

**IMPORTANT NOTICE**

**This judgment is covered by the terms of an order made pursuant to Practice Direction 4C- Transparency. It may be published on condition that the anonymity of the incapacitated person and members of his family must be strictly preserved. Failure to comply with that condition may warrant punishment as a contempt of court.**

**Neutral Citation Number: [2019]EWCOP36**

**Case No: 1313812T**

**COURT OF PROTECTION**

**MENTAL CAPACITY ACT 2005**

First Avenue House  
42-49 High Holborn,  
London, WC1V 6NP

Date: 21<sup>st</sup> August 2019

**Before :**

**Her Honour Judge Hilder**

**IN THE MATTER OF**

**TWAH**

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Hearings: 24<sup>th</sup> May and 20<sup>th</sup> September 2018  
Final determination made on the papers  
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The Applicant appeared in person through its CEO, Ms. Deborah Pardoe  
Ms. Rebecca Stickler instructed by and for the Public Guardian

The hearings were conducted in public subject to a transparency order made on 24<sup>th</sup> May 2018. The judgment was handed down to the parties by e-mail on 22<sup>nd</sup> August 2019. It consists of 29 pages, and has been signed and dated by the judge.

## The Scope of Proceedings

1. Allied Services Trust has applied for appointment as property and affairs deputy for TWAH. I am satisfied on the basis of evidence filed with the application that TWAH lacks capacity to manage his property and affairs. On 26<sup>th</sup> February 2018 Deborah Pardoe, who is the CEO of the Allied Services Trust, was appointed as deputy on interim basis.
2. Allied Services Trust is a registered charity and a company limited by guarantee. It is also authorised by delegated powers of the Lord Chancellor pursuant to section 3 of the Law of Property (Amendment) Act 1926 to act as a trust corporation.
3. In *Various Incapacitated Persons and The Appointment of Trust Corporations as Deputies* [2018] COP 3 (“the 2018 judgment”), the Court considered the suitability for appointment as deputy of trust corporations associated with legal practices. Allied Services Trust is not linked to any legal practice - in the terms of the 2018 judgment, it is a ‘Category 3’ trust corporation. As foreshadowed in paragraph 65 of the 2018 judgment, the concern of these proceedings has been to identify what information is required for the Court to be satisfied that this type of trust corporation is a fit and proper legal person to hold a deputyship appointment.
4. The Public Guardian has not been joined as party to the proceedings but was directed to file a report pursuant to section 49 of the Mental Capacity Act 2005, and has subsequently attended both hearings by representation. The Court has been very much assisted by his participation and the submissions of his Counsel, Ms. Stickler.
5. At the initial hearing, Ms. Pardoe confirmed on behalf of Allied Services Trust that no costs beyond the fixed fee of the deputyship application would be claimed from the funds of TWAH, and the Public Guardian confirmed that he will bear his own costs. The Court wishes to record its appreciation of that approach.

## Matters considered

6. Allied Services Trust has filed COP24 statements by Katrina Thomas (dated 14<sup>th</sup> September 2017) and Deborah Pardoe (dated 8<sup>th</sup> February 2018 x 2, 8<sup>th</sup> May 2018, 26<sup>th</sup> July 2018, 11<sup>th</sup> October 2018) and position statements dated 24<sup>th</sup> May 2018, 18<sup>th</sup> September 2018, and 11<sup>th</sup> October 2018.
7. The Public Guardian has filed a report by Lindsey Elliott and James Morrey (dated 29<sup>th</sup> March and 3<sup>rd</sup> April 2018) and position statements dated 23<sup>rd</sup> May 2018, 18<sup>th</sup> September 2018, and 31<sup>st</sup> October 2018.
8. I have also considered statements from regulatory bodies and insurers as follows:
  - Neil Robertson (Head of Technical Casework & Quality Assurance in the Operations Directorate of The Charity Commission for England & Wales), dated 13<sup>th</sup> July 2018
  - Paul Milton (Case Manager in the Legal & Enforcement Directorate of the Solicitors Regulation Authority), dated 2<sup>nd</sup> October 2018
  - Michael Freeman (Claims Adjuster, Angel Risk Management), dated 1<sup>st</sup> October 2018)

## The Legal Framework

9. The legal framework for the appointment of trust corporations as deputies was set out in paragraphs 6 - 9 of the 2018 judgment. In the present proceedings, the expansion of the definition of “trust corporation” set out in section 3 of the Law of Property (Amendment) Act 1926 applies.

10. It was identified in the 2018 judgment that, when considering the appointment of a trust corporation as deputy, the Court required information as to:

- (i) whether a trust corporation can lawfully act as such;
- (ii) whether the internal management, supervision and controls of the trust corporation are appropriate;
- (iii) what external regulation (other than supervision by the Public Guardian) applies;
- (iv) the total amount of protected persons' assets and funds held; in whose name and in what accounts such assets and funds are held; and the level of insurance cover which the trust corporation has.

11. It was concluded in respect of (i) and (ii), that requirements could be satisfied by a declaration made with a statement of truth by an authorised officer of the trust corporation; and that it would be sufficient for the purposes of (ii) if such declaration provided that the trust corporation if appointed as deputy would comply with the Public Guardian's published standards for professional deputies.

12. In respect of (iii), the undertaking required of a trust corporation linked to a legal practice was formulated in the 2018 judgment, but in respect of other trust corporations the decision went no further than to confirm that:

*"If the protective effect of regulation by bodies other than the SRA is broadly comparable, it is likely that the Court will be similarly satisfied as to the appropriateness of the appointment, although to establish such satisfaction there may need to be on the next occasion when such appointment is sought a direction to the Public Guardian to provide a report pursuant to section 49 of the Mental Capacity Act 2005."*

13. In respect of (iv), it was concluded at paragraph 78 of the 2018 judgment that:

*"... it is feasible and practicable for the Court to check adequacy of insurance solely in the context of a single claim relative to the size of the estate in respect of which deputyship is being considered. It is not, however, feasible or practicable for the Court to assess adequacy of insurance cover in the context of total assets under the management of the proposed deputy and aggregation risk. ... The aggregation risk is more appropriately monitored as part of the Public Guardian's ongoing supervision of deputies. If the Public Guardian, supervising all of the appointments held by a deputy at any given time, finds cause for concern as to adequacy of insurance levels overall, he should refer the matter to the Court which can take such further steps as may be appropriate in the circumstances, including adjusting the security requirement or ultimately terminating the appointment."*

The Court could then be satisfied as to sufficiency of insurance cover if an authorised person provides undertakings on behalf of the trust corporation that it would maintain insurance cover which complied with minimum terms and conditions, would lodge a copy of the policy with the Public Guardian on appointment, and would notify the Public Guardian if there was any reduction in the terms or level of cover.

14. The supervisory function of the Public Guardian is established by section 58(1)(c) of the Mental Capacity Act 2005. In Ms. Stickler's final position statement she has set out a summary of how that function is given practical effect in respect of professional deputies, in the following terms:

*“17. In summary, the professional deputy team will contact new deputies to conduct a settling in call to discuss the case. The professional team also review annual reports for all cases. Annual reports detail income and expenditure and also decisions made on behalf of P. Annual reports are an important mechanism to monitor deputies; they are both forwards and backwards looking and require deputies to set out in their reports: (i) what decisions have been taken on behalf of P; (ii) their intended future plans for P 's property and affairs; and (iii) their estimated fees for the year's management of their property and affairs.*

*18. The professional team also review the bonds and professional indemnity insurance to ensure the client's assets are protected. The team also conducts client and assurance visits through Court of Protection Visitors and will address any issues or concerns with the deputy and monitor their compliance with requests.*

*19. ...if deputies fail to meet [the PG's professional deputy standards], the PG will identify areas of weakness quickly and work with the deputy to take the necessary steps to correct them. Where there are significant breaches of the standards, the Public Guardian will seek to agree an action plan with the deputy to address deficiencies. In cases of the most serious or fundamental breaches, the PG may seek removal of the deputy.”*

#### The operational arrangements of Allied Services Trust

15. A copy of the Lord Chancellor's authorisation of Allied Services Trust to act as a trust corporation pursuant to section 3 of the Law of Property (Amendment) Act 1926 has been filed (exhibit D to Ms. Pardoe's statement of 8<sup>th</sup> May 2018). It is dated 4<sup>th</sup> November 2013.
16. A copy of the Articles of Association of Allied Services trust has been filed (exhibit A to Ms. Pardoe's statement of 8 Feb 2018). The objects of the charity are set out in Part 3 in the following terms:

#### **4. Objects**

*The Charity's objects (“the Objects”) are:*

*4.1 To advance and promote the education of the public, members of the armed forces of the Crown and members of the uniformed public emergency services in relation to personal financial and welfare matters.*

*4.2 To relieve financial hardship amongst members of the public, members of the armed forces of the Crown and members of the uniformed public emergency services by the provision of services in relation to personal financial and welfare matters.*

*4.3 Such other purposes that are exclusively charitable according to the laws of England and wales as the trustees may from time to time determine.*

*In these objects, “personal financial and welfare matters” means powers of attorney, administration of powers of attorney, advance decisions, deputyship applications, deputyship administrations and all Court of Protection related matters and any other related needs.”*

17. In respect of internal practices, Ms. Pardoe has informed the Court that Allied Services Trust does not hold client money, and it requires three signatories to be detailed on a client's accounts. Any two signatories are required to sign on any given transaction; the third “is required to undertake a check and balance on why the transaction was required.” Allied Services Trust does not hold debit or credit cards for clients

either. If a purchase is required, Allied Services Trust has a dedicated current account holding its own funds from which the purchase is made, and a disbursement form is then raised for reimbursement from the client.

18. Ms. Pardoe has given an undertaking on behalf of Allied Services Trust that, if appointed as deputy, it will comply with the Public Guardian's published standards for professional deputies.
19. The Public Guardian has informed the Court that Allied Services Trust has been appointed as property and affairs deputy once before but that protected person has now died. There were no issues with that deputyship. Additionally, Allied Services Trust holds, has held or is awaiting registration in respect of appointment as attorney for 13 individuals (including both welfare and financial appointments.) No concerns have been reported to the Public Guardian about any of those cases.
20. The questions of external regulation and insurance cover require more detailed consideration.

#### The external regulation to which Allied Services Trust is subject

21. As a registered charity, Allied Services Trust is subject to external regulation by the Charity Commission of England and Wales. Ms. Stickler identified that this proposition raises two questions for consideration:
  - a. would the Commission's regulatory regime apply to Allied Services Trust when acting as TWAH's deputy for property and affairs?
  - b. if so, are the regulatory frameworks of the Commission and SRA "broadly comparable"?
22. The Commission has confirmed that its regulatory remit is covered in a number of publicly available documents. Copies have been filed of three in particular:
  - a. The Regulatory and Risk Framework, which sets out the Commission's regulatory approach and how it assesses risk;
  - b. Guidance about Statutory Inquiries, which describes the Commission's legal powers to open a statutory inquiry into a charity and its use of those powers;
  - c. Strategy for Dealing with Safeguarding Issues, which sets out the purpose and scope of the Commission's regulatory engagement.
23. The last of these documents summarises the Charity Commission's role in the following terms:

*"The Charity Commission has an important regulatory role in ensuring that trustees comply with their legal duties and responsibilities in managing their charity. In the context of safeguarding issues, it has a specific regulatory role which is focussed on the conduct of trustees and the steps they take to protect beneficiaries and other persons who come into contact with the charity.*

*The Commission's aim is to make sure that charities that work with or provide services to vulnerable beneficiaries comply with their legal duties, and take reasonable steps to protect them from harm and minimise the risk of abuse.*

*The Commission is not responsible for dealing with incidents of actual abuse and does not administer safeguarding legislation. We cannot prosecute or bring criminal proceedings*

*although we can and do refer any concerns we have to the police, local authorities and the Disclosure and Barring Service ('DBS') each of which has particular statutory functions."*

24. In respect of oversight and supervision, the Strategy document sets out at section 4.2 the following explanation:

*"The Charity Commission undertakes strategic, tactical and operational risk assessments of safeguarding issues and trends according to:*

- developments within the sector*
- its own operational case work experience*
- the Commission/s serious incident reporting regime for trustees*
- information from other agencies*
- complaints, incidents, allegations or reports which come to the Commission's attention from beneficiaries, the public or other sources*

25. In respect of intervention, the Strategy document sets out the following approach:

#### ***"4.4 Intervention***

*When any safeguarding concerns about a charity come to our attention, we will assess them against the Charity Commission's Regulatory and Risk Framework to decide the most proportionate and effective response.*

*We will consider whether:*

- there is an immediate risk to beneficiaries in the charity that means the Commission has to take prompt regulatory action*
- the trustees have handled the suspicions, allegations or actual instances of abuse responsibly and appropriately*
- there are adequate safeguarding measures in place and these are properly implemented*

*.....*

#### ***5. The purpose and scope of the Charity Commission's regulatory engagement***

*....*

*In practice, the Commission is likely to become involved in one-to-one engagement with charities:*

- if there is a concern that someone who is currently acting as a trustee, employee or is otherwise involved in the charity, is unsuitable to hold that position*
- when there are concerns or allegations that a child or adult at risk has been abused or mistreated, and this is in connection with the activities of a charity or someone closely involved in a charity*
- when there is serious cause for concern because policies and procedures are not in place, or are inadequate, to protect children or adults at risk who may come into contact with the charity*
- where there are serious concerns that a charity's safeguarding policies are not being complied with or its practices are placing children or adults at risk of harm*

*....."*

26. Specifically considering the discharge of the functions of deputyship, Neil Robertson explained the Commission's approach as follows:

*"10. The Commission regulates charities and their adherence to charity law, it does not regulate the activities that charities undertake in furtherance of their objects, which are diverse in nature and which it has no expertise. It would not therefore supervise and monitor AST's functions as deputy specifically. For example, it would not be in a position to determine whether AST was providing an efficient or effective service when appointed as deputy. Rather, it would focus on ensuring that the trustees of AST comply with their legal duties and responsibilities in managing the charity, including by taking reasonable steps to protect beneficiaries from harm and minimise the risk of abuse."*

27. Mr. Robertson's statement goes on to explain that:

*"32.... Trustees must take reasonable steps to protect their charity's beneficiaries, staff, volunteers and those connected with the activities of the charity from harm. This should be a key governance priority. Any failure by trustees to manage safeguarding risks adequately would be of serious regulatory concern to the Commission. We may consider this to be misconduct and/or mismanagement in the administration of the charity and it may also be a breach of trustee duty.*

*33. ... The Commission's guidance "How to report a serious incident in your charity" states that a serious incident is an adverse event, whether actual or alleged, which results in significant loss of the charity's money or assets, damage to charity property or harm to the charity's work, beneficiaries or reputation..."*

28. The Commission's approach was further clarified in an e-mail to the Public Guardian on 16<sup>th</sup> May 2018 from its Head of Guidance and Practice:

*"The Commission would be interested if we received the following information about the charity/its corporate trustee, in terms of considering any potential regulatory action against the charity, its corporate trustee or individual directors of the corporate trustee:*

- There were any breaches of the charity's Memorandum and Articles of Association including acting outside of its objects;*
- There were any breaches of the law or court orders;*
- There were any breaches of trustee duties; or*
- The charity's beneficiaries, including vulnerable beneficiaries, weren't being safeguarded (in which case the Commission would also pass on the information to the appropriate authorities, if it hadn't already been).*

29. The most likely risk of property and affairs deputyship is misappropriation or mismanagement of the protected person's funds by the deputy. Such misappropriation or mismanagement would be a failure to act in accordance with the Mental Capacity Act 2005 and the terms of deputyship order. Where the appointed deputy is a charity, it would also *prima facie* be a failure to act in the charity's best interests and a breach of trustee duties, causing loss and harm to the charity's work, its beneficiaries and its reputation. On the basis of the information put before the Court, it is clear that such misappropriation or mismanagement would trigger the regulatory remit of the Commission.

30. Ms. Stickler's second question - are the regulatory frameworks of the Commission and SRA "broadly comparable"? – refers to paragraph 65 of the 2018 judgment. The purpose of making a comparison

between regulation by the Charity Commission and by the Solicitors' Regulatory Authority is not to endow on the latter any definitive 'benchmark' status but rather a recognition that, the Court having already considered one regulatory regime in depth, the process of considering a different scheme subsequently can be assisted by the identification of any differences in scope and effect.

31. To that end, both the Charity Commission and the SRA were asked a series of questions, which were answered in the statements of Neil Robertson for the Charity Commission and Paul Milton for the SRA. Ms. Stickler has helpfully collated their responses into a table which is attached to this judgment as Annex 1. Additionally Ms. Stickler has identified the comparable statutory powers of each regulatory body, and that table is attached as Annex 2.
32. It is apparent from these annexes that the regulatory regime of the Charity Commission is "broadly comparable" to that of the SRA in that (in the words of Ms. Stickler's final position statement):
  - (a) both are ultimately "event led" (albeit the Commission takes a "risk-based approach");
  - (b) both have wide investigatory powers, including information gathering by way of documents, information and interviews;
  - (c) both have wide temporary powers of protection, including freezing assets, suspending solicitors / charity trustees and carrying out disciplinary procedures;
  - (d) both have wide and permanent remedial powers, including removal of senior office holders and ultimately shutting down the solicitor's firm / the charity.
33. One significant difference between the two regulatory regimes is the availability under the SRA framework of a compensation scheme to those who suffer loss due to the conduct of a 'defaulting practitioner.'
34. The availability of compensation is not itself a form of regulation. Rather, it is a means of providing redress to a person who has suffered as a consequence of breaches of regulatory requirements. It is clearly a potential benefit to a protected person whose appointed deputy has misappropriated or mismanaged funds but the potential should not be over-stated. The SRA compensation scheme is entirely discretionary, and the availability of an alternative remedy (such as a security bond) is relevant to the exercise of discretion.
35. The Public Guardian's position is that "*the absence of any equivalent discretionary scheme for [TWAH] does not render the package of protective measures available to him inadequate.*" I agree. The potential of a claim for discretionary compensation is desirable but the standard requirement of a security bond limits the relative disadvantage of there being no such potential.
36. Does this relative disadvantage nonetheless mean that the security requirement should be set higher where the potential for discretionary compensation is not available? The factors which are taken into account in setting the level of the security requirement are by now familiar, having been set out by Her Honour Judge Hazel Marshall QC in *Re H* [2009] COPLR Con Vol 606 at paragraph 55. They include "*The availability and extent of any other remedy or resource available to P in the event of a default or loss.*"
37. The Public Guardian's position is that the availability or otherwise of a discretionary compensation scheme should not have any impact when the court is assessing the level of security bond. I understand Ms. Stickler's argument to be that, since the (discretionary) scheme is no guarantee that any person will be able to recover funds, it should not have any positive (ie reducing) impact on the assessment of the security



requirement; and if the availability of the scheme has no positive impact on the security requirement, it's non-availability should have no negative (ie raising) impact.

38. Whilst recognising that potential access to a compensation scheme is desirable, I agree with the Public Guardian's position in respect of its impact on the security requirement. The Court has to form a view of the risk of default and set the security requirement accordingly. In *Re H* terms, the weight to be given in that assessment to availability or not of a compensation scheme which is discretionary and itself takes into account the availability of the security bond, is not such as to alter the level of security required. In short, this distinguishing feature of the regulatory/protective regimes of the Charity Commission and the SRA should not itself lead to higher security requirements for trust corporations with charitable status.
39. Conclusion: I am satisfied that the regulatory regime which applies to a trust corporation which is also a charity is "broadly comparable" to the regime previously considered in the 2018 judgment. The Charity Commission provides in respect of Allied Services Trust that "further check on what the deputy does...[because there is] someone else sitting on their shoulder." The Court can derive assurance of the likelihood that a deputy subject to such regulation will behave in an appropriate fashion to meet the best interests of a protected person; and if it does not, that other agencies are likely to step in.

#### Allied Services Trust's insurance cover

40. Allied Services Trust holds professional indemnity insurance provided by XL Catlin. A copy of the policy document has been filed by Ms. Pardoe. Clause 2.1 includes the following provision:

*"The **Insurer** shall indemnify the **Insured** in respect of any settlement, damages, interest and claimant's costs arising from any **Claim** first made against the **Insured** and **Notified** during the **Period of insurance** and which arises out of the conduct of the **Insured's Business** by reason of:*

- (a) a **Wrongful Act** committed by the **Insured** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**;*
- (b) any dishonest or fraudulent act or omission on the part of any **Employee**;*

....

41. "Wrongful Act" is defined by clause 3.16 of the policy as "any negligent act, negligent error, negligent omission or negligent breach of duty."
42. Clause 4 (when read in conjunction with the policy Schedule) of the Allied Services Trust's insurance policy document filed confirms that cover is limited to £3 million for any one claim. In the course of the application Ms. Pardoe confirmed that the level of cover has now been increased to £4 million for any one claim.
43. The policy contains a 'fraud and dishonesty' exclusion, which includes the following provision:

*"The **Insurer** shall not have any liability under this policy for, or directly or indirectly arising out of, or in any way connected with*

...

#### **6.6 Fraud and Dishonesty**

any **claim** or circumstances arising from or connected with the dishonest or fraudulent act or omission of any former or present partner, principal, director, member, consultant or sub-contractor of the **Insured...** ';

44. The Public Guardian points out that the SRA Minimum Terms of professional indemnity insurance provide as follows:

**6.8 Fraud or dishonesty**

*The insurance may exclude liability of the insurer to indemnify any particular person to the extent that any civil liability or related defence costs arise from dishonesty or a fraudulent act or omission committed or condoned by that person, except that:*

- (a) the insurance must nonetheless cover each other insured; and*
- (b) the insurance must provide that no dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company, or in the case of an LLP, all members of that LLP.*

45. The Public Guardian further submits that:

60. *What the above means is that a policy can only exclude liability to insure a solicitor's firm where (i) a member of the firm has committed fraud; and (ii) all of the other members of the firm were either parties to the fraud or were aware of it and condoned it. This means that an insurer cannot refuse to cover a firm which has been the victim of undetected actions of rogue members.*

61. *Returning to clause 6.6 of the [Allied Services Trust's] Policy, when read as a whole, this clause does comply with the above because it only excludes liability (i) to the people who committed or condoned the fraudulent act; or (ii) after the fraud should reasonably have been detected.*

46. The Public Guardian initially expressed concerns also about clause 6.7 of the Allied Service's Trust's insurance policy. That clause provides that:

*"The insurer shall not have any liability under this policy for, or directly or indirectly arising out of, or in any way connected with ...any liability of the Insured as a director, officer and/or trustee in their respective capacities as a director, officer and/or trustee"*

47. Further clarification was sought, and the concerns raised are addressed in the statement of Michael Freeman. Whilst noting that *"the relationship continues to be governed by the terms of the policy, not this statement"* he says:

*"8. In my view, clause 6.7 has to be read in the context of the policy as a whole. The policy is a policy of professional indemnity insurance that covers the wrongful acts of the insured (including the insured's negligence) in the course of business. The Insured's business includes acting as the court appointed deputy for property and financial affairs under the Mental Capacity Act 2005. As I understand it, this is not ancillary to the Trust's business, but a key part of it. In those circumstances, I do not think that the policy excludes claims brought against the Allied Services Trust acting in its capacity as deputy for property and financial affairs on the basis that the Trust is technically acting as a trustee when it does so.*

*9. In my view, the exclusion in Clause 6.7 excludes the sort of insurance claims that are made when a principle or employee of the insured also happens to be the director or officer of a company, or the trustee of a pension or charity, i.e. claims against individuals arising out of work which is separate to the main business of the insured. Such liabilities would normally be covered by different policies of insurance, such as standard 'directors and officer's policies. The exclusion at clause 6.7 makes it plain that those claims are not covered by the professional indemnity policy. Our view is that this exclusion does not apply to the work of the Allied Services Trust acting in its capacity as a court appointed deputy. "*

48. The Public Guardian is “satisfied with the response of Mr. Freeman in relation to clause 6.7” and further satisfied that Allied Services Trust “has adequate insurance cover in the context of a single claim relative to the size of [TWAH’s] estate.”
49. An e-mail dated 8<sup>th</sup> February 2018 from the Client Relationship Manager of Deputy Bond Services confirms that that bond provider is also satisfied with the level and terms of Allied Services Trust’s insurance cover.
50. Conclusion: I am satisfied as to the sufficiency of Allied Services Trust’s current professional indemnity insurance cover. A copy of the policy has already been provided, and Ms. Pardoe has given an undertaking to notify the Public Guardian immediately if there is any reduction in the terms or level of insurance cover. She has also indicated an awareness of the need to review the total level of cover in the context of total assets under the management of Allied Services Trust, which will be part of the Public Guardian’s supervisory considerations.

What is required for the Court of Protection to be satisfied on application that a trust corporation linked to a charity is a suitable legal person for appointment as deputy for property and affairs?

51. The 2018 judgment set out in Schedule 2 the information and undertakings required for the Court to be satisfied that a trust corporation linked to a legal practice may appropriately be appointed as a property and affairs deputy. It is now the norm that such information/undertakings are filed as an additional page to the COP4 declaration, endorsed with the name of the case and the name, position and signature of the authorised signatory. Section 5 of the COP4 form is completed so as to make clear that the additional page is part of the declaration, to which section 6 then applies. (For the avoidance of doubt, just as a COP4 declaration is required for each application, so this additional page has to be filed *with each application*.)
52. On the basis of the conclusions above, the same approach - with appropriate modifications - can be taken in respect of trust corporations linked to charities. The required declarations/undertakings (to be filed as an additional page to the COP4 filed with the application) are that:
- a. The proposed deputy (the trust corporation) is a trust corporation within the meaning of section 64(1) of the Mental Capacity Act 2005 and can lawfully act as such; and the trust corporation will notify the Public Guardian if that ceases to be the case.

- b. The trust corporation will comply with the Public Guardian's published standards for professional deputies.
- c. The trust corporation is regulated by the Charity Commission; and will notify the Public Guardian immediately if that ceases to be the case.
- d. The trust corporation undertakes to maintain insurance cover that
  - i. includes indemnity in respect of all work undertaken by the trust corporation, including discharging the functions of deputyship; and
  - ii. provides a sum insured for any one claim (exclusive of defence costs) no less than £3 million.
- e. The trust corporation will lodge a copy of the insurance policy with the Public Guardian on appointment and will notify the Public Guardian immediately if there is any reduction in the terms or level of the insurance cover.

53. Some additional documents should also be filed with the application:

- a. a copy of the authorisation by the Lord Chancellor to act as a trust corporation; and
- b. confirmation of its charitable registration.

(A copy of the insurance policy need not be filed with the application, but must be lodged with the Public Guardian on application.)

54. The Public Guardian suggests that the trust corporation should also file with each application a copy of its Articles of Association. Noting the conclusions in respect of Articles of Association in *Re SH* [2018] EWCOP 21, and at paragraph 34 the 2018 judgment, I do not agree. The Lord Chancellor's authorisation and confirmation of charitable registration can both be provided in single page documents, and therefore their inclusion in the application papers is not unduly burdensome or costly. Articles of Association in contrast are lengthy documents. Self-reporting (in the terms of paragraph 52(a) above) with a declaration of truth is a more proportionate approach.

#### Conclusions in respect of TWAH

- 55. Through Ms. Pardoe, Allied Services Trust has provided all the declarations/undertakings identified above.
- 56. Additionally, Ms. Pardoe herself has acted as interim deputy for TWAH for some time now, taking a number of positive and proactive steps including applications for further authorities when circumstances changed. No concerns have been raised by any person or the Public Guardian with her approach to date.
- 57. Mr. Robertson's statement confirms that Allied Services Trust is not subject to any follow-up monitoring by the Charity Commission; and the bond provider has confirmed a very positive outcome of its fact-finding audit. The Public Guardian supports the application.

58. I am entirely satisfied that it is in the best interests of TWAH that the application by Allied Services Trust is granted. The interim appointment of Ms. Pardoe shall be discharged and Allied Services Trust shall be appointed instead.

HHJ Hilder

21<sup>st</sup> August 2019

**ANNEX 1**

**Comparison of Responses provided by the Commission and SRA**

		<b>Commission's Response (in summary)</b>	<b>SRA Response (in summary)</b>
[1]	In the event that a Trust Corporation ("TC"), subject to regulation by the Commission / SRA is appointed as P's deputy for property and affairs, what steps would be taken by the Commission / SRA to supervise and monitor its functions as deputy?	<ul style="list-style-type: none"> <li>- Commission is the registrar and regulator of charities in England and Wales</li> <li>- Its statutory objectives (section 14 of the Charities Act 2011) include promoting compliance by charity trustee with their legal obligations in exercising control and management of their charities</li> <li>- Its general functions include identifying and investigating apparent misconduct or mismanagement in the administration of charities</li> <li>- The Commission takes a "risk-based approach" — the "Regulatory and Risk Framework outlines how the Commission operates as a risk-led regulator; how it decides when and how to engage; and the possible outcomes of its engagement" The Commission gather and receives information about the charities it regulates from a range of sources, including charities annual return and accounts</li> <li>- Commission has identified both safeguarding and fraud and financial abuse as priority regulatory risk issues — where serious concerns relating to these matters come to the Commission's attention, the Commission will look closely at the concerns and their potential impact</li> <li>- The Commission also undertakes proactive and follow-up monitoring of certain charities.</li> </ul>	<ul style="list-style-type: none"> <li>- SRA is the independent regulatory body of the Law Society of England and Wales (the Society).</li> <li>- It is responsible for, amongst other things, regulatory and disciplinary matters concerning solicitors.</li> <li>- it sets the Principles and a Code of Conduct that those regulated by it have to abide by in order to provide legal services</li> <li>- it receives information from members of the public and other regulatory and statutory bodies concerning solicitors and the firms we regulate.</li> <li>- It has wide powers of investigation that helps it to ensure there is full compliance by solicitors and firms with the code of conduct</li> </ul> <p>Powers include (this is not an exhaustive list)</p> <ul style="list-style-type: none"> <li>- require a firm and/or a solicitor who is a manager or employee in a firm authorised by the SRA to cooperate promptly in relation to an investigation</li> <li>- a firm can be intervened into and closed down at short notice.</li> <li>- impose conditions on an authorised body at any time to restrict or stop the firm from carrying out an area of work and limit the</li> </ul>

		<p>Monitoring may include (a) deskbased research; (b) corresponding with or interviewing trustees; (c) conducting a compliance visit at the charity's premises; and (d) inspecting the charity's financial and other records</p> <p><i>"The Commission regulates charities and their adherence to charity law, it does not regulate the activities that charities undertake in furtherance of their objects, which are diverse in nature and in which it has no expertise. It would not therefore supervise and monitor AST's functions as deputy specifically. For example, it would not be in a position to determine whether AST was providing an efficient or effective service when appointed as deputy. Rather, it would focus on ensuring that the trustees of AST comply with their legal duties and responsibilities in managing the charity, including by taking reasonable steps to protect the beneficiaries from harm and minimise the risk of abuse "</i></p>	<p>activities of a manager or employee in order that we can comply with our regulatory objectives</p> <ul style="list-style-type: none"> <li>- impose sanctions on individual solicitors (including letters of advice, a reprimand and referral to the Solicitors Disciplinary Tribunal. In terms of its own fining powers, the SRA can impose fines of up to 02000 for recognised bodies and up to 250million in respect of a licensed body.</li> </ul> <p><i>"In terms of supervising and monitoring X Corporations functions as a deputy, typically direct SRA interest and involvement might be triggered by some form of complaint about the use/ misuse of the Corporation's powers and its failure to act in the best interests of P. Any complaint would be risk assessed and if appropriate an investigation would follow using some or all of the powers described above '</i></p>
[2]	<p>In answering question 1, can you please provide a practical example. For example, the PG requires annual accounts from deputies and conducts quality assurance visits. What practical steps would be taken by the Commission / SRA to "identify and investigate apparent misconduct or mismanagement" in the administration of the TO's work as P's deputy for property and affairs?</p>	<p>As above.</p>	<p><i>"Typically, any concerns of this kind and any investigation would be 'event led' where a complaint is made to the SRA from a third party. Depending on the seriousness of the complaint, the matter might be dealt with by way of desk based investigation or, for example in the very serious scenario outlined at question 5 below, by way of commission of a forensic investigation visit to the Corporation and preparation of a forensic investigation report. This report might ultimately form the basis of any disciplinary proceedings to be instigated at the Solicitors Disciplinary Tribunal "</i></p>

[3]	Would any steps taken by the Commission / SRA to enable it to identify misconduct in the administration of P's financial affairs quicker than the Public Guardian?	<p>As above, the Commission gathers and receives information about the charities it regulates from a range of sources.</p> <p>Unaware of the steps taken by the PG and therefore unable to provide any further comparison.</p>	Unable to provide a comparative analysis.
[4]	In the event that there are no practical steps taken by the Commission / SRA to supervise and monitor the work of the TC's as P's deputy, how would the Commission/SRA become aware of any misconduct or mismanagement on the part of the TC in its role as P's deputy? Is the Commission / SRA dependent on third parties to report concerns about how TC is exercising its role as P 's deputy?	As above, the Commission gathers and receives information about the charities it regulates from a range of sources and also undertakes proactive and follow-up monitoring of charities in a limited number of cases.	<i>"In large part the SRA would be dependent on third parties to report concerns about how X Corporation was exercising its role as P's deputy and I would refer again to my answer to question 2. From time to time 'thematic' visits are carried out on regulated entities by the SRA, for example random firms might be visited to check, for example, compliance with AML procedures. However, the scenarios suggested in this and other questions and the regulatory challenges they pose I would expect would typically be brought to the attention of the SRA by third party reports to the SRA"</i>
[5]	Can you please confirm what remedial and protective powers are available to the Commission/SRA in the event that TC misused its powers as P's deputy for property and affairs? For example, if TC was appointed as P's deputy for property and affairs and a director, trustee or employee of TC wrongfully ran away with £100,000 of P's savings, what steps could be taken by the Commission/SRA?	<ul style="list-style-type: none"> <li>- both safeguarding and fraud and financial abuse are priority risk issues</li> <li>- the action that would be taken in the event that AST misused its powers as P's deputy would depend on the circumstances</li> <li>- criminal activity would be reported to the police</li> <li>- if regulatory concerns, including concerns about breaches of trustee duties were brought to the Commission's attention, they would be assessed and depending on the nature and level of risk, possible outcomes could include: (i) providing advice; (ii) setting an action plan; (iii) in most serious cases, opening a statutory enquiry or other regulatory powers</li> </ul>	<i>"Depending upon the culpability of X Corporation itself for the actions of a 'rogue director, trustee or employee, consideration might be given (following an investigation which would probably include preparation of a forensic investigation report) to imposing conditions on the Corporation to restrict it or stop it from carrying out this area of work. The scenario outlined would seem to suggest however that culpability rests with one individual, whether director, trustee or employee, so the likely outcome in a serious case such as this would either be an intervention into the individual 's practice or a referral to the Solicitors Disciplinary Tribunal"</i>



		<ul style="list-style-type: none"> <li>- the Commission has a number of compliance powers which fall into three categories: (i) information gathering; (ii) temporary protective powers such as freezing bank accounts; and (iii) permanent and remedial powers that allow the Commission to implement longer term solutions</li> <li>- the Commission can also issue official warnings to charities and trustees and disqualify an individual from being a trustee or holding a senior management role for a period up to 15 years</li> </ul>	
[6]	For the avoidance of doubt, would the Commission / SRA have power to suspend or remove directors and/or trustees and/or other employees of TC if it misused its powers as P's deputy for property and affairs?	<p>The Commission has the power to:</p> <ul style="list-style-type: none"> <li>- remove a charity trustee in the circumstances described in section 80</li> <li>- disqualify an individual from being a trustee or holding a senior management role for a period up to 15 years</li> </ul> <p>If a statutory inquiry is opened under section 46 of the Charities Act 2011 , the Commission has powers to:</p> <ul style="list-style-type: none"> <li>- suspend any person who is a trustee, officer, agent or employee of the charity for up to 12 months, pending consideration being given to their removal (section 76(3));</li> <li>- remove any trustee, officer, agent or employee of the charity (section 79)</li> </ul> <p>A person cannot be a charity trustee or discharge senior management functions in charities if they have unspent convictions for offences involving dishonesty or deception, as well as various money laundering and bribery offences.</p>	<p><i>"Yes. If a trust corporation is regulated by the SRA it will be subject to the same rules and regulations as any other regulated firm. We will regulate the entity as well as the solicitors working in it. As previously mentioned, we have powers to impose conditions on an authorised body at any time to restrict or stop the firm from carrying out an area of work and limit the activities of a manager or employee so as to allow us to comply with our regulatory objectives (Rule 9 of the SRA Authorisation Rules 2011). We also have powers of intervention into a firm.</i></p> <p><i>The SRA also has powers under section 43 of the Solicitors Act to restrict or prevent non-solicitor employees from working in a related firm if we view them to be a risk. We can also impose immediate conditions on any solicitor with a practising certificate under the SRA Practising Regulations 2011."</i></p>

		In performing its functions, the Commission must have regard to the principles of best regulatory practice — including regulatory activities should be proportionate, accountable, consistent, transparent and targeted at cases in which action is needed	
[7]	<p>Are you aware whether the regulatory schemes prescribed by the Charities Act 2011 is intended to be broadly comparable to the regulatory regime of the Solicitors Regulation Authority (as it applies to solicitors acting as a person's deputy for property and affairs)?</p> <p>(7a) If so, what are the core similarities? (7b) If not, what are the core differences?</p>	No view can be expressed.	No view can be expressed.
[8]	Does the Charity Commission provide any discretionary compensation scheme to make grants in circumstances where TC had misappropriated funds of P and this was not covered by TC's insurance? If so, how does such scheme operate?	<p>No discretionary compensation scheme provided.</p> <p>The Commission may bring legal proceedings for the recovery of charitable funds with the consent of the Attorney General.</p>	Not asked to the SRA (although see questions below about the operation of the SRA's discretionary compensation scheme)
[9]	In addition to TC's legal duties under the MCA and wider fiduciary duties, does the Commission /SRA impose any separate standards on TC when acting as P's deputy for property and affairs? If so, what sanctions are likely to be imposed on TC for failure to comply with such standards?	<p>The Commission does not impose any separate specific standards on AST when acting as P's deputy for property and affairs.</p> <p>However, all trustees of a charity must comply with charity law and are subject to the duties set out in the Commission's Guidance "The essential trustee: what you need to know, what you need to do". These duties include:</p> <ul style="list-style-type: none"> <li>(a) act in charity's best interests;</li> <li>(b) comply with governing document and the law;</li> <li>(c) ensure charity is carrying out its purpose for the public benefit;</li> </ul>	"If regulated by the SRA, X Corporation and the individuals within it would be subject to the provisions of the SRA Handbook 2011 and its principle based code of conduct. If the Corporation itself failed to comply with such standards it could be subject to sanctions which include a letter of advice, a reprimand, a fine and a referral to the Solicitors Disciplinary Tribunal"

		<p>(d) ensure charity is accountable; manage charity's resources responsibly (f) act with reasonable care and skill.</p> <p>"The Commission's "Strategy for dealing with safeguarding issues in charities" also provides that charity trustees should safeguard and where appropriate promote the well-being and welfare of their charity's beneficiaries"</p> <p>"Any failure by trustees to manage safeguarding risks adequately would be of serious regulatory concern to the Commission. We may consider this to be misconduct and/or mismanagement in the administration of the charity and it may also be a breach of trustee duty"</p> <p>"Charity trustees are expected to identify and report serious incidents to the Commission. A serious incident is "an adverse event, whether actual or alleged, which results in significant loss of the charity's money or assets, damage to charity property or harm to the charity's work, beneficiaries or reputation"</p>	
[10]	<p>In relation to the [SRA] compensation fund, can you please provide an overview (with reference to the applicable Compensation Fund Rules 2011) of how the fund could benefit a vulnerable person ("P") whose property has been dishonestly misappropriated by a trust corporation, or by any individual involved in the business of the trust corporation, managing his or her affairs as his or her duty?</p>	Nil	<ul style="list-style-type: none"> <li>- discretionary fund administered in accordance with the SRA Compensation Fund Rules 2011 (the Rules)</li> <li>- the loss must have been due to the conduct of the ' defaulting practitioner'. This is an solicitor, individual or firm regulated by the SRA and the definition includes solicitor, registered European lawyer, registered foreign lawyer, or body licenced by the SRA, as well as their employee, manager or owner</li> </ul>

			<ul style="list-style-type: none"> <li>- The Fund can replace money that a defaulting practitioner has misappropriated or failed to account for (Rule 3.1)</li> <li>- It can also provide compensation for the civil liability of a defaulting practitioner that should have had a policy of qualifying insurance against which a claim could be made but did not do so (Rule 3.2).</li> </ul>
[11]	What criteria would be applied in determining an application from P for a grant?	N/A	<ul style="list-style-type: none"> <li>- Maximum payment that may be made from the Compensation Fund is £2 million (Rule 17).</li> <li>- Any payment is made entirely at the discretion of the SRA and there is no right to a payment at law (Rule3.3).</li> </ul> <p>For the jurisdiction of the Fund to be engaged, the following Rules need to be met:</p> <ul style="list-style-type: none"> <li>- The loss is due to the conduct of a person or firm regulated by the SRA</li> <li>- The loss must have arisen in the course of an activity of a kind which is part of the usual business of the regulated person or firm (Rule 3.4). Court of Protection work would be covered</li> <li>- The applicant is eligible to make a claim (Rule 3.7). They must be an individual or a trustee with an asset value of less than £2million (except where the SRA is satisfied that a beneficiary is likely to suffer hardship).</li> <li>- The applicant has suffered loss in consequence of the dishonesty of the regulated person (Rule 3.4 (a)), or has suffered loss and hardship in consequence</li> </ul>

			<p>of the regulated person or firm's failure to account for money (Rule 3.4 (b)).</p> <ul style="list-style-type: none"> <li>- The loss is not of a type excluded by the Rule 8 which includes trading debts, contractual interests and others.</li> </ul> <p>In deciding whether to exercise its discretion the Fund will also consider these Rules:</p> <ul style="list-style-type: none"> <li>- Did the applicant cause or contribute to their own loss (Rule 19)</li> <li>- Is there an alternative remedy available to the applicant (Rule 13)</li> <li>- Was the loss caused by parties other than the defaulting practitioner (Rule 10)</li> </ul> <p>The Fund is able to consider these and either reject a claim or make a reduction to take account of them.</p>
[12]	<p>With reference to Rule 5 of the 2011 Rules, would P be able to make a claim for compensation from the fund if the Trust Corporation's professional indemnity insurance policy contained a "fraud and dishonesty" exclusion clause and therefore did not cover P's losses if an individual of the trust corporation dishonestly or fraudulently misappropriated P's property?</p>		<p>Firms regulated by the SRA are required to have professional indemnity insurance cover in place. Rule 5 applies to cases where the regulated firm has a civil liability to an applicant, but the firm failed to take out professional indemnity insurance.</p> <p>Professional indemnity insurance does not cover losses due to the fraud or dishonesty of the insured himself, save in cases where there are innocent partners or members who may be indemnified.</p> <p>The Compensation Fund is a fund of last resort (Rule 13) and where the loss due to the dishonesty of a regulated person cannot be</p>

			recovered from elsewhere, a claim can be made upon the Compensation Fund.
[13]	Would the availability of security bond that can be surrendered on behalf of P (which may not cover the full extent of P's losses) disqualify P from making a successful claim and/or influence the amount of any grant awarded?		The SRA can consider claims where the full extent of the losses cannot be made good from other sources. The SRA may deduct from any grant out of the Fund monies already recovered from elsewhere.

Annex 2

Statutory Comparison: Commission and the SRA

	<b>Charity Commission for England and Wales (Charities Act 2011)</b>	<b>Solicitors Regulation Authority (SRA)</b>
<b>Objectives / Functions</b>	<p>The Charity Commission has the following statutory objectives (s. 14) :</p> <ul style="list-style-type: none"> <li>• <b>the public confidence objective</b> (to increase public trust and confidence in charities);</li> <li>• <b>the public benefit objective</b> (to promote awareness and understanding of the operation of the public benefit requirement);</li> <li>• <b>the compliance objective</b> (to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities)</li> <li>• <b>the charitable resources objective</b> (to promote the effective use of charitable resources)</li> <li>• <b>the accountability objective</b> (to enhance the accountability of charities to donors, beneficiaries and the general public)</li> </ul> <p>The Charity Commission has the following statutory general functions (s. 15(1 )):</p> <ul style="list-style-type: none"> <li>• determining whether institutions are or are not charities;</li> <li>• <b>encouraging and facilitating the better administration of charities;</b></li> <li>• <b>identifying and investigating apparent misconduct or mismanagement in the administration of charities and</b></li> </ul>	<p>The SRA is responsible for providing rules relating to (ss.31-36A, Solicitors Act 1974):</p> <ul style="list-style-type: none"> <li>• the professional practice, conduct, discipline and fitness to practise of solicitors;</li> <li>• accounts and trust accounts;</li> <li>• the inspection of bank accounts kept by solicitors;</li> <li>• accountants' reports;</li> <li>• professional indemnity</li> <li>• the compensation fund required to be maintained and administered by it, and the procedure for making grants from it.</li> </ul> <p>The SRA must pursue the following regulatory objectives (s. 1 (1), Legal Services Act 2007):</p> <ul style="list-style-type: none"> <li>• protecting and promoting the public interest;</li> <li>• supporting the constitutional principle of the rule of law;</li> <li>• improving access to justice;</li> <li>• protecting and promoting the interests of consumers;</li> <li>• promoting competition in the provision of services provided by authorised persons;</li> <li>• encouraging an independent, strong, diverse and effective legal profession;</li> </ul>

	<p><b>taking remedial or protective action in connection with misconduct or mismanagement therein;</b></p> <ul style="list-style-type: none"> <li>• obtaining, evaluating and disseminating information in connection with the performance of any of the Commission's functions or meeting any of its objectives;</li> <li>• giving information or advice, or making proposals, to any Minister of the Crown on matters relating to any of the Commission's functions or meeting any of its objectives.</li> </ul> <p>In order to encourage and facilitate the better administration of charities, <b>the Commission may give such advice or guidance with respect to the administration of any particular charity as it considers appropriate</b> (s. 15(2) and (3)(c)).</p>	<ul style="list-style-type: none"> <li>• increasing public understanding of the citizen's legal rights and duties;</li> <li>• promoting and maintaining adherence to the professional principles, which are: <ul style="list-style-type: none"> <li>○ that authorised persons should act with independence and integrity;</li> <li>○ that authorised persons should maintain proper standards of work;</li> <li>○ that authorised persons should act in the best interests of their clients;</li> <li>○ that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and;</li> <li>○ that the affairs of clients should be kept confidential.</li> </ul> </li> </ul>
<p><b>Duties</b></p>	<p>The Charity Commission has the following statutory duties (s. 16):</p> <ul style="list-style-type: none"> <li>• so far as is reasonably practicable the Commission must, in performing its functions, act in a way which is compatible with its objectives, and which it considers most appropriate for the purpose of meeting those objectives;</li> <li>• so far as is reasonably practicable the Commission must, in performing its functions, act in a way which is compatible with the encouragement of all forms of charitable giving, and voluntary participation in charity work;</li> </ul>	<p>In exercising its regulatory functions, the SRA must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives and which it considers most appropriate for the purpose of meeting those objectives, having regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principle appearing to it to represent the best regulatory practice (s.28, Legal Services Act 2007).</p>



	<ul style="list-style-type: none"> <li>• in performing its functions the Commission must have regard to the need to use its resources in the most efficient, effective and economic way;</li> <li>• in performing its functions the Commission must, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed);</li> <li>• in performing its functions the Commission must, in appropriate cases, have regard to the desirability of facilitating innovation by or on behalf of charities;</li> <li>• in managing its affairs the Commission must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.</li> </ul>	
<p><b>Investigatory Powers</b></p>	<p>The Charity Commission has the power to:</p> <ul style="list-style-type: none"> <li>• <b>institute inquiries</b> with regard to charities or a particular charity or class of charities, either generally or for particular purposes (s.46) and, as part of the inquiry: <ul style="list-style-type: none"> <li>○ direct a person to provide accounts and statements in writing or return answers in writing to any questions or inquiries addressed to the person on the matter, and to verify any such accounts, statements or answers by statutory declaration (s.47(2)(a));</li> <li>○ direct a person to provide copies of documents and verify them by statutory declaration (s.47(2)(b));</li> <li>○ direct a person to attend at a specified time and place and give evidence (which may be taken on oath) or produce documents (s.47(2)(c));</li> </ul> </li> </ul>	<p>The SRA may exercise any investigative or other powers at any time including those arising from: (a) ss.44B, 44BA and 44BB of the Solicitors Act 1974; (b) ss.93 and 94 of the Legal Services Act 2007; or (c) rules made by the Law Society or the SRA for the production of documents, information or explanations (r.4.2, SRA Disciplinary Procedure Rules 2011).</p> <p>Chapter 10 of the SRA Code of Conduct 2011 and Rule 31 of the SRA Accounts Rules 2011 impose obligations on regulated persons to assist the SRA during investigations and a failure to comply can be referred to the Solicitors Disciplinary Tribunal (s.31(2), Solicitors Act 1974) and can lead to an intervention (para.1(1)(c), Sch. 1, Solicitors Act 1974).</p>

	<ul style="list-style-type: none"> <li>○ obtain a warrant to enter and search premises and take possession of relevant documents or electronic storage devices (or copies thereof or extracts therefrom) or any other steps which appear to be necessary for preserving or preventing interference with such documents S.48 .</li> <li>● <b>call for information and documents</b> by making an order: <ul style="list-style-type: none"> <li>○ requiring any person to furnish it with any information in his possession which relates to any charity and is relevant to the discharge of the Commission's functions or of the functions of the official custodian for charities (s.52(1)(a)); and</li> <li>○ requiring any person who has in his custody or under his control any document which relates to any charity and is relevant to the discharge of the Commission's functions or of the functions of the official custodian for charities: (a) to furnish it with a copy of, or extract from, the document; or (b) unless the document forms part of the records or other documents of a court or of a public or local authority, to transmit the document itself to the Commission for its inspection (s.52(1)(b));</li> </ul> </li> <li>● without payment, <b>inspect and take copies of or extracts from the records or other documents of any court, public registry or office of records</b>, for any purpose connected with the discharge of the functions of the Commission or of the official custodian for charities (s.53);</li> <li>● in the case of a charitable company, make an order requiring that <b>the condition and relevant accounts of the charity for such period as the Commission thinks fit be</b></li> </ul>	<p>These obligations are enhanced by statutory powers of investigation under s.44 of the Solicitors Act 1974. By s.44B, the SRA may by notice require a person to provide information, or information of a description, specified in the notice or to produce documents, or documents of a description, specified in the notice if it is satisfied that it is necessary to do so for the purpose of investigating whether:</p> <ul style="list-style-type: none"> <li>● there has been professional misconduct by a solicitor;</li> <li>● a solicitor, or an employee of a solicitor, has failed to comply with any requirements imposed by or by virtue of the Solicitors Act 1974 or any rules made by the SRA;</li> <li>● a recognised body, or any of its managers or employees has failed to comply with any requirement imposed by or by virtue of the Administration of Justice Act 1985 or any rules made by the SRA and applicable to the body, manager or employee by virtue of s 9;</li> <li>● there are grounds for making, or making an application to the Tribunal for it to make, an order under s 43(2) with respect to a person who is or was involved in a legal practice.</li> </ul> <p>Section 93 and 94 of the Legal Services Act 2007 contain similar (but not identical) provisions to Section 44 Notices which apply to licensed bodies, managers and employees of licensed bodies and any non-authorized person who has a direct or indirect interest in, or holds a material interest in, a licensed body.</p>
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	<p><b>investigated and audited by an auditor appointed by it</b> (s. 147(2)).</p>	
<p><b>Temporary Powers of Protection</b></p>	<p>The Charity Commission may give notice to a charity (s.75A) stating:</p> <ul style="list-style-type: none"> <li>• that it intends to issue a warning to: (a) a charity trustee or trustee for a charity who it considers has committed a breach of trust or duty or other misconduct or mismanagement in that capacity; or (b) a charity in connection with which it considers a breach of trust or duty or other misconduct or mismanagement has been committed; and</li> <li>• the action that the Commission considers should be taken, or that the Commission is considering taking, to rectify the misconduct or mismanagement.</li> </ul> <p>Where, at any time after it has instituted an inquiry, the Charity Commission is satisfied that there is or has been a failure to comply with an order or direction of the Commission, a failure to remedy any breach specified in a warning, or any other misconduct or mismanagement in the administration of the charity or that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity; it may of its own motion do one or more of the following things (s. 76):</p> <ul style="list-style-type: none"> <li>• by order suspend any trustee, charity trustee, officer, agent or employee of the charity from the exercise of his office or employment pending consideration being given to his removal;</li> </ul>	<p>The SRA has a wide range of sanctions and regulatory steps it can take, including:</p> <ul style="list-style-type: none"> <li>• making a finding (r.7.1, SRA Disciplinary Procedure Rules 2011);</li> <li>• making a finding and a warning about future conduct (r. 7.3, SRA Disciplinary Procedure Rules 2011);</li> <li>• imposing a rebuke or a fine (s.44D, Solicitors Act 1974; para. 14 B, Sch.2, Administration of Justice Act 1985);</li> <li>• imposing conditions on registration or authorisation (reg. 7, SRA Practising Regulations 2011; r.9, SRA Disciplinary Procedure Rules 2011);</li> <li>• suspending a practising certificate or registration (s. 13B, Solicitors Act 1974; para.7, Sch.4, European Communities (Lawyer's Practice) Regulations 2000);</li> <li>• refer a matter to the Solicitors Disciplinary Tribunal (r. 10, SRA Disciplinary Procedure Rules 2011);</li> <li>• suspending authorisation (reg. SRA Practising Regulations 2011).</li> </ul>

	<ul style="list-style-type: none"> <li>• by order appoint such number of additional charity trustees as it considers necessary for the proper administration of the charity;</li> <li>• by order vest any property held by or in trust for the charity in the official custodian for charities, or require the persons in whom any such property is vested to transfer it to him, or appoint any person to transfer any such property to him;</li> <li>• order any person who holds any property on behalf of the charity, or of any trustee for it, not to part with the property without the approval of the Commission;</li> <li>• order any debtor of the charity not to make any payment in or towards the discharge of his liability to the charity without the approval of the Commission;</li> <li>• by order restrict, notwithstanding anything in the frusts of the charity, the transactions which may be entered into, or the nature or amount of the a ents which ma be made, in the administration of the charity without the approval of the Commission;</li> <li>• by order appoint an interim manager who must act as receiver and manager in respect of the property and affairs of the charity;</li> <li>• by order direct the charity trustees, any trustee of the charity, any officer or employee of the charity or, if a body corporate, the charity itself to take any action specified in the order which the Commission considers to be expedient in the interests of the charity.</li> </ul>	
<p><b>Permanent powers of Protection</b></p>	<p>Where, at any time after it has instituted an inquiry, the Charity Commission is satisfied that there is or has been a failure to comply with an order or direction of the Commission, a failure to remedy any breach specified in a warning, or any other</p>	<p>Under r.22 of the SRA Authorisation Rules 2011, the SRA may revoke a practice's authorisation on 28 days' written notice in prescribed circumstances.</p>

	<p>misconduct or mismanagement in the administration of the charity and/or that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity; it may of its own motion:</p> <ul style="list-style-type: none"> <li>• by order establish a scheme for the administration of the charity (s.79(2));</li> <li>• by order remove any trustee, charity trustee, officer, agent or employee of the charity who has been responsible for the misconduct or mismanagement, who knew of the misconduct or mismanagement and failed to take an reasonable st too ose it, or whose conduct contributed to it or facilitated it (s.79(4));</li> <li>• by order direct the winding up and dissolution of the charity (s.84B(2));</li> <li>• present a petition for the winding up of the charity (s. 113(3)).</li> </ul>	<p>There are three statutory powers of intervention available to the SRA (which are contained in: (i) Schedule 1 of the Solicitors Act 1974; (ii) paragraphs 32 to 35 of Schedule 2 to the Administration of Justice Act 1985; and (iii) Schedule 14 of the Legal Services Act 2007) which may be exercised in prescribed circumstances, in particular:</p> <ul style="list-style-type: none"> <li>• reason to suspect dishonesty in respect of a solicitor or others who either are or were within the practice;</li> <li>• insolvency;</li> <li>• breach of rules or licensing conditions;</li> <li>• where it is in the public interest to do so.</li> </ul>
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