

Britain Yearly Meeting of the Religious Society of Friends (Quakers)

Advice on support and provision of resources to groups that engage in civil disobedience and non-violent law breaking ('higher-risk groups')

Privileged and confidential

**Revised and expanded April 2025
Initially drafted in 2020**

SECTION A BACKGROUND AND OVERVIEW

1. Contents

This advice paper comprises:

Section A: This background section (pages 1 - 4)

Section B: Executive summary of advice and indication of charity law risk of different potential types of support for higher-risk groups (pages 5 to 11)

Section B: The relevant charity law framework in detail and our analysis (pages 12 to 28)

2. Background - Instructions

- 2.1 We have been instructed to advise on the extent to which Quaker Area Meetings (**AMs**) (or local meetings) can support (or provide resources to) higher risk non-charities within the parameters of charity law.
- 2.2 We understand that AMs may have different approaches and objectives in how they work with higher risk organisations and causes. Some may wish to directly support a particular cause (such as by providing financial support) and others may wish to offer a fair and consistent policy of commercial opportunity, such as letting of AM meeting houses, or understand when the latter may create risks for the AM under law.
- 2.3 We understand that that AMs have a long history of allowing other organisations to use their space / resources in this way. This may include groups that undertake a mixture of legal and illegal activities, such as those planning to demonstrate at arms fairs or nuclear weapons bases, where some people will be protesting within the boundaries of the law and some will be undertaking arrestable actions. This use of space may sometimes be provided on a chargeable basis but sometimes may be provided without charge.
- 2.4 We understand that a key element of the Quaker faith is active faith through witness (which we understand to mean translating principles of faith into real world action, such as to relieve suffering or promote justice and equality). The Quakers faith & practice - <https://qfp.quaker.org.uk/chapter/1/> - sets out the insights of Quakerism (to which we have made some reference in this advice though we appreciate that it is not the sole authoritative source of Quaker beliefs and practices).
- 2.5 It is important to note that this advice only considers the issues above in the context of charity law risk and charity regulatory engagement (as per the instructions) - it does not consider other potential areas of law that may apply such as, importantly, criminal law and an AM's potential duty of care to those it comes into contact with, other than signposting to some high level principles that may be relevant to the scope of this advice. We have however incorporated aspects of previous advice you have sought on equality law compliance when making decisions about letting parts of AM space to third parties.

We would be happy to update this note to take into account these other areas through liaising with other teams at Bates Wells and/or external counsel who specialise in these areas, if you would like further advice. Many of these principles may be relevant to BYM and AMs generally, given that non-violent criminal activities may take place in other contexts through

faith in action, and so you may wish to consider a broader piece of advice on this risk area. Please let us know if you would like to pursue this further advice.

3. Background - Area Meetings

3.1 We understand that there are circa 70 Area Quaker Meetings across the country, with Britain Yearly Meeting as the national body (**BYM**). We understand that AMs are charitable but some may not be registered with the Charity Commission (we assume this is due to them not meeting the income threshold of £5,000 for registration or being exempt). We understand that many AMs are unincorporated associations rather than taking any particular legal form (such as a company).

3.2 There are model documents for AMs but we understand that their exact governance arrangements and charitable purposes may vary, though most will have an iteration of 'the furtherance of the general religious and charitable purposes of the Religious Society of Friends (Quakers) in Britain in [local area]'.

3.3 Some AMs may have more granular charitable purposes which set out (and therefore limit) the ways in which the over-arching charitable purpose can be achieved. For example, Bristol's objects are as follows:

"to that end, the CIO's income and property are used solely to further the area meeting's object by work such as: (1) strengthening the life and witness of quaker meetings both in the area of Bristol area meeting and beyond; (2) spreading the message of quakers and interpreting and developing the thought and practice of the religious society; (3) undertaking quaker service for the relief of suffering at home and abroad; (4) funding the concerns that quaker meetings in the area of Bristol area meeting or beyond have adopted or agreed to support; (5) providing for the pastoral care of individual members and attenders including assistance to those in need and for education; (6) maintaining and developing quaker meeting houses as places for public worship and from which to carry our witness into the world; (7) administering and maintaining the organisation of Bristol area meeting and contributing to the support of Britain Yearly Meeting"

3.4 AMs are made up of several local meetings. Section 4.02 of [Quakers faith and practice](#) describes AM functions as follows: *"Its role is to develop and maintain a community of Friends, a family of local meetings who gather for worship and spiritual enrichment. It should provide that balance between worship, mutual support, administration, learning, deliberation and social life which can make its meetings enjoyable occasions and build up the spiritual life of its members."* Generally this advice will be equally applicable to local meetings.

3.5 BYM is the national body that sits above AMs, but is not structurally connected to AMs (e.g. Area Meetings are not subsidiaries of BYM).

AM premises

3.6 We understand that AMs may own meeting houses and associated property themselves, or through a custodian trustee or nominee such as Friends Trusts Limited (or London Quaker Property Trust in respect of certain London AMs). In this advice, we refer to these properties as AM premises.

3.7 Given that this advice focuses in particular on use of AM (or local meeting) premises by third-parties, we note that (a) each AM should have a policy in place for the letting and use of its

premises (which should be required to be complied with by constituent local meetings responsible for administering the letting) and (b) that the approach to use of AM premises should comply with 14.27 of Quakers faith and practice, which states:

“Area meetings are advised to permit and encourage the use of their meeting houses for educational and other suitable purposes which serve the needs of the people living in their neighbourhood. Such users should be expected to make an appropriate financial contribution to the running expenses and upkeep. It should be borne in mind that the primary purpose of the meeting house is as a place of public worship.”

“In considering the proper use of their meeting houses, area meetings should be sensitive to the feelings of the worshipping community, whose members may object to the introduction of alcoholic drinks onto the premises or to other practices by other users of the meeting house. Hiring policies in respect of particular premises should be agreed between area meetings and local meetings, and conditions made clear to prospective users. The use of Quaker premises by political parties, and by other religious or secular organisations with whose principles or practices Friends might not be in sympathy, will always require careful consideration and full consultation with Friends in the meeting most closely concerned. Particular care must be taken to avoid bookings by ‘front’ organisations with undesirable aims; the bona fides of new users should be checked. In all cases it is important to ensure that any publicity given to meetings held on Quaker premises makes a clear distinction between those organised by a meeting, committee or other Quaker body as such, and those for which others are responsible, in order to avoid confusion in the public mind.

Meetings and committees involved in letting Quaker premises should always bear in mind the need to minimise disturbance to neighbours, hurt to individual Friends, division among the membership, and erosion of our distinctive Quaker identity”.

- 3.8 In March 2025, the risks associated with third-party use of Quaker premises were brought into focus by the police’s raid of the Westminster meeting house, and arrest of several attendees, whilst in use by the direct-action campaign group Youth Demand. This led to widespread national outrage over the police’s actions, particularly given that the meeting house is principally a place of worship.

SECTION B
SUMMARY OF OUR CONCLUSIONS AND APPLICATION OF THE PRINCIPLES
DISCUSSED IN THIS ADVICE NOTE TO DIFFERENT POTENTIAL LEVELS OF
SUPPORT FOR GROUPS THAT ENGAGE IN CIVIL DISOBEDIENCE

1. Executive summary of charity law implications

This advice paper deals with difficult areas of charity law and will require AM trustees to make nuanced judgement calls. To inform those judgement calls, we think it is important for the full analysis set out in this advice paper to be considered (including section C). However, so as to help cut through to answer the immediate question - i.e. to what extent can AMs support (and permit local meetings to support) groups that engage in civil disobedience in compliance with charity law - we have summarised our analysis in this section 1 and then set out a high level summary of our view on different potential 'types' of support available and the charity law risk level below (at section 2).

Broadly, we consider that it is likely to be reasonable for AM trustees to reach a decision that limited forms of support for such groups, if restricted to supporting lawful activity only, are an appropriate means of contributing to the furthering the charities' purposes for the public benefit, in compliance with charity law. Whilst we think there is also scope to put forward arguments that it may also be possible to indirectly support some degree of unlawful activity by such groups in some circumstances, we think those arguments are too high risk for it to be prudent for AM trustees to rely upon them, as explained below.

We also consider that AMs could justify the use of resources (such as premises) by such higher-risk groups where that provision of resource is generally available to the public / community, and the AM has taken account of the risks of unlawful activity occurring *using* its premises or resources (and managed those risks accordingly – see below).

Summary of advice

- 1.1 It is a fundamental principle and duty under charity law that trustees must further their charity's purposes. When considering activity designed to assist in the delivery of those charitable purposes, which we assume to be the case with AMs considering whether to support to any third party, it is important that trustees are clear:
- (a) what their charitable purposes are; and
 - (b) how one or more of those charitable purposes would be furthered or supported by the activity (i.e. support of a third party), on the basis of a credible evidence base and reasoning.
- 1.2 A first step then is for AM trustees to consider this in the context of possibly providing support to a third party that engages in direct action/civil disobedience. We have provided some analysis of potential links between AM purposes and support for social justice civil disobedience movements in section C, paragraph 1. AM charitable purposes which might be furthered by support for organisations might include furtherance of Quakerism generally or standalone charitable objects that fall within Quaker principles, e.g. relief of poverty / need.

- 1.3 Because charitable purposes must be for the public benefit (i.e. broadly benefit a sufficient section of the public - see section C, paragraph 2), the Charity Commission's position is that inherent in the duty to further a charity's purposes is a duty to further those purposes for the public benefit. This does not, in our view, mean that every single decision and activity that a charity pursues must **individually** be for the public benefit. The public benefit that is secured by the furthering of a charity's purposes might be many steps removed from individual activities the charity undertakes. What is important is that the overall effect of the charity's decision-making and activities must further its purposes for the public benefit.
- 1.4 This requirement might be undermined where, for example, a charity engages in so many activities that do not themselves meet the public benefit requirement that the charity's purposes are no longer giving rise to sufficient public benefit, or where a single activity or decision of a charity directly and fundamentally detracts from the ability of a charity to implement its purposes for the public benefit.
- 1.5 This line of argument could be used to support a charity's decision to engage in some activities which would not meet the public benefit requirement individually - such as supporting potentially unlawful non-violent direct action. So, for example, it might be argued that whilst providing support for a movement which may help to facilitate its non-violent unlawful activity would not be for the public benefit in and of itself, doing so might either:
- (a) actively help to further the charity's purposes, which themselves continue to provide sufficient public benefit in a manner not materially undermined by the activity of supporting such a group (see section C, 3.6 for an example); or
 - (b) otherwise not detract from the overall furtherance of the charity's purposes for the public benefit through the full suite of its activities and decision making.
- 1.6 This line of argument could support a decision by AMs to provide resources to higher risk groups which may be used for unlawful non-violent aspects of their work (assuming that AM trustees are confident that the totality of their activities do further their charitable purposes for the public benefit and that support for the group in question would not materially detract from that).
- 1.7 However, we consider that relying on this line of argument is high risk and unlikely to be accepted by the Charity Commission (or, potentially, by a court). Both the Charity Commission and a court would, as a matter of public policy, be very likely to not want to endorse breaking the law, even in this indirect and specific context. The Commission in particular would be likely to put significant resource into defending its position that a charity cannot engage in or support unlawful activity, even if that activity might further a charity's purposes for the public benefit (or not detract from the impact of the overall suite of a charity's activities which do further those purposes for the public benefit). It may be that the Commission and/or a court would seek to rely on another area of law (beyond the direct application of charity law) to prevent this argument being successful.
- 1.8 In addition, trustees have a duty of prudence (broadly this is about exercising sound judgement - acting responsibly, reasonably and honestly). Even if it could be argued that pursuing potentially unlawful activity was a legitimate means of furthering a charity's purposes, it might be found to be in breach of the duty of prudence (i.e. that the trustees are exposing the charity to undue risk and there may be more sensible, lower risk means of achieving the same objectives).

- 1.9 The much lower risk approach then is to act in accordance with the Commission's regulatory approach and to assume that charities cannot engage in or support unlawful activity, regardless of whether that activity supports their purposes or not (for the public benefit).
- 1.10 As such, AM trustees could look to support higher-risk groups in ways that do not involve supporting unlawful activity, on the basis that such activity supports their charitable purposes for the public benefit. To reach a decision to pursue such activities, AM trustees should:
- (a) Ensure they understand their charity's charitable purposes and how those purposes meet the public benefit requirement;
 - (b) Consider what the link is between advancing their purposes for the public benefit and support for the given group - i.e. is there credible, objective evidence indicating that the group's actions and campaign asks will be likely to further one or more charitable purposes of the AM in for the benefit of the public? This thought process should be documented and records retained.
 - (c) In undertaking this analysis, AM trustees should have regard to the Charity Commission's public benefit guidance (in particular, [PB2](#) which relates to running an existing charity for the public benefit) and should record the fact that they have taken note of its contents in reaching a decision about support for a third party.
 - (d) It is important as such to be clear about precisely what group of individuals or entity an AM might be supporting, and how the above principles fit with that specific group's plans, ethos and objectives - AM trustees should undertake appropriate due diligence into the body they will be supporting (see <https://www.gov.uk/guidance/guidance-for-charities-with-a-connection-to-a-non-charity> as to the processes to put in place generally when working with or supporting a non-charity, including due diligence and <https://www.gov.uk/guidance/draft-guidance-grant-funding-an-organisation-that-isnt-a-charity> for funding non-charities).
 - (e) AM trustees should consider whether the particular 'type' of support they want to offer is of an acceptable risk level to the charity and its beneficiaries / Friends / the public, given the potential impact on the charity's purposes, and consider how associated risks might be mitigated. They should ensure it does not impact on the public benefit accruing from carrying out the charity's purposes.
 - (f) More broadly, AM trustees should ensure they comply with the Commission's guidance on working with non-charities, such as due diligence flagged at (d) above and documenting the terms of any financial or other resourcing support (although this could be done at a high level / fairly informally if the value of the resourcing is low): <https://www.gov.uk/guidance/guidance-for-charities-with-a-connection-to-a-non-charity> and <https://www.gov.uk/guidance/draft-guidance-grant-funding-an-organisation-that-isnt-a-charity>
- 1.11 Again, trustees should document their consideration of the risks / benefits of supporting a given group and how those risks might be mitigated, should they choose to go on to provide support to it, in compliance with the general principles for trustee decision making <https://www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-making> and risk management <https://www.gov.uk/government/publications/charities-and-risk-management-cc26>

- 1.12 In particular, the reputational implications of the activity will need to be carefully considered; noting that both supporting and failing to support these movements could have reputational implications for AMs (see section C, paragraph 7 for some further commentary on reputational issues and potential risk mitigation in this area).
- 1.13 When it comes to simply allowing a group which might engage in unlawful activity to make use of AM resources that it generally makes available to the community (e.g. premises, with a contributory fee), then the analysis can be much higher-level. Here the AM is furthering its purposes through either income generation for its usual activities or by providing facilities to the community as part of faith in action – rather than actually ‘supporting’ the group in question directly. As such, it is not necessary to examine the way in which the group’s actions and aims further an AM’s charitable purposes and much of the risk analysis and due diligence process above can be captured at a higher level in the AM’s policy and booking forms for premises use. However, even in this scenario, it is still important to capture and examine sufficient information to identify where there are high risks of, for example:
- 1.13.1 Security risk or danger to those using the premises or damage to the premises;
- 1.13.2 The potential for an offence to be committed by the group using the premises; and
- 1.13.3 Reputational impact of Quaker premises being used by the group (e.g. if its aims, activities or values directly contradicted Quaker principles – subject to the equality law considerations we have separately advised on and as summarised at Part C of this advice).

2. Risk level attached to hypothetical ‘types’ of support

- 2.1 We have considered some potential ways in which AMs might wish to support higher risk groups within scope of this advice, and the associated risks, below.

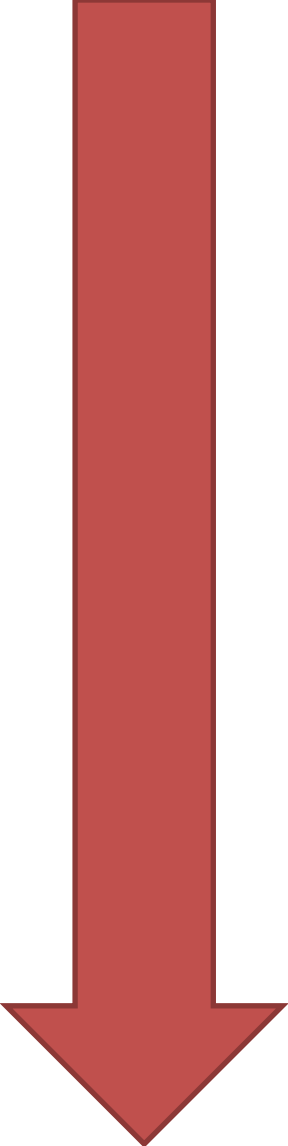
These indicators are provided at a high level and the risk rating may be affected by the specific circumstances of an AM’s support. Again, this risk rating does not consider criminal law which may also apply - we would be happy to seek further input on potential criminal law risks (such as conspiracy offences or vicarious liability, where an organisation might be held liable for the criminal acts of others). Please do let us know if you would like us to seek this additional input.

- (a) **Directly advocating for Friends and/or the public to engage specifically in unlawful elements of a group’s activity, under the charity’s name or providing support for the group (i.e. funding or resources in kind such as use of premises without any charge) where AMs are aware that the resources will be used wholly or partly to support unlawful activities**

This would be very high risk for AMs in terms of charity law and in extreme situations, potentially criminal law, for the reasons set out in section C of this advice note - whilst we believe there is a line of technical argument that could be used to attempt to defend a decision to support or partake in non-violent unlawful activity by a charity in limited circumstances under charity law, the Charity Commission would be extremely unlikely to accept these arguments. If these arguments were put forward in court to challenge any regulatory sanction imposed by the Commission (which would itself have significant reputational and cost implications) - we also consider it likely that a court may hold that unlawful activity by a charity is fundamentally inconsistent with its charitable status, regardless of the circumstances in which it occurs. This level of



HIGHER RISK



support for a direct-action organisation could therefore have significant consequences for AMs and even for trustees personally (should it be found that trustees have applied charitable resources for non-charitable activities and breached their trustee duties), as explored in section C.

(b) **Providing general funding or other resource (e.g. use of premises) without charge for a group where it is unknown whether elements of it may be used for unlawful activity or not**

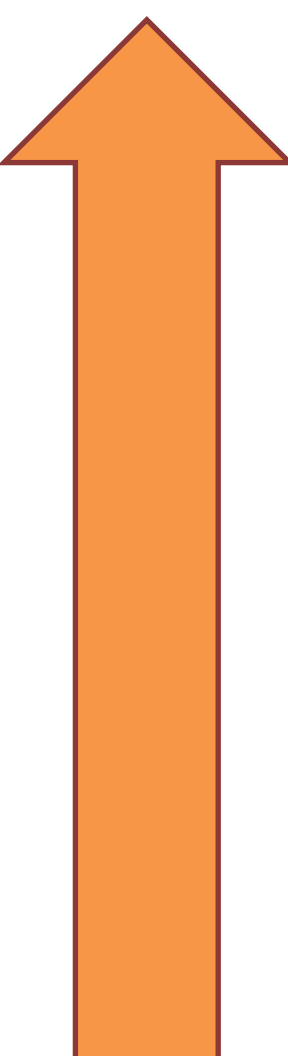
The Charity Commission sees unrestricted or general funding of non-charities as high risk as there are no guarantees that the charity's support will be used for exclusively charitable purposes by the non-charity. The same can be said for providing other forms of resources to a non-charity where the use of that resource is unrestricted - although this is far more indirect than actually providing charitable funds to a direct-action group to use for its activities, and thus less high risk.

This broad category of activity is high risk due to the fact that it may result in charitable resource being used to support unlawful activity, and AMs will not benefit from the ability to frame their support for a group in a charitable way, i.e. pointing to the fact that they restricted their support to charitable purposes only and to specifically exclude unlawful activity, in the case of regulatory intervention or adverse public interest (or for the purposes of criminal law and duty of care).

Provision of unrestricted funding is much higher risk than the provision of storage space or premises use (or other in-kind support) to such groups without putting conditions in place for its use, as AMs could generally rely on the fact that its provision of storage space or limited premises use is very remote from the actual carrying out by the group of potential unlawful non-violent activities.

Where the AM is not specifically seeking to support the group but rather is allowing it to use resources that it generally allows community groups and the public to use, the risk will be lower (as it will not be necessary to demonstrate that the group itself furthers any particular charitable purpose – rather the general provision of facilities to the public is the way in which the AM's charitable purpose is furthered). However, it is still arguable that free use of resources in this situation is a form of in-kind support, and so this remains a higher risk option than provision of resources on a cost-recovery or income generating basis (where the arrangement can be seen as more arms' length).

(c) **Providing funding or other resource in kind (such as premises use) to higher-risk groups on a restricted basis on the specific condition that it may only be used in lawful ways, and not for unlawful activities**



If an AM wished to provide funding to higher-risk groups, it could seek to do so on a restricted basis that ensures (as far as possible) that the funds will only be used for activities which advance that AM's purposes by lawful means. It may not be possible to fully mitigate risk in this approach, though, such as if the Charity Commission takes the view that the grant recipient's overall purposes and activities include such a substantial element of unlawful activity that there are unmanageable reputational risks associated by the provision of funding to it.

Providing resources in kind, such as premises use, on the condition that it cannot be used to facilitate unlawful activity, is even lower risk (as again the provision of premises or space is a type of support that is quite far removed from what a group goes on to do following use of the premises in most circumstances). However, it may be difficult to police and articulate this in the applicable terms and conditions.

Any conditions in place would however be beneficial to AMs in being able to frame its relationship with a given higher-risk group and demonstrate to the Commission that it took prudent steps to mitigate reputational risks, and particularly risk of use of charitable resource for non-charitable or unlawful purposes. See section 3 below for specific consideration of premises use and associated risks.

- (d) **Enabling discussion amongst Friends and those who attend meetings about higher-risk groups and potential support for the same, and supporting those who choose to participate independently in their activities (whether unlawful or otherwise)** - although as advised previously by Bates Wells, it would likely be high risk to extend this support to the payment of fines.
- (e) **At the lower end of the spectrum, AMs could seek to avoid providing financial support or resources in kind to higher-risk groups.**

AMs could instead provide some form of public expression of support for the movement, which could still be helpful and cost very little; for example, on AM social media channels. Support could be expressed in ways which limit reputational risk to the charity - This would still carry some reputational risk of being seen to endorse the group in question generally, which may engage in both lawful and non-lawful activities (and thus engages in activities which would both further and not further AM's charitable purposes). You may also feel this option does not carry sufficient impact for AMs or help such groups in a meaningful way.

3. Premises use – specific considerations

3.1.1 As noted in this advice, there are three approaches to use of premises (or other resources) by third-parties (including higher-risk groups):

- (a) Providing resources for free as a means of directly supporting a particular group;
- (b) Providing resources for free as part of the AM's general provision of facilities and support to its community; or
- (c) Providing resources on a cost-recovery or income generating basis in order to contribute towards upkeep of the premises and/or generate funds for the AM to pursue its usual activities.

3.1.2 Situation (a) would fall within the higher risk options set out above at s.2, where the group supported engages in unlawful activity.

3.1.3 Situations (b) and (c) are much lower risk as they do not connote that the AM is specifically supporting the group in question and its activities in any way, in principle. However, it will still be necessary for AMs to demonstrate that they:

- (i) take reasonable steps to ensure that the way in which they make resources/premises available to the public protects the charity (including its reputation) and its assets;
 - (ii) comply with their safeguarding and broader legal duties (such as under the Occupiers Liability Act and negligence) to those who use their premises and resources;
 - (iii) comply with the Equality Act in setting and implementing a policy to making premises and services available to the public and avoid discriminating against those with protected characteristics when making decisions in this area; and
 - (iv) understand enough about the user to be able to comply with (i) to (iii) above and spot where the key risks are.
- 3.1.4 This means that AMs should have a policy (preferably a standardised policy) to provision of space for the community, and use a standardised booking form that collects the right types of information to spot where the risks lie.
- 3.1.5 In most cases, the risk of direct liability attaching to the AM or Friends involved in allowing or facilitating the booking should be remote. The exception to this is where the AM has knowledge or a strong suspicion that the premises or resources in question may be directly used for unlawful activity as part of the user's activities – for example, if a Meeting House were to be used to conspire to commit a crime. Even in those circumstances, we envisage that criminal law would require a greater nexus between the AM's approval process for a booking and the group's unlawful activities for the AM itself to be held to have committed a conspiracy type crime (though we are not criminal law lawyers and to provide a certain view on level of risk we would need to involve criminal counsel in editing this note).
- 3.1.6 We appreciate that AMs are unlikely to want to 'police' this area in the way in which they approach such bookings, particularly where the risk of conspiracy offences being committed may be directly linked to the broadly criticised restriction of protest and civic expression by recent legislation (such as the new Public Order Act). However, as set out in this advice note, whilst this position may be very defensible as a point of ethics (and potentially carry wide public support), it is unlikely to be accepted by AMs' regulator, the Charity Commission.
- 3.1.7 As a minimum, AMs should collect information about the identity of the prospective user and what it wants to use the premises or other resource for, and the AM should ensure it does not have grounds to doubt the veracity of that information in proceeding.
- 3.1.8 The other key risk-mitigation tool here is to make bookings and use of premises/resources subject to a requirement to use the resources only for lawful means – this will also assist with the types of risks we discuss at the end of Part C of this paper.
- 3.1.9 We would be happy to help review or draft such terms and booking form, taking account of these risks.

SECTION C

CHARITY LAW FRAMEWORK AND ANALYSIS

Core relevant charity law principles

To comply with AMs' obligations under charity law and regulation, it is important to be able to demonstrate that:

- (a) Activities undertaken by Meetings are pursued in the context of supporting or furthering Meetings' charitable purposes (which can include generating funds to support AMs' core activities – subject to consideration of any tax implications);
- (b) Any commitment of resources to such activities is considered to be reasonable in the context, taking account of the anticipated impact upon furtherance of Meetings' purposes; and
- (c) Risks associated with activities have been identified and appropriate steps have been taken to manage and/or mitigate those risks.

1. Would supporting a cause or third party further or support AMs' charitable purposes?

- 1.1 The first question to consider is whether support for a particular cause or third-party by Meetings (putting the issue of the specific form that support takes to one side for the time being) can be seen to support or further one or more of an AM's charitable purposes.
- 1.2 The trustees of AMs should be clear about what their charity's charitable purposes are, and then assess whether the specific type of support they wish to pursue (e.g. financial, in-kind, speaking out) is likely to further one or more of those purposes, on the basis of credible evidence and reasoning.
- 1.3 If support for a cause or third-party cannot clearly be justified as directly advancing an AM's charitable purposes, then it remains open to AMs to take one of two alternative approaches:
 - (a) The cause or third-party could be allowed to use the charity's resources (e.g. premises) as a means of generating income for the AM (i.e. with charge) (which the AM then uses for its usual activities and charitable purposes); or
 - (b) It may be possible to justify use of AM resources without charge or only on a cost-recovery basis (i.e. not generating any profit for the AM) if:
 - (i) The use of AM resources is available to the community at large; and
 - (ii) this is one of the ways in which the AM advances its faith – e.g. per Quaker faith and practice 14.27:

'Area meetings are advised to permit and encourage the use of their meeting houses for educational and other suitable purposes which serve the needs of the people living in their neighbourhood'.

In any relationship between an AM and an external cause or third-party, the charity will need to go beyond considering the first question of advancement of the AM's charitable purposes (as explained further below), but this is the starting point.

Identifying AMs' purposes

- 1.4 It is not sufficient to refer to the Meetings' purposes as listed at the Charity Commission (as illustrated in the table at Section A, 3.2) alone for this analysis (e.g. *"the furtherance of the*

general religious and charitable purposes of the religious society of friends”). This is because AMs’ purposes do not go on to set out precisely what “the religious and charitable purposes of the Religious Society of Friends” are.

- 1.5 In our view the correct interpretation of the wording of the sample of AM charitable purposes we reviewed (which all share an iteration of “*furtherance of the general religious and charitable purposes of the religious society of friends*”) is that the reference to furthering ‘the charitable and religious purposes of the Yearly Meeting of the Religious Society of Friends in Britain’ is not a reference to BYM the legal entity but to the general tenets of Quakerism in Britain, such as those set out in Quakers faith in practice. As such, to be able to identify what precisely those religious and charitable purposes are it is necessary to refer to the principles of Quakerism as practised in Britain.

Considering direct support for an external cause or third-party

- 1.6 BYM and AMs will be better placed to identify the specific principles of the Quaker faith which support for a given cause or third-party may further - and it is the trustees of those bodies who should make this assessment, taking into account what the notion of support for that cause or party actually means. What does the third-party stand for? What are its own aims and purposes? How do they align with the Quaker faith?

Quaker principles which may be argued to align with support for external causes

From a brief review of Quaker faith and practice we note that there are several principles which may aid trustees in determining that there is a faith-based compulsion to support third-party causes, such as:

1.02

remember your responsibilities as a citizen for the conduct of local, national and international affairs. Do not shrink from the time and effort your involvement may demand’

respect the laws of the state but let your first loyalty be to god’s purposes. If you feel impelled by strong conviction to break the law, search your conscience deeply. Ask your meeting for the prayerful support which will give you strength as a right way becomes clear

3.27

Speaking out in the world is an essential part of our religious and social witness. Friends are encouraged to express their faith and values whenever suitable opportunities arise, and to use the media confidently for public comment on our concerns.

23.01

Remember your responsibility as citizens for the government of your town and country, and do not shirk the effort and time this may demand. Do not be content to accept things as they are, but keep an alert and questioning mind. Seek to discover the causes of social unrest, injustice and fear; try to discern the new growing-points

in social and economic life. Work for an order of society which will allow men and women to develop their capacities and will foster their desire to serve.

23.06

‘Politics’ cannot be relegated to some outer place, but must be recognised as one side of life, which is as much the concern of religious people and of a religious body as any other part of life. Nay, more than this, the ordering of the life of man in a community, so that he may have the chance of a full development, is and always has been one of the main concerns of Quakerism.

1.7 Generally, chapter 23 of Quaker Faith and Practice offers tenets that are applicable to a wide-variety of social justice causes, and chapter 14 offers principles to guide support for environmental causes.

1.8 We also appreciate that various Quaker spiritual practices may lead to clarity as to a calling from God to speak out for or support a particular cause (such as Concern).

AMs’ trustees can either view the above as tenets of Quaker faith (i.e. advancing religion as a charitable purpose) or could view them as standalone charitable objects pursued by AMs, e.g. promotion of sustainable development or relief of need.

What about support for organisations that use civil disobedience or non-violent law breaking to advance their aims?

1.9 Over the last decade, organisations that use direct action or non-violent civil disobedience have become increasingly popular (in terms of member numbers) and high profile means of advancing social justice and environmental causes (such as groups like Extinction Rebellion, Just Stop Oil, Palestine Action and Youth Demand).

1.10 The causes such groups seek to profile or advance may often align with many tenets of the Quaker faith, and AMs may therefore feel that they are groups that can and should be supported.

1.11 It is likely that the trustees of AMs can reasonably form a view that the general principle of supporting such groups is likely to support one or more of their charitable purposes (depending on the particular cause they are seeking to promote). The trustees of any AM that chooses to pursue support of such organisations should ensure that it has documented its consideration and decision as to whether that support is in support of the charity’s purposes.

1.12 The risk area for Meetings is primarily around (i) the public benefit requirement and (ii) the broader risks applying to different options for support for such organisations (such as reputational damage). These are explored below. We appreciate that these considerations may not always feel comfortable alongside AMs practice of their faith and principles, but unfortunately charity law is fairly rigid as a framework.

2. Does the public benefit requirement affect AMs' ability to support direct-action groups?

What is a charity?

Charity law derives from a long history of case law and statute, much of which is now codified in the Charities Act 2011 (CA2011)

Section 1 of that Act provides that a charity is an institution which is:

- (a) established for charitable purposes only, and
- (b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities

Section 2 defines what a charitable purpose is (relevant to whether a charity can be seen to be established for charitable purposes only as required by section 1). A charitable purpose is a purpose which:

- (a) falls within a list of categories of established charitable purpose set out at section 3 of the Act; and
- (b) is 'for the public benefit'.

The latter requirement is known as the 'public benefit requirement'.

2.1 Public benefit is a complex and contentious area of charity law. It is a concept that is integral to determining whether an entity is a charity or not. This is because for a charity to be established for charitable purposes only, those charitable purposes must not only fall within the established categories of charitable purpose set out in charity law but must also be 'for the public benefit'. The Charity Commission produces [guidance on this public benefit requirement](#) which trustees must have 'regard to' when exercising any powers or functions to which it is relevant.

2.2 It is *arguable* that the public benefit requirement is only concerned with the beginning of a charity's lifecycle. The Charity Commission will assess whether an entity is charitable by considering whether (i) it has exclusively charitable purposes and (ii) those purposes give rise to sufficient public benefit, within the meaning of charity law. In the case of AMs then, the Commission will have satisfied itself upon their charitable registration that AMs are charitable, including that their chosen purposes appear to be for the public benefit.

What is public benefit?

There is no definition of public benefit within the relevant legislation and as such the concept has developed through case law and guidance. It is regarded as being comprised of two principal aspects:

- A purpose must be beneficial, and any detriment or harm that results from the purpose must not outweigh the benefit (the 'benefit' aspect); and
- it must benefit the public or a sufficient section of the public (the 'public' aspect).

2.3 It is also arguable therefore that where trustees are satisfied that a particular decision or activity will further their charitable purposes, there is no need to separately consider public benefit. This is because public benefit is inherent to the furthering of those charitable

purposes. So, in the case of AMs, should the trustees decide that supporting a group that engages in civil disobedience etc is likely to further one or more of their purposes as explored in section 1, then there would be no need to separately consider public benefit (as it is inherent to the furthering of the charitable purpose in any event, because it has already been determined that those purposes are for public benefit).

- 2.4 However, the Charity Commission's interpretation of the law in this area is that the public benefit requirement is wider than this - i.e. it is not only relevant when considering whether an entity is a charity or not at its inception. It has wider application to the lifecycle of an existing charity. The Commission accepts the argument that public benefit is inherent to a charitable purpose, but they approach this in a different way, stating (our emphasis added):

Charity Commission analysis of the law underpinning public benefit

"Since it is inherent in every charitable purpose that it is for the public benefit, the charity trustees' duty to further the purposes of their charity includes a duty to further its purposes for the public benefit.

The public benefit which is inherent in a charitable purpose differs according to the nature and terms of the purpose. **The duty of charity trustees to further the purposes of the charity for the public benefit is therefore a duty to further it to provide public benefit of the kind which is inherent in the purposes of the charity."**

- 2.5 Whilst there may be ambiguities in the law that would allow for challenge to the way in which the Commission articulates this ongoing duty, the Commission's interpretation of the law is the basis upon which it will regulate charities, and as such acting in accordance with that interpretation is the most effective way to avoid regulatory intervention and enforcement action by the Charity Commission.
- 2.6 Additionally, as flagged above, the CA2011 provides that charity trustees are under a legal obligation to 'have regard' to the Charity Commission's guidance on public benefit 'when exercising any powers or duties to which the guidance is relevant'. Whilst the legal underpinnings document is not formally part of the suite of guidance this duty refers to, it informs the guidance which is caught by this requirement. [PB2](#) is the key articulation of the Commission's view on trustees' duty to carry out their purposes for the public benefit.
- 2.7 It is important to note that the statutory requirement to have 'regard to' the Commission's public benefit guidance is limited in two ways: (i) this requirement applies only when exercising powers or duties to which the guidance is relevant; and (ii) have 'regard to' does not equate to having to *comply* with the guidance absolutely (although as noted above this is the surest way to avoid regulatory engagement). The Commission itself acknowledges that "[h]aving regard' to its public benefit guidance means charity trustees should be able to show that (our emphasis added):
- they are aware of the guidance
 - they have taken it into account when making a decision to which the guidance is relevant

- **if they have decided to depart from the guidance, they have good reasons for doing so**

Thus the guidance acknowledges that there may be instances in which trustees can depart from it. It could for example be argued that taking action to combat a pressing existential threat which could greatly impact on a charity's purposes and beneficiaries, such as, for example, the environmental crisis, is such an extreme event that it warrants departing from the guidance (to the extent that the guidance prevents or curtails AMs' ability to support an organisation like Extinction Rebellion). However, our view is that this would be a difficult argument to 'win' and the Commission would be very unlikely to accept that this warranted non-compliance with its public benefit guidance.

3. Can AMs support such organisations/causes in compliance with the public benefit requirement and the Commission's guidance on public benefit?

- 3.1 For the reasons above, the Commission is likely to take the view that its public benefit guidance is relevant to any decision about whether to further an AM's purposes by supporting an organisation that engages in civil disobedience or non-violent law breaking. Assuming that AMs would prefer to avoid the resourcing and reputational implications of attempting to challenge the Commission's position or not to comply with its guidance (as above, there are some arguments available which could support this position), we have set out below the ways in which AMs can comply with the CC's guidance on public benefit whilst supporting such organisations, and the limitations to different forms of support resulting from the public benefit requirement.

Carrying out purposes for the public benefit

- 3.2 The Commission's guidance states that "when making decisions about how to carry out your charity's purpose for the public benefit you should: (i) understand how your charity's purpose is beneficial [and] (ii) carry out the purpose so as to benefit the public in that way".
- 3.3 Clearly, AMs do not have or seek to have a charitable purpose of supporting civil disobedience or direct action groups¹. Rather, supporting such organisations may be a proposed activity which can support the delivery of AMs' charitable purposes (e.g. advancing Quaker faith). However, deciding to support such an organisation is a decision about the way to further an existing purpose. As such, trustees need to consider how that purpose benefits the public (e.g. advancement of aspects of Quakerism may mean maintaining a sustainable environment for the benefit of generations to come) and then ensure that they are carrying out the purpose in a way that is coherent with that public benefit.
- 3.4 The Charity Commission clearly requires some degree of ongoing assessment of whether the trustees' choices about the activities it pursues will allow it to continue to further its purposes for sufficient public benefit, both from its guidance and from its public benefit reporting requirements (which involve different levels of reporting depending on the size of the charity

¹ It is worth noting that it would not be possible for an AM to have a purpose of supporting such an organisation. This would not only be likely to be held as non-justiciable (not being able to be decided by a court - because it would involve a court endorsing breaking the law and a political purpose, as many such organisations are seeking changes in the law / policy and undertake unlawful non-violent direct action), but would also be unlikely to satisfy the public benefit requirement. This is primarily due to the fact that elements of unlawful activity would be seen to automatically breach the public benefit requirement.

involved by income - for AMs only a limited amount of detail is likely to be required, summarising the main activities undertaken by the AM to carry out its charitable purposes for the public benefit and a statement that they have complied with the duty to have regard to the public benefit guidance²).

3.5 In our view, there is a strong argument that this does not mean that each and every single activity a charity undertakes has to be assessed through this lens. The way a charity ‘carries out’ its purposes is arguably the totality of the activities it pursues to support its purposes.

3.6 So the issue is to ensure that a decision to partake in a certain activity does not detract from or alter the public benefit accrued from the overall way in which the charity carries out its purposes. Whether support for such an organisation/cause would impact on the public benefit of furthering a charitable purpose requires analysis by the trustees of AMs, once they have identified the purpose they will be pursuing and the way in which that purpose benefits the public. For example:

- (a) Support for an organisation which educates on how to become carbon neutral = furthering the charitable purpose of protection of the environment, which benefits the public by helping to maintain a sustainable environment for generations to come and to relieve environmental-related ill health. If support for that organisation does not impact on that public benefit or detract from it, it is coherent with that public benefit.
- (b) Support for an organisation which promotes self-extinction by advocating for people to choose not to procreate = furthering the charitable purpose of protection of the environment, but does not cohere with the public benefit that charitable purpose should give rise to, as it does not benefit generations to come by helping to build a sustainable world (at least for human beings).

3.7 In our view it is unlikely that choosing to carry out AMs’ purposes by supporting an organisation that (i) promotes a cause that clearly furthers a charitable purpose and (ii) does so involving tactics which include civil disobedience or non-violent law breaking, would contradict the public benefit accruing from its purposes in the sense of the examples provided above. In fact it may be argued that it would be a very good way of advancing a charitable purpose such as protection of the environment for the public benefit, where it is considered that the group’s activities are particularly effective in securing change or promoting a cause.

3.8 However, the Commission’s guidance states that “*carrying out a charity’s purposes for the public benefit includes managing risks of harm the charity’s beneficiaries or to the public in general that might result from carrying out the purpose*”. It states that when “*making decisions about how to carry out your charity’s purpose for the public benefit you should:*

- *identify risks of harm*
- *minimise risk of harm and*
- *make sure any harm that might arise is a minor consequence of carrying out the purpose”*

² These requirements derive from the CC’s guidance PB3 and the Charities (Accounts and Reports) Regulations 2008

- 3.9 This goes back to the 'benefit' aspect of the definition of public benefit: a purpose must be beneficial, and any detriment or harm that results from the purpose must not outweigh the benefit. The Commission generally deems that something unlawful cannot be for the public benefit due to this aspect of the public benefit test. As support for such groups may involve supporting unlawful non-violent direct action to differing degrees of remoteness depending on the type of support an AM chooses to pursue, it might be argued that the way it is choosing to carry out its purposes is not for the public benefit - as this particular activity involves breaching the law.
- 3.10 As above we think there is a strong argument that it is *purposes* and not *activities* which must be for the public benefit. An unlawful activity does not necessarily impact on the public benefit of the purpose that the unlawful activity helps to further.
- 3.10.1 However, there is a distinction between the purpose of a charitable body and its activities in furtherance of that purpose. It is clearly not the case that every activity of a charity will itself be for the public benefit or even directly further the charity's purposes, e.g. settling a claim from a disgruntled former employee. That activity gives rise to substantial private benefit (in the sense that the employee is recompensed out of the charity's funds) and does not itself directly support a charitable purpose. However, if that settlement was part of an overall suite of activities which enable the charity's purposes to be furthered for the public benefit, then this would be acceptable (provided all other regulatory considerations had been complied with).
- 3.10.2 There is also some helpful analysis from the Commission that points to this same distinction: that activities do not necessarily have to pass the public benefit test provided that the overall activities of an organisation promote a clear charitable purpose for the public benefit. In its analysis of the law underpinning public benefit, it states as follows:

Purposes and activities

By virtue of section 2 (1) of the Charities Act 2011 it is an integral part of every charitable purpose that it is for the public benefit. It is also the duty of charity trustees to administer their charity to further its purposes. Since it is inherent in every charitable purpose that it is for the public benefit, the duties of charity trustees include a duty to further its purposes for the public benefit. **The concepts of the purposes of a charity and the activities undertaken to further its purposes, although closely related, are distinct.**

- 3.10.3 This distinction is reflected in the law regulating political activity by charities: whilst a charity cannot have a political purpose, it can undertake political activities, provided such constituent activities further one or more of the organisation's charitable purposes for the public benefit, and provided that political activity is not the primary method by which a charity operates (as otherwise there is a risk that the activity will become a purpose in itself).
- 3.10.4 This distinction can be applied to non-violent direct action (that may involve breaking the law) - whilst a charity cannot have an unlawful purpose, perhaps a minority of its activities supporting its charitable purposes could involve this type of activity, notwithstanding the fact that such activity might not be for the public benefit? For example, would there not be significant positive impact on a charity setup to educate women and girls of providing 'underground' education to girls in Afghanistan (where that is unlawful in Afghanistan)?

3.10.5 This is not a position the Commission has ever explicitly accepted (as it does for political activity) but arguably the concepts are analogous (albeit that the nature of the ‘undermining’ of public policy / law when it comes to direct action by breaking the law is much more direct and of a more visceral nature than political activity in the form of lobbying or calling for change, and the consequences are generally greater). The Commission is extremely unlikely to endorse this position given the potential public policy implications - but we think there are good legal arguments that the trustees of a charity will not necessarily have breached their charity law obligations by facilitating the furthering of the charity’s purposes through unlawful direct action (though they may of course have breached other obligations, such as conspiracy to commit an offence).

3.11 The Commission’s 2008 document on the legal underpinnings to its guidance on advancement of religion as a charitable purpose (which is one of the Meetings’ purposes) states:

“Some activities, or the way some tenets or practices are promoted, may have a negative effect on public benefit by tending to produce social or personal harm. Such potential harm would have to be balanced against the overall public benefit otherwise established”

3.12 However, the Commission then goes on to imply (contradictorily) that where an activity is unlawful, it may not matter that the totality of the activities further a charitable purpose for the public benefit overall: *“where the particular practice or doctrine includes an act which would be against the law, or in contravention of public policy, then it may mean that public benefit cannot be established and hence the body will not be a charity (despite the public benefit otherwise established from the totality of the practices and doctrines)”*. The Commission makes this point based on case law determining whether some types of religious orders could be charitable where they involve a practice that is unlawful (e.g. proselytising) - and so the Commission is talking about the practices of a religion which may prevent it from being registrable as a charity (rather than an already registered charity which may engage in some illegal activities). However, this does point to the Commission’s treatment of illegal activity in a different category or other activity which may not obviously be for the public benefit.

4. Conclusion: Will the charity continue to carry out its purposes for the public benefit if it supports an organisation that undertakes civil disobedience or non-violent law breaking?

4.1 We have set out a number of arguments above which could be used to support the position that AMs could engage in an activity, such as support for an organisation which involves some unlawful (non-violent) activity in compliance with charity law - such as (i) that this would be acceptable provided that the overall suite of the charity’s activities further the charity’s purposes in a way that is consistent with those purposes’ public benefit, or even the bolder approach that (ii) it is simply not necessary for an activity to meet the public benefit requirement provided that it does not detract from or impact upon the public benefit of the charitable purpose it supports.

4.2 However, we believe that relying on this line of argument to support unlawful activities would be high risk and the Commission would be unlikely to accept it if it were to investigate, as it would have implications for the sector as a whole. It may be that a court would hold that illegal activities are simply inconsistent with charitable status generally (relying on, for example, the fact that a court / the Commission needs to be in a position to ensure that a charity is continuing to undertake its purposes for the public benefit, which would involve it having to

indirectly endorse unlawful activity if it were to accept that it was furthering a charitable purpose).

4.3 The lowest risk approach would therefore be to clearly restrict support for such an organisation only to lawful aspects of their activities. Whilst trustees of AMs would still need to go through the same thought process of ensuring that the lawful activities the charity is supporting further its purposes for the public benefit, and have regard to the Commission's public benefit guidance, we consider it likely that the trustees can reasonably reach a view that providing some resource to support such group's lawful activities does not breach charity law.

4.4 The position is slightly complicated for AMs and BYM in particular, however, because:

- (i) Quaker faith could be argued to involve consideration of breaking the law where necessary; and
- (ii) That principle is put into practice regularly by friends and AMs, as far as we are aware, without challenge by the Commission (to our knowledge).

We explore these additional considerations below.

5. Can a charity's purpose involve undertaking unlawful activity?

5.1 We understand that a key part of the Quaker faith involves recognition of when the active realisation of one's beliefs requires undertaking activities contrary to the policy or law of the state - e.g. 1.02 (35) Quaker faith & practice 5th edition: *'respect the laws of the state but let your first loyalty be to god's purposes. If you feel impelled by strong conviction to break the law, search your conscience deeply/ ask your meeting for the prayerful support which will give you strength as a right way becomes clear'*. We understand that in this manner, Meetings have at the very least supported those attending meetings who may choose to partake in potentially unlawful activity, e.g. trespass at a nuclear site.

5.2 To our knowledge the Charity Commission has not taken regulatory action against the Quakers regarding this form of support for unlawful activity by its members / Friends or for undertaking activity against public policy, in spite of the fact that it is an activity that is quite publicly associated with Quakerism, given its history of conscientious objection and its relationship with direct action.

5.3 In practice then it seems that the public association between Quakerism / Meetings and unlawful activity in practicing the Quaker faith is not high on the Charity Commission's regulatory agenda. BYM and Meetings are as such an interesting example of an area of fairly untested charity law, even without the specific question of supporting more controversial groups that engage in direct action - the ability of a charity to pursue or support unlawful activity as a means of furthering its purposes. However, the Charity Commission's analysis, taking into account case law, is that a purpose cannot be charitable if it is illegal or contrary to public policy. This view is in part due to the Commission's analysis of the law on public benefit, explored below.

5.4 Various Charity Commission guidance documents assert that there is an absolute prohibition on a charity having an illegal purpose or applying its funds for illegal purposes, for example: the Commission's compliance toolkit for monitoring use of charity funds states: *"Charity trustees must use their charity's funds and assets only in furtherance of the charity's*

purposes. They must ensure that funds are properly protected so that, for example, they are not used for illegal or improper purposes, including for terrorist and other criminal purposes” and its guidance CC4 on what makes a charity states that “*Legal requirement: a charity cannot have purposes that are illegal under the law of England and Wales.*”

- 5.5 No organisation that has aims that are illegal, or that intentionally deceives or misrepresents its aims and so is a sham, can be a charity. As registered charities in England and Wales are subject to the jurisdiction of the High Court, this means that their aims cannot be illegal under the law of England and Wales.
- 5.6 There is case law that provides that a gift on trust provided for an illegal purpose will fail, and the law around public benefit also provides some arguments that it is not possible to have an illegal purpose. However, we do not think that the Commission’s position is legally clear here and it is possible that there are some arguments to be made that some incidental element of unlawful activity or support of unlawful activity might be possible within the parameters of charity law.
- 5.7 It may be that the Charity Commission recognises or accepts that the actions of individual Friends in pursuit of their faith (which they have a fundamental right to exercise) are not acts to be attributed to the charitable AMs or BYM and then regulated by the Charity Commission. Alternatively, the Commission simply might not be aware of the full detail of any such activities or have considered its position. As many direct action organisations are high profile and their unlawful activities controversial, we consider there is a real risk that support for such organisations could lead to this issue coming onto the Commission’s regulatory agenda and engagement with an AM about such support leading to wider consideration of unlawful non-violent activity within AMs and the Quaker charitable context. If this should occur, whilst this note does not consider criminal law beyond some high-level signposting, we believe there are some arguments to be made that actions of individual Friends should not be an issue of charity law. However, with the safeguarding of people charities come into contact with becoming a central regulatory issue for the Charity Commission, it might examine this argument closely. This is outside of the scope of this note as this advice deals with support that is envisaged as being ‘corporate’ activity by AMs rather than individual actions by Friends.
- 5.8 We appreciate that the recent example of this area being potentially tested (the raid on Youth Demand at the Westminster Meeting House) has not as yet led to regulatory engagement, and indeed may have had a positive impact on the reputation and profile of Quakers in the UK and the relevant AM/local meeting. However, this is a slightly different situation than that which is analysed in this part of the advice – we understand that Youth Demand were granted use of the House for a meeting as part of the AM’s general letting policy for the space for the community and that this was not direct support by the AM for the group and its activities. This alternative means of engaging with the types of organisations examined in this part of the advice note is explored at section 8 below, and is generally lower-risk for AMs.

6. Do charity trustees have a duty not to break the law?

- 6.1 Related to the above is the principle that charity trustees have a duty not to break the law. This is a principle that the Charity Commission asserts in its guidance³ but they do not state

³ See e.g. the Charity Commission’s guide CC3 <<https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3/the-essential-trustee-what-you-need-to-know-what-you-need-to-do#comply-with-your-charitys-governing-document-and-the-law-1>> : “*you and your co-trustees must: make sure that the charity complies with its governing document, comply with charity law requirements and other laws that apply to your charity. You should take reasonable steps to find out about legal requirements, for example by reading relevant guidance or taking appropriate advice when you need to.*” See also the

any legal basis for this duty (at least as a standalone duty rather than as an extension of the principles stated above).

- 6.2 Whilst the legal source of this duty is unclear, to the extent that this can be viewed as a standalone legal duty applying to charity trustees specifically (over and above the fact that breaking the law is generally impermissible for all individuals)), the Commission's assertion that there is such a duty is likely to form the basis of their decision-making when determining whether to scrutinise, criticise, or take regulatory action in relation to actions taken by a charity. It may be that the duty of prudence could be argued to encompass a duty not to break the law (described in the Charity Commission's guidance on [charity duties](#) as a requirement to "*act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement*").
- 6.3 To the extent that the Charity Commission is able to demonstrate that AM trustees are subject to such an independent duty, there is a remote but conceivable risk that the trustees of the charity could be found personally liable for expenditure incurred by the charity in breach of that duty. Although cases of trustees being found personally liable for breach of trust/duty are very rare, this case could be unusual, in the sense that the trustees could have made an active, informed and considered decision to support unlawful activity. As the charity will be aware, the Commission also has a variety of wide-ranging powers at its disposal including issuing warning notices, opening a statutory inquiry and in extremis directing charities to take (or not take) particular actions, or to take control of a charity through the appointment of an interim manager. Additionally, certain exemptions from tax are only available in respect of "charitable expenditure". There is a risk that these exemptions could be lost if the charity engages in non-charitable expenditure (including potentially expenditure considered to be incurred other than for the public benefit, such as because it supported unlawful activity).
- 6.4 Of course it is unlikely that AM trustees would be breaking the law themselves in their capacity as charity trustees, but rather the charity they are responsible for may be supporting unlawful activity by the group supported to some degree (depending on the form of support taken - e.g. arranging for members of Meetings to go along to a demonstration and undertake illegal activity themselves).

7. Other key considerations

7.1 Commission's views on participation in protests

- 7.1.1 It is worth noting given the nature of the types of activities we are envisaging in this section that the Commission's guidance on political campaigning states that "*[t]he nature of public demonstrations means that there is a greater risk of an offence being committed by representatives of the charity, or others taking part, compared with other campaigning activities. For this reason the charity should consider carefully what steps it can take to minimise or mitigate the risk of these offences occurring, for example through careful preparation and good liaison with the police or other authorities*". It seems possible to draw from this that:

- (a) the Commission accepts that representatives of a charity can directly take part in public demonstrations;
 - (b) the Commission does not accept that a charity can promote unlawful activity on the part of its employees; and
 - (c) the Commission in fact considers that a charity should actively take steps to mitigate the risk of offences occurring.
- 7.1.2 It is unlikely that the Commission would consider something as remote as provision of storage or meeting space to a third-party that engaged in protest would require the charity to engage with the risks of that organisation's members engaging in protests, beyond the issues discussed in this note regarding support of unlawful activity.
- 7.1.3 Whilst as mentioned in agreeing the instructions for this updated advice note, we would need to instruct counsel to advise on criminal and/or protest law considerations that may be relevant here, we note that:
- (a) The Government has introduced stronger protest and civil disobedience laws expressly with the actions of groups such as Extinction Rebellion and Just Stop Oil in mind (e.g. the Police, Crime, Sentencing & Courts Act 2022 and the Public Order Act 2023);
 - (b) Those legal frameworks are likely to materially impact on the likelihood of the types of organisations envisaged in this advice engaging in unlawful activity or being curtailed by the law; but
 - (c) Those legal frameworks are unlikely to have a bearing on the extent to which AMs can provide support to such organisations, except (i) insofar as they may make the likelihood of unlawful activity by those organisations more likely and (ii) for a situation in which an AM wishes to more directly support a specific planned activity of such a group which could mean it itself accrues liability under civil order laws).
 - (d) However, it is important to consider section 8 of this note in respect of conspiracy offences and offences which might be committed using AM resources, in this context.

7.2 Insurance

At a high level, engagement in unlawful activity (directly or indirectly) may invalidate a charity's insurance policy/ies or any indemnity given in favour of its trustees, officers or employees. Trustees should also ensure they will not be invalidating any insurance policy and that policies are adequate for any other form of support they choose for an organisation that engages in unlawful activity – trustees should consider whether there are, for example, conditions on their building insurance (if applicable) that invalidate cover where premises are used for unlawful activities (noting our comments at section 7.4 below).

7.3 Reputation

- 7.3.1 A charity's reputation is one of its core assets and, like all assets, trustees have a duty to protect it and ensure that it is applied in furtherance of charitable purposes. AM trustees must take account of that duty in this scenario. Does it risk reputational damage by being seen to participate in or endorse civil disobedience / law breaking, or otherwise supporting groups

which may be controversial or engage in such activities in furtherance of its charitable purposes? Even if AMs do restrict their support to lawful activity, are such groups too closely interlinked with unlawful activity by the public that even that limited form of support might be seen (incorrectly) as endorsing their unlawful tactics? Conversely, do AMs risk reputational damage (particularly among Friends and supporters) by refusing to engage in these campaigns, despite a perception that they could effectively help to address the key world and domestic crises and injustices? This thought process and conclusion should be documented in case of later challenge.

7.4 Regulation of funding non-charities

The Charity Commission produces separate guidance on [charities funding non-charities](#) and more generally [working with non-charities](#) – it would be advisable for the trustees of AMs to have (and to note that they have had) regard to these documents in agreeing a particular course of action that may involve support or financial assistance for a third party that is not a charity.

7.5 “Safeguarding” and duty of care

7.5.1 The Charity Commission’s [guidance](#) on safeguarding adopts a particularly expansive definition of “safeguarding” to state that there is a positive duty on charities to “take reasonable steps to protect from harm *people who come into contact with your charity*” (our emphasis). This, it states, not only includes children and vulnerable people or the charity’s beneficiaries, but employees, volunteers and it “*may include other people who come into contact with your charity through its work*”. The guidance would be engaged in relation to the activities of employees and volunteers taking part in protests, for example, and could apply significantly more widely depending on how AMs (and the Charity Commission) interpret their “*charity’s work*”.

7.5.2 It is probable that the Charity Commission would hold that even in a situation where an AM is simply allowing a group to make use of its general letting policy of its space to its community, the AM has a responsibility to safeguard the attendees to a reasonable extent. This is in line with broader obligations on the duty of care that the occupier or owner of premises owes to those who use premises – e.g. under the Occupiers Liability Act or general law of negligence.

7.5.3 Whilst this would more obviously apply to, e.g., ensuring the building is safe and complies with fire regulations, the Commission could also hold that this includes an obligation not to enable groups to expose themselves to risk of prosecution or arrest. We think that the latter could only be reasonably argued where the AM or local meeting involved has knowledge or a strong suspicion that its premises may be used to facilitate or conduct unlawful activity.

7.5.4 If an AM / local meeting did hold this suspicion or knowledge then this would generally increase the risks here and those that we set out at section 8 below.

7.5.5 The law of negligence and occupiers liability is outside of the scope of our current instruction but we could, if helpful, seek an estimate from our property team who could input on these issues in further depth.

7.6 Serious incidents

7.6.1 It is important that AMs understand the expectations of the Charity Commission as to when a charity should report a “*serious incident*” – being “*an adverse event, whether actual or alleged,*

which results in or risks significant” harm to the individuals mentioned above, or to the charity’s work or reputation (as well as loss of its money or assets or damage to its property). The Commission has produced guidance on reporting serious incidents generally and, recently, on reporting serious incidents involving a partner:

<https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity>

<https://www.gov.uk/guidance/reporting-a-serious-incident-in-your-charity-when-it-involves-a-partner>

- 7.6.2 The consequence is that, as a matter of practical risk, AMs may be more likely to be required or expected to self-report any high-risk activities to the Charity Commission (if they result in a broadly-termed “serious incident”), making it more likely that AMs’ decisions to participate in those activities will face regulatory scrutiny.

8. Could there be criminal law / other legal implications of supporting a movement that undertakes illegal activity?

- 8.1 We are not a criminal law firm and any criminal law implications of support for organisations that engage in unlawful activity or the principles discussed here are outside of the scope of this advice (which is limited to compliance with charity law). Criminal law is invariably fact / context specific and you should always seek bespoke advice. However, it may be that some general principles can be taken into account by AM trustees in this regard and we would be happy to work with external counsel to update this advice note to also cover potential criminal law implications, should you wish to seek this additional advice.

- 8.2 However as flagged in discussion of this advice note in the context of what happened at the Westminster Meeting House, it is important to note that:

- 8.2.1 It is a possible but remote risk that AMs or Friends could hold criminal liability in relation to unlawful activity by groups it supports or provides use of resources to (e.g. premises), depending on the purpose of the support and the level of knowledge that the AM holds about the group’s activities;

- 8.2.2 This is unlikely where AMs are not directly involved in facilitating unlawful activity by a group – however, as seen in Westminster, it is possible that groups may commit offences *whilst using AM premises*, or that be alleged to be the case – e.g. offences relating to organising unlawful protest or conspiracy to commit an offence offences;

- 8.2.3 Where this happens, again AMs are unlikely to be investigated unless it appears that they have knowingly facilitated a crime, in which case they as a charity could in theory also be held liable (e.g. for also conspiring to commit an offence).

- 8.2.4 S1 of the Criminal Law Act 1977 provides that a conspiracy is where “a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either

(a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or

(b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,

In that situation, the person (e.g. the AM) will be guilty of conspiracy to commit the offence in question.

- 8.2.5 This area of law is complex and subject to various defences and evidential hurdles, but it is clear that AMs will be protected to a large degree from the remit of this offence where they can demonstrate there is no agreement with another person to pursue a course of conduct that amounts to commission of an offence. For example, where the use of AM premises is made subject to a requirement to only undertake lawful activity whilst using the premises.
- 8.2.6 There may be a variety of criminal law provisions which could apply to the facilitator or organiser of a meeting, outside of conspiracy offences. As an example, if an AM was seen to be involved in organising a meeting where the AM 'knows' the meeting is to support a proscribed organisation or is addressed by a person who belongs or professes to belong to a proscribed organisation – under s.12 Terrorism Act 2000 (a proscribed organisation being a group designated as engaging in terrorism by the government, as listed [here](#)). As an example, if an AM knew that they were allowing a group to use premises for a discussion of how to facilitate Hamas' re-establishment in Gaza, for example, the AM could commit this offence.
- 8.2.7 It is important that AMs obtain enough information about groups they wish to support or allow use of their resources by to identify whether there are any potential red flags for potential criminality [using the AM's resources or support](#).

9. Equality Act considerations

- 9.1 Bates Wells has recently advised you on the standard Friends House terms of letting of premises to groups and decision-making in that regard in terms of Equality Act compliance around, e.g., gender critical beliefs.
- 9.2 This advice is also relevant when AMs are making decisions about which groups to support or allow use of resources by.
- 9.3 As that advice states:
- (a) a person (a "service provider" -e.g. an AM) concerned with the provision of a service to the public or a section of the public (for payment or not) must not **discriminate** against a person requiring the service by not providing the person with the service (section 29(1)); and
 - (b) a service provider (A) must not, in providing the service, **discriminate** against a person (B) as to the terms on which A provides the service to B; by terminating the provision of the service to B; or by subjecting B to any other detriment (section 29(2)).
 - (c) A service-provider must not, in relation to the provision of the service, **harass** (a) a person requiring the service, or (b) a person to whom the service-provider provides the service (section 29(3)).
 - (d) A service-provider must not **victimise** a person requiring the service by not providing the person with the service (section 29(4)).
- 9.4 AMs must ensure that they do not commit discrimination, harassment or victimisation in the way in which they make decisions about which people and groups may use its premises

(assuming they are within remit of the provisions above by generally providing use of premises to the public).

- 9.5 Discrimination arises when someone treats or would treat a person less favourably than others because of a protected characteristic (which includes religious or philosophical belief).
- 10. Indirect discrimination arises when there is a provision, criterion, or practice (**PCP**) (e.g. a policy or procedure) that applies in the same way for all service users but (whether intentionally or not) disadvantages people with a protected characteristic, without justification i.e. it cannot be shown that the PCP is “a proportionate means of achieving a legitimate aim”.
- 10.1 Harassment under the EqA includes subjecting someone to unwanted conduct related to a protected characteristic which has the purpose or effect of violating their dignity or creating an environment that is intimidating (e.g. bullying), hostile, degrading, humiliating or offensive.
- 10.2 Victimisation is less likely to be relevant (applying where a person treats someone poorly because they have, or you believe they have or will, made a claim or allegation about breach of the Act).
- 10.3 Accordingly as a general rule it is important that AMs’ decisions and policy around who they will support or allow to use their resources is objectively justifiable on the basis of criteria that do not relate to or disadvantage those with protected characteristics – noting the analysis set out in our advice note of on the balancing of Quaker religious rights with those of any group or person that claims it has been discriminated against.
- 10.4 It is likely that decisions made on the basis of a credible, evidencable risk of unlawful activity whilst using AM premises would be justifiable. The advice set out by Bates Wells on the terms of the BYM Letting Policy will assist in this regard.