payments were considered by the Charity's governing bodies.[47] Overall, the judge concluded that it would plainly not be in the best interests of the Charity to appoint a receiver to carry out a further investigation into the

[41] *Jaffer* [2024] EWHC 135 (Ch).
[42] *Jaffer* [2024] EWHC 135 (Ch) at [211]–[220].
[43] *Jaffer* [2024] EWHC 135 (Ch) at [233]–[355].
[44] *Jaffer* [2024] EWHC 135 (Ch) at [356]–[358].
[45] *Jaffer* [2024] EWHC 135 (Ch) at [372].
[46] *Jaffer* [2024] EWHC 135 (Ch) at [378]–[383].
[47] *Jaffer* [2024] EWHC 135 (Ch) at [397]–[449].

Charity's finances beyond what the trustees had already commissioned.[48] In summary, there was no evidence that anything had gone seriously wrong with the management of the Charity, the Charity's financial management had improved over the last few years, and as a result there was no serious risk to the Charity's finances.

The new law

Relevantly, the court discussed at length the power to appoint a receiver over a charity.[49] The judge confirmed that the High Court has the power to appoint a receiver over a charity pursuant to s.37 of the Senior Courts Act 1981 and the court's inherent jurisdiction over charities.[50]

As to when the court will make an appointment, the judge's key conclusion is that—

> "… in deciding whether to appoint a receiver for either of the purposes sought, [the court] need[s] to be satisfied that this is necessary or clearly desirable and in the best interests of the charity, because something has gone seriously wrong in its operation or management which is not being and/or cannot be effectively addressed by its current trustees, or there is a clear risk this will happen, making due allowance for the fact the trustees are volunteers performing a public service."[51]

This is now the definitive test for the court to apply when deciding whether to appoint a receiver over a charity. There are seven further points to note.

First, there are no hard and fast rules because the decision whether to appoint a receiver depends on all the circumstances of the particular case.[52]

Second, it is a necessary but not a sufficient requirement that the appointment of a receiver is in the charity's best interests.[53]

Third, the judge expressly adopted the principles which apply when deciding whether to appoint a receiver over a trust.[54] There are useful summaries of those principles in the main textbooks on trusts law and receiverships.[55] In a nutshell, the courts will usually only appoint a receiver over a trust where the trustees are guilty of misconduct, the trustees cannot function effectively, and/or the trust assets are at risk. These principles now apply to charity disputes.

Fourth, similarly—

> "it could be said that [s.76 of the Charities Act 2011] indicate[s] the seriousness of the situations which would justify invoking this power, and possibly that they were intended to reflect the type of situation where the court would have exercised this power."[56]

It is submitted that this makes sense because the principles which the Charity Commission applies are analogous to the common law principles which apply in trust cases.

Fifth, it is appropriate for the court to bear in mind that, unless the charity is already in public crisis, appointing a receiver is likely to have a negative effect on the charity's public perception and its ability to fundraise and recruit.[57] Where there is a real risk of serious harm to the charity, the court must be "very

[48] *Jaffer* [2024] EWHC 135 (Ch) at [469].
[49] *Jaffer* [2024] EWHC 135 (Ch) at [179]–[203].
[50] *Jaffer* [2024] EWHC 135 (Ch) at [179].
[51] *Jaffer* [2024] EWHC 135 (Ch) at [201]. This last point is a reference to *Re Keeping Kids Co* [2021] EWHC 175 (Ch) at [848] and [911] per Falk J.
[52] *Jaffer* [2024] EWHC 135 (Ch) at [185].
[53] *Jaffer* [2024] EWHC 135 (Ch) at [200].
[54] *Jaffer* [2024] EWHC 135 (Ch) at [200].
[55] See e.g. L. Tucker et al, *Lewin on Trusts*, 20th edn (London: Sweet & Maxwell, 2020) paras 40-033–40-040, and Robinson and Walton, *Kerr & Hunter on Receivers and Administrators*, 21st edn (2020) paras 6-91–6-101.
[56] *Jaffer* [2024] EWHC 135 (Ch) at [195].
[57] *Jaffer* [2024] EWHC 135 (Ch) at [203].

confident that appointing a receiver would provide essential benefits to the charity which outweighed these risks".[58]

Sixth, when considering whether the problem(s) for the charity in question "cannot be effectively addressed" by the current trustees, the court will consider the qualifications and recent conduct of the current trustees.[59] For example, it would be relevant if the trustees had already instructed external professionals to investigate alleged wrongdoing within the charity.[60]

Seventh, in practice, the power to appoint a receiver is "on any view a rarely exercised power".[61] Usually, the power will be exercised as an interim measure pending a decision whether to remove the trustees, but it is possible to appoint a receiver for a wider purpose if there is a "serious risk to the proper functioning of the charity".[62] For example, it may be appropriate to appoint a receiver to conduct an election within the charity if the charity itself is "incapable" of doing so effectively.

Comparing the new law and the old law

There are four obvious points of comparison between the old law and the new law. First, it is still only in rare cases that the court will appoint a receiver over a charity. Second, in essence, the fundamental common law test continues to be one of necessity. Third, when making its decision in relation to a charity, the court will look to both the principles applied by the Charity Commission and the principles applied to receiverships of trusts. This expressly brings cohesion to the law. Fourth, in most cases, the court will still only appoint a receiver for a limited period, for example pending the trial of charity proceedings.

However, there are at least two important new points of substance. First, the court has confirmed that the best interests of the charity are relevant, but not decisive. Second, the court has confirmed that it will take into account practical realities, including the qualifications, experience and conduct of the current trustees, and the impact that appointing a receiver would have on the charity. This second point will no doubt be particularly welcome to hardworking charity trustees.

Justifying the new law

It is clear from the discussion above that the court will (still) only exceptionally appoint a receiver over a charity. For five reasons, it is respectfully submitted that this is the right approach for the law to take.

First, litigation between members of a charity over whether to appoint a receiver will be charity proceedings.[63] The courts generally discourage the expenditure of charitable funds on charity proceedings because they are time-consuming, expensive and emotive, and rarely advance the interests of the charity to the extent that the parties hope.[64]

Second, in order to obtain permission to issue charity proceedings, the claimant will necessarily have had to ask the Charity Commission for permission to issue the claim.[65] In deciding whether to grant permission, the Charity Commission will have considered whether there were alternative ways to resolve the issues, including whether the Charity Commission can exercise one of its other statutory powers.[66] It is therefore fair to assume that the Charity Commission will probably have decided against instituting an

[58] *Jaffer* [2024] EWHC 135 (Ch) at [469(v)].
[59] *Jaffer* [2024] EWHC 135 (Ch) at [469].
[60] *Jaffer* [2024] EWHC 135 (Ch) at [134]–[137].
[61] *Jaffer* [2024] EWHC 135 (Ch) at [181]. The same is true for the appointment of receivers over trusts: P. Matthews et al (eds), *Underhill and Hayton Law of Trusts and Trustees*, 20th edn (London: LexisNexis, 2022), para.95.7.
[62] *Jaffer* [2024] EWHC 135 (Ch) at [202].
[63] See e.g. *Jaffer* [2024] EWHC 135 (Ch) at [1] and [145] per Nicola Rushton KC.
[64] See e.g. *Bhamani v Sattar* [2021] EWCA Civ 243 at [56] per Nugee LJ.
[65] Charities Act 2011 s.115.
[66] Charity Commission, "*Charities and Litigation: the legal underpinnings* (2016)" paras.5.9 and 5.20–5.23, see *https://assets.publishing.service.gov.uk/media/639846a6d3bf7f3f82d2474d/Charities_and_litigation_the_legal_underpinnings_dec22.pdf*. Note that it is possible for the Charity Commission to decide that it is more appropriate for the issue to be decided by the court, even if the Charity Commission has the power to act.

inquiry and exercising its statutory power to appoint an interim manager. If the Charity Commission has decided not to appoint an interim manager as a temporary receiver, the court should be very slow to appoint a receiver.[67]

Third, the appointment of a receiver is one of the most serious actions which can be taken by the court in relation to a charity. For example, in *Jaffer* the High Court acknowledged that—

> "… removing one trustee may have less impact on the management of the charity than appointing a receiver alongside the existing trustees, restricting what they can all do and removing functions from all of them, albeit temporarily."[68]

Fourth, relatedly, appointing a receiver will often precipitate the winding up of the charity.[69] For example, as the High Court recognised in *Jaffer*:

> "… to appoint a receiver to investigate any aspect of the affairs of the Charity, and I have no doubt this applies with particular force to financial affairs, would seriously damage the standing of and confidence in the Charity, both internally on the part of its members and externally by its donors, beneficiaries and partner organisations, potentially fatally."[70]

Fifth, for centuries, the courts have recognised that the management of a charity is best left to its trustees and should not be run under the constant supervision of the court.[71] This principle must of course give way in cases where there is no other way of avoiding serious harm to the charity. However, it is submitted that in cases of doubt the courts should err on the side of replacing trustees and/or giving directions to assist the charity to manage itself more effectively.

Conclusion

For more than 300 years the court has had the power to appoint a receiver over a charity, but it has only recently become clear when the court will do so. In short, the court will only appoint a receiver over a charity if it is necessary or clearly desirable *and* in the best interests of the charity because something has gone seriously wrong with the management of the charity which cannot be effectively addressed by the trustees. In practice, it is unlikely that many receivers will be appointed by the court over charities. First, the newly restated test is difficult to satisfy. This article argues that this is the correct position for charity law to take. Second, the Charity Commission can appoint an interim manager to conduct a similar role to a court-appointed receiver. It will be a rare case for the court to disagree with the Charity Commission over so serious a matter as the appointment of a receiver. Nevertheless, the increasing financial pressures on charities and the Charity Commission's increased focus on proper governance might bring the issue of receivership to the fore in the coming years. In those circumstances, *Jaffer* is a welcome and timely restatement of the law.

[67] Cf. *Jaffer* [2024] EWHC 135 (Ch) at [468(i)].
[68] *Jaffer* [2024] EWHC 135 (Ch) at [187].
[69] Cf. Bates Wells Braithwaite, *The Charities Acts Handbook* (London: LexisNexis, 2016), para.9.95, discussing interim managers.
[70] *Jaffer* [2024] EWHC 135 (Ch) at [469(v)]. Also see *Jaffer* [2024] EWHC 135 (Ch) at [372(iv)].
[71] See e.g. *Attorney General v The Haberdashers' Company* (1791) 1 Ves. Jr. 295 at 295–296; 30 E.R. 351 per Lord Thurlow; and *Attorney General v Solly* (1835) 5 L.J. (N.S.) Ch. 5, 7 per Earl Cottenham MR, both cited in *Attorney General v The Haberdashers' Company* (1852) 15 Beav. 397, 405 and 406; 51 E.R. 591, 594 and 595 (respectively) per Sir John Romilly MR.