

Inquiry Report

Palestinians Relief and Development Fund (Interpal)

Registered Charity Number 1040094



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Introduction

1. There are a number of charities providing aid internationally in high risk situations including conflict and post-conflict environments, natural disasters and other complex emergencies. Charities often can reach places and communities and accomplish tasks that governments and government agencies cannot, delivering essential relief and rehabilitation assistance in spite of extreme and adverse conditions. These charities make a vital contribution to these communities and their work supports people in desperate need. The value of their work cannot be overstated.
2. Conditions such as those described above present complex risks and difficult challenges for charities providing humanitarian aid. Great humanitarian need often exists in the very regions where there is armed or civil conflict and political unrest and where criminal and terrorist groups¹ or those connected with them may operate. Maintaining humanitarian guiding principles, such as impartiality and independence in the implementation of their work, becomes even more important for charities operating in these environments. The risks and challenges require difficult, and often finely balanced judgements by charity trustees as well as greater effort and stringency in the development, implementation and monitoring of humanitarian programmes of work.
3. Charity trustees take on a significant responsibility to deliver the charity's work while protecting it from abuse. Charity trustees are under a legal obligation to discharge their duty of care, to act in the best interests of the charity and to act prudently as part of their general legal duties. Charity trustees must use charitable funds and assets only in furtherance of the charity's purposes, and avoid undertaking activities that might place the charity's funds, assets or reputation at undue risk. This includes acting with due diligence in the receipt and expenditure of funds and in the selection, use and monitoring of a charity's partners, donors and beneficiaries.
4. Any links between a charity and terrorist activity are totally unacceptable and corrosive of public confidence in charities². This includes fundraising, financial support or provision of facilities, but also includes formal or informal links to organisations proscribed under UK law³. Charities are subject to the provisions of UK anti-terrorist legislation. Allegations of criminality are primarily a matter for the law enforcement agencies. The Commission's concerns relate to the lawful exercise by trustees of their duties and responsibilities and ensuring that charitable relief reaches those in need. In addition to the obligations that flow from UK anti-terrorist legislation, charity trustees must discharge their duties and responsibilities and be vigilant to ensure that a charity's premises, assets, volunteers or other goods cannot be used for activities that may, or appear to, support or condone terrorist activities. They should take all necessary steps to ensure that their activities could not reasonably be misinterpreted. Charity trustees are accountable for ensuring that proper controls and measures are in place to ensure that terrorist organisations cannot take advantage of a charity's status, reputation, facilities or assets.
5. Where appropriate, the Commission exercises its regulatory powers of investigation and remedy. The Commission exercises these statutory powers only where allegations prompt serious regulatory concern, where risk to charity property and reputation is greatest and where there is a clear public interest for justifying this approach.

¹ Throughout this report we refer to the risks and harm for any charity being associated either with terrorism, terrorist activities or those supporting the ideology or activities of terrorist organisations. For the purpose of this report, when we refer to terrorism and associated expressions we are using the definition given in the Terrorism Act 2000, which is given in full in Annex 1.

² See further the Commission's publications: *OG 96 Charities and Terrorism*, the Commission's *Counter Terrorism Strategy* and the *Risk and Proportionality Framework* for the Commission's compliance work.

³ See further Annex 1.

6. The purpose of a statutory inquiry is to investigate and establish the facts underlying regulatory concerns and so ascertain the extent of any misconduct or mismanagement, assess the risks to the charity, its work, assets, beneficiaries and reputation and decide what action needs to be taken to resolve the concerns. In assessing the extent to which charity trustees have complied with their duties and responsibilities as trustees, the Commission's consideration extends to whether the trustees have complied with the criminal or civil law to the standard which is applicable in the United Kingdom, not the laws in the foreign jurisdiction where the funds may be applied. Although there are limitations on the Commission's ability to do so outside England and Wales, the evidential weight and provenance of the material and evidence are examined. If the allegations are not substantiated, the inquiry will say so. In such circumstances an inquiry can act for the protection of the charity and to enhance the reputation of the wider charitable sector.

The Charity

7. The Palestinians Relief and Development Fund, also known as Interpal ("the Charity") is a registered charity delivering aid and other charitable relief to Palestinians, mainly in the Occupied Palestinian Territories⁴, Jordan and Lebanon.
8. The Charity was established in July 1994 and registered as a charity on 11 August 1994. It is governed by a Declaration of Trust dated 29 July 1994.
9. The Charity's objects, as set out in its Declaration of Trust, are:
 - a. The provision of aid and assistance, support, guidance and comfort to poor needy sick children and widows and those suffering or distressed as a consequence of civil or military action or national disasters within its area of benefit, including setting up and maintenance of medical and health centres.
 - b. To relieve the need hardship and distress of persons whose relatives or friends died or who are missing or detained as a consequence of civil or military action and to provide protection and promote good health, both mental and physical, the relief of poverty and sickness, the advancement of education in matters relating to the nature of grieving and bereavement of connected persons.
 - c. The provision in the interests of social welfare of facilities for the recreation and other leisure time occupation of those of refugee status or connected persons who may have need of such facilities by reason of their youth or age or infirmity or disablement or social and economic circumstances.
10. The Charity raises funds in the UK by way of donations, and directs those funds to its work, which is primarily in the Occupied Palestinian Territories as well as Jordan and Lebanon. In 2007, the Charity collected donations of £5,064,280 and applied £2,201,365 towards its charitable purposes. Of that, £1,564,057 was spent on providing aid in the Occupied Palestinian Territories, with £167,725 and £119,711 spent on aid for Palestinians in Jordan and Lebanon respectively. The remainder went towards other charitable purposes⁵.

⁴ The Occupied Palestinian Territories comprise the West Bank and the Gaza Strip.

⁵ The Charity's accounts for the year ending 31 December 2007 are available from the Register of Charities on the Commission's website.

11. The Charity's main areas of work are the provision of humanitarian aid, education, community development and health. Much of its aid is delivered through local partners in the Occupied Palestinian Territories, which are responsible for implementing the projects that the Charity supports. Many of these partners are registered locally as charities, some of which are known as "zakat committees"⁶.
12. The Charity is a member of a number of umbrella organisations which bring charities together to share experience, information and best practice about providing international aid⁷.
13. The Commission recognises the historical and deep-seated nature of the dispute which exists connected with the Occupied Palestinian Territories. It makes no judgments about this and acknowledges that there are the strongly held views within the region. It also acknowledges that since the Charity was established in 1994, the political, economic and social circumstances within the Occupied Palestinian Territories have undergone change. Many of those changes have complicated the work of charities in the region⁸.

Previous Inquiries

14. The Commission has previously conducted two inquiries into the Charity following allegations that it has links to Hamas. The UK Government's view is that there are two wings to Hamas: the political wing and the military wing. Since 2001 the military wing, the Hamas Izz al-Din al-Qassem Brigades, has been proscribed as a terrorist organisation in the UK under the Terrorism Act 2000. Since 2003 Hamas in its entirety has been designated as a terrorist entity in the UK following a European Union regulation⁹.
15. The Commission treats allegations of links to terrorism as a zero tolerance issue warranting immediate attention due to the risks such links could pose to the public, the Charity's beneficiaries, and the reputation and integrity of charity¹⁰.
16. The first inquiry into the Charity, in 1996, concerned allegations that the Charity funded Hamas and had connections to a number of former Hamas militants. The inquiry scrutinized the Charity's financial controls and records and ran test checks on particular payments made by the Charity. It found no evidence of any donations that could not be accounted for or that were given for political reasons. As it was not the Commission's usual procedure at the time, no report was published, although reference was made to the inquiry as a high profile case in the Charity Commission's 1996 Annual Report¹¹.

⁶ Zakat, the third pillar of Islam, is the giving of a set proportion of one's wealth to worthy recipients. Zakat committees, which are a type of Islamic charity, provide social welfare (such as aid, education and health services) to Muslim communities in many countries. They exist worldwide in different forms; in the Occupied Palestinian Territories they have a local or regional committee structure. Their size can vary, with some having an annual expenditure of over \$1m while others are much smaller. Zakat committees may be registered with the Palestinian Authority or other local regulators as charities. As with all overseas charities that are not within the regulatory jurisdiction of the Commission, they are not nor would expect to be registered as charities in England and Wales.

⁷ These umbrella organisations include British Overseas NGOs for Development (BOND) and the International Bureau of Humanitarian Organisations.

⁸ For an overview of the history and current political position in the Occupied Palestinian Territories please see its Country Profile on the Foreign Office website at www.fco.gov.uk

⁹ Annex 1 explains the meaning of being proscribed under the Terrorism Act 2000 in more detail and sets out the position of the Charity and Hamas under UK terrorism legislation. It also explains the meaning of being designated as a terrorist individual and entity.

¹⁰ For further information on the Commission's response to allegations of links to terrorism please see the *Commission's Counter-Terrorism Strategy, CC47 Complaints about Charities and its Risk and Proportionality Framework* for its compliance work, all of which are available on the Commission's website.

¹¹ Annex 2 contains the 1996 summary of the inquiry included in the Charity Commission's Annual Report.

17. A second inquiry was opened in August 2003 following a decision by the Government of the United States of America to designate the Charity as a ‘*Specially Designated Global Terrorist*’ for allegedly supporting Hamas’ political or violent militant activities. The Commission had already been engaged with the Charity since early 2003 as the allegations of it being connected to Hamas had been repeated. As part of its inquiry the Commission formally requested the US Authorities to provide evidence to support the allegations made against the Charity. The US Authorities did not respond with evidence as requested and the Commission concluded that in the absence of any clear evidence showing the Charity had links to Hamas’ political or violent militant activities, the inquiry should be closed. It was closed in September 2003, following which the Commission published a statement of the results of the inquiry. This statement is attached in Annex 3.

18. One particular outcome of the 2003 inquiry was that it was made clear at that time that:

‘Where a charity’s activities may give, or appear to give, support or succour to any terrorist activity, the Commission expects the charity’s trustees to take immediate steps to disassociate the charity from the activity. We expect trustees to be vigilant to ensure that a charity’s premises, assets, volunteers or other goods cannot be used for activities that may, or appear to, support or condone terrorist activities. Examples include the use of a charity’s premises for fundraising or meetings.

Charities should take all necessary steps to ensure their activities could not be misinterpreted. The Commission expects trustees and charities to ensure their activities are open and transparent, for example, when transferring assets abroad. We hold trustees accountable for ensuring that procedures are put in place to ensure that terrorist organisations cannot take advantage of a charity’s status, reputation, facilities or assets.’¹²

19. At the conclusion of the 2003 inquiry, the Commission acknowledged that the Charity had made improvements to its procedures and record keeping since the previous inquiry. However, the Commission wrote to the trustees immediately following the closure of the inquiry to make it clear that:

‘whilst the Commission accepts... that on the whole Interpal is a well managed charity and is committed to acting strictly in furtherance of its stated objects and within legal boundaries, we would advise the trustees to implement procedures that allow for independent verification of the projects supported by Interpal. This may well include the use of other charities and NGOs operating in the region to provide independent verification of the contents of the reports received by Interpal. Whilst the trustees may not be able to do this in every instance, the procedures should nonetheless be in place....[In addition,] it would be prudent for the trustees to seek clarification from the local charities on their procedures for selecting beneficiaries, given the recent allegations that Interpal’s funds had been used to support Hamas’ political/militant activities.’

¹² See paragraphs 14 and 15 of the 2003 Report, in Annex 3.

20. In the same letter, the Commission also confirmed that if at any time in the future, the Commission received '*evidence clearly showing Interpal's funds had been used to support Hamas' political/militant activities, then [the Commission] would consider opening a fresh inquiry*'. The reasons why the Commission opened the current Inquiry are set out in paragraphs 28-31 of this report.
21. In November 2003 the Charity confirmed to the Commission its then methods of verifying the legitimacy of its partners and the projects it supported in the Occupied Palestinian Territories, and proposed sending questionnaires to its partners to clarify their processes for selecting beneficiaries¹³.

Source of new concerns

The Panorama Programme *Faith, Hate and Charity*

22. In July 2006 the BBC broadcast a Panorama programme called *Faith, Hate and Charity*. This programme reported allegations that the majority of the Charity's funding was sent to Islamic charities¹⁴ in the Occupied Palestinian Territories, and that a number of these promoted the ideology of Hamas¹⁵. It appeared to the Commission that the key points reported in the programme were:
 - a. allegations that many of these Islamic charities are an integral part of Hamas, and are crucial to its support amongst the Palestinian people. It further alleged that many are committed to a particular concept of dawah¹⁶; in essence forming a '*dawah wing*' of Hamas¹⁷. The programme claimed: '*for a political movement like Hamas, dawah is militant preaching, often aimed at impressionable minds*';
 - b. allegations that the Charity's funds are sent to local partners which promote a '*jihadi ethos*'. The programme claimed that militant material had been found at several of these committees' premises during raids by the Israeli Defence Force, and that key figures in the management of certain local partners were members of Hamas;
 - c. allegations that a trustee of the Charity had links with Hamas by virtue of meetings with senior Hamas figures and making public expressions of support for the Second Intifada¹⁸. It further alleged that links were created by that trustee's senior role in the Union for Good¹⁹, a coalition of charities operating in the Occupied Palestinian Territories which directed its funding at '*missionary dawah*'; and
 - d. claims that the Charity was a key member of the Union for Good, whose President appeared to have publicly supported suicide bombings directed at Israeli civilians.
23. The allegations reported in the Panorama programme raised issues that were broader than the Commission's regulatory remit. However, in the Commission's view if the allegations in respect of the way in which the Charity may be operating in the Occupied Palestinian Territories were true, these would raise serious implications that the Commission needed to examine further.

¹³ See paragraphs 123-126 for further details.

¹⁴ These are described as local partners in this report (see also footnote 6 above).

¹⁵ A transcript of the Panorama programme *Faith, Hate and Charity* is available from the BBC website.

¹⁶ Dawah is generally considered to be an obligation to promote the Islamic faith or call others into it.

¹⁷ Some countries take the view that there is no distinction between the political and military wings of Hamas, and that Hamas also has a '*dawah wing*' which is an integral part of its structure. This is not the view of the UK Government (see paragraph 14).

¹⁸ The Second Intifada refers to the Palestinian uprising which began in September 2000.

¹⁹ See paragraph 71 for further information about the Union for Good.

The Commission's regulatory response

24. In order to ascertain the basis of these allegations, the Commission immediately contacted the BBC to request the material underpinning the claims made in the Panorama programme ("the Panorama material"). The BBC explained there would be a delay due to the unavailability of the staff who had gathered the material. Over the next two months the Commission repeated its request and liaised with the BBC to obtain the material. Following a meeting with the BBC in October 2006 it was finally provided to the Commission.
25. The Commission sought a meeting with the trustees of the Charity. On 11 August 2006 that meeting took place, attended by the Chair of the trustees, the Charity's Executive Manager, two other trustees and their legal advisers. The Commission explained that it intended to analyse the Panorama material, when received, to ascertain if it raised regulatory concerns about the Charity.
26. The Commission did not rely on the conclusions drawn by the programme but instead, as an independent, evidence-based regulator, it conducted its own analysis of the Panorama material to assess whether it raised regulatory concerns. It established that there was evidence in the material raising concerns that required further investigation to ascertain whether the Charity's trustees were properly fulfilling their legal duties and responsibilities.
27. On 7 December 2006 the Commission met again with the Charity, specifically its Chair, another trustee and its legal representatives following its initial analysis of the Panorama material and put the Commission's preliminary concerns to them.

Commission Inquiry and issues

28. Following that meeting and due to the serious nature of the issues raised by the Commission's analysis of the Panorama material, the consequent risk to the Charity's assets and reputation, and the Commission's responsibility to safeguard public trust and confidence in the charitable sector, on 13 December 2006 the Commission decided to open an Inquiry under section 8 of the Charities Act 1993 ("the Act").
29. The issues of concern in this Inquiry were different from those of the 1996 inquiry, which were concerned with scrutinising the Charity's financial controls and records, testing individual payments and donations and looking at, in particular, whether the Charity's funds and support reached its intended destination. This was explained to the Charity at the start of the Inquiry. There has been nothing brought to this Inquiry's attention that suggests that the Charity's funding has been siphoned off for inappropriate or non-charitable purposes.
30. The focus of this Inquiry was a new and different allegation that the Charity may be indirectly supporting the ideology or activities of terrorist organisations by using partners which may or appear to support such activities. The regulatory issues were whether the trustees were acting appropriately and with due regard to their legal duties and responsibilities as trustees if they supported the charitable activities of an organisation whose wider activities or associations may include the promotion of the ideology or activities of terrorist organisations.

31. The Commission established, after its examination of the Panorama material that the Inquiry would look at the following issues:
- a. **Issue 1: Whether particular local partners funded by the Charity were promoting the ideology or the activities of terrorist organisation(s) and therefore would be inappropriate partners for the Charity.**
 - b. **Issue 2: Whether the Charity's membership of the Union for Good was appropriate.**
 - c. **Issue 3: Whether one of the trustees, Dr Essam Mustafa, had any links to terrorist organisations or undertook activities which might make him unsuitable to be a trustee of the Charity.**
 - d. **Issue 4: Whether the trustees were fulfilling their legal duties and responsibilities, in particular by ensuring that the Charity and its assets were protected from any association with terrorist or inappropriate political activities.**

Timescale and conduct of the Inquiry

32. The Inquiry was opened on 13 December 2006 and closed on 26 February 2009.
33. In January 2007 the Inquiry put detailed questions in writing to the trustees of the Charity to explore the issues it had set out. For the next eight months the Inquiry engaged with the trustees to obtain complete responses to these questions and to clarify the information that was provided. This included a visit to the Charity's premises in May 2007, during which the trustees offered to provide the Inquiry with substantial information about the local partners the Charity worked with. The Inquiry assessed the list of material that was provided, and then requested and obtained the relevant documents.
34. In December 2007 the Inquiry interviewed two trustees (the Chair, Ibrahim Hewitt, and the Managing Trustee, Dr Essam Mustafa²⁰) and one Charity employee (the Executive Manager, Jihad Qundil). Key points and documents from the Panorama material, as well as issues arising from the Inquiry's engagement with the Charity thus far, were discussed. Following these interviews it was necessary for the Inquiry to put additional points to the trustees to ensure that it fully understood their views and evidence.
35. The trustees regularly reassured the Inquiry that they were prepared to cooperate fully with the process. In practice there were, on occasions, delays in obtaining information from the Charity, and twice, the Charity missed extended deadlines for specific requests²¹. The length of the Inquiry was also affected by the considerable documentary material received from the trustees that required in-depth analysis and verification. The Inquiry also found, on further investigation, that some information provided by the trustees early on in the Inquiry was incomplete or required further explanations and clarification. The Inquiry appreciated that the trustees were volunteers, some of whom travelled overseas regularly; however, the Inquiry expected the trustees and their advisors to meet reasonable deadlines and comply with the Inquiry's requests.
36. When forming its findings and conclusions about the Union for Good, the Inquiry contacted that organisation for its comments.

²⁰ Dr Mustafa has been named by the Charity as its "Managing Trustee". This has no effect on his legal status as one of the trustees of the Charity since all trustees are collectively responsible but recognises certain additional functions that the Charity has given him. He is not an employee of the Charity.

²¹ See paragraph 165.

37. Unprompted by the Inquiry, in January 2007 the Israeli Government provided the Inquiry with an outline of its concerns about the Charity and a number of its local partners in the Occupied Palestinian Territories²². It also raised concerns about the activities of the Union for Good. The Inquiry subsequently requested and received material relating to the evidential basis for the Israeli Government's concerns.
38. This Inquiry repeated the request made in 2003 to the US Authorities to provide the evidence supporting their decision to designate the Charity²³. The US Authorities did not provide a response to this request. As a result, the Inquiry could not take account of the reasons underlying the US decision²⁴.
39. The Inquiry used the Commission's knowledge and experience gained through its general engagement with the charities it regulates, in particular those working internationally and in this region. It did this to set the Charity's activities in context and assist the Inquiry in assuring itself that its assessments about what was possible and realistic in practice were reasonable in the circumstances. The Inquiry looked into the steps taken by other international aid agencies working in the Occupied Palestinian Territories to control and monitor how their funds are used. It also looked at the framework of relevant terrorism legislation in different countries and their impact on the work of the Charity²⁵. The Inquiry also gained an appreciation of the significant challenges faced by aid agencies working in the region, including the complexities of the political and security situations²⁶, and looked at the types of controls and protections put in place by aid agencies generally. The Inquiry looked at the role of local partners in delivering aid in the Occupied Palestinian Territories, and the extent to which aid agencies worked with them²⁷. The Inquiry took these factors fully into account.
40. In addition, the Inquiry drew on the expertise of the Commission's International Programme. The International Programme aims to create a healthy, accountable and independent NGO²⁸ sector by supporting the development of effective local regulation internationally, regionally and nationally through sharing experience and ideas. As part of its work, the International Programme has visited the Occupied Palestinian Territories to explore NGO regulation in the region.
41. Evidential material collected during the course of an inquiry is assessed objectively and fairly without bias, taking into consideration the fact that material provided to an inquiry may arise from sources that have a particular view point or perspective. The Commission's published procedures²⁹ explain that a charity is entitled to know the nature of allegations being made against it and the nature of the evidence upon which a complaint about them is based. The inquiry will make its findings and conclusions on the basis of the evidence objectively viewed.

²² In 1998 the Charity was declared a "terrorist organisation" by the Israeli Government under the Terror Preventing Command 1948. It is also an "unlawful association" in Israel under the Defence Regulations (State of Emergency) 1945. Israeli law has no legal standing in the Occupied Palestinian Territories. The Charity is not illegal under Palestinian law.

²³ See paragraph 17.

²⁴ See the Statement of Results of the 2003 Inquiry relating to the Charity, in Annex 3.

²⁵ See further "Relevant legislation, orders and other declarations made by other states" in Annex 1.

²⁶ The Inquiry understands that Hamas' presence is not confined to its military and political wings. There is a social welfare presence in Palestinian Society which delivers social, cultural and welfare activities.

²⁷ As part of this process the Inquiry looked at published research on the role of zakat committees in the Occupied Palestinian Territories. Several of these publications were also identified by the trustees as valuable research material on the subject which informed their decision-making processes.

²⁸ Non-Governmental Organisation.

²⁹ See further CC47 *Complaints about Charities*.

42. The Inquiry involved an examination of the organisation, activities, records, management and decision-making procedures of the Charity in respect of the four issues investigated by the Inquiry. It required an in-depth analysis of a significant volume of documents, electronic records and videos, and engagement with the trustees and their representatives. This included assessing and testing information, and obtaining translations of certain documents.
43. The Inquiry assessed what material was relevant to the points under consideration with the Charity. It set out in writing to the trustees the nature of the concerns and the allegations made against the Charity which the Inquiry was investigating. This was done through summaries and descriptions of documents in letters, exchanges at meetings and interviews, copies of particular documents, and references to material they already had. This included relevant material given to the Inquiry by third parties.
44. In addition, the trustees' responses about how they discharged their duties and responsibilities, together with details of the Charity's policies and procedures, and copies of completed forms they provided to the Inquiry, formed an essential part of the evidence that the Inquiry relied on.
45. Through the Inquiry process, the Charity was provided with the evidence on which the Inquiry came to its findings and conclusions. During the course of the Inquiry's engagement with the trustees and their advisers, they were given a full opportunity to respond to these findings and conclusions. As a consequence, the Commission is satisfied that the Charity has had sight of the relevant material and evidence to support the regulatory concerns which were the focus of this Inquiry.
46. The volume and complexity of all the material, along with the time needed for the Inquiry to complete its analysis and to receive information from other parties, contributed to the length of this Inquiry.
47. As a civil regulator, the Commission must apply the civil standard of proof³⁰ in English law when evaluating evidence upon which it takes regulatory action. This means that an inquiry will apply the principle that the more serious the allegation or consequences of the allegation, the stronger the evidence must be, before the inquiry could conclude whether the allegations concerned were proved and regulatory action should be taken.
48. In January and February 2009, the Inquiry met with the trustees and their legal representatives to discuss the Inquiry's findings and to give the trustees the opportunity to comment on factual accuracy. During those meetings and related communications, on some issues differing accounts were given on some of the evidence received by the Inquiry. This and the trustees' comments on factual accuracy have been taken into account.

³⁰ Reference to this standard of proof was made in, for example, the case of *Dr Adu Aezick Seray-Wurie v Charity Commission and Her Majesty's Attorney General* [2008] EWHC 1091 (Ch) at paragraphs 31 and 32: *'There is only one civil standard in English law, the balance of probabilities. However, it is well established that, the more serious the allegation or the consequences of the allegation, the stronger must be the evidence before a court will conclude that the allegations concerned are proved on the balance of probabilities.'*

Findings

Issue 1: Whether particular local partners funded by the Charity were promoting the ideology or the activities of terrorist organisation(s) and therefore would be inappropriate partners for the Charity

General context and regulatory principles

49. Trustees of charities regulated under the law of England and Wales are responsible for the proper management and administration of their charity. Deciding to carry out, or knowingly supporting activities that would be criminal, illegal, or otherwise improper for a charity to carry out would amount to misconduct on the part of the trustees of the charity.
50. The Commission's experience as regulator indicates that the number of cases in which there is evidence to prove that charities have been involved directly, indirectly, deliberately or unwittingly in supporting terrorist activity is very small. However, any such abuse is completely unacceptable in view of the potentially significant impact on public trust and confidence in that charity and the charitable sector in general³¹.
51. The Commission's view is that a charity must not provide funding or support³² to a partner organisation that exposes beneficiaries to activities which directly, or indirectly, promote terrorism. This is so even if the charity's funding or support were used for legitimate humanitarian aid or other charitable activities. Aside from the risks of committing criminal offences under UK legislation, this is likely to amount to misconduct on the part of the trustees in managing and administering the work of the charity.
52. As regulator the Commission can and will look into evidence that trustees have breached charity law by participating in willful wrong-doing or criminal activities, or by acting in such a way that they place their charity at risk of abuse by others. Evidence that indicates criminal offences may have taken place under terrorism or any other legislation will be referred to law enforcement agencies. It is a criminal offence to provide funding or other support to a proscribed organisation³³.

Regulatory concerns relating to the Charity

53. Serious allegations were raised in the material examined by the Inquiry about links between some of the Charity's partners in the Occupied Palestinian Territories and the Hamas Izz al-Din al-Qassem Brigades³⁴. The material included claims that a number of the local partners were promoting the ideology of Hamas to the children they looked after, and/or were promoting the use of terrorist attacks.
54. If these claims were true, there was a risk that the Charity's funds could be used indirectly to promote terrorism or, even if the Charity's funds were not used for such activities, that the Charity was associating itself with terrorist ideologies or activities by funding these local partners. Either of these circumstances would be completely unacceptable for a charity regulated under the law of England and Wales.

³¹ Further information on the Commission's general approach to terrorist abuse is set out in its *Counter-Terrorism Strategy*.

³² For example, the use of facilities, the provision of volunteers or capacity building activities.

³³ Section 12 of the Terrorism Act 2000.

³⁴ The militant wing of Hamas, which is proscribed as a terrorist organisation under the Terrorism Act 2000.

55. The trustees were and remain under a continuing duty to satisfy themselves about the integrity of their partners. When such serious concerns are raised about those partners, the trustees must take sufficiently rigorous steps to assess the extent and veracity of those concerns. Such an assessment must go beyond a financial audit demonstrating that the Charity's funds reach the intended recipient partners. It must extend to whether or not those recipient partners are appropriate to receive those funds.

The Charity's partners in the Occupied Palestinian Territories

56. The Inquiry identified four local partners³⁵ funded by the Charity about which there were sufficient concerns about support for the Hamas Izz al-Din al-Qassem Brigades to require further investigation³⁶. The Inquiry requested the Charity respond to these allegations and explain the steps they took to determine whether the allegations were unfounded.

Material relating to the local partners

57. The Inquiry considered whether the material it examined provided persuasive evidence that any of the local partners with which the Charity worked were promoting the ideology or activities of terrorist organisations, or were otherwise inappropriate to receive Charity funds.
58. Some of this material³⁷ claimed in particular that:
- a. material relating to the Hamas Izz al-Din al-Qassem Brigades had been found at premises belonging to the Charity's local partners. This material included posters glorifying suicide bombers, videos of children performing songs promoting violence, and videos of ceremonies involving children carrying replica guns and missile launchers, and acting out suicide bombings or assassinations³⁸;
 - b. members of the management committees of some of the local partners operating in the Occupied Palestinian Territories and funded by the Charity had been convicted in Israel of criminal offences relating to militant activity; and
 - c. a number of the local partners supported by the Charity had been banned as terrorist organisations under Israeli law³⁹.

Findings related to the material

59. Some of the material examined by the Inquiry had been claimed to show a link between each item (be it video, photograph or document) and a particular zakat committee, and the Inquiry established that the Charity did fund some of those local partners.
60. The material provided seemed to indicate that certain local partners funded by the Charity promoted terrorist ideology or activities amongst their beneficiaries. However, the Inquiry could not verify to its satisfaction each of these item's provenance or accuracy. In order for the Inquiry to draw firm conclusions from the material, it would need proof that the material was found at particular identifiable local partners, and/or showed activities which could be proved to have been carried out at a particular identifiable partner, during a particular period of time.

³⁵ The Jenin Charity Committee, the Hebron Charity Committee, the Al Islah Charitable Society in Ramallah and the Al Tadhman Charity Committee. All four have different variants of their names but these are used for clarity. The Charity works with over 100 zakat committee partners at any time, some of which vary from year to year. A significant number of their other partners in the Occupied Palestinian Territories were also considered although in less detail.

³⁶ Some of the material considered included videos reported to have been seized by the Israeli Defence Force.

³⁷ This material was provided by the Israeli Government.

³⁸ The Charity has informed the Inquiry that such material can be found '*in any and all Palestinian schools*'.

³⁹ Israeli law does not have legal standing in the Occupied Palestinian Territories (or the UK) but does have an impact on the practical situation on the ground, which the trustees need to consider. For further guidance see paragraphs 208-209 and Annex 1.

61. The Inquiry found that, given the seriousness of the allegations being made, the material did not reach the standard of proof required under UK civil law for the Inquiry to consider taking regulatory action on this issue⁴⁰.

The Charity's response to concerns

62. The Charity advised the Inquiry that it: *'had no evidence to suggest that anyone... linked to the organisations supported by Interpal has done anything illegal or misused charitable funds.'* It stated that the local partners highlighted by the Inquiry were: *'entirely lawful'* and it was *'confident that such NGO partners are not engaged in any unlawful activity'*. The Charity explained that these views were based on its *'strict scrutiny procedures'* for monitoring how the local partners used its funds⁴¹. The trustees also said that they relied on their knowledge and experience of working in the field⁴², together with the fact that the committees had not been shut down by the local regulatory authorities, and that *'no concrete evidence'* of wrongdoing had been given to them.
63. The Inquiry also sought details of how the trustees had responded to the specific allegations that were within the Commission's regulatory responsibilities made in the Panorama programme. The trustees told the Inquiry that: *'on the day after the broadcast of Panorama, we opened our own month-long inquiry into the charities in question.'* The Inquiry established that the trustees had obtained statements from these partners that insisted the concerns were unfounded. The trustees stated that they evaluated the responses to these questionnaires, consulted with experts on zakat committees, and relied upon academic research on the benefits of distributing aid through the zakat committee structure. In support of this, the Inquiry was provided with copies of four completed questionnaires, and two examples of publicly available reports on the role of zakat committees.

Findings related to the trustees' actions

64. The Inquiry took into account the limitations on the trustees arising from the operational challenges of the Occupied Palestinian Territories. Nevertheless, the Inquiry found that the trustees had accepted the responses from the local partners without adequate further investigation.
65. Given the serious nature of the allegations, the Inquiry would have expected the trustees to have engaged actively with their partners in a manner consistent with the seriousness of the allegations being raised. The Inquiry noted that Funding Agreements were in place with the local partners⁴³ which set out how the Charity's funds could be used, and the conduct expected of the local partners. The Inquiry was told that the Charity sent questionnaires to four local partners asking them about the truth of the allegations made against the committees. However, the information provided in the four completed questionnaires received by the Charity from four local partners and shown to the Inquiry was, in the Inquiry's view, inadequate; for example in response to the question: *'Does your charity urge hatred and violence? Or do your employees do so?'* one zakat committee replied: *'The society goals don't encourage incitement on hatred or violence. Employees of the society don't practice any activity in this regard.'* A different zakat committee replied to the same question with: *'We don't support hatred or violence, and none of our staff use this method. Our goal is to help Palestinian women and children.'*

⁴⁰ See paragraph 47.

⁴¹ See Issue 4 below.

⁴² See footnote 27.

⁴³ For further details on these Funding Agreements, see paragraph 133.

66. This example is indicative of the quality of the questions and responses in these questionnaires. The steps taken by the trustees to check the validity or otherwise of specific claims of inappropriate activity at particular local partners were not sufficient in the circumstances.
67. The trustees should have entered into more meaningful engagement with the local partners in question. For example, they could have insisted on receiving detailed documentation showing how the requirements of the Funding Agreements were enforced on the ground in each zakat committee. Furthermore, given the seriousness of the allegations, the Charity should have independently verified the local partners' activities on the ground. The greater the risks and more serious the allegations, the more efforts are expected of the trustees.
68. The Inquiry noted that the trustees strongly disagreed with its finding, as they considered their enquiries, along with their knowledge and expertise of the region, amounted to a thorough investigation. They told the Inquiry that they had investigated the allegations *'to the best of [their] ability as a small charity with limited resources'*.

Conclusion

The Inquiry could not verify the material suggesting that certain local partners funded by the Charity may be promoting terrorist ideology or activities, so the material was of insufficient evidential value to support these allegations.

While accepting the difficulties the trustees faced, and acknowledging the action they did take, the Inquiry concluded, in the circumstances, that they did not take sufficiently rigorous steps to investigate the allegations about their local partners. The trustees should have acted with greater diligence to satisfy themselves that the local partners concerned were not directly or indirectly supporting the promotion of terrorist ideology or activities.

Issue 2: Whether the Charity's membership of the Union for Good was appropriate

General context and regulatory principles

69. The Commission encourages charities to look regularly at what they can achieve for their beneficiaries through working with other organisations. When the conditions are right, and the trustees can see the clear advantages to their charity, working together can bring real benefits of shared costs and extra reach⁴⁴. The ability to work through partners is particularly important for charities that work internationally.
70. In any collaborative working arrangement, trustees must continue to fulfill their duties of care and prudence towards their charity. The benefits of the collaboration should be clearly established at the outset and reviewed regularly, and trustees must be satisfied that their charity's assets and reputation are safeguarded in the arrangements. If they cannot be satisfied on these points, then the collaborative working may not be in their charity's interests and accordingly would not be appropriate for the charity.

⁴⁴ Further information is available in the Commission's guidance on *Collaborative Working and Mergers*.

Regulatory concerns relating to the Charity

71. The Charity is a founding member⁴⁵ of the Union for Good (also known as the “Charity Coalition”, “Coalition for Good” or “I’tilaf Al-Kahyr”), which comprises a number of UK and foreign organisations working with Palestinians and in the Occupied Palestinian Territories.
72. The Union for Good was created as the continuation of a campaign called the “101 Days Campaign” which was established in 2001 during the Second Intifada⁴⁶. Its President is Sheikh Yusef al-Qaradawi⁴⁷, and Dr Mustafa (the Charity’s “Managing Trustee”⁴⁸) is its General Secretary. The Union for Good is not a registered charity in the UK⁴⁹ and was not the subject of this Inquiry. However, the Charity was, and remains, closely linked to the Union for Good. Dr Mustafa told the Inquiry that he was the originator of the 101 Days Campaign. The trustees described this campaign as a project run by the Charity, and that the Charity was a founding member of it and its successor, the Union for Good. It is the Charity’s relationship with the Union for Good and the trustees’ management and supervision of this, which was an issue for the Inquiry.
73. The material examined by the Inquiry included claims that the Union for Good channelled funds from its members, including the Charity, to local partners in the Occupied Palestinian Territories that supported Hamas. However, the Inquiry could not establish the provenance and accuracy of this material⁵⁰.
74. Nonetheless, the Inquiry did consider whether the Charity’s membership of the Union for Good was appropriate. It looked at:
 - a. the structure, activities and wider membership of the Union for Good; and
 - b. the relationship between the Charity and the Union for Good.

The structure, activities and membership of the Union for Good

75. The Inquiry asked the Charity to describe the Union for Good. They explained it is:
 - a. *‘a very loose (albeit well-organised) relationship’ of member organisations and individuals;*
 - b. *‘an initiative to encourage and facilitate cooperation between those charities associated with it;’* and
 - c. *‘a tool used by its associated charities for cooperation and coordinating efforts in their raising funds campaigns.’*
76. The Charity also informed the Inquiry that: *‘the aims, activities, governance and administrative structure of the Union for Good are all of a charitable nature and for a charitable purpose.’*

⁴⁵ The Charity has been variously described by the trustees as *‘a founding member’*, *‘one of the leading founders’* and *‘the founder’* of the Union for Good.

⁴⁶ See footnote 18.

⁴⁷ Sheikh al-Qaradawi is a prominent Muslim scholar. In February 2008 Sheikh al-Qaradawi was refused a visa to enter the UK due to concerns raised about statements he made that appeared to justify acts of terrorism. He had, on a previous occasion in 2004, been granted a visa to enter the UK.

⁴⁸ See footnote 20.

⁴⁹ Annex 1 summarises the relevant legal status of the Union for Good.

⁵⁰ See paragraphs 59-61.

77. The Union for Good told the Inquiry that it was originally set up as *'an ongoing cooperative forum to run as long as the humanitarian situation among Palestinians is continuing.'* Its purposes now are *'charitable objectives, purposes and means that cannot be understood or interpreted otherwise by anyone. Moreover, these have never and will never include political objectives or purposes.'*⁵¹
78. The Inquiry analysed Union for Good publications, copies of interviews given by its President, and its website to determine how it expressed its purposes and activities. It noted the following material:
- a. According to documents supplied by the Charity, the 101 Days Campaign: *'was launched on 15 May 2001, the anniversary of the Nakbah, the Day of Catastrophe marking the illegal occupation of Palestine.'*
 - b. In an interview on Al Jazeera, Sheikh al-Qaradawi said: *'They have even called it... "The Coalition for Good 101 Day Campaign". This means that if Sharon⁵² says that he will put down the Intifada in 100 days, we say that in 101 days we will rebuild what he has destroyed, will continue with our resistance and will not stop.'*
79. In particular, the Inquiry's attention was drawn to certain statements made by the Union for Good's then and current President, Sheikh al-Qaradawi, in a programme on Al Jazeera in 2001 (during the Second Intifada and shortly after the Union for Good was formed) which caused particular concern. He appeared to describe the 101 Days Campaign as one form of resistance to the Israeli occupation of the Occupied Palestinian Territories, whilst simultaneously encouraging violent action against Israeli forces as another form of resistance. The relevant extracts and further material identified by the Inquiry is given in Annex 4.
80. In response to the Inquiry's request, the trustees provided a statement given to them in 2002 when the trustees asked Sheikh al-Qaradawi to explain what he, as President of the Union for Good, understood its aims and objectives to be. Sheikh al-Qaradawi supplied a written response, which included the following statement: *'I became more preoccupied and interested in [the Palestinian issue] when I became mature and more aware of life, and that is for many reasons. Because the issue is concerned with a part of the Islamic lands and we have been taught in [school] that when any part of the Islamic land is invaded by any invader, it will be an individual duty on all its people to resist the invader, each as far as he could, male or female, and that all Muslims across the world have to aid them with all that is needed, be it weapons, money or men.'* He then stated: *'For all this, our brothers in Palestine are most in need of aid... Henceforth extending relief and aid to these poor, oppressed, distressed and besieged people is a duty on any one who is able to extend something to them or assist them.'* The Union for Good explained that Sheikh al-Qaradawi's role was honorary and that he was not speaking on their behalf in the 2001 Al Jazeera programme. However, the trustees later indicated that *'it is incorrect to say that the trustees did not recognise the political dimension of Union for Good's work'*.

⁵¹ According to the Union for Good, its objectives are: *'redrawing the priorities of the charitable and relief work of the Palestinians, as well as the formation of its philosophy, strategies and its administrative rules according to the scientific concepts based on the requirements of reality; the coordination between the charity, relief and voluntary institutions that offer their services to the Palestinians; contributing to show the size of the humanitarian suffering of the Palestinian people and informing the international community about this suffering; contributing to the alleviation of the suffering of the Palestinian community in general and that of the most needy in particular; contributing to the building and developing of the capacities of the Palestinian people, as well as the rehabilitation of its local environment and infrastructure; and securing the appropriate environment for the relief and development work to the Palestinian people through the provision of technical support and expertise for Arabic, Islamic and international humanitarian relief organisations wishing to carry out its activities for its benefits and to form partnerships with it.'*

⁵² Ariel Sharon, the former Prime Minister of Israel.

Wider membership and work of the Union for Good

81. The Inquiry noted that, according to the Union for Good, its work includes conducting field surveys to determine the needs of the Palestinian people, researching and prioritising projects, seeking partnerships with institutions to implement projects, monitoring the financing of projects and working with supporting parties, the implementation, monitoring and running of projects in the Occupied Palestinian Territories. This work is carried out by the Union for Good centrally.
82. In addition, the Union for Good described itself as having members, of which the Charity was one. The material supplied by the Union for Good to the Inquiry disclosed that membership duties included: *'being ready to provide support for E'tilef El Khair (the Union for Good) on matters which coincide with the organisation's objectives, policies and financial and administrative capacities; willingness to contribute towards the expenses of the administration of [the Union for Good].'* Beyond this, how the membership was constituted and its organisational structure lacked clarity.
83. During the Inquiry the Charity supplied an undated list of members of the Union for Good. At least five (out of 24) organisations which appeared on the list have been, since 2003, designated in the UK⁵³. Although the Charity advised the Inquiry that these designated entities were no longer members, in December 2008 the Union for Good supplied its list of members, which included at least four of the same designated entities⁵⁴.
84. In addition, the Union for Good also supplied details of the contributors to particular projects filtered through its application process. A majority of the projects which listed the Charity as a contributor were also given financial support by one or more designated entity.
85. One member of the Union for Good's Committee (on which Dr Mustafa sat as the General Secretary of the Union for Good) is a designated terrorist person: Sheikh Abd al-Majid al Zindani. The trustees advised the Inquiry that: *'if he [al-Zindani] is an Al Qaida member, we would assume that he would not be a free man today⁵⁵... As regards to Interpol, he has had no contact whatsoever, and is unknown to most of the Interpol trustees.'*

Findings related to the structure, activities and wider membership of the Union for Good

86. The Inquiry noted that the Union for Good described itself as having humanitarian purposes. However, the Inquiry found that its President had, on more than one occasion, publicly supported the use of violence to achieve the same purposes as those of the Union for Good.
87. Towards the end of the Inquiry the trustees stated that they had asked Sheikh al-Qaradawi (at an unspecified date) about the Union for Good's purposes and he replied that its goal was *'humanitarian aspects alone'*⁵⁶.

⁵³ These were the Al Aqsa Foundation Belgium, the Al Aqsa Foundation Germany, the Al Aqsa Foundation Holland, the Al Aqsa Islamic Charitable Society Yemen and Sanibil Al Aqsa Sweden. Most were designated in 2003 and they remain designated as at the date of this report. The Al Aqsa Foundation of South Africa was also listed as a member: see paragraphs 136-142 for further details in respect of this organisation. For details of all designated individuals and entities see the Treasury website at www.hm-treasury.gov.uk.

⁵⁴ See footnote 53.

⁵⁵ Being designated does not carry with it an automatic criminal conviction or custodial sentence.

⁵⁶ See paragraph 77.

88. The trustees stated that: *'Dr Qaradawi's views on such matters as suicide bombings are irrelevant to their [the trustees'] relationship with the Union for Good. These views, necessarily, form no part of the implementation of [the trustees'] duties as trustees.'* However, the trustees, to fulfil their duties of care and prudence, had to satisfy themselves that the Union for Good was an appropriate organisation for the Charity to associate with. Sheikh al-Qaradawi's comments were therefore relevant to the discharge of the trustees' duties when working with the Union for Good.
89. The Union for Good's acceptance of designated individuals and entities as members potentially risked harm to the Charity's assets and reputation given its own involvement as a member. By engaging with designated entities through the central activities of the Union for Good, and by regularly contributing to projects also financially supported by designated entities, the Charity risked breaching international financial sanctions upon designated entities⁵⁷. The links with designated entities through membership of the Union for Good risked jeopardising public confidence in the Charity. These risks were heightened, as the Charity could not properly manage this association given the way the Union for Good operated.
90. The Inquiry found no evidence that the trustees had properly assessed the potential risks of membership of the Union for Good, in order to come to a reasonable decision about whether these were outweighed by the benefits. In particular, there was no evidence such a risk assessment had been conducted in 2003 when the Charity knew that a number of the Union for Good's members were named as designated entities.

The relationship between the Charity and the Union for Good

91. The trustees explained that the Union for Good runs media and fundraising campaigns for its members, who pay for and receive the funds from them. It has a Central Working Committee but no bank account or, as far as the Inquiry could establish, resources of its own. The Charity provided the UK branch of the Union for Good with substantial administrative support when it was first set up, including hosting its website, organising and providing administrative support to the first meetings between members, and undertaking the task of coordinating the Union for Good's UK and Europe-based members.
92. The Inquiry established that the Union for Good carried out some activities independent from its members. For example, according to the Charity it draws up lists of applications from local partners, which are: *'put into categories according to need and meeting the funding criteria for sponsorship.'* The applications are then sent to members to consider. It also now has its own website⁵⁸ and has organised conferences in the UK.
93. The Inquiry asked the Charity to explain its relationship with the Union for Good. The Charity's responses included the following:
 - a. A trustee told the Commission during a meeting in December 2006 that the Charity both did and did not provide administrative support to the Union for Good. The trustees later clarified that the Charity made its staff, premises and office facilities available to the Union for Good. The Inquiry established that the Charity produced letters and minutes on behalf of the Union for Good when it was first set up. The Charity's documentary records did not demonstrate to the Inquiry's satisfaction the nature and extent of subsequent support given to the Union for Good.

⁵⁷ See Annex 1.

⁵⁸ www.etelaf.org – the website is available in Arabic only.

- b. The Charity stated that it made grants to applicants co-ordinated through the Union for Good of around 3% of its annual distributions. The grants went direct from the Charity to the recipient zakat committee in the Occupied Palestinian Territories without passing through the Union for Good, and no other direct funding was given to the Union for Good.
 - c. The trustees advised the Inquiry that they received regular briefings on the activities of the Union for Good, including reports made to trustee meetings. Dr Mustafa stated that he gave periodic reports to the trustees, along with verbal briefings at trustee meetings. According to the minutes of trustee meetings between October 2003 and March 2007, given to the Inquiry by the trustees, the Union for Good was mentioned at four out of the 14 trustee meetings held. In two of those four meetings the mention was in a report to the trustees, and no discussion was held about it. Towards the end of the Inquiry, the trustees provided a list referring to three other occasions during this period where updates to the Board had been given, and stated that: *'there had been very little to report or discuss about [the Charity's] involvement with the Union for Good'*.
94. The Charity advised the Inquiry that its membership of the Union for Good: *'has provided a distinct benefit for Interpal. This can be measured in increased donation levels, extra publicity across a wider potential donor base (internationally and in the UK), administratively and [in] relations with other charities and NGOs.'* These benefits were never quantified to the Inquiry, although the trustees told the Inquiry that they attributed the increase in the Charity's income between 2000 and 2007 to the benefits of its membership of the Union for Good.
95. The Inquiry asked the trustees to explain how its relationship with the Union for Good worked in theory and in practice. It was told that there was no contractual or other written agreement in place between the two organisations, which the Inquiry would have expected of a collaborative relationship of this nature⁵⁹.

Findings related to the relationship between the Charity and the Union for Good

96. There was a lack of clarity in the information provided to the Inquiry about the nature of the Charity's relationship with the Union for Good. For instance, it was clear that the Charity's resources (such as office facilities) had been expended on the Union for Good, but the trustees were unable to clarify the manner or extent of the resources used.
97. The Charity had played a central role in the establishment and subsequent operation of the Union for Good in the UK, but there was no contract or other written agreement between the two to formalise the relationship.
98. After these findings were put to them, the trustees told the Inquiry that *'we accept that there are areas for improvement in our policies and procedures... for example, the importance and benefit of a written agreement with the Union for Good.'*

⁵⁹ Further information on collaborative working is available in the Commission's publication *Collaborative Working and Mergers*.

Conclusions

Given the very close association between the Charity and the Union for Good, the Inquiry concluded that the Charity's continued membership of the Union for Good is not appropriate, for the following reasons:

- Designated entities have been amongst the Union for Good's membership. There is a lack of certainty as to whether this is still the case.
- The involvement of at least one designated entity in many of the projects coordinated through the Union for Good and supported by the Charity allowed a link to be made between the Charity and those designated entities.
- The risks to the Charity's reputation arising through statements made by the President of the Union for Good at the time of its formation, which promoted violence as a legitimate form of resistance in support of the Palestinian cause.
- The trustees did not adequately manage the Charity's relationship with the Union for Good, including the absence of any formal written agreements or any other formal arrangements between them.
- In future, given the lack of clarity surrounding the constitution, organisational structure and membership of the Union for Good, the trustees would not be able to satisfy themselves that they have discharged their legal duties and responsibilities to the Charity.

Therefore, the Charity must dissociate itself from membership of the Union for Good.

Issue 3: Whether one of the trustees, Dr Essam Mustafa, had any links to terrorist organisations or undertook activities which might make him unsuitable to be a trustee of the Charity

General context and regulatory principles

99. Individual trustees are entitled to exercise their own judgment over whom they wish to associate with when acting in their personal capacity. However, a charity is entitled to have the independent and objective judgment of its trustees, acting in the best interests of their charity. Trustees must therefore ensure they do not permit any personal associations to interfere with their judgment as charity trustees.
100. Trustees of charities are publicly accountable. Trustees have a duty of loyalty to their charity. Trustees should ensure that their personal interests or interests which they owe to another body or general conduct do not place them in a position where a conflict with their charity's interests may arise⁶⁰. Even the appearance of a conflict of interest can damage the charity's reputation, so conflicts need to be managed carefully. Where conflicts of interests unavoidably arise, they need to be properly and effectively managed. In practice, many trustees deal with managing conflicts of interest on a regular basis.

⁶⁰ Further information is set out in the Commission's *Guide to Conflicts of Interest for Charity Trustees*.

101. Holding or expressing strongly controversial or partisan views on a particular issue which is of detriment to and compromises the charity's integrity, purposes or activities may make an individual unsuitable to act as a trustee of that charity. This is regardless of whether those views are held or expressed in a personal capacity. Those views may be irreconcilable with that individual exercising their objective judgement in the interests of their charity. If publicly contentious, such views may also irreparably interfere with that person's ability to properly manage the potential harm to public confidence in their charity, and create risks to the charity's operations. In particular it may undermine the charity's ability to deliver to its beneficiaries.
102. Furthermore, trustees must also ensure that their conduct in their personal capacity does not impact negatively upon their charity's reputation. To do so may breach their duty as trustees to safeguard their charity from undue risk⁶¹. Any personal associations between a trustee and serious criminal activity such as terrorism would have a significant negative effect on public confidence in their ability to discharge their responsibilities as a charity trustees.

Regulatory concerns relating to the Charity

103. The material examined by the Inquiry included allegations that Dr Mustafa was associated with Hamas, by virtue of his meetings with senior Hamas figures and making public expressions of support for the Second Intifada, and through his work for the Union for Good. Although these meetings and his work for the Union for Good were not carried out in Dr Mustafa's capacity as a trustee of the Charity, the Inquiry looked at whether his conduct was in breach of his duties as a trustee or otherwise put the Charity's assets or reputation at risk.

Dr Mustafa acting in his personal capacity

Meetings with alleged Hamas figures

104. Whilst visiting Yemen in 2002 Dr Mustafa met with Sheikh Mohammed Moyad and Dr Mohammed Siam. The Panorama material described these two individuals as: *'senior members of Hamas'* but did not identify whether they were allegedly members of its political or military wing.
105. Dr Mustafa told the Inquiry that at the time of meeting them, Dr Siam *'was not a member of the Hamas organisation'* and Sheikh Moyad was not *'suspected at that time of involvement in illegal activity or terrorist crimes either in his own country or abroad.'* Dr Mustafa also informed the Inquiry that neither of the men, nor the organisations they represented, nor Hamas, was designated as a terrorist organisation at the time. The Inquiry noted that whilst Hamas in its entirety was not designated as a terrorist entity until 15 September 2003, the Hamas Izz al-Din al-Qassem Brigades were in fact proscribed as a terrorist organisation in 2001.
106. The trustees stated that they were *'confident that Dr Mustafa has at all times kept them aware of its activities⁶² and work on behalf of Interpal. If he has met any individuals at meetings or conferences with relevance to the work of Interpal, then he will on occasion mention them.'*

⁶¹ Further information is available in the Commission's publication *The Essential Trustee: what you need to know*.

⁶² The Inquiry considers *'its activities'* refers to the activities of Dr Mustafa.

Finding related to meetings with alleged Hamas figures

107. The Inquiry found no evidence to suggest that Dr Mustafa's meetings with Sheikh Moyad and Dr Siam had impacted on his conduct as a trustee of the Charity.

Reference to 'Sheikh of the Mujahideen'

108. During a broadcast on Al Jazeera in 2001 Dr Mustafa called Sheikh al-Qaradawi⁶³ the '*Sheikh of the Mujahideen*'. Dr Mustafa told the Inquiry that he was speaking in his personal capacity at the time. The word '*Mujahideen*' has been given different interpretations. It can mean someone who is engaging in a spiritual or social struggle. However, in modern times it has also been given a different interpretation by its association with Afghan fighters in conflict with the Soviet Union in the 1980s. More recently, it has been adopted by some political commentators as a word associated with the Taliban and with militant Islamists⁶⁴. The Inquiry acknowledged that this definition was one of a range of potential interpretations of Dr Mustafa's words.

Finding related to reference to 'Sheikh of the Mujahideen'

109. The incident took place a number of years ago and was the only such example brought to the Inquiry's attention. Although trustees should exercise caution when using terms that are open to controversial political interpretations, the Inquiry makes no findings on this allegation.

Dr Mustafa acting as General Secretary of the Union for Good

110. Prior to his role as General Secretary, Dr Mustafa was the Executive Director of the Union for Good. One of the responsibilities he held in that role was for: '*the effective implementation of projects and to ensure that they were in line with international regulatory specifications.*' Dr Mustafa described his main responsibility when he became General Secretary of the Union for Good as: '*to nurture and develop relationships within the coalition.*'
111. The Inquiry questioned whether Dr Mustafa's roles as Managing Trustee of the Charity and General Secretary of the Union for Good compromised his ability to act solely in the interests of the Charity and created a conflict of interest⁶⁵ which a trustee should avoid. It noted that within the Charity Dr Mustafa was described as the Compliance Officer, with responsibility for ensuring the Charity complied with its legal requirements and due diligence in the distribution of funds. Both Dr Mustafa and the other trustees replied that cooperating with other organisations working in the same field is within the Charity's purposes. Dr Mustafa also explained that he did not think his two roles caused any conflict of interest, but were in fact: '*mutually beneficial.*'
112. Towards the end of the Inquiry, the trustees acknowledged that Dr Mustafa's two roles did create the possibility of a conflict of interest, and that as a result Dr Mustafa ceased being the Charity's representative to the Union for Good when he became its General Secretary. The trustees did not, however, give any indication that they managed the possible conflict of interest prior to this, when he was its Executive Director. The trustees also did not acknowledge that any possible conflict of interest remained when he continued to be both a trustee of the Charity and the General Secretary of the Union for Good.

⁶³ The President of the Union for Good.

⁶⁴ As an example of the different interpretations that can be given to the word '*Mujahideen*', the Inquiry noted that in the same Al Jazeera broadcast, Sheikh al-Qaradawi described the Mujahideen as: '*burning with longing for Jihad.*'

⁶⁵ Further information on conflicts of interest is available in the Commission's guidance *A Guide to Conflicts of Interest for Charity Trustees*.

Finding related to Dr Mustafa's role in the Union for Good

113. Given the conclusion in issue 2 above⁶⁶, particularly the presence of designated entities amongst the Union for Good's membership, Dr Mustafa's senior role in both organisations meant he could not act solely in the interests of the Charity in relation to arrangements with the Union for Good. His dual role was problematic because it increased the risk to the Charity in being associated with an organisation that had designated entities amongst its members.
114. The trustees' view was that they are able to manage the conflict of interest that arises from Dr Mustafa's dual roles. However, the Inquiry disagrees.

Conclusion

Concerns about Dr Mustafa's suitability to act in the capacity of trustee of the Charity were not substantiated as the evidence before the Inquiry did not indicate links between Dr Mustafa and terrorist activities.

Given the conclusions drawn by the Inquiry regarding the Union for Good, Dr Mustafa cannot properly discharge his responsibilities to the Charity whilst he remains both a trustee of the Charity and the General Secretary of the Union for Good.

Issue 4: Whether the trustees were fulfilling their legal duties and responsibilities, in particular by ensuring that the Charity and its assets were protected from any association with terrorist or inappropriate political activities

General context and regulatory principles

115. When they take up their role, trustees accept ultimate responsibility for the general control and management of the administration of their charity. All charities must operate within the law, including international humanitarian law which emphasises the duty of governments and the international community to provide assistance and protect civilian populations in times of armed conflict and other natural or man-made disaster situations. The alleviation of suffering, with aid provided on the basis of need and without discrimination of any kind, is the foundation of humanitarian assistance.
116. Trustees accept a range of duties and responsibilities under charity law, including the duty to ensure that their charity does not breach any of the requirements set out in its governing document, to use charitable assets reasonably and only in furtherance of their charity's objects, and to avoid undertaking activities that might place their charity's assets or reputation at undue risk⁶⁷.
117. When operating overseas, charities may work through appropriate intermediaries: providing grants to local partners to fund projects or for them to be distributed on the ground can be an effective way of distributing funds, particularly in regions where access and movement is restricted⁶⁸.

⁶⁶ See paragraph 20.

⁶⁷ Further information is available in the Commission's publication *The Essential Trustee: what you need to know*.

⁶⁸ Further information is set out in the Commission's guidance *Charities Working Internationally*.

118. When choosing intermediaries to work with, trustees must conduct adequate due diligence checks on prospective partners⁶⁹, in order to discharge their legal duties and responsibilities, put in place an agreement setting out the proper use of the charity's funds, and implement proper ongoing monitoring of how they use these funds. These procedures must satisfy trustees that:
- a. the activities they intend to carry out through their partners are in furtherance of their charity's purposes;
 - b. their partners are and continue to be appropriate for their charity to work with; and
 - c. they have put in place adequate monitoring procedures to ensure their charity's funds are being properly applied. This includes:
 - i. ensuring that their partners can and will apply their funds for proper charitable purposes, such as by selecting their beneficiaries solely on the basis of charitable need; and
 - ii. having an audit trail to demonstrate that the funds reached their partner and the end beneficiaries.
119. All elements of these procedures must be based on an assessment of the risks arising in the charity's area of work. For example, terrorist organisations are known to operate in the Occupied Palestinian Territories, and it is a politicised and unstable region. Trustees of charities working there must take steps to mitigate the risks resulting from these factors, and demonstrate a greater duty of care than in more stable regions. This must be an ongoing assessment as the risks in an area may change⁷⁰.

Regulatory concerns relating to the Charity

120. As a result of the work of the Inquiry, the question arose as to whether the trustees were fulfilling their legal duties and responsibilities when managing the Charity; in particular whether the trustees were exercising adequate due diligence in the selection of local partners, and the monitoring and control exercised over the use of their funds, in order to be satisfied that each local partner was an appropriate recipient of the Charity's funds. As explained above⁷¹, whether the partner concerned received the Charity's funds was not at issue: the Inquiry confirmed that the Charity maintained comprehensive financial audit trails, including a personal acknowledgement from each orphan supported by the Charity. The Inquiry noted this as a good example of practical due diligence steps.
121. When reviewing whether the trustees had been fulfilling their legal duties and responsibilities, the Inquiry took into account the Charity's methods of operating through local partners, and the difficult local conditions it faced. In particular, the trustees told the Inquiry that they were unable to open field offices in the region because the Charity had been banned by the Israeli Government.
122. In particular, the Inquiry looked at:
- a. advice given to the Charity by the Commission in 2003;
 - b. the selection and monitoring processes used by the Charity; and
 - c. the potential for bias in the distribution of aid.

⁶⁹ A partner would be any individual or organisation with whom a charity is associated for the purposes of carrying out an activity.

⁷⁰ Further guidance is available in *Charities Working Internationally* and *Charities and Risk Management*, available on our website.

⁷¹ See paragraph 30.

Advice given to the Charity by the Commission in 2003

123. Despite the specific focus of the 2003 inquiry⁷², regulatory advice⁷³ was given to the Charity about its activities in the Occupied Palestinian Territories, including advice that it should/must:
- a. implement procedures that would allow for independent verification of the work done by the Charity's zakat committee partners; and
 - b. seek clarification from these local partners on their procedures for selecting beneficiaries.
124. In response, in November 2003 the Charity confirmed that it:
- a. sent delegations to visit the Charity's partners and projects to check on their implementation and report back to the Charity;
 - b. used international NGOs to verify the distribution of the Charity's funds and the implementation of their projects; and
 - c. proposed a new process, which involved sending a questionnaire to all its local partners seeking clarification on their procedures for selecting beneficiaries. This Inquiry established that this was not taken forward in 2003, and the first such questionnaires were actually sent in 2006/07 after the start of this Inquiry.
125. During the Inquiry, the Charity stated that three delegations had been sent to their projects in the Occupied Palestinian Territories between November 2003 and March 2007. According to the minutes of trustee meetings from the time, these delegations were part of a programme called '*Bearing Witness*', the aims of which did not include monitoring the use of the Charity's funds. A report covering two of the delegations did not provide any detail or analysis of how the Charity's funds had been used by its local partners. Its focus was on raising awareness of humanitarian need in the Occupied Palestinian Territories which was legitimate work for the Charity, but served a different purpose from monitoring or reporting on the use of the Charity's funds. The Inquiry later established that the Charity had organised other delegations comprising members of its staff and trustees.
126. The Charity gave the Inquiry the names of three organisations with which it worked to monitor its zakat partners, which included the Union for Good and one of its members.

Findings related to the 2003 advice

127. Although the Inquiry took into account the significant challenges of working in the Occupied Palestinian Territories, the Inquiry found that the procedures put forward by the Charity in 2003 as methods of obtaining independent verification of the work done by its zakat committee partners were not fully implemented and did not achieve this aim.
128. The Charity did not implement its plan to send questionnaires to all its partners to seek clarification on their procedures for selecting beneficiaries until this Inquiry commenced.
129. The delegations were not an effective monitoring method. Those sent as part of the Bearing Witness programme served a different, albeit beneficial purpose, while the details supplied regarding the internal delegations did not demonstrate that they provided adequate detailed monitoring of the Charity's partners and projects.

⁷² See paragraph 17.

⁷³ See paragraph 19.

130. The Charity was working with other NGOs to verify the distribution of its funds, but close links between the Charity and the Union for Good meant this could not be considered independent verification of the work done by the Charity's partners.
131. The trustees disagreed with this finding, stating that they always looked for improvements in the Charity's procedures, and sought to implement the Commission's guidance now and in the future. They disagreed that they were under any expectation to implement the advice as the Commission had in their view only suggested they could improve their procedures in these ways. However, the Inquiry noted that the trustees had, in November 2003, confirmed the steps they said they either did or would take and therefore had a reasonable expectation that these would be done.

Conclusions

The Inquiry concluded that the trustees did not give sufficient consideration to the 2003 advice. As a result, the trustees continued without adequate independent verification of the work done by the Charity's partners, and insufficient clarification regarding how those partners ensured they applied the Charity's funds solely on the basis of charitable need.

The Charity's failure to deliver on the new processes in a timely manner that they had confirmed to the Commission as regulator in 2003 is a matter of concern and, given the region in which the Charity works and the media and other concerns that have been raised about the Charity, has contributed significantly to the difficulties it currently faces.

The selection and monitoring processes used by the Charity

132. In order to assess whether the trustees had established and implemented adequate procedures, the Inquiry sought details of how the Charity selected and monitored its local partners.
133. The Charity outlined its procedures as follows:
- The Charity's prospective partners were required to complete and submit a Partner Profile giving information about their management, finances and activities. The profile also requested '*details as to how the organisation ensures that the end use of the funds are for charitable purposes only*'. However, the trustees could give no explanation, either generally or through specific examples, of how they decided whether the responses given by a prospective partner were sufficient.
 - The Charity's partners were required to sign and adhere to a Funding Agreement committing them to use the Charity's funds for charitable purposes only and setting out the sanctions that may apply should they not do so. The trustees could give no indication of how they monitored whether partners complied with the Funding Agreement, or any examples of when they would consider it necessary to take steps to check compliance. It appeared to be a paper exercise.
 - Ongoing projects funded by the Charity supplied regular feedback reports, following which the Charity completed Project Evaluation Forms. However, these forms were not completed properly. In particular, a section requesting the justification for approving continued funding by the Charity was frequently left blank or inadequately filled in. When this was put to the Charity, it told the Inquiry that the form was being reviewed⁷⁴.

⁷⁴ In addition to these three forms, the Charity also provided copies of its Project Proposal Summary, Project Feedback Report and Partnership Protocol.

- d. All partners were required to certify that they were registered with the relevant local regulatory authority, although the Charity did maintain the discretion to work with non-registered organisations.
 - e. The Inquiry was told that prospective partners were checked against the UK's consolidated list of designated persons, entities and groups. Further details are given in paragraphs 136-142.
 - f. The Charity relied heavily upon the oversight of the local regulatory regime and of local law enforcement bodies to be satisfied that their zakat committee partners were not misapplying the Charity's funds.
 - i. The trustees explained that none of the Charity's partners had action taken against them by either the Palestinian National Authority or the Israeli Government. However, the Inquiry noted that the trustees' assertion was incorrect: a significant number of the Charity's partners had in fact been declared "terrorist organisations" by the Israeli Government. The trustees later clarified for the Inquiry that what they meant was that *'despite being declared illegal by Israel, it left them to operate.'*
 - ii. In March 2007 the trustees explained that the Charity's partners operated under the *'very strict regulations'* of the Palestinian National Authority, which were: *'in place to ensure that any person or persons involved in illegal activity will be prevented from becoming an official or leading member of a charitable organisation. To the best of the trustees' knowledge, the establishment of a branch of such a charity in order... to cover up the transfer of funds to Hamas... would not be possible under PNA legislation.'* However, the regulations supplied by the trustees to support this claim specified no measures that could be taken to prevent charitable organisations from supporting or promoting any terrorist or political organisations. Furthermore, during the interviews conducted by the Inquiry in December 2007⁷⁵, the two trustees confirmed that they were not aware of the extent of monitoring or regulation carried out in the Occupied Palestinian Territories. Later in the Inquiry, the trustees confirmed that they did know *'very well the conditions and facts that are present in the areas of its operation.'*
 - g. The Charity relied upon published research into the general benefits of the zakat committee structure in delivering social welfare⁷⁶. This may have been significant to the Charity's assessment of the best way to deliver aid in the Occupied Palestinian Territories, but the published research was not suitable to be used as a selection and monitoring tool to assess whether a specific zakat committee was an appropriate partner for the Charity and complied with its Funding Agreement.
134. In addition to the procedures described to the Inquiry, the Charity's accounts for the financial year ending 31 December 2005 stated that the Charity had *'initiated new processes of validation, appraisal and assessment in close liaison with regional regulatory bodies such as the British Consul in Jerusalem and UNDP [United Nations Development Programme]'*.

⁷⁵ See paragraph 34.

⁷⁶ The trustees brought two reports to the Inquiry's attention:

- The International Crisis Group Middle East Report No. 12 (2 April 2003) *Islamic Social Welfarism in the Occupied Palestinian Territories*
- Benthall, J (2008) *The Palestinian Zakat Committees 1993-2007 and their Contested Interpretations*

135. In March 2007 the Inquiry requested details of these new processes and was advised by the Charity that they had not yet been initiated. The trustees supplied copies of email correspondence with UNDP from December 2004 which ended with UNDP stating that they would proceed in co-operation with the Charity and left the matter with them. According to the trustees, UNDP then withdrew their offer of co-operation.

Particular monitoring issues related to designated individuals and entities

136. As explained above⁷⁷, the Inquiry was told that prospective partners were checked against the UK's consolidated list of designated persons, entities and groups.

137. In order to fulfill their legal duty to act in their charity's interests, trustees working with designated individuals and entities must be satisfied that the potential serious harm to public confidence and other risks caused by associating with them are properly assessed and managed. This must include a rigorous assessment of whether it is in the interests of the charity to have any dealings with them at all. In addition, trustees must also put in place robust procedures to ensure they do not inadvertently commit a criminal offence under the legislation relating to designation⁷⁸.

138. In March 2007, the Charity told the Inquiry that they had ceased relations with at least 11 organisations because: *'these organisations were either forced to close down or they were designated as "terrorist organisations."*

139. However, information given to the Inquiry by the trustees showed the Charity continued to work with an organisation called the 'Al Aqsa Foundation of South Africa'. The Charity signed a partnership agreement with this organisation on 17 May 2003. The Inquiry noted that an entity known as the 'Al Aqsa Foundation' was designated in the UK as a terrorist entity on 29 May 2003⁷⁹. It had branches in a number of countries, including South Africa. The addresses of the Charity's partner and the designated entity were identical, including operating from the same PO Box.

140. The Inquiry requested details of how the trustees had addressed the risk that their partner was in fact the designated entity. In response, the trustees confirmed that they had not considered this issue at the time. However, they could make the following points:

- a. The designated entity was known as the 'Al Aqsa International Foundation', not the 'Al Aqsa Foundation of South Africa'.
- b. The Charity's partner was not a branch of an international organisation, but the designated entity was.
- c. The 'Al Aqsa International Foundation' had dissolved. The Charity supplied a copy of a 'Resolution of the board of trustees of one Al-Aqsa International Foundation' to that effect.
- d. The trustees had personal knowledge of both the 'Al Aqsa International Foundation' and the 'Al Aqsa Foundation of South Africa'.
- e. The Charity's due diligence processes had demonstrated that the two organisations had different trustees, employees and bank accounts.

⁷⁷ See paragraph 133(e).

⁷⁸ See Annex 1.

⁷⁹ For further information please see the Financial Sanctions section on the Treasury website at www.hm-treasury.gov.uk.

141. After reviewing the trustees' statements and supporting evidence, the Inquiry noted the following:
- a. The Bank of England Notice of 29 May 2003 confirming the designation gave the entity's name as the 'Al Aqsa Foundation AKA the Al Aqsa International Foundation⁸⁰'.
 - b. The trustees offered no explanation of how they knew that their partner was not a branch of an international organisation, or any evidence to support this assertion.
 - c. The trustees gave no details of their personal knowledge of the Al Aqsa International Foundation or the Al Aqsa Foundation of South Africa, where this knowledge came from or how it impacted on their decision to enter into a partnership with the Al Aqsa Foundation of South Africa.
 - d. When asked to produce an explanation or supporting documentation to demonstrate how the Charity's due diligence processes had clarified there were two organisations, the Charity said they were unable to do so.
142. Finally, the Inquiry noted the trustees' statement that *'there are no specific further minutes of meetings or "risk assessments"'* from 2003 to demonstrate whether and how the trustees ensured that their partner was not the designated entity.

Findings related to selection and monitoring processes, including relationships with designated individuals and entities

143. The Inquiry found that the trustees could not explain, either generally or with specific examples, how the information they gathered about their partners was used to determine whether it was appropriate for the Charity to support an organisation or continue funding it.
144. The Charity could not demonstrate that it took sufficient steps to ensure that its partners complied with the Funding Agreement, or that procedures they used to monitor the work of their partners had any practical worth to the Charity as a means of protecting against the misuse of its funds. Examples given of methods of monitoring the use of the Charity's funds (such as published research and awareness-raising delegations) were not directed to that purpose. The Inquiry found that it would be reasonable to expect the trustees to apply the same care in relation to the selection and monitoring of their partners as shown in their financial audit procedures.
145. The Inquiry agreed that it was useful and appropriate to place a degree of reliance on the Palestinian National Authority and local law enforcement bodies to inform and assist the trustees' decision-making. However, during the course of the Inquiry the trustees, when questioned on the topic, stated that they did not know the details of how these regulatory regimes operated. After the trustees had sight of the Inquiry's draft findings, the trustees submitted their explanation of the regulatory regime.
146. The Inquiry found that in 2003 the trustees had failed to identify the potential for one of their partners to be a designated entity. The trustees asserted their partner was not designated without any further supporting or documentary evidence.
147. The Inquiry found there was an ongoing risk that the Al Aqsa Foundation of South Africa may be a designated entity.

⁸⁰ A number of other aliases were also given.

Conclusion

The Occupied Palestinian Territories is a region where designated entities and proscribed terrorist organisations are known to operate. While recognising the challenges for the trustees posed by this environment, the Charity's procedures should have been sufficiently robust to manage the risks involved.

The Inquiry concluded that the trustees had not adequately fulfilled their duties and responsibilities in respect of their due diligence and monitoring procedures for their partners. The procedures the trustees put in place went some way towards mitigating the risks but they were not, in the circumstances, sufficient. Where procedures were in place, for instance those in relation to Funding Agreements and designated entities, they were not fully implemented.

The potential for bias in the distribution of aid

148. The material examined by the Inquiry included claims that the distribution of aid by the local partners funded by the Charity was not on the basis of charitable need, but was instead targeted at the families of suicide bombers. This aid was allegedly aimed at providing financial security and social support to the families of those willing to engage in terrorist activity.
149. It is legitimate for charities to provide aid to people in need of humanitarian relief who happen to include children or others whose families have been involved in terrorist activity. However, it is not acceptable for any charity to limit its class of beneficiaries using such a criterion, or deliberately to select and support families who have engaged in terrorist activity. This may indicate that the charity has pre-selected its beneficiaries rather than conducting an assessment of their needs, or that the underlying purpose of the charity is indirectly to support the terrorist activities of the child's family.
150. Within the material it examined, the Inquiry identified a document said to be created by the Al-Tadhuman Charitable Society (a zakat committee partner of the Charity) giving a list of children it supported. Each child was described as coming from the family of a 'martyr' and details were given of the event which led to the death, wounding or imprisonment of their parent(s). The Inquiry noted that the term 'martyr' is used in the Occupied Palestinian Territories to describe an individual harmed, killed or imprisoned as a result of the conflict. In addition, that term is also used to describe suicide bombers. The Charity should take care to establish the basis upon which the Charity's partners in the region are selecting beneficiaries, especially if they use such a term in their selection criteria.
151. However, the Inquiry could not verify to its satisfaction the provenance or accuracy of this document.

Findings related to the potential for bias in the distribution of aid

152. The claim that there was a bias in the distribution of aid using the Charity's funds towards the families of martyrs was unfounded, on the basis of the material examined by the Inquiry.

Conclusions

The Inquiry concluded that:

- The allegations of bias in the distribution of aid were unfounded on the basis of the material examined by the Inquiry.
- However, they added to the risks the Charity had to manage when working in the Occupied Palestinian Territories. To mitigate these risks in the future, the Charity should publish guidelines setting out the criteria it applies in selecting charitable beneficiaries. The Charity should also ensure that their local partners can demonstrate to them that they only use the Charity's funds to support people who fall within those criteria.

Summary of conclusions

Issue 1: Whether particular local partners funded by the Charity were promoting the ideology or the activities of terrorist organisation(s) and therefore would be inappropriate partners for the Charity (paragraphs 49-68)

153. The Inquiry could not verify the material suggesting that certain local partners funded by the Charity may be promoting terrorist ideology or activities, so the material was of insufficient evidential value to support these allegations.
154. While accepting the difficulties the trustees faced, and acknowledging the action they did take, the Inquiry concluded, in the circumstances, that they did not take sufficiently rigorous steps to investigate the allegations about their local partners. The trustees should have acted with greater diligence to satisfy themselves that the local partners concerned were not directly or indirectly supporting the promotion of terrorist ideology or activities.

Issue 2: Whether the Charity's membership of the Union for Good was appropriate (paragraphs 69-98)

155. Given the very close association between the Charity and the Union for Good, the Inquiry concluded that the Charity's continued membership of the Union for Good is not appropriate, for the following reasons:
- Designated entities have been amongst the Union for Good's membership. There is a lack of certainty as to whether this is still the case.
 - The involvement of at least one designated entity in many of the projects coordinated through the Union for Good and supported by the Charity allowed a link to be made between the Charity and those designated entities.
 - The risks to the Charity's reputation arising through statements made by the President of the Union for Good at the time of its formation, which promoted violence as a legitimate form of resistance in support of the Palestinian cause.
 - The trustees did not adequately manage the Charity's relationship with the Union for Good, including the absence of any formal written agreements or any other formal arrangements between them.
 - In future, given the lack of clarity surrounding the constitution, organisational structure and membership of the Union for Good, the trustees would not be able to satisfy themselves that they have discharged their legal duties and responsibilities to the Charity.

156. Therefore, the Charity must dissociate itself from membership of the Union for Good.

Issue 3: Whether one of the trustees, Dr Essam Mustafa, had any links to terrorist organisations or undertook activities which might make him unsuitable to be a trustee of the Charity (paragraphs 99-114)

157. Concerns about Dr Mustafa's suitability to act in the capacity of trustee of the Charity were not substantiated as the evidence before the Inquiry did not indicate links between Dr Mustafa and terrorist activities.

158. Given the conclusions drawn by the Inquiry regarding the Union for Good, Dr Mustafa cannot properly discharge his responsibilities to the Charity whilst he remains both a trustee of the Charity and the General Secretary of the Union for Good.

Issue 4: Whether the trustees were fulfilling their legal duties and responsibilities, in particular by ensuring that the Charity and its assets were protected from any association with terrorist or inappropriate political activities (paragraphs 115-152)

159. The Inquiry concluded that the trustees did not give sufficient consideration to the 2003 advice. As a result, the trustees continued without adequate independent verification of the work done by the Charity's partners, and insufficient clarification regarding how those partners ensured they applied the Charity's funds solely on the basis of charitable need.

160. The Charity's failure to deliver on the new processes in a timely manner that they had confirmed to the Commission as regulator in 2003 is a matter of concern and, given the region in which the Charity works and the media and other concerns that have been raised about the Charity, has contributed significantly to the difficulties it currently faces.

161. The Occupied Palestinian Territories is a region where designated entities and proscribed terrorist organisations are known to operate. While recognising the challenges for the trustees posed by this environment, the Charity's procedures should have been sufficiently robust to manage the risks involved.

162. The Inquiry concluded that the trustees had not adequately fulfilled their duties and responsibilities in respect of their due diligence and monitoring procedures for their partners. The procedures the trustees put in place went some way towards mitigating the risks but they were not, in the circumstances, sufficient. Where procedures were in place, for instance those in relation to Funding Agreements and designated entities, they were not fully implemented.

163. The Inquiry concluded that:

- The allegations of bias in the distribution of aid were unfounded on the basis of the material examined by the Inquiry.
- However, they added to the risks the Charity had to manage when working in the Occupied Palestinian Territories. To mitigate these risks in the future, the Charity should publish guidelines setting out the criteria it applies in selecting beneficiaries. The Charity should also ensure that their local partners can demonstrate to them that they only use the Charity's funds to support people who fall within those criteria.

Overall conclusion

Charities providing humanitarian aid in high-risk situations, such as conflict and other complex emergencies, make a vital contribution to these communities and their work supports people in desperate need. Working in areas facing such situations brings with it difficult risks and challenges and the need for finely balanced judgements by trustees.

Interpal works in the Occupied Palestinian Territories, where there is considerable instability and organisations proscribed and designated by the UK government operate. As a result the trustees face particular challenges and should operate robust procedures commensurate with the risks and practical difficulties involved.

In summary, the Commission noted that the Inquiry had confirmed that the Charity had maintained clear financial audit trails in their delivery of aid for humanitarian purposes.

However:

- The trustees had not taken sufficiently rigorous steps to investigate the allegations about some of their local partners and did not put in place adequate due diligence and monitoring procedures to be satisfied that these partners were not promoting terrorist ideologies or activities (Paragraphs 49-68).
- The Charity's close association with the Union for Good cannot continue given the potential for linkage to be made between the Charity and designated entities through membership of, and association with, the Union for Good (Paragraphs 69-98).
- Given the position with the Union for Good, Dr. Mustafa cannot continue both as trustee of the Charity and General Secretary of the Union for Good (Paragraphs 99-114).
- The due diligence and monitoring procedures the trustees put in place went some way to mitigating risks faced by the Charity. However, in the circumstances, these were not sufficient nor fully implemented. (Paragraphs 115-147).
- In order to deal with any allegations of bias relating to the distribution of aid to the Charity's beneficiaries, the Charity should produce and publish guidelines setting out criteria which their local partners must apply in selecting beneficiaries and ensure that these are complied with. (Paragraphs 148-152).

Steps now required to be taken by the Charity's trustees are set out below.

Regulatory action taken and actions required of the trustees

164. On 22 January 2007 the Commission ordered, under section 9 of the Act, the Charity's banks to provide copies of the Charity's bank statements. Further orders were made in February 2008 asking for additional statements.
165. On 23 February 2007 and 20 May 2008 the Commission directed the Charity and its representatives to respond to its questions, using its powers under section 8 of the Act. This was necessary because the Charity missed extended deadlines for specific requests for information as outlined in paragraph 35.
166. The Commission referred its findings in relation to the Al Aqsa Foundation of South Africa (see paragraph 147 of this report) to the Asset Freezing Unit at HM Treasury.
167. On 26 February 2009 the Commission provided the Charity with its conclusions from its Inquiry.
168. On 26 February 2009 the Commission made an Order under section 19A of the Act directing the trustees to:
 - a. Carry out a review of the trustees' due diligence and monitoring procedures.
 - b. End the Charity's membership of, and in all other respects dissociate from, the Union for Good, including ceasing to provide it with any facilities or other resources.
 - c. Ensure that no trustee of the Charity holds any office or has any role whatsoever within the Union for Good.
169. The Order included a timetable for completing these actions.

Impact of Commission intervention

170. The Inquiry has set out its findings and conclusions about the issues being examined, based on the evidence before it. As a result, it has had the following impact.
171. The Charity will conduct, as a result of the Commission's direction, proper due diligence on its partners to be satisfied, and to satisfy donors, the Commission as regulator and the general public, that the Charity is using appropriate local partners and that its funds, assets and reputation are safeguarded. In particular:
- a. where concerns are raised about the Charity's local partners in the Occupied Palestinian Territories or elsewhere, the trustees are aware of their duties and responsibilities to the Charity. Where allegations of a serious nature are made, particularly relating to links to violence or terrorism, the trustees will take thorough and rigorous steps to ensure that their partners are appropriate for the Charity to use; and
 - b. the Charity's due diligence procedures will be sufficiently robust for dealing with the challenges of working in the Occupied Palestinian Territories, and will be fully implemented. The risks of charitable funds not being properly applied, or of public confidence in the Charity being harmed, will therefore be reduced.
172. The Inquiry has examined the Charity's relationship with the Union for Good. As a result, the Charity will no longer be a member of this organisation. The risks to the Charity arising from membership will therefore be mitigated.
173. The Charity has faced concerns being raised about its activities since it was first established. An important defence against concerns is to be able to demonstrate that the trustees have adequate safeguards in place to protect the Charity's interests, and to deal properly with these concerns. In doing so, they will be helping to maintain public trust and confidence in charity. As a result of acting on this Inquiry, the trustees will be better able to demonstrate that they are:
- a. fully implementing their due diligence procedures, including those commitments made to the Commission as regulator; and
 - b. satisfied that the Charity's funds, assets and reputation are not at undue risk.
174. This Inquiry recognised and highlighted the challenges faced by charities operating in the Occupied Palestinian Territories. It has re-emphasised that charities working in the Occupied Palestinian Territories must be transparent and accountable for their activities and for funds sent to the region, and must rigorously monitor the use of their funds commensurate with the risks and practical difficulties involved. The issues for the wider sector arising from this Inquiry are set out below.

Resources applied

175. The Commission adopted a multi-disciplinary team working approach to this case both before and during the Inquiry. The team consisted of investigators and lawyers. The Commission, as a non-prosecuting body, does not record the full costs of each inquiry. However, due to the scope and complexity of the case the resources applied were significantly greater than average. In addition, the Commission paid £4,983 to obtain translations of documents written in Arabic.

Issues for the wider sector

176. The purpose of this section is to highlight the broader issues arising from the Inquiry that have relevance for other charities operating in the Occupied Palestinian Territories or in similarly challenging contexts. The issues raised below are not intended as further comment on the Charity in addition to the findings and conclusions set out the earlier sections of this report, but because of their wider applicability and interest to the charity sector.
177. Charities frequently undertake work around the world in complex and often chronic emergency situations, whether caused by natural disasters or as a result of political and social unrest or armed conflict. There may be a collapse of infrastructure, and/or a breakdown of trust within and between political authorities and civilian populations. A charity's staff and volunteers may often work where there is real danger and a risk of physical harm as they attempt to deliver vital assistance to alleviate human suffering and distress. Charities make a vital contribution to supporting communities in desperate need and the value and impact of their work cannot be overstated.
178. The Commission fully recognises that charities operating in the Occupied Palestinian Territories are likely to come into proximity with political or militant organisations. In Gaza, the political and administrative activity of those organisations is so pervasive and deeply ingrained in daily life that it is inevitable that most individuals and organisations will have some degree of contact and interface with them. This means that trustees need to be even more vigilant in assessing the risks when working there. Trustees cannot base their decisions on an automatic acceptance that all organisations, and those they work with, have an association with Hamas or other political or militant entities. It is the trustees' responsibility, and theirs alone, to properly assess and manage risks to ensure that a charity's premises, assets, volunteers or other goods cannot be used for activities that may, or appear to, support or condone terrorist activities. They should take all necessary steps to ensure that their activities could not reasonably be misinterpreted.
179. The long-running complex conflict in the Occupied Palestinian Territories presents an extremely challenging operating environment for charities. The volatile and insecure situation requires charities to be highly adaptive and quick to respond to the changing and often acute humanitarian needs of communities and families, while also working to protect, develop and strengthen the provision of education, health and welfare and other services, and support longer-term poverty reduction efforts, often in partnership with other organisations.
180. The risks of working in such a context are likely to fluctuate continually. In times of intense humanitarian crisis, where needs are acute, the requirement to provide immediate and effective emergency assistance will be paramount. This will necessarily mean that the extent of due diligence assessment needs to be proportionate to the urgency of delivering rapid relief. However, in the aftermath of an acute emergency phase when the need to provide relief diminishes, trustees should reassess the risks and undertake thorough due diligence work to manage those risks properly.

181. In such long-running complex emergencies, many charities put in place their own emergency preparedness plans, often drawn up and practiced with established partner organisations on the ground, to help respond as rapidly and effectively as possible to quick-onset humanitarian crises. This allows for adequate and thorough due diligence work to be carried out and operating agreements to be formed between partners, clarifying their respective roles and responsibilities, in advance of the occurrence of crisis situations.
182. Trustees should take appropriate steps to ensure:
- a. the activities they intend to carry out are in furtherance of their charity's purposes;
 - b. their partners are, and continue to be, appropriate for the charity to work with;
 - c. their partners can and will apply their funds for proper charitable purposes; and
 - d. their charity's funds reach the partners and the intended beneficiaries.
183. Humanitarian assistance cannot be denied to people because they support, actively or otherwise, or are sympathetic towards the work or aims of a political body such as Hamas. However, assistance cannot be given solely on the basis of a person's support or sympathy for Hamas.

Allegations of terrorist abuse within charities

184. Proven instances of terrorist involvement⁸¹ in and abuse of charities are extremely rare but are completely unacceptable. It is the responsibility of charity trustees to safeguard their charity from the risk of abuse, including terrorist abuse. The Commission will support them to do this, and will also support charities carrying out legitimate and vital humanitarian and other work, within the law.
185. The Commission expects trustees to be vigilant to ensure that a charity's premises, assets, volunteers or other goods cannot be used for activities that may, or appear to, support or condone terrorist activities. It also expects trustees to take all necessary steps to minimise the risk that their charity's activities could be misinterpreted as promoting or supporting terrorism by ensuring that they are transparent about the work they do and the rationale behind the trustees' decisions. The Commission holds trustees accountable for ensuring that proper and adequate procedures are put in place and properly implemented to prevent terrorist organisations taking advantage of a charity's status, reputation, facilities or assets.
186. It is particularly important to ensure that the charity is not used to commit any criminal offences under terrorism legislation.
187. In the context of a charity whose purposes are the relief of need, a charity's procedures must ensure that its funds are distributed to its beneficiaries on the basis of charitable need. It may be possible to further limit those benefitting by some other criteria; this will depend on the charity's purposes and policies.

⁸¹ See Annex 1 and footnote 1.

188. In certain circumstances, such as the delivery of food or other aid to a refugee camp, it may be legitimate for a charity to provide aid to all individuals within a group in need that happens to include the children or families of terrorists or those responsible for terrorist activity. In doing so, its trustees must be satisfied that:
- a. the aid furthers the charity's purposes;
 - b. the aid is, in practice, capable of alleviating the need that has been identified;
 - c. the criteria used – by the charity or its partners – when selecting beneficiaries are consistently applied; and
 - d. the charity is not breaking charity, terrorism or other applicable law in providing the aid.
189. Trustees must also ensure that they fulfill any obligations under UK or international law regarding the reporting of suspicions of terrorist or criminal activity.
190. It is not acceptable for a charity to select and support individuals because they are the children or families of terrorists or those responsible for terrorist activity. Such a criterion is not based on charitable need.
191. Targeting funds on the basis of affiliations or connections to a terrorist group, irrespective of whether those in that group are in need, would raise the question of whether the purpose of that support was to indirectly support terrorist activity. It could create an unacceptable association to terrorism, and would breach the trustees' duty to ensure the charity's funds were properly applied.

Acting as a trustee

192. A prospective trustee should consider the general duties and responsibilities of being a trustee. In addition, the needs of individual charities may vary, and the judgements required of a charity trustee can be challenging and finely balanced, with difficult implications to consider. Before making a decision to become a trustee, individuals should ensure they understand what is required of a trustee for that particular charity, and ensure they are prepared to give the commitment and time to fully discharge their duties, even on challenging matters.
193. Trustees are publicly accountable. A charity is entitled to the independent and objective judgment of its trustees, acting solely as trustees. Trustees must ensure that they do not permit any personal associations to interfere inappropriately with their judgement as charity trustees. They should also ensure that their personal interests or conduct do not place them in a position of conflict with their charity's interests.
194. Holding or expressing strongly controversial or partisan views on a particular issue which is relevant to a charity's purposes and activities may make an individual unsuitable to act as a trustee of that charity. This is regardless of whether these views are held and expressed in a personal capacity. Those views may be irreconcilable with that individual exercising their independent judgment in the interests of their charity. The publicly contentious nature of such views may also irreparably damage public confidence in their ability to carry out a public office and in their charity.

Managing risk

195. Charity trustees have a duty of care towards their charity, along with a duty to protect the charity's assets, to use those assets only in furtherance of their charity's purposes and a duty to account for the proper application of their charity's funds. Charity trustees can take risks, however, in order to fulfill their duties, trustees must implement realistic and reasonable risk management strategies to identify and mitigate potential risks to the proper use of their funds.
196. The risks trustees should consider can take a number of forms, including operational, financial, reputational and external risks, and compliance with the law and regulations in the UK or overseas.

Working with partners

197. Charities working overseas must ensure their risk assessment takes account of any relevant circumstances arising in their particular country or region of operation. Specific risks could arise from, for example, any internal conflict or other military action in the country or region, any known terrorist or criminal activity in the area, or working in a remote or sparsely populated area or one with limited infrastructure. There is often a need for humanitarian aid in such regions so when working there charities should consider appropriate risk management strategies, such as minimising the charity's exposure to the risk, implementing new procedures for controlling the distribution of funds, or sharing the risk with others through joint working. At the extreme, where the risks are particularly high, the appropriate decision may be to stop working in that region, either temporarily or permanently.
198. When working overseas, charities often operate through local partners rather than establishing their own delivery infrastructure in their country or region of operation. Working through or with a local partner can be an effective way of delivering significant benefits direct to a local community. It does not, however, alleviate or shift responsibility for ensuring the proper application of the charity's funds by the local partner. That responsibility always remains with the charity trustees, forming part of their duties and responsibilities under charity law. The need to implement risk management strategies therefore remains critical.
199. As part of their due diligence processes, trustees should conduct checks on prospective (and existing) partners to satisfy themselves that their partnership with this organisation would not expose the charity's assets or reputation to undue risk. These processes, which can be described as 'know your partner', may also apply in relevant circumstances to a charity's donors or beneficiaries.
200. Charities should establish their own benchmarks for the extent and quality of the information they require about their local partners to be satisfied that their trustees are acting in accordance with their duty to safeguard their charity's funds. The degree of detail needed by trustees to satisfy themselves on these points should be proportionate to the risks present in the area their charity operates. It may be that different partners require differing levels of oversight and monitoring depending on the length of the charity's relationship with them and the strength of their infrastructure.

201. When charities work in or send funds to regions where terrorist groups are known to operate they must still consider their duty to safeguard the proper application of the charity's funds. The presence of terrorist groups creates a significant risk that trustees must manage. For example, trustees must take adequate steps to ensure that they do not put their charity, its funds or its reputation at risk by failing to take basic steps to check that they do not inadvertently commit a criminal offence in the UK or overseas by working with proscribed or designated organisations.
- a. Prospective partners can be checked against the list of organisations proscribed under the Terrorism Act 2000, which is available on the Home Office website here <http://security.homeoffice.gov.uk/legislation/current-legislation/terrorism-act-2000/proscribed-terrorist-groups>. It is a criminal offence for funds to be made available to proscribed organisations.
 - b. Trustees can also consult the consolidated list which includes individuals and entities designated under the Terrorism (United Nations Measures) Order 2006 or the Al Qaida and Taliban (United Nations Measures) Order 2006. It is a criminal offence to make funds or other economic resources available to designated individuals and entities and working with them risks associating a charity with terrorism. The consolidated list is published on the Treasury website here http://www.hm-treasury.gov.uk/fin_sanctions_index.htm.
 - c. Charities should also be aware of the risk of committing criminal offences under local laws when working overseas, as many countries have their own list of designated or banned terrorist individuals or organisations. Charities should, where applicable, check those lists to inform their decision about with whom to work.
202. If trustees fail to take these basic steps to check their partners they may fail to properly discharge their duty to safeguard their charity. This, in turn, could be evidence of misconduct or mismanagement by the trustees.
203. The following are examples of the type of due diligence processes trustees may want to apply in order to be satisfied that they are properly safeguarding their charity, and that their charity's funds will be used for charitable purposes:
- a. Develop and apply consistent criteria for selecting their local partners, ensuring that they have sufficient knowledge about each prospective partner to make an informed choice. For example, they may look at a partner's track record for delivering projects, consult with other charities that have worked with them, and ensure that they comply with any regulatory requirements in their own country.
 - b. Check their prospective partners against any lists of proscribed and designated organisations which apply in the UK or any other relevant country, particularly the prospective partner's own country.
 - c. Satisfy themselves that their prospective partners are capable of delivering the proper charitable application of their funds. They should take, and require their partner to take, reasonable and adequate steps to mitigate any risks to the proper application of their funds. They should require their partners to demonstrate that their funds are applied on the basis of charitable need, for example by requesting sight of the criteria applied to select beneficiaries.
 - d. Put agreements between their charity and its partners in writing, and specify the funds being made available, the timeframe for delivery of the project and measures of success. The agreement should set out clear requirements for reporting to the charity on progress and financial expenditure. The requirements set out in the agreement should address any risks specific to the region the local partner works in. For example, if normal banking facilities are not

in operation then charities should set out how they will transfer funds.

- e. Conduct risk assessments of potential pitfalls to their project, and draw up contingency plans if appropriate. Such plans might cover, for example, what would happen if a partner proved unreliable and the funding agreement was terminated.
 - f. Draw up robust monitoring processes, write them down and implement them to be satisfied that its funds are adequately protected from abuse, misuse or other loss. These processes should be workable, and all those involved (for example, the trustees, field agents, other NGOs, or other regulators) should be given their role and responsibilities in writing.
 - g. Ensure its partner understands that sanctions may be taken if agreements are not kept, and be prepared to use those sanctions if needed.
 - h. Communicate with any other NGOs or umbrella bodies with relevant experience or knowledge that may be of assistance.
204. Local regulation of charities may complement the monitoring work undertaken by trustees; it cannot replace it. Charities can be subject to different legal frameworks and levels of regulation in different parts of the world. Charity regulation may differ in its scope, nature and efficacy, and may or may not overlap with law enforcement agencies. Charity trustees should familiarise themselves with the local regulatory regime, as well as with any legal framework applicable to their charity.

Collaborative working

205. Collaborative working can cover a wide range of activities. It can include networking, sharing of information and membership of associations, groups or federations, or more formal arrangements involving contracts or memoranda of understanding between charities.
206. When entering into collaborative working arrangements, trustees must act prudently in the interests of their charity. In practice this means that the benefits of collaborative working should be clearly established at the outset. As good practice trustees are recommended to satisfy themselves that there will be adequate benefits to their charity and beneficiaries. It is also important that an agreement for terminating the arrangements is drawn up from the beginning in case circumstances change and the arrangement is no longer viable.
207. Trustees must also properly exercise their duty of care. Whatever the size and complexity of the proposed arrangement, trustees should thoroughly consider the possible risks involved to ensure that these have been sufficiently addressed. In particular, when considering using charity property or assets in a collaboration, trustees should properly assess the likely risks as well as the potential benefits.

Working in the Occupied Palestinian Territories

208. The Occupied Palestinian Territories present a particularly challenging landscape to charities working there. The political situation has altered significantly over the last 18 months, and the acute humanitarian crisis in Gaza brought on by the Israeli military action against Hamas, which began in December 2008, further complicates an already challenging operating environment for charities. The Commission's advice is that charities working in the Occupied Palestinian Territories should keep themselves regularly updated with relevant information concerning the security situation and the operating environment, and actively take this into account when reviewing their risk management strategies and programme delivery plans. The examples given in paragraph 203 above may assist in this.

209. Currently, most local charitable organisations operating in the West Bank come under the regulation of the Palestinian Authority's Ministry of Interior. The Commission advises charities working in the area to make contact with the Ministry of Interior to ensure that they comply with any registration or reporting requirements covering their work in the region. In Gaza it is less clear whether local charities and foreign aid agencies come under the jurisdiction of the Hamas-led Government in the Gaza Strip or the Ministry of Interior in the West Bank. Any charities working there should be aware of the need to adjust their risk management and monitoring strategies accordingly, and potentially to maintain relations with more than one regulatory body. Charities should also consider the accepted standard practices regarding relationships with regulatory bodies adopted by other charities, UN bodies and other assistance actors.

Sources of further and future guidance

210. Related information and guidance available from the Commission includes:

- a. OG96 Charities and Terrorism
- b. The Commission's Counter-Terrorism Strategy
- c. Charities Working Internationally
- d. Charities and Risk Management

211. The Commission's Counter-Terrorism Strategy sets out its aim to develop a 'toolkit', in partnership with the sector, to assist charity trustees and their advisors in undertaking risk assessments to better identify and minimise the risk of terrorist abuse. It also sets out the Commission's aim to provide updated advice and guidance regarding charities and terrorism, charities working internationally, charities' legal obligations under terrorism legislation including guidance on proscribed and designated lists, and guidance on the transmission of funds overseas and verifying the end use of funds. This will include defining 'know your' principles for due diligence and the minimum standards we expect charities to reach in applying them.
212. During 2008, the Commission ran a number of events throughout England and Wales, giving many charities the opportunity to discuss the proposed toolkit and provide feedback which the Commission will use along with charities' experience and good practice to inform and shape its development. Work on the toolkit is progressing in collaboration with the sector and the first elements will be available for consultation during 2009.

Annex 1: The impact of terrorism legislation

Relevant terrorism legislation in the UK

Definition of Terrorism Under UK Legislation

1. The Terrorism Act 2000 defines terrorism, in s1 of that Act, as follows:
"1 Terrorism: interpretation
 1. In this Act "terrorism" means the use or threat of action where-
 - a. the action falls within subsection (2),
 - b. the use or threat is designed to influence the government or to intimidate the public or a section of the public, and
 - c. the use or threat is made for the purpose of advancing a political, religious or ideological cause.
 2. Action falls within this subsection if it-
 - a. involves serious violence against a person,
 - b. involves serious damage to property,
 - c. endangers a person's life, other than that of the person committing the action,
 - d. creates a serious risk to the health or safety of the public or a section of the public, or
 - e. is designed seriously to interfere with or seriously to disrupt an electronic system.
 3. The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.
 4. In this section-
 - a. "action" includes action outside the United Kingdom,
 - b. a reference to any person or to property is a reference to any person, or to property, wherever situated,
 - c. a reference to the public includes a reference to the public of a country other than the United Kingdom, and
 - d. "the government" means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.
 5. In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation."

Proscribed organisations

2. The Terrorism Act 2000 also provides that certain organisations are “proscribed” (proscribed organisations are listed in Schedule 2 to this Act, and the Home Secretary may add organisations to Schedule 2 by Order.)⁸². The Act provides that it is an offence to be a member of or support such organisations, in a number of specified ways⁸³.

Designated individuals and entities

3. Under legislation made by the United Nations, the European Union and the UK Government, individuals and entities can be also be “designated”. Individuals and entities can be “designated” in the UK under the Terrorism (United Nations Measures) Order 2006 (SI 2006/2657), or under the Al Qaida and Taliban (United Nations Measures) Order 2002 (SI 2002/11) or the Al Qaida and Taliban (United Nations Measures) Order 2006 (SI 2006/2952). These Orders impose financial controls on persons or entities specified by UN Resolutions, European Union Regulations, and the UK Treasury which are all effective in the UK.
4. Under the Orders, it can be an offence for a person (including the designated individual) to deal with funds or economic resources belonging to, owned or held by a designated individual or entity, or to make funds, economic resources or (under the Terrorism (United Nations Measures) Order 2006) financial services, available directly or indirectly, to or for the benefit of a designated individual or entity⁸⁴.

Relevant legislation, orders, and other declarations made by other states ⁸⁵

5. The Government of the United States of America declares certain individuals and entities “Specially Designated Global Terrorists” (SDGTs), under Executive Order 13224, the effect of which is to freeze any assets of those individuals or entities in the U.S. and to prohibit transactions between them and U.S. nationals.⁸⁶
6. The Government of Israel declares certain entities ‘unlawful organisations’ under the Defense Regulations (State of Emergency) 1945, and ‘terror organisations’ under the Terror Preventing Command 1948.⁸⁷ Under Israeli law, the membership, funding and support of such organisations can amount to criminal offences.

⁸² At the date this Inquiry report was published, 45 organisations are “proscribed” criminalising a number of acts and activities, if carried out in relation to such a proscribed organisation. Of these proscribed organisations, two are proscribed under powers introduced in the Terrorism Act 2006, as glorifying terrorism. 14 additional organisations connected to the affairs of Northern Ireland are also proscribed (having already been proscribed under previous legislation).

⁸³ Including, for example, holding assets or raising funds and wearing uniform indicating membership or support. The full text of the Terrorism Act 2000 is available on the Office of Public Sector Information website at [www.opsi.gov.uk.]

⁸⁴ The full text of these Orders is available from the Office of Public Sector Information.

⁸⁵ Many other countries have terrorism legislation in place under which persons, entities and organisations can be “designated”. Whilst these designations will not be enforceable under UK law, they may affect charities which operate in those countries which are subject to the Commission’s regulation.

⁸⁶ For further information please see the US Department of Treasury on www.ustreas.gov.

⁸⁷ For further information please see the Israeli Ministry of Defense on www.mod.gov.il.

Effects on the Charity and other organisations

The Charity

7. The Charity is not proscribed or designated in the UK.
8. On 22 August 2003 the Charity was designated as an SDGT by the United States Government under Executive Order 13224.
9. The Israeli Government declared the Charity an 'unlawful organisation' on 6 May 1997, and declared it a 'terror organisation' for its affiliation with Hamas on 27 January 1998.

Hamas

10. Since 2001, the Hamas Izz al-Din al-Qassem Brigades have been proscribed under the Terrorism Act 2000. Other parts of Hamas (including its political wing) are not currently proscribed.
11. On 12 September 2003 Hamas as a whole (including its political wing) was designated by a European Union regulation. Prior to this date only the Hamas Izz al-Din al-Qassem Brigades were designated. On 22 September 2003 Hamas as a whole was designated by the UK Government.
12. Hamas as a whole (including its political wing) was designated as an SDGT by the United States Government under Executive Order 13224 on 2 November 2001.
13. Hamas as a whole (including its political wing) was designated by the Government of Israel as an 'unlawful association' on 15 September 1989 and a 'terror organization' on 22 June 1989.
14. In the Occupied Palestinian Territories, Hamas is a legitimate political party, although in June 2007, President Abbas issued a decree outlawing the "Executive Force and Militias of the Hamas Movement" within the Occupied Palestinian Territories. The Inquiry understands that this is regarded as impacting on the Hamas Izz al-Din al-Qassem Brigades, not the political wing⁸⁸.

The Union for Good

15. On 7 July 2008 Israel declared that 36 funds based around the world, which it considered to be members of the Union for Good, were banned associations.
16. On 12 November 2008, the US Department of the Treasury designated the Union of Good under Executive Order 13224.

⁸⁸ This decree was issued after Hamas took effective power in Gaza

Annex 2: Summary of the Inquiry regarding the Charity published in the 1996 Annual Report of the Charity Commission for England and Wales

1. Interpal was registered in 1994 with the principal aim of providing aid to the poor and needy, including sick children and widows of those who are missing or detained, and to those detained themselves, as a consequence of civil or military action or national disasters. The charity confines its activities to Palestine and Palestinian refugees. Our investigation into the activities of Interpal was prompted by allegations in the press that there was a connection between the charity Interpal and the alleged terrorist wing of the group Hamas. It was suggested that the charity part funded that group.
2. Where a charity's beneficiaries are overseas our powers of investigation in the locations where funds are distributed are often limited. Our primary concern was to ensure that the trustees had taken all reasonable steps to ensure that funds were being used within the objects of the charity and within the law. We anticipated that Hamas would have supporters in the areas where Interpal distributes aid. Relief cannot be denied to them because of that support but at the same time we needed to ensure, to the best of our abilities, that funds were not being given solely because of a person's support for Hamas. Poverty and need should be the only criteria used when deciding how the charity's funds should be distributed.
3. We scrutinised in detail the charity's controls and records. They were well organised and we found no evidence of any donations that could not be accounted for or that had been given for political reasons. All of the evidence that we obtained suggests that Interpal is independent and non-profit making. Scrutiny of the charity's publicity and documentation provided no evidence of any pro-terrorist propaganda and interviews with the trustees and staff suggested that they were motivated by faith and altruism rather than fanaticism.

Annex 3: Statement of the Results of an Inquiry under section 8 of the Charities Act 1993 conducted in 2003

PALESTINIANS RELIEF AND DEVELOPMENT FUND (INTERPAL)

Introduction

1. This report is the statement of the results of the Charity Commission's Inquiry under Section 8 of the Charities Act 1993 ("1993 Act") into the affairs of the Palestinians Relief and Development Fund, known as Interpal.
2. Interpal was registered as a charity in August 1994. Interpal provides aid to, assists, guides and comforts poor and needy Palestinians in the West Bank and Gaza strip, Jordan and Lebanon. It aims to relieve the hardship and suffering of these distressed persons by cooperating or working with other charitable organisations in the region. Interpal is based in London. Its income for the year ended 31 December 2001 was in excess of £4 million.

Background and Issues

3. Interpal had been subject to a Charity Commission inquiry in 1996 into allegations that some of its funds had been misappropriated for the political or violent militant activities of Hamas in Palestine. This inquiry found no evidence of inappropriate activity, and the information available indicated that Interpal was a well-run organisation. A small number of suggestions were made on how the charity could further improve its procedures.
4. In April 2003 the Commission contacted Interpal's trustees because similar allegations had been made. The Commission's aim was to determine how Interpal's working practises had changed, if at all, since 1996, especially in light of the increased tensions during recent years in the region. Detailed examination of Interpal's practises and record keeping found that it had improved its procedures and record keeping since the Commission's previous Inquiry, although these procedures could be further enhanced by introducing a greater degree of independent verification of the work done by Interpal's partners in the region on its behalf.
5. During the course of this correspondence the Commission learned that Interpal had received funds from the Al-Aqsa Foundation in the Netherlands. The Al-Aqsa Foundations in the Netherlands and various other countries had their assets frozen under United Nations sanctions in May 2003 for allegedly supporting terrorist activities. Closer inspection of the records relating to Interpal's relationship with the Al-Aqsa Foundation in the Netherlands revealed that the funds received were in respect of humanitarian work already carried out by Interpal and then invoiced to the Al-Aqsa Foundation.
6. On 21 August 2003, in a Presidential decree, the Government of the United States of America (US Authorities) designated Interpal as a "Specially Designated Global Terrorist" organisation for allegedly supporting Hamas' political or violent militant activities. The Commission concluded that these were serious allegations and in line with its well-publicised policy opened an Inquiry into Interpal under section 8 of the Charities Act 1993 on 26 August. The principal aim of the Inquiry was to investigate these allegations with a view to determining what, if any, remedial action was necessary to address the issues.

Actions Taken

7. The Commission used its powers to act in the interests of charities and their beneficiaries under Section 18 of the 1993 Act by freezing Interpal's bank accounts as a temporary and protective

measure on 26 August whilst it investigated the allegations. This 'freezing' order allowed Interpal to apply to the Commission for release of funds to fulfil its charitable purposes. In the course of the inquiry, Interpal applied for release of small amounts of funds. The Commission agreed to these releases.

8. Also, as part of its investigation, the Commission formally requested the US Authorities to provide evidence to support the allegations made against Interpal. The Commission is mindful of the possible consequences for Interpal's beneficiaries of the Commission's actions, and therefore requested the US Authorities to provide evidence to support their allegations within a reasonably short period of time.

Findings and Outcomes

9. The US Authorities were unable to provide evidence to support allegations made against Interpal within the agreed timescale.
10. The Commission concluded that in the absence of any clear evidence showing Interpal had links to Hamas' political or violent militant activities, Interpal's bank accounts should be unfrozen and the Inquiry closed. The bank accounts were 'unfrozen' and the Inquiry was closed on 24 September 2003.

Wider Issues

11. The Charity Commission is alert to the possibilities of charities being used to further or support terrorist activities. It will deal with any allegation of potential links between a charity and terrorist activity as an immediate priority. Where such allegations are made we will liaise closely with relevant intelligence, security and law enforcement agencies to facilitate a thorough investigation. As an independent statutory regulator, the Commission will make its own decisions on the law and facts of the case.
12. The Commission's own work reveals that connections or links between registered charities in England and Wales and terrorist organisations are very rare. However, any links between charities and terrorist activity are totally unacceptable and corrosive of public confidence in charities. 'Links' in this case might include fundraising or provision of facilities, but also include formal or informal links to organisations 'proscribed' under the Terrorism Act 2000, and any subsequent secondary legislation.
13. Active collaboration between charities and terrorist organisations is a police matter that may lead to serious criminal charges. Where allegations are made to the Commission or suspicions arise as a result of the Commission's work, the Commission will inform the relevant law enforcement agencies immediately and co-operate fully with the criminal investigation.
14. Where a charity's activities may give, or appear to give, support or succour to any terrorist activity, the Commission expects the charity's trustees to take immediate steps to disassociate the charity from the activity. We expect trustees to be vigilant to ensure that a charity's premises, assets, volunteers or other goods cannot be used for activities that may, or appear to, support or condone terrorist activities. Examples include the use of a charity's premises for fundraising or meetings.
15. Charities should take all necessary steps to ensure their activities could not be misinterpreted. The Commission expects trustees and charities to ensure their activities are open and transparent, for example, when transferring assets abroad. We hold trustees accountable for ensuring that procedures are put in place to ensure that terrorist organisations cannot take advantage of a charity's status, reputation, facilities or assets.

Annex 4: Public statements made by the Union for Good and its representatives (see paragraph 79)

Statements made by Sheikh al-Qaradawi

1. During 2001, on the programme *Shariah and Life* broadcast on Al Jazeera, Sheikh al-Qaradawi was asked what could be done to show the Palestinian people that there were people standing by them. He replied: *'No doubt there are steps that need to be taken at the official and popular level... There is another thing: Financial Jihad. Our brethren are struggling for money. They are sacrificing themselves. They are giving martyrs every day. Thank God this means that the Umma is giving martyrs. Women cry for joy at the death of the martyrs... We should give aid to our brethren to reinforce their steadfastness, to try and overcome the blockade enforced on them.'* Immediately after he spoke, Dr Mustafa was introduced and confirmed that the Sheikh was referring to the 101 Days Campaign.
2. Later in the Interview, Sheikh al-Qaradawi answered further questions about the duties of Muslims regarding the conflict with Israel, and he said: *'We should resist and resist with what we have. We do not have nuclear weapons... I am surprised at any Muslim who calls these acts "suicide acts." These are martyrdom, commando and heroic acts. We should hail those who carry out these acts and bless them and call on God to take them to live in Paradise. They are there, God willing, because of their intentions, works, efforts and Jihad.'*
3. During another 2001 Al Jazeera interview, Sheikh al-Qaradawi responded to a question from a viewer concerning suicide bombing. He said: *'It is the religious duty of the Umma to fight its enemies and remove them from its dwelling. Anyone who frustrates the Umma from carrying out its religious duty is a traitor to the Umma and a traitor to his religion.'* He went on to say: *'We should resist and resist with what we have. We do not have nuclear weapons. What should we do? This ["suicide operations"] is what we are capable of. I am surprised of any Muslim who calls these acts "suicide acts". These are martyrdom, commando and heroic acts. We should hail those who carry out these acts and bless them and call on God to take them to live in Paradise. They are there, God willing, because of their intentions, works, efforts and Jihad.'*
4. In the same Al Jazeera interview, Sheikh al-Qaradawi is asked: *'Why don't we focus with arms, because I am one of those who haven't got the money to buy arms to take part in Jihad?'* In response Sheikh al-Qaradawi said: *'I do focus, but I know that the doors are closed.'*

Statements made by the Union for Good

5. The "Final Statement of the First Meeting of the Trustees" of the Union for Good in Kuwait, began with the following statement: *'The Zionist enmity to this Umma is manifest in the Zionist barbaric attacks which target the destruction of the constituent elements of a Palestinian society, at various levels, to create a humanitarian catastrophe amongst the Palestinian people, in pursuit of breaking the pride of the people and their steadfastness, in the face of an attempt to cancel the identity of this Holy Land of its Islamist nature, and its ownership by all the Muslims in this world. But the Palestinian response has always been contrary to these attempts and the Palestinian people have insisted on the holiness and Islamist nature of Palestine....'*
6. The "First Statement of the Coalition [the Union for Good]" gave a list of the campaign's aims which included (amongst humanitarian aims) *'Thwart the Zionist plan to break the strength of the Palestinian people.'*

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