



Education, charities and the law
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Education, charities and the law

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Education, charities and the law

- Never mind 'what have the Romans ever done for us?'
- What has the law ever done for education and charities?



Education, charities and the law



- Charitable status
- Certainty
- Structure

.... the 3 C's 😊

What is education?

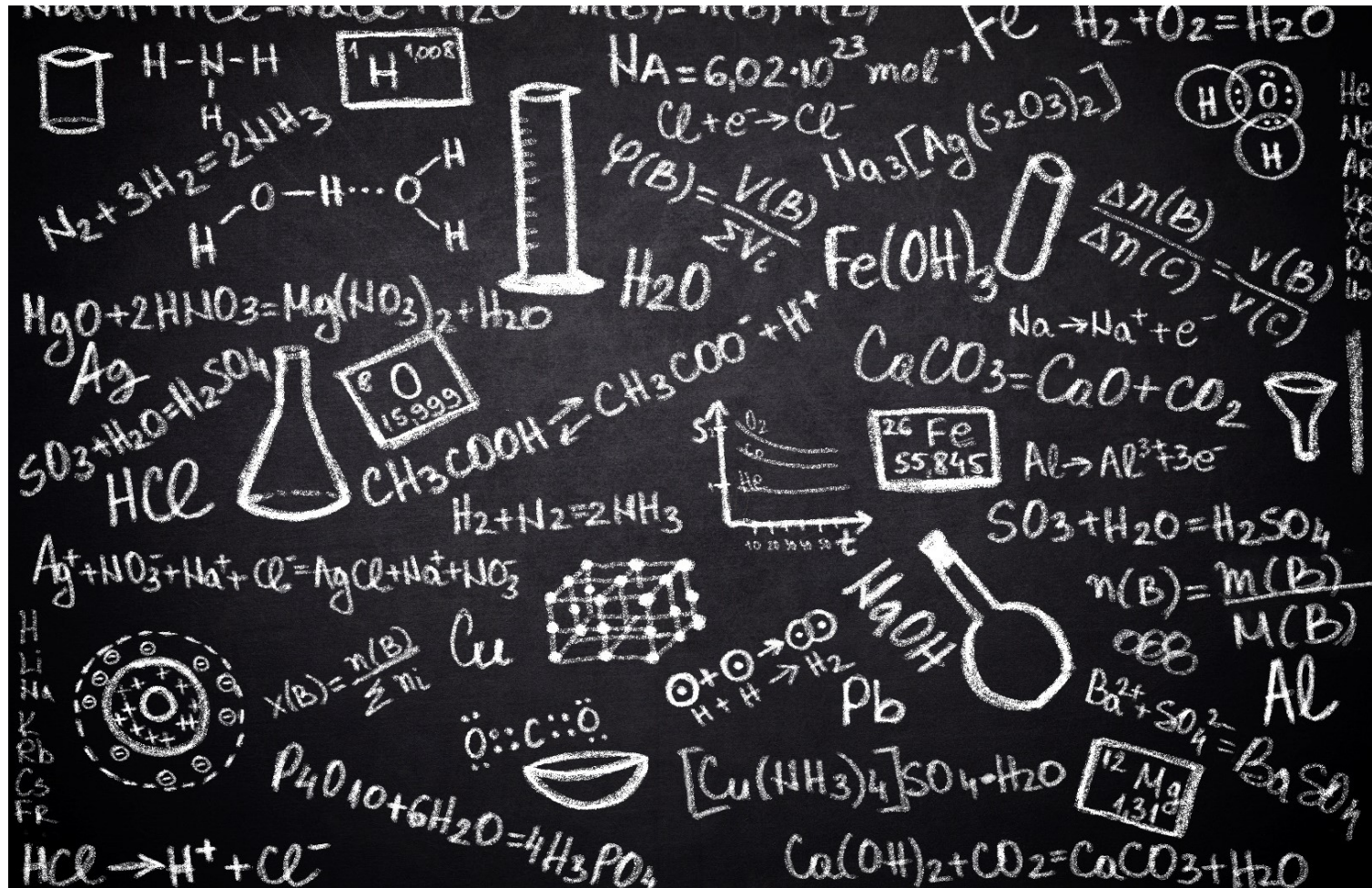
- A very broad term
- Life long learning
- Formal and informal
- Some delivered by charities, some not (commercial businesses)
- Agr-food, farming, rural matters are just some of many specialist areas of education



A history lesson

- Education is one of the oldest forms of charity
- The oldest established charity in England is educational: The King's School, Canterbury, founded 597AD
- Charitable purposes probably first outlined in the Statute of Charitable Uses (Statute of Elizabeth) 1601 and included “schools of learning, free schools and scholars in universities” and “the education and preferment of orphans”
- “advancement of education” was one of four recognised ‘heads’ of charity arising from *Pemsel's case* in 1891
- Nowadays, it is to be found as one of the purposes listed in the Charities Act 2011

Education for charity law purposes



Education for charity law purposes



- Section 1, 3 & 4 Charities Act 2011: the advancement of education for the public benefit
- Public benefit: not defined in the Act; see Charity Commission guidance: must:
 - Be for a significant section of the public
 - Deliver a meaningful, identifiable benefit
 - If charging for services, not exclude the poor
- Difficulties with public benefit in education:
 - Activity of doubtful educative merit
 - Charged-for services

What form does education take in charities?



- In legal terms: what types of organisations and legal structures undertake education?
- Types: nurseries, pre-schools, forest schools, schools (independent, academy, maintained), sixth form colleges, FE colleges, universities, other HE institutions, research and learned institutions, training organisations, on-line providers, community / mobile providers
- Structures: trusts, associations, companies, charitable incorporated organisations, royal charter corporations, community benefit societies
- Some are in the audience

The role of risk



The role of risk

- Most education providers are companies and CIOs
- The reason? risk management
- Corporate structure protects the trustees because the *structure* enters into legal arrangements (contracts, employment, owning property), not the trustees
- Non-corporate charities must enter into legal arrangements via the trustees

Current challenges in education and charities:



- **Safeguarding**
- Charity Commission: 'a priority for every charity'
- Must have a policy: bespoke for each charity
- Must screen trustees, staff and volunteers who have contact with children or vulnerable adults
- Treat it as an opportunity to demonstrate modern, conscientious way of working

Current challenges in education and charities:



- **Pensions**
- Universities: Universities Superannuation Scheme, contribution increases
- Independent schools and (to lesser extent) academies: Teachers Pension Scheme, contribution increases
- All charities: many facing considerable funding shortfalls
- Incorporations: care needed as the pension fund trustee may well view covenant strength as weaker from new charity

Current challenges in education and charities:

- **Schools**
- **Independents:**
 - VAT on school fees (possible)
 - Loss of business rates relief (quite likely)
 - Charitable status itself (not likely)
- **Academies:**
 - Financial viability
 - Increase in governance and compliance responsibility

Current challenges in education and charities:



- **Funding sources**
- All charities get money from three sources: gifts, investments, trading
- Gifts: not all charities are obvious recipients
- Investments: not all charities have these
- Trading: charitable and non-charitable (via a subsidiary company)
- GDPR: compliance, effort, fines
- Fundraising regulation
 - Fundraising Regulator
 - Code of Fundraising Practice

Charitable status



- What can the law do to support educational charities?
- Charitable status
- A legal qualification which brings restrictions but also benefits
- Public recognition and trust
- Protection of assets: can only be used for charitable purposes
- Tax reliefs: corporation tax, gift aid, SDLT, business rates, IHT, some VAT

Charitable status:



- Access to charities-only grant funding
- Beneficial commercial rates
- Gifts in kind
- Volunteers
- Charity Commission and others (DfE, OfS) are regulators providing guidance and protection for trustees and those working in the sector

Challenges and Certainty



Certainty



- What is or is not a charity
- Laws governing how charities are structured, governed and regulated
- Laws on how education is structured, delivered, funded and regulated
- Contracts: who does what, when, how, and what if they don't

Certainty



- How people are treated: employees, volunteers, those with protected characteristics, children and vulnerable adults
- How data is collected and managed
- How property is acquired, constructed, owned, managed and transferred
- How disputes are dealt with

What does the law do for education and charities?

- Gives them a settled legal meaning
- Provides frameworks for how they are dealt with
- Creates certainty





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This presentation is written as an outline guide only and any action should not be based solely on the information given here. Appropriate professional advice should always be taken in specific instances.