**Shell Charities and Terrorist Financing: A Sledgehammer to Crack a Shell?**

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1. Introduction

Charities are accustomed to enjoying special treatment in English law, but this is normally positive in nature. For example, charities enjoy fiscal privileges which are denied to other Non-Profit Organisations (NPOs).[[1]](#footnote-1) Increasingly, though, charitable organisations (and NPOs) are seen as open to significant abuse by people who want to exploit them for various ends. The fact that charities are highly valued in society can, it is said, make them attractive targets for criminal abuse such as money laundering and the financing of acts of terrorism. Charities often work in conflict zones, where terrorists are operating, and they may provide an attractive and efficient way to raise and/or channel funds. Moreover, the reality of how many charities operate, particularly in dealing with humanitarian crisis, can be through a tendency to raise funds first and worry about regulation later. This is about response to need, those charities would say, and is doubtless the modus operandi of many, though not all, organisations. In a context of increasing regulation and concern, with the escalation of terrorist attacks across the world and in western cities in particular, charities are said to ‘have the potential to be the weak link’ in ant-terrorist and anti-money laundering efforts.[[2]](#footnote-2) If charities were to be exposed in practice to facilitating acts of terror this would cause significant damage to trust and confidence in charities. There is the added sting that, at least in the UK, the public purse would have indirectly financed the activity, through the support of tax relief given to charitable organisations.

The particular issue under consideration in this paper is how shell charities might have the potential for abuse for terrorist financing. While the issue of shell organisation might be felt to be narrow in scope, this necessarily involves interaction with more general issues around the approach to regulation of activity,[[3]](#footnote-3) as the key is to find a balance in regulation, and one that does not harm the legitimate operation of the sector. This is, in the words of Hubert Picarda QC, the ‘search for an appropriate comprehensive and effective strategy to combat the virus that is attacking civilised living and freedoms.’[[4]](#footnote-4) It must be remembered that charities are more likely to be play a major role in dealing with the impact of terror, a point well made in the strength and speed of the response to the Manchester suicide bombing of the Ariana Grande concert, rather than finance or facilitate acts of terror.[[5]](#footnote-5)

It will be suggested that the regulatory response in England and Wales, and internationally, may have gone too far and expended more effort than is necessary to little significant advantage. There is, in fact, no more significant threat posed by shell charities, or charities more generally, than for many other forms of organisation. Indeed, charities may need to operate shell charities for legitimate reasons, such as where organisations are merging.[[6]](#footnote-6) There are issues, but they are of general import, and no less applicable to any sort of shell organisation, rather than charities. Instead, there remains, as with many private sector organisations, deep-rooted issues of weak governance within the sector, and a regulator which has come under trenchant criticism over a period of years for its (perceived) weaknesses. This is a great threat to the facilitation of financial crime such as fraud more generally, and is of more significant concern to the sector as whole than the continued concentration on terrorism and money laundering. Have those concerned wielded a legal sledgehammer to crack a shell?

1. Definitions

Before embarking on a consideration of the issue, both in theory and practice, it is necessary to define the actors at play in this particular drama and to establish the scenery.

1. What are Charities?

Charitable bodies in England and Wales are organisations which are both part of, and distinct from, the Voluntary sector at large, which includes many non-charitable voluntary organisations, including Not-For-Profits.[[7]](#footnote-7) They are formed for designated charitable purposes, and are thus purpose trusts, and do not have named, individual beneficiaries.[[8]](#footnote-8) Charities must normally be registered with the Charity Commission,[[9]](#footnote-9) enjoy the fiscal and other privileges associated with charitable status,[[10]](#footnote-10) and are subject to regulation by the Charity Commission, discussed below.[[11]](#footnote-11) Many charities choose to incorporate as charitable companies limited by guarantee, and will have trustees on their boards, where the directors and trustees are not one and the same persons. Whether a charity exists as an incorporated or unincorporated body, or as a trust, it is governed by essentially similar rules.[[12]](#footnote-12) These are the normal duties of care and skill that apply to all trustees under the Trustee Act 2000, and the myriad related rules in equity, including the fiduciary duties and obligations on the controlling members of the charity. Regulation of the Charity sector in England and Wales, through the Charity Commission is designed to promote transparency in the financial affairs of charities, and to thereby ensure that ‘trust and confidence’ in the sector is protected, so that civilians will continue to donate both time through volunteering and money through donation to charities.[[13]](#footnote-13)

Charities form a very significant part of a wider Third Sector ,[[14]](#footnote-14) which includes ‘not for profit’, voluntary and community sector, social enterprise, and mutual societies or organizations, cooperatives, and non-governmental organizations all working independently of direct governmental direction. Charities in the UK, as part of the Third Sector, are an essential component of social provision,[[15]](#footnote-15) as they encourage and create ‘new services . . . [plug] gaps in delivery . . . and often focus on meeting the needs of the disadvantaged and socially excluded’.[[16]](#footnote-16) At a wider level charities, and other not-for-profits, are seen as a significant part of Civil Society.

Internationally, UK charities also play a significant role. Most countries have a concept of NPOs or charities, through regulation is very different. Those closest to the English and Welsh conception include other common law countries, though the United States of America has always regulated not-for-profit organisations as a matter of tax law. Civil law countries view NPOs very differently:

 ‘The treatment of non-profits under common law is governed by the legal concept of charity. Thus...regulators focus on the activity of an organization and whether it provides a public benefit. Qualifying organisations, or ‘charities’, are subject to a more stringent form of regulation than other non-profits. Yet, it is estimated that charities account for only half the 865,000 non-profits in the UK. In contrast, civil law treatment of non-profits is based upon legal form and not activity. In many civil law jurisdictions, the purpose of registration as either an association or foundation is to obtain legal personality and basic tax exemptions although it is becoming more common for extra tax exemptions to be awarded to a subset of these registered non-profits that serve publicly beneficial purposes.’[[17]](#footnote-17)

Charities, which are under scrutiny in this article, are thus only a subset of a much wider group of organisations, something which is often forgotten or overlooked when considering regulation and the threats posed by such organisations. They are more tightly regulated as organisations than other NPOs, because of the privileged position they enjoy through public funding in granting them tax reliefs.

1. What Are Shell Charities?

Shell charities, just like shell companies, are those set up as a vehicle with little or no legitimate activity, or assets, and, at most, nominal officers and directors which exists to frustrate private and public law enforcement efforts through misdirection and obfuscation. They are organisations which ‘wink in and out of existence as if they were exotic subatomic particles of varying flavours and half-lives, with the sole purpose of obfuscating their creators’ activities in the hope of frustrating governmental regulatory and law enforcement efforts’.[[18]](#footnote-18)

Shell trusts should be distinguished from ‘sham’ trusts. Shams are typically made when a settlor seeks to divest himself of assets by settling them on trust, where he often retains great control over the assets and is named as a beneficiary.[[19]](#footnote-19) There are no beneficiaries, as such, in charity law. Shells are organisations which are legitimately registered as charities, or suggest that they have been.

1. What is Money Laundering?

For current purposes, money laundering is the process of turning the proceeds of crime into property or money that can be accessed legitimately without arousing suspicion. The term ‘laundering’ is used because criminals turn ‘dirty’ money into ‘clean’ funds which can then be integrated into the legitimate economy as though they have been acquired lawfully. Charities, like any other organisation, can be targeted as conduits for money laundering. In the UK, and internationally, money laundering is a crime, and the relevant offences are set out in the Proceeds of Crime Act 2002.

Traditionally the money laundering process is broken down into three phases[[20]](#footnote-20) — placement, layering and integration. Shell charities, could, in theory, be used at multiple phases of the money laundering process, in line with any other corporate vehicle. In the ‘placement’ phase, ‘dirty’ money is inserted into the financial system. In the ‘layering’ phase, the money is moved through various bank accounts, mostly belonging to several different corporate vehicles in multiple jurisdictions. The third and final phase, the ‘integration’ phase consists of two sub phases: ‘justification’ and ‘investment’. In the former, the proceeds are re-integrated into regular business activities, for instance by way of a loan structure’ and in the latter, the now laundered money is invested for personal gain, such as purchasing property (normally real estate).

1. What is Terrorist Financing?

Terrorist financing is the raising, moving, storing and using of financial resources for the purposes of terrorism. There is a marked overlap between money laundering and terrorist financing – both criminals and terrorists use similar methods to store and move funds. However, the motive for generating and moving funds differs. Terrorists ultimately need money to commit terrorist acts/attacks. Terrorist groups involve disparate individuals coming together through a shared motivation and ideology.[[21]](#footnote-21) Terrorist financing is a crime, and the offences are set out in ss15-18 of the Terrorism Act 2000.

Shell charities might be employed to facilitate the laundering of money for terrorist purposes, or receive or provide money.

1. International Regulators: Anti-Terrorism

The threats posed by money laundering and terrorist financing are global. Following the attacks on the world trade centre on 11 September 2001, and the escalation of global terror in western countries, action was need. The Financial Action Task Force is an inter-governmental body and acts as the international standard setter for anti-money laundering and counter-terrorist financing, through its 40 Recommendations. The mandate for its existence runs in 8 year cycles, and current mandate continues until end of Dec 2020.[[22]](#footnote-22) There are over 180 countries in which the Recommendations are implemented and assessed.[[23]](#footnote-23) Only 34 countries are direct members of the FATF, the rest are members of FATF-Style Regional Bodies (FSRB’s).[[24]](#footnote-24) The FSRB’s have the status of ‘associate’ members of FATF which affords them participation within FATF.[[25]](#footnote-25)

The Recommendations provide a set of global anti-money laundering and counter-terrorist financing standards that members of the FATF and FSRB’s should strive to achieve. They are non-binding (soft law tools), and the principles that they promote are open to interpretation by states as to how best to implement them into their national law. Countries have diverse legal, administrative and operational frameworks, and as such a one size fits all approach to anti-money laundering and counter-terrorist financing would not work[[26]](#footnote-26). Recommendations 1-3 concern money laundering generally, while 5-8 concern terrorist financing (and money laundering within it). The Recommendation which involves charities in particular is, Recommendation 8, which relates to non-profit organisations.

The EU, of which England and Wales is still a part, despite the outcome of the Brexit referendum vote, has implemented a set of anti-Money Laundering Directives, which are to be implemented in domestic law. The Fourth Money Laundering Directive (EU) 2015/849, was passed by the EU in June 2015, and was implemented in English law in June 2017. These are based on the money laundering aspects of FATF recommendations.

1. Charity Commission in England and Wales[[27]](#footnote-27)

The last actor has already been introduced. In England and Wales, the fact that public money underwrites charities means that charities are regulated by the government. The Attorney-General enforces charitable trusts in the name of the Crown, but they are regulated and overseen by the Charity Commission,[[28]](#footnote-28) which plays the predominant role in the supervision and regulation of charities, and the regulation is now consolidated in the Charities Act 2011. Regulation also provides an important public validation of charitable organisations, and a safeguard for those contributing to worthy causes. Thus, it is said that ‘trust is the voluntary sector exchange rate’,[[29]](#footnote-29) so that an effective charity ‘is accountable to the public and other stakeholders in a way that is transparent and understandable’.[[30]](#footnote-30)

Most charities are required to be registered,[[31]](#footnote-31) and the Charity Commission also undertakes the process of registration and the maintenance of the register. As regulator, it has wide powers to conduct investigations into charities, and ultimately has the power to deregister organisations and bring them to a close. The Charity Commission has also has a role as the champion of the sector, which did not sit easily with its role as regulator. It has been forced, by budget cuts, to focus more on the regulatory function, but, as part of that, it provides guidance and support to the sector, principally through guidance publications on law and practice.

Currently, funding for Charity Commission activity comes from government funding. There is no levy on the charitable sector to maintain the regulator. That issue has come under increasing scrutiny in previous years, against a background of austerity in British political spending, and swingeing cuts to the Charity Commission’s budget in real terms. A consultation by the Charity Commission with the sector on the subject of a levy is forthcoming at the time of writing.[[32]](#footnote-32) Funding of regulation of charities is a matter of ongoing debate across the world, [[33]](#footnote-33) but the English model has often been cited as an exemplar outside of issues of anti-terrorist activity.

1. The Problem In Theory

Now that the stage is set, and the cast introduced, it is time to turn the theoretical problems faced by the use of shell charities to facilitate terrorist financing or money laundering.

The use of shell (non-charitable) organisations is well documented, both in familiar trusts cases on tracing and breach of trust, particularly in international fraud and money laundering cases. It is fourth of four typologies identified by FATF in its 2006 report, as a key scheme to hide the origins of beneficial owners as well as the origins of money.[[34]](#footnote-34)

A shell charity could be established for the purpose of providing cover for channelling funds for the purposes of terrorism, directly or indirectly. A shell could be used to impersonate a legitimate charity, collect donations, and redirect the income collected to terrorism.[[35]](#footnote-35) It could also be employed, by terrorists who set up the shell, promoted as charitable but whose sole purpose is really to raise funds or use its facilities or name to promote or coordinate terrorist activities.[[36]](#footnote-36)

It is to be remembered that shell charities are legitimately created organisations, not shams. So, the possibility exists that terrorist entities may elect to establish a shell charity, one which is registered and engages in requisite regulatory requirements. It is not difficult to set up a charity in the UK. The Commission has the legal obligation to keep a register of institutions that are charitable.[[37]](#footnote-37) The process of registration is well documented and can be started online.[[38]](#footnote-38) It is true that all charities that are required to be registered must have a bank or building society account, but that does not present undue difficulties for shell organisations. Similarly, (bogus) declarations about trustees and income (there must be proof that the organisation has an income must be over £5,000) can be relatively easily produced or procured. The Commission makes a decision on the application before it, applying the relevant law, and, if it seems to meet the requirements, it is registered as a charity.

Gurelé has suggested a general *modus operandi* for non-profit exploration, based on sham NPOs in the USA.[[39]](#footnote-39) Such agencies were found to:

* + incorporate under state law;
	+ apply for tax-exempt status as a charity (or other type of NPO);
	+ undertake fundraising activities;
	+ open domestic bank accounts into which proceeds and donations are deposited; (required for all UK charities) and
	+ transfer funds to overseas financial institutions, diverting all or some of the funds to terrorist activity.

Rather than test the limits of the author and reader’s collective imagination, it is fair to say that shell charities *could* be used and abused for a variety of theoretical purposes. At this stage, there is nothing unique in terms of legal form about shell charities as opposed to any other form of corporate vehicle. The uniqueness, and the theoretical attraction, comes from the potential attraction of charities (and NPOs) more generally to terrorists.

A perception that charities, and other NPOs, operate under less formal regulatory control than other organisations and are governed with less rigour than private organisations, is identified as one attraction of the sector as a whole.[[40]](#footnote-40) This, however, should be challenged at the outset for charities in England and Wales. While it is true that governance is not as mainstreamed in law or popular perception as with private corporate vehicles, charities are subject to regulative scrutiny through the Charity Commission at the very least (unless they are in small category of exempt charities). The need for effective internal governance is as much as live issue for charities as it is for other organisations. Indeed, a new Charity Governance Code was published on 13 July 2017, setting out higher standards for all charities.[[41]](#footnote-41) The Code recognises that good governance in charities if fundamental to their success , as well as compliance with relevant law and regulation. While this is doubtless true of the larger national and international charities, it remains true that there are many smaller charities which do not have the capacity, or interest, to achieve good governance, or appreciate its impact. There are many charities which are small in terms of income, and which may be run by one or two key individuals, often in unsupervised roles, which leaves them vulnerable to abuse. Similarly, new charities may not have the infrastructure or know-how of established organisations.[[42]](#footnote-42) That said, such generalisations are dangerous, as smaller charities can be very well run, and large, national charities not so.[[43]](#footnote-43)

The second, broad appeal of charities to potential money launders or terrorists is the nature of their work, and the geographical locations in which they do it. Charities, particularly aid charities, often have a global network, and can deal intensively in cash, thus providing an attractive cover for illicit transactions.[[44]](#footnote-44) Where money is raised by donation, it can come in small amounts, from multiple donors, and informal money transfers This makes it easier to conceal suspicious activity. They also work in troubled hot spots, and rely on volunteers and galvanise people for a common purpose. Charities could be abused from within by recruiting staff or volunteers who commit fraud, but again, these vulnerabilities are not a unique issue for use of shell charities.

Nonetheless, there has clearly been a perception that there is a problem with charities, and shell charities, that needed a response.

1. The Response: FATF & The Charity Commission And Anti-Terror Laws & Duties

The response in consideration here is principally what has happened in the UK, though that involves looking to an extent at the international dimension. It is worth noting at the outset that the approaches taken, both internationally and at home, through soft[[45]](#footnote-45) and hard law measures, have not targeted the use of shell charities as a specific concern. Instead, action has been directed at a preventative set of strategies, and the hard law in the UK has been to criminalise activity and make bodies that permit or involved in that activity guilty of offences.

The mantra, which is central to the Charity Commission’s approach in England and Wales , is about good governance. This is both as a preventative measure, to try and stop potential instances of financial abuse by terrorists and others, as well as measure of discovery and reporting if and when such abuses take place.[[46]](#footnote-46)

1. FATF

Recommendation 8 (originally SVIII) is FATFs response to the threat of abuse of NPOs (including charities) to abuse for the financing of terrorism. It tasks member countries (which includes the UK) to review domestic laws and regulations that relate to non-profit organisations. It states that NPOs are ‘particularly vulnerable’ to abuse for terrorist purposes. It proposes that countries should ensure these organisations cannot be misused:

* by terrorist organisations posing as legitimate entities
* by exploitation of legitimate entities as channels for terrorist financing including for the purpose of escaping asset-freezing measures
* to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations

As well as calling for more effective transparency and info sharing between the charity sector, FATF advises states to encourage the non-profit sector to:

* adopt methods of best practice with respect to financial accounting, verification of program specifics, and development and documentation of administrative, and other forms of control;
* use formal financial systems to transfer funds; and
* perform due diligence and auditing functions of partners and field and overseas operations respectively.

The Recommendation is accompanied by an Interpretative Note and a Best Practices paper which restricts its application and gives guidance on how to apply it. The Interpretative Note expands on R8 by providing both the ‘objective and general principles’ and the ‘measures’ that should be introduced. The Best Practices paper provides the FATF’s proposals on compliance with R8.

The Recommendation, when enacted, suggested charities and NPOs were at high risk. The efficacy of this framework will be considered below, but it has drawn considerable criticism for being too draconian and having the potential to stifle the general activity of NPOs and charities.[[47]](#footnote-47) It is also worth noting, that out of 180 countries, few are compliant.[[48]](#footnote-48)

2. The Charity Commission

The Charity Commission, as regulator of the charity sector in England and Wales, has tried to maintain the balance between effective regulation and not stifling the day-to-day efficacy of the charity sector as a whole through over-regulation. While the Commission acknowledges that charities are vulnerable to terrorist or other criminal abuse, it is clear that ‘proven instances of terrorist involvement in the charitable sector are rare in comparison to the size of the sector’.[[49]](#footnote-49) Nonetheless, it holds that any such activity is ‘completely unacceptable.’

In the Commissions own words, it’s broad counter-terrorism approach is based on a four stranded approach, and is influenced by both the UK governments approach (CONTEST) and the FATF’s guidance:

1. **Awareness** - raising awareness in the sector to build on charities’ existing safeguards.

2. **Oversight and supervision** - proactive monitoring of the sector, analysing trends and profiling risks and vulnerabilities.

3. **Co-operation** - strengthening partnerships with government regulators and enforcement agencies.

4. **Intervention** - dealing effectively and robustly when abuse, or the risk of abuse, is apparent. [emphasis added][[50]](#footnote-50)

In acting on any issues, it will liaise with all concerned and act speedily, and will take a balanced approach which is evidence-based and risk-based, targeted and proportionate. In particular, though, it notes that it will

‘encourage trustees to implement strong and effective governance arrangements, financial management and partnership management - charities which implement good general risk management policies and procedures will be better safeguarded against all types of abuse’

In so doing, it said it would publish guidance about good practice and how to avoid risks. The Commission has been true to its word on the provision of advice. It has reviewed existing general guidance, such as on risk management, [[51]](#footnote-51) as well as the publication of the Compliance toolkit, with a number of modules to address protecting charities from harm. Module 2, for example, looks at due diligence in relation to charitable funds.[[52]](#footnote-52) This includes guidance relevant to shell charities: that trustees need to be alert to the risk that individuals may be raising funds in the charity’s name that never reach the charity, or where only some of the money is passed on. If trustees have concerns that this might be the case, this should be reported to the appropriate authorities.

The approach, which again centres on prevention through good governance can be demonstrated well through Module 8, which considers the duties and responsibilities of charity trustees:

• you must comply with the law, including counter-terrorism legislation

• as a trustee you must act in your charity’s best interests, avoid exposing it to undue risk and make sure that its assets are used only to support its charitable purposes; you should:

• take reasonable steps to ensure that your charity’s premises, assets, staff, volunteers or other resources cannot be used for activities that may, or appear to, support or condone terrorism or terrorist activities

• ensure that effective procedures are put in place and properly implemented to prevent terrorist organisations taking advantage of your charity’s status, reputation, facilities or assets

• take immediate steps to dissociate the charity from any activity that may give, or appear to give, support to terrorism or terrorist activity

• take all reasonable steps to ensure the charity’s activities are open and transparent so that these cannot be misinterpreted

• exercise proper control over your charity’s financial affairs and safeguard its assets

• any person connected with a charity, whether a trustee, employee, volunteer, or beneficiary, should deal with the concerns of a charity’s possible links with terrorism responsibly; these must be reported[[53]](#footnote-53)

The Commission has also, particularly under the current Commission Chairman, Sir William Shawcross, been proactive in dealing with issues relating to terrorism and extremism.

3. Anti-Terrorism Laws

The final part of the response to the threat of abuse from terrorism generally has been the establishment of variety of criminal offences, and supporting legislation, to prevent and catch terrorist activity. Nothing more than an overview is needed here, but the primary counter-terrorism Act in the UK is, as stated earlier, the Terrorism Act 2000 (which came into force on 29 February 2001), and money laundering is caught under the Proceeds of Crime Act 2002. Other relevant legislation includes The Anti-Terrorism, Crime and Security Act 2001,  the Terrorism Act 2006, the Counter Terrorism Act 2008, the Terrorist Asset Freezing etc Act 2010, the Terrorism Prevention and Investigations Measures Act 2011, the Protection of Freedoms Act 2012 and the Counter Terrorism and Security Act 2015.

These Acts collectively create a number of offences related to terrorism, including fundraising for and the financing and support of terrorist activities, running terrorist training activities and encouraging terrorism. They give a number of powers to the police to help in investigating and dealing with terrorism. Of relevance to shell charities specifically, in the sense of holding existing charities and their trustees to account where the actions of a shell charity have been involved, sections 15-18 of the Terrorism Act 2000 make it an offence to raise, receive or provide money or other property for the purpose of terrorism, possess or use money for the purposes of terrorism, become involved in an arrangement to make money, etc available for the purposes of terrorism or to facilitate the laundering of terrorist money. A person is guilty of an offence if he ‘knows’, ‘intends’ or has ‘reasonable cause to suspect’ that the terrorist property may be used for the purposes of terrorism. Therefore, it is an offence for a charity to provide funds to an organisation which it suspects as being a terrorist organisation. This could apply to trustees, the charity’s fundraisers and volunteers. Trustees are under a duty of reasonable care and skill,[[54]](#footnote-54) so that can discharge their duties and responsibilities by taking reasonable steps and implementing risk-based procedures and systems to protect the charity from abuse.

While this is only a taster of the approach taken, there are clearly a variety of methods, soft and hard, to try and minimise the risk of any meaningful interaction between charities and terrorists, including in relation to the abuse through the creation and exploitation of shell charities.

1. The Problem In Practice: From Threat to Reality?

There has clearly been a significant response, both nationally and internationally to the issue, some of which can be seen to relate to the use of shell charities in terrorist financing schemes. The lingering issue, and the meat of the drama that unfolds, is whether this has been a proportionate response to the risk.

For those who favour the approach taken, there is evidence that cases of abuse by charities by terrorists do exist. It is not a theoretical concern.[[55]](#footnote-55) Moreover, the majority of cases that have been detected have involved either the establishment of a shell charity or the exploitation of a legitimate entity to raise, transfer, distribute or launder funds. Most cases are about charity misuse to raise and divert funds to terrorism. Many of the implicated charities formed part of a complex financing network where funds were transferred between a series of local and international accounts held by the charity, other NPOs, business (legitimate and fictitious) and individuals. In terms of remedies, the Charity Commission has had trustees removed and required the charities concerned to improve governance and financial reporting requirements (Charity Commission, 2010, 2009b). Significant action, such as freezing a charity’s assets or de-registering/shutting down the charity had been comparatively uncommon.[[56]](#footnote-56)

In a 2016, the Charity Commission said that the number of formal investigations relating to terrorist abuse rose fourfold (to 20) which legal disclosures between the commission and police and other agencies on the issue more than doubled to more than 500. These account 22% of all disclosures, compared to 14% in the previous year. However, there is very little information about what these contain and two that have details concerned charities had had goods or staff seized by terrorist groups. Is this an increase in activity, or just the impact of a ‘safety-first’ approach to reporting anything out of the ordinary? Even if the latter, that could be argued as a success for the Commissions preventative approach. Not all these issues have concerned the use of shell charities. Lately, for example, the Charity Commission stepped in to stop the Joseph Rowntree Charitable Trust and the Anita Roddick Foundation funding Cage because it did not match their charitable objectives. Cage was an independent advocacy organisation working to empower communities impacted by the War on Terror. The Commission intervened as Cage was not a charity and could not represent any charitable purpose under English law.

On the other side of the equation, it is argued that these are very small examples of issues. The evidence that is out there, of reported ‘examples of abuse tend to lack tangible proof’.[[57]](#footnote-57) Breen notes that intial EU efforts to consider regulation of NPOs was beset by a lack of baseline knowledge of the extent of the issues:

‘This difficulty is particularly acute in the context of SR VIII, given the absence of any EU wide assessment of the risk posed by the tens of millions of non-profits operating in the EU. The report acknowledged attempts to fill this knowledge void in the context of non-profit organizations but conceded that these efforts were not proving successful.’[[58]](#footnote-58)

Indeed, it has been suggested that one reason for poor compliance with FATF’s Recommendation 8 is that it is too burdensome, as the advantages of committing to the agreement need to outweigh the burdens of complying:[[59]](#footnote-59)

‘The Best Practices paper adds to this burden; it recommends that states implement a host of specific measures, including the licensing or registration of non-profits, increased police scrutiny of non-profit sector and strict reporting and vetting requirements. Hayes notes that together, the Interpretative Note and the Best Practices paper ‘add up to a recipe for civil society repression.’ If the Best Practices paper and Interpretative Note are placing too onerous a burden on states, then it is understandable why compliance with [Recommendation 8 is low] is low. To an extent the FATF have attempted to alleviate the burden: ‘measures adopted by countries to protect the NPO sector from terrorist abuse should not disrupt or discourage legitimate charitable activities.’ This could be seen as recognition by the FATF that states cannot achieve all of the obligations set out. However, the usefulness of the safeguard is questionable, Hayes observes: ‘there is nothing further in the lengthy guidance on how to best protect the freedom of association and expression in the delicate realm of non-profit/civil society regulation.’ Without further guidance on achieving an appropriate balance between implementation of obligations and ensuring freedom of association and expression, then states will be unsure as to how far they need to go to comply’[[60]](#footnote-60)

There have been criticisms that the Charity Commission in England and Wales has forgotten or abandoned its supportive role outside of counter-terrorism, due to its intense focus on these and other issues. The Muslim Charities Foundation (MCF), which represents 10 leading NPOs, said the heightened focus on extremism had led to fear of guilt by association and a drop of 60-70% in donations because of ‘sensationalist media reporting’. The sector is hurting.

The issue is not whether there is a risk, but whether the risk is so much greater than other organisations that it needed such a deliberate response.[[61]](#footnote-61) It is hard to shake the sense, that, in light of the reported evidence, the threat in the UK is a relatively small threat in the grand scheme of global terrorist finance, and that the standards and issues around this issue are already sufficiently heightened within charities, who care for the reputations individually and collectively within the sector, to deal with the issues without regulatory interference. This is particularly so when it comes to to the threat of those who will use shell charities to abuse the sector. There is nothing specific, beyond the raft of criminal measures, that makes this any more or less significant.

Indeed, in June 2016, at a FATF meeting in South Korea, there has been a rethink that NPOs are ‘particularly vulnerable’ to abuse by those wishing to siphon money into terrorism. FATF removed this sentence from R8, although the interpretative notes accompanying the guidance still say that some NPOs are at risk of being exploited. This change came about from by the Charity Finance Group, Charities Aid Foundation and BOND (international development umbrella group) and following a FATF consultation on the wording of R8. Andrew O’Brien, head of policy and engagement at CFG, said that the updated note ‘far more accurately reflect the risks to the sector and call for a more measured response when protecting charities’. It stops the risk of charities losing funders due to signals from FATF. Adam Pickering, international policy manager at CAF, said the original text had been ‘unhelpful’, ‘prescriptive’ and ‘didn’t lead to better regulation of the sector’. The approach needs to be spelled out more clearly in the interpretative notes.

1. Remedies

Where shell charities are discovered to have been involved in terrorist fund-raising activities, remedies are available against . Many of the provisions are the generic ones, well known and well-rehearsed, which are the general duties incumbent on trustees, including breach of trust, tracing of assets, and fiduciary duties. Similarly, an overview of the relevant terrorist legislation has already been noted in this article. The soft law remedies (or tools) are dealt with elsewhere, and are unlikely to improve compliance.[[62]](#footnote-62)

The Charity Commission has general wide ranging powers to deal with issues in charities, including the power to suspend or remove trustee,[[63]](#footnote-63) to give specific directions for the protection of charity,[[64]](#footnote-64) and to direct the application of charity property.[[65]](#footnote-65) The Commission may also to institute inquiries with regard to charities, or a particular charity or class of charities’.[[66]](#footnote-66) It has wide-ranging powers to take action on the basis of an inquiry under s.76 of the Charities Act 2011, which includes the suspension of any trustee pending consideration of his removal;[[67]](#footnote-67) appointing additional trustees;[[68]](#footnote-68) vesting the property of the charity in the Official Custodian;[[69]](#footnote-69) restraining persons who hold property on behalf of the charity from parting with it without their approval;[[70]](#footnote-70) restricting the transactions and payments that may be entered or made without approval;[[71]](#footnote-71) and appointing a receiver and manager.[[72]](#footnote-72)

The Commission argued that it needed further powers to deal with potential threats to charities, including threats from terrorism generally. It got its wish with the passing of the Charities (Protection and Social Investment) Act 2016, which extends the number of criminal offences which lead to someone being automatically disqualified from becoming a trustee to include convictions for serious terrorism offences, money laundering or bribery.[[73]](#footnote-73) It is too early to assess how often that power will be used.

1. Concluding Remarks

This paper has attempted to demonstrate that, while there is a risk that shell charities can be used in terrorist financing, it is a risk of no greater import than the use of shell corporations generally. Similarly, there is nothing in the law of trusts that makes such organisations more vulnerable than others.[[74]](#footnote-74) Indeed, charities have been proactive in trying to stop the exploitation of trusts and companies to remove large amounts of wealth from the UK through facilitating tax evasion. Oxfam wrote to the Prime Minister to shine a light on ‘the shadowy world of anonymous shell companies will help governments from Uganda to the UK claim what’s rightfully owed to them, and help citizens to hold governments to account for spending the money on vital public services’.

Nonetheless, the charity sector, along with the wider voluntary sector, is at risk of abuse by terrorists, and there are some well documented attractions of the sector. This article has attempted to explode some myths as well, and it is difficult to know whether the approaches internationally and domestically have borne fruit, as either the small number of instances of abuse is proof of the approach, or proof that the risk was small to start with. It is extremely difficult to know what the correct answer here is, and whether an appropriate balance has been reached in terms of regulation of the sector against the threat, and curtailing the legitimate and necessary work of charities. Perhaps the fact that charitable organisations are themselves more alive to the need to act as ‘whistle-blowers’, where issues are unearthed, may be the most important outcome of the scrutiny of issues that regulation has brought.[[75]](#footnote-75)

It is some comfort to those that thought the current approach was too blunt and out of proportion to the risk posed by the threat of terrorists abusing charities that the international approach has downgraded the impact of regulation. Nonetheless, policy intervention and attitudes tend to harden in the wake of terrorist activity, and 2016 and 2017 have seen an escalation in successful acts of terror across the globe. Paris, London, Manchester – the list of atrocities continues, and is more civilian in nature. This has seen, as in most times of heightened concern, a more hawkish attitude by regulators and a more proactive response by the sector as a whole. Indeed, the Charity Commission Chairman, Sir William Shawcross has said of extremism and its role in terror that: ‘It is the most dangerous because of the threat of Islamist extremism. It is not the most constant threat – it is the most potentially deadly threat.’ It is probably naïve to assume that regulatory approaches will not evolve, and potentially harden, as the atrocities continue. This is not to say that such regulation will lead to significant results, just to point to the facts of the matter.

One general point, though, that is worth considering is the Charity Commission’s insistence that good governance will help prevent abuse or help make it known (and traceable) when abuse has taken place. This is a good point, and there is no organisation that would not benefit from better governance processes generally. It is beyond doubt that charities must be part of the solution to any perceived problem – they must be active in seeking to call out instances of concern; something, which, as seen above from the reporting of suspicious activities, appears to be happening more frequently. Charities, individually and collectively, have a core responsibility to seek to maintain public trust and confidence in the sector, quite apart from anti-terrorist concerns. What they lack, however, is a convincing champion in the sector, who can talk about their strengths and inspire the public trust and confidence in charities that is so needed. Umbrella groups, such as the National Council for Voluntary Organisations, do some of this work, but do not have the remit or reach to effectively deal with the multifarious issues which face charities, of which the threat of abuse for terrorist financing is only one.

That said, whatever form regulation takes and no matter how good internal governance procedures are, there needs to be an effective regulator. Perhaps this is the most telling observation from this paper, which is much broader than any concern for the use and abuse of shell charities. The biggest threat to the sector may well not be from terrorist financing, but the lack of financing, by central government or an effective alternative mechanism, to allow the Charity Commission to be an effective regulator, capable of doing an effective job and to the standards it would like.

It has already been suggested that the Commission asked for (and was granted) more powers to deal with issues in the sector, including counter-terrorism measures. However, as noted by Professors Morris and Morgan, who gave evidence as academic witnesses before the passing of the 2016 Act, the Commission really did not need more powers, but should be using the powers it has more effectively.[[76]](#footnote-76) In failing to do so, both authors did note that ‘it must be recognised that [the Charity Commission] has had its resources reduced significantly so that between 2007–08 and 2015–16, with the number of registered charities remaining reasonably static, the Commission’s annual budget fell by 48% in real terms to £20.4 million (NAO, 2013a: para 1.12)’. The funding issue must be addressed. Indeed, fraud, rather than terrorist based activity, costs the charity sector some £1.3 billion a year, according to the Charity Commission.[[77]](#footnote-77) Similarly, the Commission has come under trenchant criticism for its inability to deal with major incidences of fraud, including the ‘Cup Trust’ saga, in which a charity was used as an elaborate tax avoidance scheme worth some £46 million in fraudulent Gift Aid claims.

As noted earlier in this article, conversations around ‘what charity regulation should look like, and who should pay for it, have…gained momentum.’[[78]](#footnote-78)

These points illustrate the importance of regulation and governance jointly, in dealing with abuse of charities for nefarious purposes. This article makes the argument that, unless and until there is an effective and well-resourced regulator in place, little will change and that the absorption with the threats caused by terrorist financing can obscure broader issues in need of rectification. The issue is one for England and Wales alone, but nobody in the charity sector is helped by a regulator lacking sufficient resource to the job it has been charged to do. This needs to change.

In returning to the words of the title to this article, it is hard not to see that the blunt, decisive efforts of regulators, international and in England and Wales, have indeed been something of a sledgehammer to crack a nut – the response has been out of proportion to the threat, particularly the threat posed by shell charities, or, indeed charitable organisations more generally. It has exposed inherent weaknesses in the effectiveness of regulation, though, which is a by-product of the focus on efforts to thwart terrorist financing, not a direct result of them. In that sense, it is much more chilling for the sector. Happily, Civil Society Futures has launched an ambitious project, which involves a national conversation to consider the future of charities are part of wider civil society.[[79]](#footnote-79) Preventing abuse, and promoting effective regulation, will be key parts of the review and its outcomes. There is reason to think that the future might be bright.

1. In English law, tax exemptions are only awarded to those organisations which have charitable status under the law; other organisations do not get any tax exemptions. This is discussed further below, but also see R Pearce and W Barr *Pearce & Stevens’ Trusts and Equitable Obligations* 6th ed (OUP, 2014) Chapter 11. [↑](#footnote-ref-1)
2. Tom Keatinge, Director, Royal United Services Institute’s Centre for Financial Crime and Security Studies. [↑](#footnote-ref-2)
3. This paper is not concerned with a critical evaluation international framework of regulation of money laundering or anti-terrorism, in so far as it is relevant to give context to the issue at hand. It is similarly not concerned with an overview of how domestic law operates in any countries beyond England and Wales. Again, there are studies on such issues, but, where relevant, citation will be made to similar approaches or concerns. [↑](#footnote-ref-3)
4. H Picarda QC, Charity Law Bulletin – First Issue – January 2016, 28th January 2016 <http://www.bloomsburylawonline.com/2016/01/28/charity-law-bulletin/> (accessed October 2017). [↑](#footnote-ref-4)
5. See, for example, the £4 billion raised from the concert - <https://www.ft.com/content/510dbb0a-49e0-11e7-a3f4-c742b9791d43> (accessed October 2017). [↑](#footnote-ref-5)
6. Where there is a merger which involves the transfer of all property by two or more merging charities to a newly created charity, most subsequent gifts and legacies left to a pre-merger charity will automatically be transferred to the merged (new) charity under the statutory framework (s.310, Charities Act 2011). For this to happen, it is a requirement that the transferring charities cease to exist on or after the merger. There are circumstances in which gifts will not transfer automatically. One is where a pre-merger charity held a permanent endowment and receives a gift that is intended to be held as part of that permanent endowment. Some legacies may also be worded so as to prevent the gift being transferred to the merged charity, even where the merger is registered. It follows that merging organisations may need legal advice before dispensing with a shell charity. The issue caused by permanent endowment is one of the issues considered by the Law Commission (CP No 220 Technical Issues in Charity Law (2015**),** and detailed in the final report Law Commission Technical Issues in Charity Law (2017), published on 14 September 2017. It has proposed that s.310 should apply to a charity’s permanent endowment in the same way that they apply to a charity’s unrestricted funds, which would remove this problem. This is now contained in Recommendation 34. [↑](#footnote-ref-6)
7. Together, charities and other not for profit organisations, including co-operatives and mutual societies, make up the Third Sector (as opposed to the private and public sectors). They are also increasingly referred to as together constituting civil society. [↑](#footnote-ref-7)
8. Charitable purposes were originally limited to four in number, known as the four heads of charity. These were the relief of poverty, the advancement of religion, the advancement of religion, and a catch-all category of ‘other purposes beneficial to the community’ - *Commrs for Special Purposes of Income Tax v Pemsel* [1891] AC 531. These purposes evolved over many years, so that issues such as the advancement of health or recreational support were said to fall within the heads of charity. In 2006, these charitable purposes were captured in statutory form in the Charities Act 2006, and were no longer hidden behind the four heads, which remain. There are now thirteen charitable purposes. For an organisation to demonstrate a charitable purpose, it must be on contained within s.3(1) of the Charities Act 2011 (which replaced the Charities Act 2006). [↑](#footnote-ref-8)
9. To be eligible for registration as charities, under Charities Act 2011, such organisations must be must have as their object a recognised charitable purpose (s.3), must demonstrate that they carry on their purposes for the benefit of the public (s.4) and be wholly and exclusively charitable (s.2). See further, H Picarda *Law and Practice Relating to Charities* 5th ed (Bloomsbury Professional, 2014) ; R Pearce and W Barr *Pearce & Stevens’ Trusts and Equitable Obligations* 6th ed (OUP, 2014) Chapter 11. [↑](#footnote-ref-9)
10. In the year 2007-08, the Inland Revenue estimated the value of tax reliefs for charities was around £2.19bn (HMRC *Annual Report Tables & Statistics 2007-2008*, Table 10.2). These include relief on donor gifts through the Gift Aid scheme, which increases the value of donations to charities. [↑](#footnote-ref-10)
11. For details of the nature of this regulatory framework, see Pearce and Barr Chapter 26. [↑](#footnote-ref-11)
12. Charitable companies are also subject to the rules of company law, which means that they are subject to two regulatory regimes. [↑](#footnote-ref-12)
13. For an interesting review of the purpose of regulation of charities, and public perceptions of its necessity and weaknesses, see E Hogg ‘What Regulation, Who Pays? Public Attitudes to Charity Regulation in England and Wales’ (2017) Nonprofit and Voluntary Sector Quarterly 1. [↑](#footnote-ref-13)
14. The other two sectors are referred to as the private sector and public sector. [↑](#footnote-ref-14)
15. See HM Treasury, Exploring the Third Sector in Public Service Delivery and Reform: A Discussion Document (2005), Chapter 1. [↑](#footnote-ref-15)
16. FCO, ‘Implementing the Cross Cutting Review on “The Role of the Voluntary and Community Sector in Service Delivery” ’ (2004). [↑](#footnote-ref-16)
17. U O’Breen, ‘Through The Looking Glass: European Perspectives on Non-Profit Vulnerability, Legitimacy and Regulation’ (2010) Brook J Int’l L 947, 970. [↑](#footnote-ref-17)
18. F P Chihlar, ‘The Delaware LLC problem: cracking the shell’ (2008) Comp Law 176. [↑](#footnote-ref-18)
19. For a re-examination of the basis of shams, see S Douglas & B McFarlane ‘*Sham Trusts*’ in H Conway & R Hickey *Modern Studies in Property Law: Volume 9* (Hart, Bloomsbury, 2017) 236. This technical distinction is not always made in non-legal studies – see, for example, A Knobel ‘Trusts: Weapons of Mass Injustice?’ Tax Justice Network, February 2017, where the terms are used interchangeably. [↑](#footnote-ref-19)
20. Finacial Action Task Force 2006. [↑](#footnote-ref-20)
21. Charity Commission Toolkit Chapter 2 (2006) [↑](#footnote-ref-21)
22. FATF, Financial Action Task Force Mandate 2012-2020, April 20, 2012. [↑](#footnote-ref-22)
23. See: FATF Members and Observers, at <http://www.fatf-gafi.org/pages/aboutus/membersandobservers/> [↑](#footnote-ref-23)
24. See: FATF Members and Observers, at <http://www.fatf-gafi.org/pages/aboutus/membersandobservers/> [↑](#footnote-ref-24)
25. FATF, Annual Report:2004-2005, 23rd June 2005, Forward [↑](#footnote-ref-25)
26. See M Shillito, ‘Countering Terrorist Financing via Non-Profit Organisations: Assessing why few States Comply with the International Recommendations’ (2015) Nonprofit Policy Forum. [↑](#footnote-ref-26)
27. There is a separate Charity Commission for Northern Ireland. In Scotland, they have the ‘Office of the Charity Regulator’. [↑](#footnote-ref-27)
28. Prior to the Charities Act 2006 that constituted the Charity Commission as an incorporated body, the functions of the Commission were vested in the Charity Commissioners. [↑](#footnote-ref-28)
29. NCVO, ‘Blurred vision’ in Research Quarterly Issue 1, January 1998. [↑](#footnote-ref-29)
30. Charity Commission, CC10, The Hallmarks of an Effective Charity (July 2008), p 11. [↑](#footnote-ref-30)
31. Each registered charity is given a unique registration number. The register is open to public inspection, and is now computerised. [↑](#footnote-ref-31)
32. See E Hogg, ‘What Regulation, Who Pays? Public Attitudes to Charity Regulation in England and Wales’ (2017) Nonprofit and Voluntary Sector Quarterly 1, who tentatively concludes that the public in England and Wales might not look unfavourably on charities using some of their resources to fund a regulator, at least where that funding led to an improved and more transparent regulation. [↑](#footnote-ref-32)
33. See, for example, C Cordery, C, D Sim & T Zijl ‘Differentiated regulation: the case of charities’ (2017)

Accounting & Finance 131-164. [↑](#footnote-ref-33)
34. FATF ‘The Misuse of Corporate Vehicles, Including Trust and Company Service Providers’ (2006). [↑](#footnote-ref-34)
35. See Charity Commission, ‘Compliance toolkit: protecting charities from harm Chapter 1: Charities and terrorism Module 3: How might a charity be abused for terrorist purposes?’. [↑](#footnote-ref-35)
36. FATF, Best Practices: Combating The Abuse of Non-Profit Organisations (Recommendation 8), June 2015. [↑](#footnote-ref-36)
37. Charities Act 1993, s 3. Under s 4(1) of the Act, the register is deemed conclusive of the charitable nature of an organization. Certain charities are not required to be registered. These include exempt charities (see s 3A(2)(a) and Sch 2) who are organizations that are subject to another form of regulatory or supervisory control, eg universities, national galleries, and museums. Small charities, defined by having a total income of less than £5,000 a year, are also not required to register (s 3A(2)(d)) but may choose to do so. See further Lloyd, Charities—The New Law 2006: A Practical Guide To The Charities Acts (2007), Ch 3. [↑](#footnote-ref-37)
38. <https://apps.charitycommission.gov.uk/outreach/RegistrationLanding.ofml> (accessed July 2017) [↑](#footnote-ref-38)
39. J Gurelé *Unfunding Terror: The Legal Response to the Funding of Global Terrorism*) (Edward Elgar, 2008) [↑](#footnote-ref-39)
40. Charity Commission, 2009a; FATF 2004a; 2004b. [↑](#footnote-ref-40)
41. The Code was overseen by a steering group of charity umbrella bodies, with an independent chair. The Code has been adopted by the Charity Commission in favour of its existing guidance on ‘Hallmarks of an Effective charity’, a first in the sector. [↑](#footnote-ref-41)
42. In Australia, the Government guidance identifies smaller charities at more risk of abuse, because they are likely to be less familiar with the issues or lack the resources to implement risk mitigation strategies. [↑](#footnote-ref-42)
43. The saga of Royal Society for the Prevention of Cruelty to Animals (the RSPCA), a respected national charity in the UK with an income of approx. £140 per annum, is a salutary example. It has drawn the intervention of the Charity Commission to deal with the issues of poor governance as of 13 June 2017, following the departure of the CEO and a damning internal report by the RSPCA of its own failings. [↑](#footnote-ref-43)
44. FATF, Terrorist Financing, Feb 2008. [↑](#footnote-ref-44)
45. ‘Soft’ law is being used here in to describe codes of norms, standards and behaviours which are not enforced directly by binding legislative or legal rules. For a good discussion of the difference between soft and hard law in the context of FATF and the approach to terrorist financing, see M Shillito, ‘Countering Terrorist Financing via Non-Profit Organisations: Assessing why few States Comply with the International Recommendations’ (2015) Nonprofit Policy Forum, at pp.335-6. [↑](#footnote-ref-45)
46. This approach has been replicated in guidance elsewhere. See, for example, in Australia: Australian Government, *Safeguarding Your Organisations against Terrorism: A Guidance or Non-profit Organisations* (2009). [↑](#footnote-ref-46)
47. See, for example, M Sidel, *Regulation of the Voluntary Sector: Freedom and Security in an Era of Uncertainty*, Critical Approaches to Law (Routledge, 2010). [↑](#footnote-ref-47)
48. See M Shillito n.26, who in 2015 noted that only seven countries were noted as compliant. The UK was not one of them. [↑](#footnote-ref-48)
49. Charity Commission, Compliance toolkit: Module 3 at pp1-2. [↑](#footnote-ref-49)
50. Charity Commission ,Compliance toolkit: protecting charities from harm Chapter 1: Charities and terrorism Module 2: Background information on the Charity Commission’s and UK government’s counter-terrorism strategies. [↑](#footnote-ref-50)
51. Charities and risk management (CC26). See, for example, p13 where the guidance talks about heightened risks with affiliated trading structures. [↑](#footnote-ref-51)
52. Charity Commission, Compliance toolkit: Chapter 2: Due diligence, monitoring and verifying the end use of charitable funds. [↑](#footnote-ref-52)
53. Charity Commission, Compliance toolkit: protecting charities from harm Chapter 1: Charities and terrorism Module 8: Charity law duties and responsibilities [↑](#footnote-ref-53)
54. Trustee Act 2000, ss.1 & 2. [↑](#footnote-ref-54)
55. See, for example, Charity Commission 2010, 2009b; FATF 2008, 2004b, 2003. [↑](#footnote-ref-55)
56. See, however, the approach to The Tamil Rehabilitation Centre, both nationally and internationally. [↑](#footnote-ref-56)
57. M Shillito Countering Terrorist Financing via Non-Profit Organisations: Assessing why few States Comply with the International Recommendations (2015) Nonprofit Policy Forum at p328, talking of FATF in particular. [↑](#footnote-ref-57)
58. U O’Breen Through The Looking Glass: European Perspectives on Non-Profit Vulnerability, Legitimacy and Regulation (2010) Brook J Int’l L 947, at 963. [↑](#footnote-ref-58)
59. Christian Tomuschat, *Obligations Arising for States Without or Against Their Will* (1st edn, Recueil des Cours 241, 1993) 361. See also B Hayes, Counter-terrorism, ‘Policing laundering’ and the FATF: legalising surveillance, regulating civil society’ Transnational Institute, 2012 at 6. [↑](#footnote-ref-59)
60. Shillito, op cit n57, at 337-8. [↑](#footnote-ref-60)
61. In Australia, a report in August 2916 revealed that there was a high risk of terrorist funding being channelled through non-profit organisations. This report, which was a world first risk assessment of terrorism financing in SE Asia, ranked non-profit organisations as the second highest risk for terrorist financing in the sense of self funding from legitimate sources. ‘In Australia, two cases from the mid-2000s involved community-based non-profit organisations that raised close to $A1 million each, which was funnelled to foreign-based terrorist groups’ [↑](#footnote-ref-61)
62. See Shillito op cit n52. [↑](#footnote-ref-62)
63. Charities Act 2011, s 83. [↑](#footnote-ref-63)
64. Charities Act 2011, s 84. [↑](#footnote-ref-64)
65. Charities Act 2011, s 85. [↑](#footnote-ref-65)
66. This power did not extend to exempt charities, but this was modified by the Charities Act 2006 meaning that the Commission can investigate at the request of the principal regulator of the exempt charity (s 46(2). [↑](#footnote-ref-66)
67. S 76(3)(a). [↑](#footnote-ref-67)
68. S 76(3)(b). [↑](#footnote-ref-68)
69. S 76(3)(c). [↑](#footnote-ref-69)
70. S 76(3)(d). [↑](#footnote-ref-70)
71. S 76(3)(e). [↑](#footnote-ref-71)
72. S76(3)(g). [↑](#footnote-ref-72)
73. Charities (Protection and Social Investment) Act 2016. s.10. On a more contentious note, the Commission was also given the power to power to publicly issue warnings to a trustee of charity where it thinks that a breach of trust or duty or other misconduct or mismanagement’ has taken place, under s.1of the Act. These are not open to appeal, and the Commission has countered that they will be responsibly used. Time will tell. [↑](#footnote-ref-73)
74. Trusts are felt to be inherently open to abuse for tax purposes in particular, as the separation of ownership and control, coupled with there being no registration requirements as to the owners of assets, have drawn trenchant criticism – see A Knobel ‘Trusts: Weapons of Mass Injustice?’ Tax Justice Network, February 2017. The inequalities in the distribution of assets under at trust were considered in the seminal work, R Cotterell, ‘Power, Property and the Law of Trusts: A Partial Agenda for Critical Legal Scholarship’ in P Fitzpatrick & A Hunt *Critical Legal Studies* (1987, Blackwells, Oxford). [↑](#footnote-ref-74)
75. In an effort to stamp out fraud more generally, a social media campaign #CharityFraudOut and week long Charity Fraud Awareness week was launched n 2016. This ran again from October 23rd 2017. It involves a group of around forty charities, regulators, professional bodies and other stakeholders are joining forces to help combat fraud targeted against charities. See <https://www.gov.uk/government/news/charity-fraud-awareness-week-23-27-october> (accessed October 2017). [↑](#footnote-ref-75)
76. D Morris & G Morgan, Strengthening charity regulation in England and Wales? The Charities (Protection and Social Investment) Act 2016 and the impact of academic witnesses (2016) 8 Voluntary Sector Review 89. [↑](#footnote-ref-76)
77. Compliance Toolkit, Chapter 3: Fraud and financial crime April 2011 (revised June 2012) New Format November 2016 [↑](#footnote-ref-77)
78. E Hogg ‘What Regulation, Who Pays? Public Attitudes to Charity Regulation in England and Wales’ (2017) Nonprofit and Voluntary Sector Quarterly 1, 2. [↑](#footnote-ref-78)
79. See <https://civilsocietyfutures.org/> (accessed October 2017). [↑](#footnote-ref-79)