ISLAMIC RELIEF ACADEMY
THE PATH TO A BRIGHTER FUTURE

Comparing the Effectiveness of Waqf and English Charitable Trusts

Islamic Relief Academy

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Foreword

In its simplest form, a *Waqf* is a charitable endowment that allows a person to dedicate his or her property to Allah (God) for the benefit of the public good. In conventional terms, this would often be in the form of building mosques, schools and hospitals all aimed at perpetually benefitting local communities.

The *Qur'an* as the primary source of Islamic law does not mention *Waqf* explicitly and, consequently, does not detail its legal parameters. However, the *Qur'an* does state in numerous places the importance of charitable giving, such as:

إِنَّ ٱلَّذِينَ ءَامَنُوا۟ وَعَمِلُوا۟ ٱلصَّٰلِحَٰتِ وَأَقَامُوا۟ ٱلصَّلَوٰةَ وَءَاتَوُا۟ ٱلزَّكَوٰةَ لَهُمْ أَجْرُهُمْ عِندَ رَبِّهِمْ وَلَا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُونَ

> *Lo! those who believe and do good works and establish worship and pay the poor-due, their reward is with their Lord and there shall no fear come upon them neither shall they grieve.*

سُوْرَةُ البَقَرَة 2:277

This call by the *Qur'an* to be charitable, therefore, has been viewed historically by Islamic society to require the facilitation of an institutionalised mechanism for wealth redistribution in an efficient and practical manner, which is *Waqf*. Similarly, the Prophet Muhammad's (pbuh)[1] teachings also indicate a similar call to charity. In one such tradition, he stated, "*When a man dies, all his acts come to end, but three:* ***recurring charity (Sadaqah Jāriyah)****, or knowledge (by which people benefit), or a pious offspring, who prays for him.*"

Since the establishment of a *Waqf* was considered an act of piety, it carried with it a favourable reputation as a by-product. Thus, as with an endowment to a university today, founding a *Waqf* demonstrated wealth, a high social status and emphasised a concern for developing civil society. Similarly, it was not uncommon for *Waqf* founders to immortalise their endowments by naming it after themselves.

The inherent strength of *Waqf* as a means of poverty alleviation and general social development within the Islamic system of charitable giving, lies in the fact that it is enduring, existing in perpetuity and thus goes beyond other charitable options open to Muslims for religious altruism. *Zakāt* and *Sadaqah*, for example, are useful tools in poverty alleviation and wealth re-distribution, but fall short of providing the capability *Waqf* has in enhancing the lives of its recipients, particularly when looking at long-term benefits. The goal of the benefactors with regards to *Waqf* is therefore wholly different to other forms of charitable giving, with the nature and intent of *Waqf* being designed to provide poor and needy people access to facilities and resources without giving them a direct monetary benefit.

1. It is an Islamic convention to send peace and blessing upon the Prophet Muhammad, normally phrased as 'peace be upon him,' abbreviated 'pbuh'.

In terms of the broader participation in *Waqf* with respect to faith, up until the nineteenth century, Jews and Christians living in Muslim protectorates were typically prohibited from establishing a *Waqf* and could therefore not benefit from the protection of Islamic law nor would they have recourse to *Shari'ah* courts, though they were allowed functionally similar institutions. It is clear that this dates back to the eighth and ninth centuries, when it was established that a *Wāqif* be a Muslim and that they register their *Waqf* with the Islamic court. This was in general, but evidence is unequivocal that actual practice varied in time and place and that influential non-Muslims throughout history, living in Muslim lands did establish *Waqf* with full legislative support. However, in comparison to Muslims of comparable wealth, non-Muslims were averse to establish *Waqf*, even those serving their own religious communities. This changed significantly in the nineteenth century, under more liberal *Shari'ah* protocols, when the right to establish *Waqf* was officially granted to people of other religious traditions and it became commonplace for wealthy Jews and Christians to participate in the *Waqf* system.

Historically, *Awqāf* has aided the development of Muslim societies greatly and has proven to be successful in financing and maintaining religious, educational and healthcare establishments, as well as civil infrastructure, such as roads and bridges. However, scholarly interest in *Waqf* diminished for many centuries and fell into limited usage. This lack of interest is slowly being reversed. Pivotal to this revival was the international Jerusalem conference in 1979, which dealt exclusively with *Waqf* matters. Following this, university departments specialising in Islamic studies have also begun researching the subject in increasing depth.

This paper explores the concept of *Waqf*, its role in contemporary society and its growth, usage and methods of implementation. The research reveals that historically, *Waqf* was well established during the period of Islam's establishment in the seventh century and went on to become utilised with a variety of driving forces across the growing Muslim world in the centuries which followed. However, having been marginalised as an effective social development tool in more recent generations, contemporary Muslim societies across the globe are now witnessing a revival of *Waqf* awareness and value.

Furthermore, this study focuses on *Waqf* in Muslim minority environments, exploring contemporary *Waqf* usage in comparison to permanent legal trusts in England, offering tangible strategic and procedural proposals for the enhancement of effectiveness in contemporary *Awqāf*, particularly in the United Kingdom.

In the broader context, we at Islamic Relief Academy are keenly engaged in exploring key issues around faith and development, including fiscal aspects of Islam, such as Islamic philanthropy, *Waqf* and Islamic microfinance. Consequently, published research can inform the development sector through empirically-based, evidential research in the field of Islam and development and, more broadly, lend our support for the positive value faith adds to humanitarian and development work.

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Executive Summary

Waqf (an Islamic perpetual trust or endowment) and English charitable trusts have some noted similarities in their nature, character and socio-economic implications. Despite emerging and evolving in two different environments, the mechanisms, objectives and functions of *Waqf* and trusts are identical to a great extent. In historical terms, the two institutions have effectively delivered charitable services into a vast number of areas including social welfare, advancement of religion, education, research, infrastructure development and general well-being. However, in spite of playing an applaudable role in its history, during the last two centuries the experience of *Waqf* has been diametrically opposed to the experience of trusts. During this period, while the trust witnessed consistent progress and prosperity, *Waqf* suffered persistent downfall and decline.

Notwithstanding this, *Waqf* is regaining momentum and is in the process of re-evolution. *Waqf* in a contemporary context, compared to traditional *Waqf*, incorporates almost all essential features and characteristics of the modern trust. This phenomenon enables *Waqf*, once again, to be as effective as the modern trust.

This study examines the determinants of effectiveness in contemporary *Waqf* and permanent trusts, particularly in the context of English socio-legal environment. The paper employs a qualitative research approach to analyse a mix of primary and secondary data. Finally, it provides a list of critical policy recommendations for the enhancement of effectiveness in contemporary *Awqāf* particularly in the United Kingdom.

Introduction

Waqf[2] *(plural; Awqāf)* is frequently compared with the English trust[3] or endowment[4] in the West. The institutions of *Waqf* and English endowments (hereafter charitable trusts) evolved in two different socio-legal and socio-economic environments. While *Waqf* arose in the Islamic Middle East in the 7th Century CE, charitable trusts originated in England in the 12th century. The premises of the two institutions are derived from two different worldviews (Akhtar, 2012). Consequently, the underlying visions and values of the two institutions differ on many counts. The concept of *Waqf* is inspired by the repeated Islamic emphasis on altruism, volunteerism and charitable behaviour. *Waqf* evolved within the framework of Islamic voluntary charities and continued to carry its Islamic colour and spirit. Charitable trusts, on the other hand, originated as an instrument of property-disposition, motivated by both need-orientation and faith-based convictions, but could not maintain its religious identity for long (White, 2006).

From the socio-economic perspectives of these two institutions, *Waqf* and trusts played similar, if not identical roles. They provided the means and the mechanism for permanent charities. The institutions of *Waqf* and trusts served a plethora of social and charitable objectives including funding infrastructure for inclusive socio-economic development of the given societies (Kahf, 2003). They also provided a permanent channel for means of sustenance and free education for communities. Notwithstanding all these, *Waqf* and charitable trusts went through different experiences in their prolonged respective histories. *Waqf* witnessed phases of prosperity and decline (Kahf, 1999); charitable trusts continued its progress without suffering a substantial setback in its relatively shorter history (Kuran, 2001; Schoenblum, 1999).

Historically, charitable trusts have learnt and adapted from the framework of *Waqf* to reach their current state of being a progressive and firmly established institution (White, 2006). However, whether contemporary *Waqf* needs to reciprocate the process is a highly significant question. Additionally, the areas in which *Waqf* could learn from charitable trusts are yet to be fully articulated.

The structural as well as functional frameworks of *Waqf* and charitable trusts have noted similarities. Both the institutions have similar mechanisms to fulfil their charitable objectives (Stibbard et al., 2012). However, whether the two institutions are equally effective in their operation is beyond the scope of the available literature on the topic. This study attempts to bridge this existing gap in the literature, through examining existing similarities and dissimilarities between the functional mechanisms of *Waqf* and charitable trusts. Additionally, the paper endeavours to identify the factors of effectiveness in the two institutions and provides policy recommendations for *Waqf* institutions for four key areas: conceptual, management, investment and governance aspects of *Waqf*. Lastly, the study underlines the need for further research, by suggesting eight areas to be studied critically, followed by their own new sets of recommendations to be applied.

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2. *Waqf* is literally translated as confinement, detention, holding and prohibition (Ibn al-Manzoor: 2002). In juristic terms, *Waqf* is a special kind of philanthropic deed in perpetuity that is exercised in a non-perishable asset by designating the specific categories of beneficiaries to receive its usufructs or revenues (Zaid, 1996). According to Accounting and Auditing Organisation for Islamic Financial Institutions, *Waqf* is defined as "…making a property invulnerable to any disposition that leads to transfer of ownership, and donating the usufruct of that property to beneficiaries" (AAOIFI, Shari'ah Standard 2/1, 2010).

3. Though there is a minute technical difference between the terms 'endowment' and 'charitable trust', in substance, both are almost identical. For the purpose of this study both the terms have been used interchangeably.

4. The Charity Commission defines a 'permanent endowment' as "… money or property that was originally meant to be held by a charity forever. This is usually set out as a restriction in the charity's governing document" (Charity Commission, 2015). Compared to this, there is no specific definition of charitable trusts. In general, it denotes "trusts for purposes that benefit the public" (Penner, 2010: 452).

Aims of the study

1. To examine the historic roots of charitable trusts and *Waqf* in the UK.
2. To examine similarities and dissimilarities between contemporary *Waqf* and charitable trusts' management practices in the UK.
3. To identify the factors of efficiency and effectiveness in *Waqf* vis-à-vis charitable trust management.
4. To identify the similarities and differences between the *Waqf* and charitable trusts, in terms of their ability to be sustainable and independent.
5. To explore the possibilities of learning from the experiences of charitable trusts for enhancing contemporary *Waqf* management.

Research Methodology

This study is based on a qualitative research paradigm and employs both primary and secondary data. Primary data was collected through semi-structured interviews of five experts having proven academic credentials on *Waqf* and charitable trust studies from different countries, and interview responses of selected Muslim charities involved in *Waqf*-management in the UK. Secondary data has been obtained from available literature on charitable trusts and *Waqf*, and annual reviews and financial reports of specific charitable trusts in the UK have been examined for the purpose of identifying the factors for their efficiency and effectiveness. Recommendations were made after analysing the given responses of these experts along with the conclusions drawn from the reports.

The Origin of *Waqf*

Waqf[5] denotes an Islamic charitable institution. One of the most distinctive features of *Waqf* is that it connotes a charity in perpetuity. The origin of *Waqf* lies in the early phase of Islamic history. Though the concept of voluntary charity is greatly inspired from several verses in the *Qur'an*, the term *Waqf* is not mentioned explicitly. In fact, the conceptual framework of *Waqf* has been characterised in the light of Prophetic *Hadīth* (sayings), which exhort the spiritual merits of *Sadaqah Jāriyah* (perpetual charity) (Çizakça, 2000). The Prophet Muhammad (pbuh) said, "*When a child of Adam dies, the chapter of his deeds is closed forever except for three; one who founded a perpetual charity, a scholar who left behind him a legacy of knowledge that benefits people at large, and a pious child of the deceased who constantly seeks Allah's mercy for him*" (Muslim, 14/4223).

From the conceptual perspective, *Waqf* is a sub-branch of the broader term in the *Qur'an*, '*Infāq*' (spending in charity). The term '*Infāq*' covers into its fold another related term '*Sadaqah*'. The term '*Sadaqah*' has its further sub-divisions into material and non-material *Sadaqah*, followed by the material form's categorisation into obligatory and non-obligatory *Sadaqah* (Zaman, 1991). Figure 1 provides a conceptual schematic of the location where the concept of *Waqf* lies among the different variants of *Infāq* and *Sadaqah*.

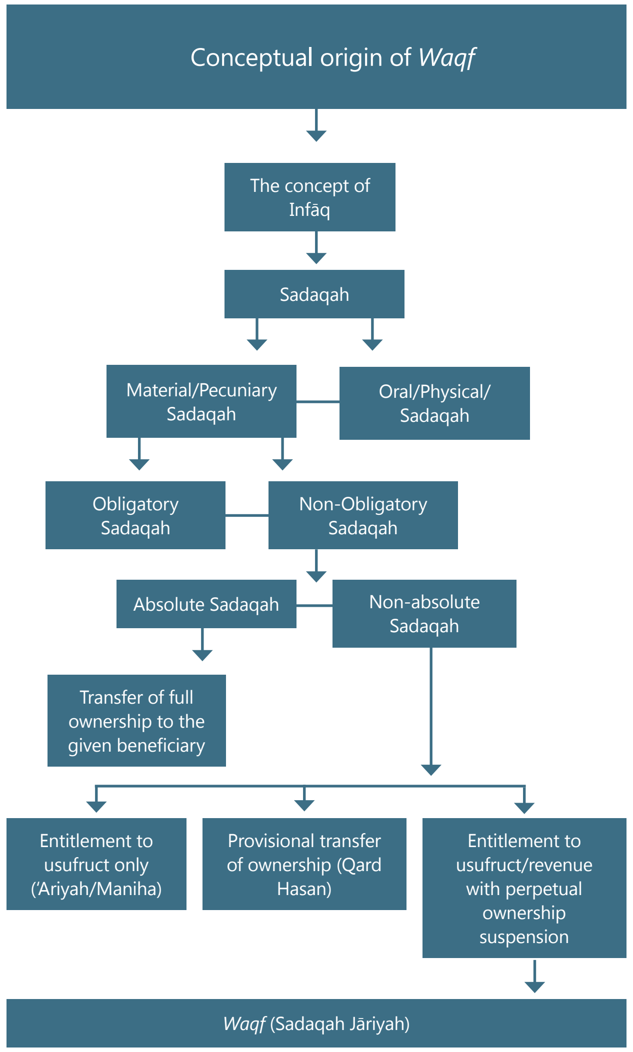

Figure 1: Conceptual schematic of the location where the concept of Waqf lies among the different variants of Infāq and Sadaqah.

5. *Waqf* (plural, *Awqāf*) is also known as *Habs* (Plural, *Ahbās/Hubūs*) in North and West African countries. In Turkey, *Waqf* is written as Vakif (plural, *Awqāf*) and in Malaysia as *Waqaf*. In the first Encyclopaedia of Islam (1913-1936) the term has been spelled as "Wakf".

The building of two great mosques, *Masjid al-Quba* (the first mosque built in the Islamic period) and *Masjid al-Nabawi* (the Prophet's mosque and second holiest place in Islam), constitute the earliest examples of *Waqf*. Similarly, *Waqf* of *Byr-al-Rumah* (the well of *Rumah*) by Uthmān ibn Affān (RA)[6] is widely recognised as one of the most primitive examples of *Awqāf* (Kahf, 2003; Gil, 1998).

In the history of *Waqf*, the deed of the second caliph Umar ibn al-Khattāb (RA) is the cornerstone. Reportedly, Umar (RA), who had obtained a high value piece of land in Khayber, approached the Prophet Muhammad (pbuh) and sought his advice on how to utilise the given land in the best charitable manner. The Prophet Muhammad (pbuh) suggested: "If you wish so, retain the corpus while spending its recurring benefits (in charity)" (Muslim, 15/4224). In the aftermath of the famous *Waqf* of Umar (RA), a number of companions endowed their properties as *Waqf*. The notion and practice of *Waqf* became so attractive to the Prophet's companions that according to a report attributed to Jabir (RA) 'every Companion who could have afforded to make a *Waqf* practically did it' (al-Khassāf, 1904).

With the rapid expansion of Islamic territories, the domain of *Waqf* expanded exponentially. By the tenth century AD, *Awqāf* superseded *Zakāt* as the primary institution of community-financing (Singer, 2008). In the words of Hennigan (2004: xiii) "It is not an exaggeration to claim that the *Waqf*, or pious endowment created in perpetuity, has provided the foundation for much of what is considered Islamic civilisation."

The prominent role of *Waqf* in provision of essential needs such as food, clothing and shelter for individuals or in financing basic amenities for society at large has been acknowledged and documented in historical records (Sabra, 2002). According to Abul Hasan and Sadeq (2002: 140), "both in historical terms and in contemporary Muslim societies, *Waqf* has acted as a social institution. It has been a mechanism for the elimination of poverty; supporting families, low socio-economic groups and professional groups."

The role of *Waqf* in financing a plethora of public needs has been repeatedly underlined by researchers. According to Sait and Lim (2006: 149) "One important function of the Islamic *Waqf* was to support social units and to provide for public institutions such as schools and mosques. For example, the health, education and welfare systems of the Ottoman Empire were financed to a great extent by *Waqf*."

6. RA is an abbreviation for "Radhi Allahu Anhu" - may Allah be pleased with him, a term reserved for significant pious supporters of the Prophet Muhammad (pbuh), in particular, his companions and successors.

The Origin of English Trusts

There are various theories propounding that the idea of trusts were borrowed from Roman Fidei Commissum or German Salic Salmannus (Thomas, 1949). Gaudiosi (1988), however, discarded these suggestions as she terms the suggested similarities between them to be unconvincing in several aspects. It is argued that until the nineteenth century, there was a common belief that the concept of trusts had been imitated from Fidei Commissum (Thomas, 1949; Verbit, 2002). Later on, opinions pointing toward the origin of trusts in Salic Salmannus gained momentum. Nonetheless, Gaudiosi (1988), disputed to accept either of these theories. According to her findings, the device of Fidei Commissum was used as a testamentary vehicle, and thus it differs conceptually from the trust which was mainly employed for inter vivos expressions. As far as the idea of German origins of trusts goes, Gaudiosi (1988) rejects it outright with what she terms as rather superficial similarity between them.

Some researchers have contended that the trust is purely a brainchild of English lawyers and is based on an unprecedented structure. In contrast, while drawing an analogy between *Waqf* and trusts, Wigmore (1928: 565) notes "in the *Waqf* [model] they invented a legal concept which equals if not excels in originality and practical utility the Anglican trust; it combines the ideas of trust, family entail and charitable foundation."

As far as the notion that the mechanism of trusts was inspired by the *Waqf* model is concerned, Gaudiosi (1988) adopts a more practical and pragmatic method to depict a comparative picture of *Waqf* and trust, which portrays a striking resemblance between the two concepts and structures.

"Under both concepts, property is reserved and its usufruct appropriated for the benefits of specific individuals or for a general charitable purpose; the corpus becomes inalienable; estates for life in favour of successive beneficiaries can be created without regards to the law of inheritance or the rights of the heirs; the continuity is secured by the successive appointment of trustees or Mutawallis"

[Gaudiosi 1988: 1246].

The Background to *Waqf* Versus Charitable Trust in the UK

Whereas, the history of *Waqf* can be traced back to the 7th century AD, there is no consensus of opinion on the genesis of English trusts. Various theories suggest and locate the birth of English trusts to the 12th and 13th century AD. Compared to this, there are assertions that the permanent charity has had its presence in English society as early as from the 6th century AD. The King's School, Canterbury, for instance, was established in 597 AD, and is widely regarded as the oldest charity in England (Hodgson, 2012). Remarkably, this charity is still functional today. In the same vein, the hospital of St. Cross in Winchester, which was set up by William the Conqueror's grandson, Bishop Henry De Blois, constitutes one of the oldest charities in England. The history of this charity suggests that the hospital was set up in 1136 AD to provide shelter and refuge for the elderly and passersby (Hodgson, 2012). Importantly, this too is still in service, despite passing through turbulent phases of English history. Notably, in its early usage, the word 'hospital' was used to denote its hospitality for less fortunate people. For this reason, it seems sensible to assume that the hospital of St. Cross was not a hospital in the contemporary medical sense of the word, but a place of hospitality.

Despite these instances of charitable endowment in English society, charity had not assumed its conventional legal status in England until as late as 1601 AD. It was during the early years of the 17th century that the definition of charity was formally promulgated through the introduction of statutes of charitable uses in the English legal system (Hodgson, 2012: 8). Most of the existing charities prior to this were under the power and control of churches and monasteries and were not independent in their functional structures.

In terms of the earliest charitable endowments for the institution of learning in England, the deed of Merton College, Oxford, forms the most vivid living example of its kind. The deed exhibits a striking resemblance with the deeds of its Islamic counterpart i.e. the institution of Islamic learning in the Middle East known as *Madarasa* (Makdisi, 1981). The college, which was initially known as "the House or College of Scholars of Merton" was based on the charitable endowment of Walter De Merton in 1264 AD (De Merton Statues, 2013: 4). Apparently, similar to the inherent feature of a typical *Waqf* deed, the deed of De Merton was greatly inspired by the deep religious sentiment of its founder. This phenomenon is evidently palpable in the preamble of De Merton's deed. It begins with *"In the name of the most glorious and undivided Trinity, the Father, Son and Holy Ghost, Amen"*. In fact, beginning a charitable deed by referring to the glory and pleasure of the Divine has been an inextricable feature of classical *Waqf* deeds as well. Hence, in this regard, a close similarity between the two institutions is, arguably, more than evident at the conceptual level. Interestingly, very much similar to the spiritual objective of a *Waqf* deed, the deed of De Merton unmistakably associates the endowment with the ultimate objective of salvation. This is unequivocally pronounced in the Preamble of the Statues which further reads:

"This House was founded on my own property, which I had acquired by my own exertions: it was situated at Malden, in the county of Surrey, and was destined for the constant support of scholars residing in schools, in behalf of the salvation of my own soul and of the souls of the Lord Henry, formerly King of England, that of his brother Richard, the renowned King of the Romans, and those of their predecessors and heirs, and of all my own parents and benefactors, to

the honour and glory of the Most High"
[De Merton Statues, 2013: 4-5].

Gaudiosi (1988) further underlines some identical similarities between a typical *Waqf* deed and the documented features of the trust created for the establishment of Merton College, Oxford. These features could be summarised as:

1. In principle, a *Waqf* is necessarily required to incorporate a charitable dimension in the deed to attain validity. Complying with this rule, De Merton explicitly evinced the charitable nature of his trust at the commencement of the document.
2. In line with the essentially perpetual feature of *Waqf*, Merton College trust was to support the individuals associated with the House of Scholars in perpetuity.
3. Following the theme of family *Waqf*, De Merton specified in the deed that underprivileged members of his family should be considered for support and benefit from the trust.
4. Similar to a *Waqf* deed, where it is always required to specify its ultimate objectives to be vested in charitable purposes, De Merton provided that in case the number of family members benefiting from the trust falls short of twenty, the vacant places would be filled with other most eligible individuals as ultimate beneficiaries.
5. In the classical *Waqf* for education it was common to find stipulations requiring the beneficiaries to maintain uniformity in clothing and conduct. This specification has also found a place in the deed of De Merton trust, which requires the desired uniform among the beneficiaries.
6. As a *Wāqif* can authorise the *Mutawalli* to apply his/her discretion in terms of including new beneficiaries or excluding existing ones for not complying with certain conditions of the deed, De Merton trust also contains this clause.
7. The *Mutawalli* of a *Waqf* could be removed for being negligent, incompetent, or for not discharging his assigned duties. This, point also finds emphasis in De Merton trust documents, and according to the given term of the deed, an unfit/dishonest trustee was to be disqualified.
8. A *Wāqif* could possibly reserve the right to amend the clauses and conditions of his *Waqf*. A similar provision was made in the case of De Merton trust too.

Discussing the possible ways for *Waqf* to be imported into English society, White (2006: 513) argues that during the 12th century, the Crusaders might have been attracted by the model of existing *Waqf* in Palestine as a "flexible religious and adaptable device for various uses by both religious and state interests." In subsequent centuries, big and small endowments proliferated in England. Most of these endowments were established for the purposes of either propagation of education, promotion of religion, relief of poverty or other purposes beneficial to the public at large. Since the beginning of the 19th century, precisely until 1818 AD, the scale and magnitude of charitable endowments expanded to cover 443,000 acres of lands in England and Wales. In the same year, there were 28,880 documented charities in the country (Clark, n.d). Notably, a major portion of these charities were established with the objective of imparting free education to less-fortunate and underprivileged sections of English society. It was in this era and context that a regulatory body known as the Charity Commission (initially set up as an inquiry committee to investigate the complained malpractices into the sector) was installed to register, supervise, govern and regulate charities falling under

its own jurisdiction as per the law of the land. The contemporary governance framework of the Charity Commission of England and Wales identifies thirteen objectives as charitable Figure 2.

Figure 2: Identification of charitable objectives found in the governance framework of the Charity Commission of England and Wales (Charity Commission, 2013).

It is noteworthy here that the list of thirteen charitable objectives (Figure 2) is neither comprehensive nor exhaustive, but is indicative of principal objectives, each of which may have further sub-divisions as per the given instructions of the Charity Commission. The point of special significance however, is that to acquire recognition of charitable character, each objective must be associated with public objects (beneficiaries).

Interestingly, the charitable purposes identified by the Charity Commission stand in congruence with Islamic teachings and in fact, compliance of these charitable purposes with *Shari'ah* guidelines is critically crucial for *Waqf*, particularly, in the context of the United Kingdom, because a *Waqf* cannot be founded except for a purpose or objective which is *Shari'ah*-compliant. Furthermore, White (2006: 500) asserts that similar to the requirements of *Waqf*, early trusts were also perpetual in nature and the ultimate ownership of the same was presumed to be vested in Christ. In fact, this assertion further consolidates the conceptual similarities of trusts with *Waqf*.

Technicalities of Waqf versus charitable trusts

It may be disputed among scholars as to whether the model of trusts was borrowed from *Waqf* or not. However, there is an invariable assertion of experts on the existing commonalities between the two institutions on the conceptual as well as at the structural levels. The inherent features and technical framework of a trust is evidently more amenable to the framework of *Waqf* than any other similar foreign legal device (Verbit, 2002; Gaudiosi, 1988). The trust comprises of an identical framework to *Waqf*. Similar to the structure of *Waqf*, a trust under English law involves three parties, namely settlor, trustee and beneficiary. Remarkably, like the concept of *Waqf*, trusts too recognise separation between legal and beneficial/equitable ownership of the given property (Gaudiosi: 1988).

Trust	Waqf
Settlor	*Wāqif*
Property	*Mawqif bihi*
Trustee	*Mutawalli / Nazīr*
Beneficiary	*Mawqif 'Alayh*

Table 1: Key relationships between trusts and Waqf.

Technically, a *Waqf* is by default perpetual in its nature, whilst for a trust the character of perpetuity is acquired only by stipulating it into the deed (Kuran, 2011). In other words, a trust is initially time-bound, except the one in which the condition of perpetuity is explicitly attached; whereas, there is no need for a separate stipulation for a *Waqf* to become perpetual. Therefore, when a trust is juxtaposed with *Waqf*, the possibility of revocation in the former distinguishes it from the latter; as the latter (*Waqf*) cannot be revoked.[7] Figure 3 illustrates the jurisprudential features of a *Waqf*.

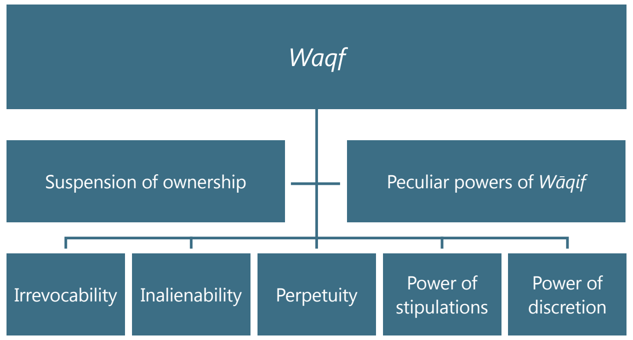

Figure 3: Jurisprudential features of a Waqf.

7. There is only one exception found within the Māliki school of Islamic jurisprudence to the right of revocation of a Waqf (Marwah and Bolz, 2009).

With reference to the potential subject matters for a *Waqf* vis-à-vis a trust, there is a minute but fundamental difference between the two institutions. Whereas the scope of trusts is open to cover almost all valuables/assets as the subject matter of a trust, for a *Waqf*, the valuables/assets must fulfil the criteria of *Shari'ah*-compliance (Mohsin, 2009). Simply, an item which contradicts the essential principles of *Shari'ah*, such as alcohol-related paraphernalia or gambling merchandise, would fall short of qualifying criteria for *Waqf*. In comparison, for a trust, there are no such restrictions on similar items. In general, similar to a *Waqf*, a charitable trust can be set up by endowing land, buildings, cash and other investments (Charity Commission, 2013).

Waqf and trusts both equally entail fiduciary duties for their respective *Mutawalli* and trustees. In simple terms, the trustees of both *Waqf* and trusts owe the fiduciary duty to their prescribed or prospective beneficiaries. Whereas, the requirements of fiduciary obligations are always constant for the *Mutawalli* of a *Waqf*, the trustee of a trust would have different responsibilities with reference to a permanent and non-permanent trust. In this context, it is incumbent upon the respective trustees of *Waqf* and trusts to act prudently and take initiatives that are fit and proper for the given *Waqf* / trust and which are in the best interest of the beneficiaries. Similarly, endeavouring to fulfil the given objectives of *Waqf* or trust constitutes one of the fundamental duties of the managers (Pettit, 2009; *Mawsoo'ah*, 2006); thus, there are a great many similarities between the *Waqf* and trust in terms of their management practices.

Sustainability and effectiveness of Waqf versus trusts

The key to viability and sustainability of a permanent trust as well as a *Waqf* remains with the efficient management of their underlying assets. To this end, it is critical that efficiency is maintained at all levels of trust or *Waqf* management. The concept of efficiency requires cost-effective administration of the institution along with securing a good return on their respective investments. Nonetheless, generally in the charity sector there is often a dichotomy between efficiency and effectiveness. In many instances, the dilemma of whether to prioritise a higher financial return over greater social impact remains critical but unresolved. This phenomenon is increasingly sensitive for grant-making foundations as well. These foundations need to decide on whether to follow a lower financial return but higher social impact or to target a higher financial return but lower impact. In this regard, the creative concept of social investment encapsulates the idea of preferring effectiveness over efficiency. Foundations like The Tudor Trust, Esmée Fairbairn, the Joseph Rowntree charitable trust, Trust for London and the Wates Foundation, all make social investments by extending loans to the organisations working to achieve the objectives that correspond to the given objectives of these funding organisations (ACF, 2012). This strategy generates greater social benefits along with financial return.

Notwithstanding this, since investment return is essential for the sustainable functioning of a *Waqf* / trust, their trustees are obliged to ensure not only effective, but also efficient management of the institution. To this end, setting up the objectives of a *Waqf* / trust in a clear and explicit way is central to its sustainable functioning. The immediate question that arises with reference to asset management of a trust / *Waqf* is whether to focus on preserving real value of the endowments or to grow them through inflationary adjustments (ISFR, 2014). This is vital in cash or liquid assets but not with immovable ones. In general, the default position with respect to spending from a permanent *Waqf* / trust is to disburse only the return and not the capital (MIFC, 2014). In this context, investing in fixed income instruments such as bonds (or *Sukūk*) have been criticised by some experts. According to their opinion, long-term, fixed income securities remain unresponsive to the impacts of inflation, which, over time may minimise the real value of the endowed capital. This in turn would dent the prospects for sustaining the capital in the future. For this purpose, it is advisable that the investment strategy should be revised in a phased manner according to the targeted future commitments or aims (ACF, 2012).

According to Charity Commission guidance, investments which target fulfilling a social purpose are classed as 'programme-related investments.' The Commission holds a very positive view towards such initiatives and tends to appreciate and promote such an approach among charities. However, the major problem in this respect is that "*there are few investment advisers on the market with expertise in the foundation sector. For smaller foundations particularly, such advice may prove to be too expensive or be geared towards a larger-scale operation*" (ACF, 2012: 45). Also, in the third sector there is common anxiety, particularly over two aspects of charities; the first is related to lower return on investment and the second is on higher demand for benefits from potential beneficiaries due to rising costs and reduced governmental funding plans (ACF, 2012). To bridge this gap between the demand and supply of charitable benefits, charities are required to carve out their investment and spending policies in a more prudent and pragmatic manner (ISFR, 2014).

Learning from the Experiences of Each Other: Examining the Management Practices of Charitable Trusts in the UK

The Joseph Rowntree Foundation

In theory, *Waqf* and trusts have many commonalities in their formulation as well as in their management structures. However, in practice, there are noted differences in their overall governance, functions and management paradigm. For instance, in the case of the Joseph Rowntree Foundation (JRF)[8], under the terms of the deed of the foundation, trustees have the power to spend both income and capital. In other words, there is no provision of restricted or designated reserves in the deed of the foundation. Thus, all of JRF's capital is regarded as free capital and it can be deployed at the sole discretion of its trustees. This is not the case with *Waqf* as its deed cannot contain such flexibility of capital consumption.

One of the essential characteristics of most of the deeds of charitable trusts is that they stipulate relieving their respective trustees of their services after a specific period. Generally, this is scarcely the case with *Awqāf*. The deed of JRF for example stipulates that a trustee can serve a maximum of ten years and thereafter a new trustee would be inducted into his/her place. It would seem that this stipulation plays a vital role in maintaining the structure of governance as being active and transparent. In terms of its fiscal objectives, JRF holds the following dictum:

Investment objective of JRF: "*To achieve the maximum total return on its portfolio in terms of the capital growth and income received without incurring undue risk*" (JRF, Annual Report, 2013: 22).

Financial objectives: (1) To maintain a level of expenditure on research and development and influencing activities in real terms; (2) To ensure that the value of JRF capital is maintained in real terms over the long-term.

JRF follows strict filtering criteria for its investment. However, despite this, the capital value of its investment portfolio increased from £264 million to £320 million between 2012 and 2013, representing a 21 per cent increase. In terms of its filtering criteria, JRF's report elaborates: "*Investments are subject to ethical constraints, which preclude investment in companies significantly engaged in the manufacture of armaments, alcohol and tobacco or gambling*" (JRF Annual Report, 2013: 22). Notably, JRF's investment portfolio has a very high concentration in equities as it regards high asset allocation in equities to be the most appropriate strategy to meet its financial objectives. Though concentration in equities carries greater propensity for volatility, because JRF is a long-term investor, it believes in its ability to manage this risk. The key to good investment return for JRF lies partly with its sound investment strategy "*which has a very high weighting (90 per cent) to equities*" (JRF Annual Report, 2013: 25). The foundation has four independent fund managers who are responsible for investment within agreed benchmarks.

8. JRF is located in York, England and was set up by a deed of foundation in 1904. Since its inception, the deed has undergone a number of changes. The foundation's objectives include: (a) research and development, (b) examining the root causes of poverty and (c) poverty alleviation. JRF funds its research through grant-making and its operation is limited to the UK. The foundation decides on its policies through consultation with staff, trustees and other stakeholders. The foundation is non-incorporated, but its trustees are incorporated under section 251 of the Charities Act 2011. The role of the trustees is limited to setting the strategic and policy direction, while directors are responsible for the day to day functioning of the trust (JRF, Annual Report, 2013).

The Garfield Waston Foundation

In comparison to JRF, the Deed of Garfield Waston Foundation (GWF)[9] stipulates that the endowed sum constitutes the permanent endowment capital which cannot be disposed of by the trustees except with unanimity of their vote. A second substantive difference between GFW and JRF is that the former's trustees are directly responsible for management of the foundation, whilst for the latter; the role of trustees is limited to setting the strategy and policy direction to be implemented by the directors.

The governance structure of the GWF is similar to a traditional structure of family *Waqf*. According to the Deed of GWF, after the death of the founder, his wife and thereafter his descendants would become the trustees. According to the Deed, between five and ten trustees are legislated at any given time and, in the event of the number of trustees falling below five, lineal descendants of the founder should be appointed trustees to make up the shortfall, as family members of the endower are regarded as being better acquainted with the vision and mission of the trust.

The investment objective of GFW is to maintain the real value of the capital. GFW has a conservative investment strategy; with primary benchmark for investment performance being the retail price index (RPI) plus four percent on a three year rolling basis. The foundation holds 79.2 percent of Wittington Investments Limited, a British food company and total income receipts in 2014 were £51.8 Mn. The trustees issued grants worth £54.1 Mn by drawing on capital reserves. The following are points are noteworthy with respect to GWF:

1. The endowment of the foundation is largely invested in one company.
2. Though the foundation is charitable, governance is through the trusteeship of descendants of the founder.
3. Trustees of the foundation are also directly responsible for management.
4. Investment management is outsourced to an independent portfolio management consultancy, reporting to the trustees of the foundation.
5. The Deed provides substantial discretionary power to the trustees in terms of the selection of beneficiaries and the allocation of grants.
6. The foundation maintains regular monitoring of the recipients of grants to ensure the accomplishment of the given purpose.
7. The foundation secures a good rate of return by investing in equities.
8. The foundation maintains an income reserve mechanism, which underwrite potential future fiscal shortfalls.

9. GWF was established in 1958 and is located in London. It is a general grant giving charity endowed by W Garfield Weston and his family. GWF provides grants to registered charities in the UK. Since its foundation, GFW has made cumulative donations of £790Mn (GFW, 2014).

Sir Jules Thorn Charitable Trust

Compared to GWF, the Deed of Sir Jules Thorn Charitable Trust[10] (SJTCT) confers absolute discretionary power to the trustees to apply the funds as they view reasonable, albeit, in compliance with the wishes of Sir Jules Thorn. There is no restriction in the Deed on how to formulate investment policies. The endowment funds are fully

10. Sir Jules Thorn Charitable trust was established in 1964, with an endowment from Sir Jules Thorn. The trust is located in London. Complying with the wishes of its founder, the trust aims to improve quality of life for the sick and underprivileged along with funding medical research. Also, it provides grants for humanitarian purposes in related areas. At year end 2013, the value of the endowment fund was £108.96 Mn (Sir Jules Thorn Charitable Trust Financial Statements, 2013).

invested in the stock market on a long-term basis. Fund managers operate with a discretionary mandate. The targeted investment return for SJTCT endowment is 3.5 percent above the CPI and net of fees, measured over a rolling three year period. The trustees expect a negative screening of direct investment in the tobacco manufacturing stocks. The cash resources of the trust are deployed in money market funds and bank deposits.

The following are key points on SJTCT management:

1. The Deed supports utilisation of capital from the endowment reserve, but with the caveat that a mechanism to return this reserve to its former capital value be defined and in place prior to approval.
2. The trust is expendable on trustees' discretion (whose principal and earnings can both be expended for authorised purposes).
3. Funds are managed and invested on a long-term basis.
4. A sustainable funding policy is applied i.e. in accordance to the performance of the investment portfolio.
5. The trust does not hold unrestricted funds as reserves.
6. Since there is no new fundraising activity, there is less need for intermittently renewing investment policies.
7. Cash is placed in interest bearing deposit accounts (which is not applicable for a *Waqf* fund).
8. The trust is governed by a board of trustees, but there is no stipulation for either minimum or maximum number of its members.
9. The trustees are appointed for an indefinite period and it is they who set policies, review progress and consider grant applications. All trustees are unpaid.

The Andrews Charitable Trust

The Andrews Charitable Trust[11] (ACT) was established with the objectives of the advancement of Christianity and relief from poverty, sickness and distress. It follows a similar model to that of SJTCT in terms of its management. Trustees have full discretion in its investment portfolio. The trust has its major investment in the property market (Andrews & Partner Ltd). These comprise a total asset of £9.82 Mn for the trust. The founder of Andrews & Partner Ltd increased the principal sum of the trust by endowing a majority shareholding of the company to the trust. For the trust, the investment return is bench-marked with the FTSE all-Share index total return over a rolling five year period. As a consequence of the 2008-09 financial crisis, the trust's return dipped significantly. However, since 2010, ACT's average total return was 14.3 percent per annum and Andrews & Partner Ltd has maintained an average return above the FTSE index.

In addition to Andrews & Partner Ltd, there are investment strategies in place for diversification of the trust's investment portfolio, with an average return of 10.3 percent since 2010 exceeding a target return in these long-term investments of 8 percent per annum. The trust has its major investment in M&G equities. In 2013, the return on investment exceeded 25 percent compared to FTSE all Share index benchmark of 20.8 percent.

ACT also has international operations, whereby it provides grants to established charities and to those which are in the process of establishing themselves and demonstrate shared values and vision. The operation of ACT is atypical in the sense that it works closely with the grantee organisation through a mutually agreed letter of contract between, providing only funding for core organisational costs, not for project activities.

The following are salient features of ACT:

1. Some new rules have been incorporated into the original Deed of the trust. For instance, the original Deed has provision for between four and fifteen trustees. However, new rules amend this to between nine and twelve. Also operational processes have been simplified through these new rules.
2. New trustees are appointed after passing through a rigorous check by the sub-committee followed by interview.
3. The trust operates with a finance and investment committee, comprising a treasurer, chairman and two further trustees.
4. Day-to-day administration of grants is handled by the trust director.
5. In addition to funding, the trust provides management and development support to the grantee.
6. The expertise of one trustee is offered to the grantee institution, who becomes involved with the new project at all strategic levels.
7. The trust exits the project once the grantee organisation becomes self-sustainable, usually around 2-7 years from inception.

The Wellcome Trust

Compared to the previous four charitable trusts, the Wellcome Trust[12] has no individual trustee; rather, the sole trustee is a company limited by guarantee, called The Wellcome Trust Limited (Wellcome Trust, 2014: 28). The trustee is governed by its memorandum and articles of association and there is an established Board of Governors, which "*sets strategy, decides priorities, establishes funding policies and allocates budgets*." The trust has an executive board, chaired by the director, which reports directly to the Board of Governors. The executive board is responsible for the day-to-day management of the trust's operation and provides advice to both the governors and the director with regard to planning, policy and strategic matters. The Wellcome Trust Group comprises the trust and its subsidiary undertakings.

The Wellcome Trust has enjoyed successive years of strong returns on its investments and is a long-term investor in property markets, comprising residential housing, student accommodation, hotels and farmland. At the time of volatility in the property market, it acquired a number of assets at attractive prices, boosting its overall return after the financial crisis passed. The trust employs the services of both internal and external investment managers. However, the performance of internally managed investments surpassed those outsourced to external managers in public equities, private equity and property. The Trust's directly held investments account for 42 percent of the total portfolio, up from 26 percent in 2010-11.

11. The Andrews Charitable Trust was established in 1965. It is based in: Bristol. Earlier it was known as the Phyllis Trust and has undergone a number of name changes throughout its history.

12. The Wellcome Trust is a charitable trust created in 1936 by a will of Sir Henry Wellcome. The trust is governed by its constitution which was established in 2001. The objectives of the Trust include: to protect, preserve and advance all or any aspect of the health and welfare of humankind and to advance and promote knowledge and education. During 2013 and 2014 the trust had an investment portfolio valued at £15 Bn and £16.7 Bn, respectively, with a net valuation of the trust in 2015 of £18 Bn. The trust forecasts that its charitable cash spending will rise over the next five years to £4 Bn, compared to spending of £3 Bn for previous past five years.

The following are key features of Wellcome Trust:

1. The Wellcome Trust has a well defined reserve policy with the objective of maintaining its purchasing power. Also, reserve policy is regarded as a vital factor in sustainability of its charitable mission.
2. The Trust invests globally and across a very broad range of assets.
3. In terms of its filtering criteria, the policy of the trust is to not invest in companies that derive material turnover or profit from tobacco or tobacco-related products.
4. During 2014, almost 75 percent of its investment portfolio was invested in public and private equities.
5. Almost 40 percent of its assets are directly managed by its internal asset managers.
6. In each of the major asset classes (public equities, hedge funds, buyout funds, venture and property), the trust achieved double-digit returns.
7. The performance of directly managed assets was better than those managed by external managers.

Examining the Management Practices of *Waqf* in the UK

Compared to the aforementioned charitable trusts in the UK, there are few comparable examples of *Waqf* in the country. There are a number of Muslim charity organisations operating *Waqf* departments, but there is scarcity in the specialism of *Waqf* management.

Europe Trust

Amongst prominent Muslim charities in the UK, the structure and functions of Europe Trust[13] is perhaps closest to the functions of a purely *Waqf*-based charity.

This trust provides funds only to community-based projects, funding only institutions and not individuals. The outreach of the trust is limited to a national level; however, it has plans to cover international projects in the future. The funding process of the trust includes invitation of applications from eligible institutions, and its trustees decide which projects will be funded.

The trust began in 1996 with a donation of £20,000, which was subsequently invested in a few Muslim-owned companies, earning a 5-6 percent return per annum. The initial experience of Europe Trust presented a unique model for fundraising on a sharing basis and the trust signed contracts with high net worth individual donors to fund the purchase of a specified property, with the condition that it be registered in the name of the trust, but that the accrued return from it would be shared between the donors and the trust on predetermined equity terms. The contribution of the trust and donors towards the purchase of the property was equal. The donors would utilise their proceeds to fund charitable objectives at their own discretion.

The current portfolio of Europe Trust is approximately £8 Mn, including the value of mosques and real estate registered in the name of the trust. Trust assets worth almost £5 Mn are invested in various *Shari'ah*-compliant ventures, with the bulk of the portfolio invested in property. Europe Trust seeks the services of property managers to manage its assets. Since the nature of its underlying donated capital is *Waqf*, the trust is careful to preserve the corpus of donations. In view of the condition of perpetuity in *Waqf*, the trust further avoids high risk investment, with a reported rate of return of 6-7 percent per annum.

Though it is believed by the trust that *Shari'ah*-filtering criteria of investment minimises the prospect for optimal return on investment, the trust strictly avoids investments in any non-*Shari'ah*-compliant industries.

The following are key features of Europe Trust:

1. Return on investment can be improved significantly if, instead of concentrating on property, funds are invested in equities and other liquid instruments.
2. If there is a mechanism of securing *Qard Hasan* on demand, the performance of the trust can be improved substantially. This is in view of the fact that at times there are attractive investment opportunities, for instance, low-cost auctioned properties, for which capital investment would be required, but unavailable in the absence of an interest-free loan.
3. For high net worth donors, the integrity and trustworthiness of fundraisers is more important than the popularity and credibility of the charity they are working for.
4. The prospects for the donation-pool can be improved if some fundraisers are contracted on a commission basis; though some trustees have reservations about *Shari'ah*-permissibility of this mechanism.

13. Initially, it was known as European Trust. In 1998, with the donations received from high value Middle Eastern donors, the trust purchased properties in Leeds where it also established its offices.

5. Only 30 percent of investment-returns are used to fund projects, with the remainder used to for administrative costs, reinvestment or inflation-adjusted expenditure.
6. For the purpose of effective fundraising, personal contacts of trustees with potential donors are vital.
7. There is no individual reporting mechanism; however, donors are kept abreast of the operation of the trust through published annual reports.
8. Due to ongoing conflict or humanitarian crises in many Middle Eastern or Muslim majority countries, many Muslim donor-clients are inclined towards pilanthropic or rehabilitative projects internationally, rather than developmental goals of communities at home.

Manchester Islamic Education Trust

In comparison to Europe Trust, the experience of *Waqf* management by Manchester Islamic Education Trust[14] (MIET) has its own distinctive lessons. The MIET began its operations with rented buildings and later, through increased donations, purchased properties for establishing schools and generating revenue through residential property letting.[15] During 1999-2000, MIET established two separate schools for girls and boys through cash donations and transformed the collection of small donations into *Waqf* assets. This experience encouraged donors, who provided further funding to purchase buildings to be rented by MIET and the accruing proceeds were deployed to fulfill charitable objectives of the trust. In 2010, MIET succeeded in securing funds from the Islamic Development Bank (IDB) for the purchase of further properties and construction of buildings. Importantly, donors, including IDB, did not use the specific term of '*Waqf*' in their funding; rather MIET converted these donations into *Waqf*.

According to the given investment policy of MIET, all small donations are added to existing *Waqf* properties as all *Waqf* and non-*Waqf* funds are invested into MIET's own properties. Furthermore, MIET does not provide funding, but offers charitable services, particularly through facilitating education for eligible beneficiaries. MIET employs a project-oriented fundraising mechanism, for which high net worth entities are approached individually and funds raised are immediately put into property-oriented projects.

The trust believes that its effectiveness can be improved by:

1. Cost-effective management of *Waqf* is possible if management is motivated by Islamic teachings and values.
2. There is a need to expand operational outreach.
3. Government support is key for the successful delivery of services.
4. Continuous cash flow and income generation is vital for the trust's sustainability.
5. Avoidance of over-ambitious ventures and projects.
6. Soundness of tentative projects and their precise presentation is crucial to attract potential donors.
7. The local community should also be approached for *Waqf*-based donations.
8. There is a need to raise awareness of the spiritual and socio-economic benefits of *Waqf* among the Muslim community.
9. Updating donors on ongoing and completed projects is important in encouraging them for further donations.

14. Manchester Islamic Education Trust was established in 1992 and is located in Manchester, UK. The purpose of the trust is the 'advancement of education, particularly, Islamic education in the United Kingdom.

15. A group of highly motivated educationists started a school in a rented building and then moved on to acquire other properties in Manchester. The trust has further aims to provide special accommodation for Muslim women coming from abroad for the purpose of education. Currently, the trust possesses an asset-portfolio of about £5 Mn.

Muslim Hands

The department of *Waqf* at another UK-based Muslim charity, Muslim Hands,[16] was instigated in 2008-09 with a modest *Waqf*-donation. Notably, in contrast to traditional forms of *Awqāf*, which in general are originally constituted through real estate investments and buildings endowments, the starting point for most contemporary *Awqāf* is composed of cash *Waqf* donations. This was the case with Muslim Hands, which collected a pool of cash *Awqāf* from individual donors both as general *Waqf* contributions as well as in the form of subscription to *Waqf* units in the form of certificates as offered by the institution.

Muslim Hands invites project-oriented cash *Waqf* donation and after investing the collected pool in *Shari'ah*-compliant ventures, it utilises the return on investment for specific charitable purposes. In general, Muslim Hands invests its *Waqf* pool with al-Rayan Bank (formerly known as Islamic Bank of Britain) through its *Mudārabah* scheme. Over the years, Muslim Hands has secured a five percent rate of return on its investment.

According to officials at Muslim Hands, the return on its investments constitutes a small part of the charity's total turnover as the functional objectives of the charity are largely dependent on the continuous stream of voluntary donations. Consequently, compared to general donations received, the pool of *Waqf* is minimal.

The charity employs various methods of fundraising including emails, TV advertisements, volunteer-oriented campaigns and approaching individuals in person; with officials at Muslim Hands considering the most effective means of fundraising being through personally contacting individuals.

The following are salient features identified by Muslim Hands in advancing their remit:

1. There is a need to identify the reasons why people donate i.e. for faith-based conviction, spiritual reward or as a consequence of humanitarian concern.
2. Providing bespoke sevices to individual donors and offering tailored donation schemes.
3. Providing trouble-free and uncomplicated methods of transaction for first time donors.
4. Raising awareness about the significance of *Waqf* across communities and involving them in the process is of vital importance.
5. The quality of services provided by the charity is directly correlated with donor retention and motivation.
6. Reaching out to unique beneficiaries, who are not the focus of other charities, adds both a unique selling point for the charity and sends a positive signal to donors about the charity's distinctive approach.
7. If the cash *Waqf* reserve of the given charity is large enough, prospects for the diversification of its investment portfolio are enhanced.
8. For sustaining cash *Waqf* reserves, a strategy must be in place, which is only possible if the rate of return on the investment is sufficient.
9. Limited *Shari'ah*-compliant investment opportunities restricts the potential return through cash *Waqf*; consequently, there is high demand for broadening prospects for *Shari'ah*-compliant investment.

16. Muslim Hands is an international aid agency, established during the Bosnian crisis in 1993. The charity is located in Nottingham, UK.

Determining The Factors Of Effectiveness In Comparing *Waqf* And Trusts

Though, the two institutions of *Waqf* and trusts evolved independently of one another, they have overlapping characteristics in terms of their structures, mechanisms, technicalities and objectives. *Waqf* and trusts therefore both have their own historical experiences and track records. Nonetheless, despite their past, scope for further improvement needs exploration and is important in developing best practice.

With reference to *Waqf*, perhaps, there is a general perception that both its jurisprudential as well as its management paradigms require adaption in order to align with the dynamics of current needs and challenges. To this end, with the objective to develop further understanding on the topic, five academics having expertise in the field were interviewed. The names of these experts are as follows:

1. Prof. Monzer Kahf[17]
2. Prof Rodney Wilson[18]
3. Prof. Timur Kuran[19]
4. Prof. Habib Ahmad[20]
5. Assoc Prof. Mohammad Tahir Sabit[21]

An analytical summary of the views and suggestions expressed by these experts provides a holistic framework for determining the factors of effectiveness in *Waqf*, vis-à-vis trust.

17. Prof. Monzer Kahf is a Shari'ah scholar and one of the pioneers of the Islamic finance industry. He has authored a number of academic papers on Awqāf and English trusts.

18. Prof. Rodney Wilson is the former director of the Islamic Finance department at the University of Durham. He has produced a number of books and academic papers in Islamic economics and finance.

19. Prof. Timur Kuran is known as one of the most famous critics of the traditional Awqāf system and its associated Fiqh. He is Professor of Economics and Political Science, and Gorter Family Professor in Islamic Studies at Duke University, USA.

20. Prof. Habib Ahmad is a leading academic and an authority in Awqāf studies. He is the Sharjah Chair in Islamic Law and Finance at Durham University.

21. Prof. Mohammad Tahir Sabit is the author of a number of articles on *Waqf* and has seminal work on *Waqf* as a banking model. He is currently Associate Professor at University Teknologi Malaysia (UTM).

According to Timur Kuran, there are noted differences between contemporary and traditional *Waqf* management paradigms. In his view, conventional *Waqf* became static as there was very limited adaptation to its jurisprudential principles. Kuran holds that it was not only the jurisprudence of *Waqf* but the whole jurisprudential structure of Shari'ah that stagnated after the first few centuries of the advent of Islam. He emphasises *"If you get stagnation in one area of law, it automatically causes stagnation other areas of law as well" and "If one area of law stands still, the change in another area of law would look very abnormal."*

In comparison to traditional *Awqāf*, Kuran believes that contemporary *Awqāf* is not only as effective as English trusts, but is more advanced in countries such as Malaysia and Turkey, where *Waqf* has already developed into effective non-profit corporations. These corporations have their own legal entity and are governed by a board of trustees compared to conventional *Waqf*, which was generally managed by a single *Mutawalli*. Modern *Waqf* therefore has significantly more flexibility in adjusting to different legal and socio-economic paradigms. Additionally, compared to traditional *Awqāf*, modern *Waqf* does not need to seek approval of a court judge (*Qādi*) to exercise changes or alterations to its function and management.

Notwithstanding, Kuran holds that since there are variations in existing *Waqf* laws in different Muslim majority countries, contemporary *Waqf* is not a uniform institution. The effectiveness of *Awqāf* has improved in countries where the legal framework of *Waqf* has been modernised. However, this notion cannot be generalised for other countries which have not responded to changing needs over time. For example, in countries such as Egypt, Syria and Algeria, the institution of *Waqf* remained relegated to a valueless industry. Since the institution of *Waqf* empowers communities and provides resources to, in particular, religiously motivated organisations, it has always been seen as a potential threat to the ruling classes. For this reason, the institution was marginalised in a number of Muslim countries. Thus, many countries maintain restrictive forms of *Waqf* law in order to suit vested interests.

In the view of Kuran and Habib Ahmad, governmental ownership of *Awqāf* in some countries has dampened public confidence in the institution. Highlighting a similar concern, Monzer Kahf points out "*there is not even a single Wāqif who would wish governmental agencies to manage his/her Waqf. However,* [even] *some governments have taken over Awqāf against the will and aspirations of Wāqif.*"

Ahmad looks at the problem of ineffectiveness in many *Awqāf* from a different angle. According to him, the problem with *Awqāf* is that in many jurisdictions it is not governed by *Fiqh* rulings but by the *Waqf*-laws of the country. This causes rigidity in its functioning and limits the potential effectiveness of the institution, because the laws of the land are not necessarily as accommodative as the jurisprudence of *Awqāf*. Ahmad elucidates, *Waqf* law in Bangladesh, for example, is very rigid and inflexible, requiring from each registered *Waqf* a payment of five percent of its total revenue to the National *Waqf* Board, a governmental body. Also, this board wields authority to interfere with the management of the registered *Awqāf*. In contrast, the treatment of a registered trust is not the same, neither being bound by the payment of the five percent fee, nor is it subject to governmental intrusion. In this environment, if one is given a choice between creating a *Waqf* or a charitable trust, it is more probable that the creation of a trust would be preferred over *Waqf*.

Apart from this, according to Kahf and Ahmad, *Waqf* and trusts fulfil very similar objectives. However, their effectiveness is subject to the formulation of their deeds, functional structures and paradigms of management. Theoretically, they are equally effective. According to Kahf, public permanent endowments are perfectly compatible with the perpetuity feature of *Waqf* and are similar to *Awqāf* in terms of their efficiency and effectiveness. However, Kahf underlines that the concept of efficiency has not been dealt with in classical *Fiqh*. Though classical jurists have discussed the concepts of *Amānah* with reference to the management of *Waqf*, classical *Fiqh* of *Awqāf* lacks specific references to the efficiency of *Awqāf*, which needs to be embedded in contemporary *Awqāf*.

In the view of Kuran, current *Waqf* practice is very flexible and does not need specific adaptation from trusts; on the contrary, given the flexible nature of contemporary *Awqāf* practices, trusts may need to learn from it. Current *Waqf* not only exhibits almost all the essential features of English trusts, but also has all the merits of a modern non-profit corporation. Kuran agrees with Ahmad and Kahf in asserting that contemporary *Fiqh* of *Awqāf* is flexible and no longer causes a hindrance in efficient and effective management of *Awqāf*. In spite of this, Kuran suggests the following points to further improve the effectiveness of modern *Waqf*:

1. The historical value of *Waqf* needs to be better understood by all its stakeholders.
2. The potential benefits of modern *Awqāf* should be advocated among the broader community. There is very little understanding of how *Waqf* can empower communities through the provision of, for example, free social services, and how *Waqf* can solve many socio-economic problems, not only for Muslims but for non-Muslims too.
3. Any issues of corruption in existing *Awqāf* should be tackled and there need to be safeguards against a fraudulent *Wāqif*, who resorts to the mechanism of *Waqf* in order to exploit its flexibility to serve their own vested interests.

4. The jurisprudential principles of *Waqf* are based on analogical deduction (*Qiyās*) and thus further adaptation is possible where needs arise, provided these are carried out by Islamic scholars and these adaptions are not contrary to the tenets of Islamic law.
5. A *Wāqif* should balance their discretionary powers with those of trustees, in terms of adaptation in the clauses of the deed.

Classical *Fiqh* provides to the *Wāqif* absolute authority in setting the terms of the *Waqf*. According to Kuran, this provision causes rigidity in the institution of *Waqf*. Kahf, however, disputes this contention of Kuran, as he regards the provision fully consistent with the theory of property-rights in *Shari'ah*. Kahf emphasises that there are technical differences between a charitable trust and a charitable endowment. Compared to a charitable endowment, a charitable trust confers more power on trustees including the power of winding up the trust. However, charitable endowments are always perpetual. Thus, conceptually, the nature of permanent endowments, particularly public permanent endowments, is identical to the nature of *Waqf*. In terms of enhancing the prospects of *Waqf*-performance, Kahf suggests the following points:

1. The management of *Waqf* should not be handed over to a few individuals on a permanent basis. Rather, management may be relieved of their duties on the basis of performance, rewarding high performers and dismissing under achievers.
2. Ideally, trustees' terms should be time-bound, nominally 3-5 years.
3. The efficiency characteristic of *Waqf* should be emphasised. The efficiency clause is not provided in classical *Fiqh* of *Awqāf*, and thus there is a jurisprudential inadequacy in terms of *Waqf* management according to classical *Fiqh*. This existing gap should be bridged in modern *Waqf* management practice by embedding efficiency clauses in the deed.
4. Whilst preparing a *Waqf* deed, the *Wāqif* should insert clauses of efficiency, good governance, transparency, accountability, expected rate of return and reward for effective management into the contract.
5. *Awqāf* managed by private entities are preferable and can perform better than those managed by governmental bodies.
6. There is no rigidity in the principles of *Waqf* as a whole, but there is rigidity in the opinions of some of the Islamic scholars. In such cases, a moderate, facilitating opinion should be adopted.
7. The Fiqh of *Awqāf* was developed almost 1000 years ago. Consequently, many crucial concepts of management are missing in its discourse. To this end, there is a need to learn from modern tools of management.
8. In line with the spirit of Prophetic *Hadīth* that "*the one whose two days are the same, he is a loser*," the concept of increment and growth should be emphasised in capital escalation strategy and revenue generation of existing *Awqāf*.
9. There needs to be a policy for reinvesting accruing revenue from the existing *Awqāf*. This practice ensures capital growth and maintains sustainability of the *Waqf* on the one hand and continuously improves beneficiary impact on the other.

Ahmad views a few conceptual and technical differences between *Waqf* and trusts. Generally the primary motive of establishing a *Waqf* is religious rather than a trust, which is motivated both religiously and otherwise. Additionally, the jurisprudential doctrines of *Waqf* differentiate it from English trusts. For instance, whereas the ownership of *Waqf* rests with God, the legal and beneficial ownership of a trust rests with its trustees and beneficiaries respectively. However, Ahmad counts the differences between the two institutions as superficial in terms of their objectives and management. He stresses "*the economies of both Waqf and trusts are almost the same; they can fulfil similar objectives and both serve charitable purposes equally.*"

Tahir Sabit echoes Ahmad's view, noting that "*the model of English charitable trusts is borrowed from the concept of Waqf.*" Sabit holds that, in general, the functions of *Waqf* and trusts are similar in fulfilling certain objectives; however, there are some differences as well. According to him, "*creation of trust can be driven by a multitude of factors, but for Waqf, religious conviction is the major driver.*" Also, in the view of Sabit, "*the necessary requirement of Shari'ah-compliance in Waqf distinguishes it from trusts.*"

According to Ahmad, drafting the deed of *Waqf* in an efficient manner is one of the most crucial steps towards its effectiveness. He believes that if the deed is structured too narrowly in terms of its objectives or management, the effectiveness of such a *Waqf* may be affected negatively. This has been the case with many traditional *Awqāf*, as there are *Awqāf* that were founded a long time ago, with very narrowly defined purposes, which are no longer relevant. For example, in India there are instances of *Awqāf* set up for benefiting the people of Medina, (one of the two holy cities in Saudi Arabia). However, given the reversal of affluence when comparing Saudi Arabia to India since the time of the establishment of these *Awqāf*, this objective is no longer applicable, as the people of Medina are in no need for financial assistance from foreign lands.

Though Ahmad does not view contemporary *Awqāf* to be as effective as trusts, he asserts that there are specific examples of well managed *Awqāf*. For instance, those managed by the Islamic Development Bank (IDB) are exemplary both for their efficiency and effectiveness. Furthermore, Ahmad asserts, the effectiveness of a *Waqf* vastly depends on the priorities of the *Wāqif*, the purpose for which the *Waqf* has been made and the management of the *Waqf*. He suggests that implementing a few points in current *Awqāf* practice can be instrumental for its effectiveness, including:

1. *Mutawalli*'s should be given more discretionary power in deciding the purpose, management and benefits of *Awqāf*.
2. Efforts must be poured in to revive dormant or decaying *Awqāf*. This is crucial both for the empowerment of the communities they serve and for reinvigorating confidence in the institution of *Awqāf* more broadly.
3. There are a large number of *Awqāf* lying ineffective due to underlying rigidity in their deeds. These deeds should be reviewed and restructured and their purposes redefined as per the needs of their specific and current circumstances.
4. Most traditional *Awqāf* declined due to inefficient management, partially caused by a lack of expertise of the *Mutawalli* and also through lack of accountability. These problems can be remedied in modern *Awqāf* by installing a proper mechanism of trustee selection and accountability.
5. In countries such as the UK, there may be limited investment avenues for cash *Awqāf*, resulting in comparative disadvantage in terms of potential return. To remedy this problem, creation of new *Shari'ah*-compliant investment opportunities should be explored.
6. English trusts have improved their management through incorporating sophisticated and innovative means and methods of management.

Waqf should follow this example to achieve greater efficiency and effectiveness.

7. The legal framework of the UK should be broadly understood to adapt the functions of *Waqf* properly in the country.
8. There are trust companies that manage trusts professionally, but such services are not available in the Islamic financial sector.
9. Creation of new *Awqāf* should be re-emphasised in the community and the concept of cash *Waqf* should also be promoted actively.
10. Efficient management of contemporary *Awqāf* is key, not only in the short-term, but also to secure long-term sustainability of the institution. Adequate management of *Waqf* by the institutional *Mutawalli* strongly factors in the long-term success of the institution.
11. It is critical for the effectiveness of *Awqāf* that the most deserving beneficiaries are identified and served on a priority basis.
12. In defining the objectives of *Awqāf*, examining the long-term socio-economic implications on the community is instrumental in their overall effectiveness.

According to Sabit, modern *Awqāf* is still playing catch-up with the effectiveness of trusts. He explains "*compared to trusts, Awqāf has a lag of almost two hundred years*." This gap in the progress of the institution must be bridged by expediting the renovation of its institutional edifice. Though there have been repeated calls for the revival of *Awqāf* in past decades, this restoration process is slow and *Awqāf* needs to accelerate its progress to achieve the levels of sophistication and advancement experienced in trusts' management practices.

Rodney Wilson too stresses that *Awqāf*, particularly those functioning in the UK, must learn from the sophisticated mechanism and experience of trusts, and wherever needed, should adapt to the requirements of the English legal environment. For this purpose, he adds, special studies should be commissioned to examine not only the legal and management aspects of trusts, but also to learn from the mechanisms for their governance, audit, transparency, tax-treatment and tailor-made structuring.

Sabit believes that *Awqāf* is relatively disadvantaged compared to trusts in terms of generating competitive returns on investment. This aspect, according to him, dents the prospects of full effectiveness of *Awqāf*. Sabit underlines the following points to make *Awqāf* more effective:

1. Developing management skills in *Mutawalli* (individual or institutional) is more important than providing them training on *Fiqh* aspects of *Waqf*.
2. Both *Mutawalli* and beneficiaries should be inducted on the spiritual nature of *Awqāf*, and the spirit of altruism, volunteerism and dedication for this pious cause should be understood by all stakeholders.
3. In countries where Muslims are in a minority such as the UK, special consideration should be assigned to the immediate needs of the community.
4. Innovative *Waqf* instruments should be devised in line with the special needs of different *Wāqif* and beneficiaries.
5. There is substantial scope for *Awqāf* to learn from trusts; however this should not lead to the 'secularisation' of *Awqāf*; the religious spirit of *Waqf* should never be compromised and no violation of *Shari'ah*-principles should be tolerated in the process.
6. *Awqāf* can learn from management techniques of trusts. The most important areas for *Waqf* to learn from trusts includes methods for maximising its revenues in a tax effective manner and ensuring the protection of given assets.
7. A selective approach towards determining beneficiaries according to their need should be emphasised.
8. Promotion of cash *Awqāf* should be carried out by highlighting its significance and by dispelling any misconception regarding its *Shari'ah*-permissibility.
9. There is a need to create and promote a special *Awqāf* management fund in line with the mechanism of unit trust funds.
10. For corporate *Awqāf*, the example of Johor corporate *Waqf* model in Malaysia can be used as a model for effective *Waqf* management.

Wilson holds that there are some variations in legal and jurisprudential aspects of *Waqf* vis-à-vis trusts. However, both devices can be employed interchangeably to serve similar objectives. Wilson further asserts that the tax treatment of *Waqf* and trusts plays a decisive role in their ultimate effectiveness. Additionally, according to him, the effectiveness of *Waqf* and trusts is subject to the given clauses of their deeds and structures, so generalisations of either their effectiveness or ineffectiveness should be avoided as they cannot be validated in practice. With reference to the comparative efficiency of *Waqf* and trusts, Wilson points out that "*in historical terms, there was a time when Awqāf was very efficient; however, the modern Waqf is, perhaps, not as efficient as the modern trust.*" In fact, contemporary *Waqf* has started incorporating almost all essential features of modern trusts into its mechanism; nevertheless, contemporary *Waqf* will require time to achieve its full potential. Wilson further stresses the significance of proper structure, function, operation and management of individual *Awqāf* for achieving their objectives in an effective and efficient manner. He considers the classical *Fiqh* of *Awqāf* relatively rigid, and this rigidity, according to him, played a role in the overall stagnation and decline of traditional *Awqāf*. However, he clarifies that this rigidity in classical *Fiqh* does not affect modern *Awqāf* due to significant change in its modern structure. Thus, according to Wilson, the era of decline for *Awqāf* is over now, as there has been noted progress in the process of *Awqāf* development by proactive involvement of the community and other stakeholders of the institution. For enhancing the efficiency and effectiveness of *Awqāf*, Wilson offers some fundamental suggestions for improvement, which can be summarised in the following points:

1. *Awqāf* managing institutions should introduce and follow good corporate governance practices.
2. The structuring of *Awqāf* should be done in compliance with the legal environment of a given jurisdiction and the tax implications of the governing authority should be considered in advance.
3. For the purpose of efficient management, if a range of small scale *Awqāf* can be consolidated, the resulting unified *Waqf* asset may be more advantageous.
4. Development of required skills and expertise for *Waqf* management should be emphasised.
5. International *Awqāf* managing institutions should also focus on benefiting local communities.
6. Identifying the most deserving beneficiaries and serving them on a priority basis is important for the effective deployment of *Awqāf* resources.
7. Research should be conducted on successful examples of *Awqāf* management in different countries to learn best practice.

For the majority of interviewees, managing cash *Waqf* is challenging owing to the requirement of protecting its corpus along with ensuring comparative revenue generation. Also, a deficiency in *Shari'ah*-compliant investment opportunities restricts the prospects for proper portfolio diversification for *Awqāf*. However, despite this, Wilson and Kahf assert that, in practice, it does not necessarily affect the rate of return for *Awqāf* negatively as there are possibilities for compensating this limitation by prudent selection of portfolios from available *Shari'ah*-compliant asset classes. Wilson added, "*There are instances where the return on Shari'ah-compliant assets has been very competitive and good*." For Ahmad, with respect to cash *Waqf*, good investment return is the key for the overall effectiveness of the institution.

Recommendations

On the basis of what has been discussed and analysed in the previous sections of this report, it is reasonable to believe that contemporary *Awqāf* is undergoing a process of revival and renewal and new patterns, paradigms and programmes of *Awqāf* management are emerging. There is a common perception that traditional *Awqāf* gradually demised over time to becoming practically ineffective. In comparison, the effectiveness of contemporary *Awqāf* is potentially on par with the effectiveness of modern trusts. However, there is a blurred line on the causes of *Awqāf* decline. In general, both ineffective and inefficient management of traditional *Awqāf* have been proffered as the root causes for the overall poor condition of the institution.

In view of this background, in order to achieve its full potential, modern *Awqāf* needs to learn from both; the negative experiences of traditional *Awqāf* and the positive experience of modern trusts. To this end, contemporary *Awqāf* requires critical attention of its stakeholders into four areas; conceptual, management, investment and governance aspects of the institution. Even prior to exploring the details of these recommended areas, it is pertinent to examine and analyse the key success factors of trusts in the UK. This analysis may, in turn, underline the building blocks for contemporary *Waqf*, which would help develop a new paradigm for effective management in the country. There follows a summary of the distinctive elements of trusts, which make them relatively more effective compared to *Waqf*.

Best practice lessons from trusts

a. **Founders:** The founders of trusts are generally individuals who have donated considerable sums for the establishment of their own foundation. Most trusts are established by founders to achieve specific charitable objectives. Thus the founders' aspirations, vision and mission play a critical role in chalking out the roadmap for the functions of the given trust. In comparison, there is limited parallel with a *Waqf* founded by any individual-*Wāqif* for serving similar charitable purposes by a single founder. Instead, most *Awqāf* comprise various donations raised by Muslim charity organisations rather than being set up separately with their own well-determined aims. This variance between the nature of *Waqf* and trust founders impacts the sustainability and successful functioning of *Waqf* vis-à-vis trusts.

b. **Deeds:** In general, most trust deeds are drafted in professionally and feature flexibility and discretion for trustees. The possibility for amendment in the deed of trusts accommodates the potential need for change with time. In contrast, generally, there is scarcely a need for formulating a *Waqf* deed as most of the *Awqāf* constitute one-time charitable donations given by individuals to the charity organisations. This practice eliminates the requirements for a *Waqf* deed, which is otherwise central for evaluating the performance of the *Waqf* in relation to the vision and mission of the *Wāqif*.

c. **Objectives:** Clarity in the aims and objectives of the charity is crucial. Trusts are set up with clear objectives and ambitions of their founders. However, this is not the case with current *Waqf* in the UK, as the *Wāqif* in several instances donates simply in response to the appeal of different charity organisations and not by their own ambitions and initiatives.

d. **Management:** The management of trusts is by appointed trustees. In comparison, Awqāf in the UK are managed by Muslim charity organisations as a collective pool of different donors. Due to this, unlike with trusts, the independent nature of different Awqāf is not maintained. In contrast to the performance of different trusts, the performance of most Awqāf in the country is subject to the performance of the charity organisation, which manages not only Awqāf but also a myriad of various other donations as well. This can result in incongruity between mechanisms for Waqf management and overall Awqāf performance within the context of the charity.

e. **Investment approach:** One of the most essential factors for successful trusts is that they assign greater significance to investment. An expert, prudent and active internal and external fund management team is central to successful trusts. Most trusts grow capital and maximise revenue through sensible risk mitigation. To this end, the evident trend in trusts' investments is a higher concentration in equities. For them, a long-term investment strategy is suited to the short-term volatility of equity markets, but long-term return and investment in equities comprises of 50 percent or more of most trusts' portfolios. In comparison, *Waqf* avoids exposure to equities, being regarded as too uncertain.

f. **Investment restrictions**: Most of the given trusts apply their own ethical investment policies, which neither affects their financial performance nor hinders the fulfilment of their missions.

g. **Efficiency:** The efficiency of the given trusts is partially ensured through minimum administrative costs. This is achieved by ensuring the recruitment of a committed but unpaid board of trustees and by involving a number of volunteers to work for the charity.

h. **Reserve policy:** Most of the trusts employ a reserve policy to safeguard them against occasions of poor return. Also, in general, charitable disbursement by the given trusts is subject to the performance of their respective investment portfolio each year, which plays an essential role in sustainability.

Recommendations for Waqf

The following are recommendations for the further enhancement in the overall effectiveness of *Waqf*:

a. The principles of *Shari'ah* and *Fiqh* are paramount in the establishment of *Awqāf*, and the faith-driven spirit of *Waqf* should never be compromised.

b. Similar to the practices of trusts, *Waqf* deeds should incorporate more discretionary powers to trustees in terms of need-oriented application.

c. *Waqf* deeds should have greater clarity in terms of vision, mission and objectives.

d. Similar to the example of successful trusts, the selection criteria for *Waqf* trustees should be standardised and the process should be fully transparent.

e. There is a need for *Waqf* management to enhance governance, transparency and accountability.

f. *Awqāf* should also adopt a policy for reinvesting accrued revenue. This practice is important in ensuring capital growth and continuity of benefits to beneficiaries.

g. Trusts have improved their efficiency and effectiveness by adopting sophisticated and innovative means and methods of management. *Waqf* should emulate this, in order to achieve greater efficiency and effectiveness.

h. The legal framework of the UK in general and tax implications in particular, for non-conventional trust-structures must be better understood, in order to enhance the functions of *Waqf* towards being more in tune with accounting principles of trusts.

i. In contrast to companies that manage trusts, the Islamic financial sector does not offer services to manage *Awqāf* as a profession, which is a gap that needs addressing.

j. *Awqāf* are relatively disadvantaged compared to trusts in terms of generating competitive returns on investments. This situation could be remedied by adopting an investment strategy for *Awqāf* that would include establishing equity market portfolios.

Recommendations: Conceptual Aspects

1. Promotion of the *Shari'ah* significance of volunteerism, altruism and charitable giving through various community-based programmes.
2. Dissemination of proper information about the spiritual merits of *Sadaqah Jārriyah* among the community in general and to potential donors in particular.
3. Promotion of the concept of cash *Waqf* whilst dispelling the existing misconceptions regarding its *Shari'ah*-compliance.
4. Provision of focussed *Tarbiyah* programmes (spiritual training) to the entities involved in managing *Awqāf*; inculcating in them a sense of duty towards beneficiaries as well as to the Divine.
5. Provision of a consultative mechanism for potential donors; guiding them on preparing deeds of *Waqf*; how to assess and define the purposes and beneficiaries of their donated *Waqf*.
6. Application of the objectives, or the *Maqāsid al-Shari'ah* perspective in determining the nature of prioritised purposes and persons to be benefitted by *Waqf*.
7. Prioritisation of beneficiaries from *Waqf* donations.
8. Pre-assessment of *Waqf*-based welfare schemes and their possible impact on the overall socio-economic health of society.
9. Ensuring the involvement of the community in the institution at all levels.

Recommendations: Management Aspects

1. Provision of specialised training programmes on *Waqf* management to the key entities involved in the institution; both at individual as well as institutional levels.
2. Provision of induction to the management team on the values, vision, mission and ideals of the *Waqf* institution.
3. Pre-determination of short and long-term management goals and periodic assessment of their accomplishments.
4. Limiting the time-span for services of *Mutawalli*/ trustee e.g. between three to five years tenure with the provision of their re-installment on the basis of good performance.
5. Examining the feasibility and prospects for collaboration with charitable trusts to exchange knowledge and best practice experience of managing endowments.
6. Promotion of professionalism in the management of *Awqāf*.
7. Provision of reward/incentives for good management of *Waqf*.
8. Employment of *Waqf* management teams with proven management experience.
9. Involving volunteers at all levels.
10. Efficient allocation of given donations with minimal administrative costs.
11. Examining the prospects for collaboration among different Muslim charities involved in *Waqf* management in the UK.
12. Creation of specialised *Waqf* management funds.

Recommendations: Investment Aspects

1. Employment of internal asset managers along with outsourcing services of external asset managers
2. Pre-determination of investment aims and objectives with expected rate of return
3. Deliberation on how to maximise the prospects of financial return by prudent portfolio diversification
4. Examining the feasibility of higher investment in Shari'ah-compliant equities
5. Allocation of special funds (through reserves) for the enhancement of capital growth for existing Awqāf
6. Exploring the viability of financing the development of existing but unproductive Awqāf
7. Deliberation on how to maximise the prospects of social return on the investment of Waqf (CSR)

Recommendations: Governance Aspects

1. Appointment of reputed and credible Trustees with proven moral integrity and full conviction in the values of the institution
2. Introducing the best practices of corporate governance for Waqf managing institutions
3. Installing a proper mechanism of transparency and accountability
4. Involvement of Shari'ah experts as internal auditors with the responsibility of advising and auditing Shari'ah issues
5. Development of special reporting mechanisms for donors exceeding defined contributions
6. Development of policies with special focus on serving the mission of the Wāqif and the material interest of beneficiaries
7. Ensuring the management's commitment to maintain the perpetuity of each and every Waqf

Further Research

It is advised to conduct further research on cases of successful models of contemporary *Awqāf* management and implementing identified mechanisms for improving efficiency and effectiveness. Similarly, research should be commissioned on cases of well-known charitable trusts, endowments and foundations to identify factors contributing to their effectiveness and to learn best practice. Special studies should also be undertaken to examine the legal and management aspects of trusts and to learn from instruments of their governance, audit, transparency, tax-treatment and tailor-made structuring. Existing links between *Awqāf* and Islamic finance requires more in depth understanding in order to support the development of the *Awqāf* industry, leading to the development of innovative *Waqf*-based financial instruments designed to meet the financial needs of the poor and understand the prospects for financial innovation through the model of *Waqf*. Further research is also advisable on examining the feasibility of *Waqf*-based micro-*Takaful* schemes directed towards improving the lives of the world's most vulnerable. An explorative study into the validity of temporary *Waqf* from a *Shari'ah* standpoint is also required and the potential implications of time-bound *Waqf* instruments.

Conclusions

Waqf denotes an Islamic endowment in the form of a perpetual charity, which has its origin dating to the era of the Prophet Muhammad (pbuh). The advancement of *Waqf* as a socio-economic institution entailed a number of benefits for early Islamic societies and since then, the institution of *Waqf* has played a critical role in the provision of social security and basic necessities to the masses. The role of *Waqf* has been instrumental in the advancement of education, religion, spirituality and general welfare for all. In brief, the institution of *Waqf* provided a channel for sustainable charity all across the Muslim world and beyond.

The mechanism of *Waqf* has parallels with English trusts and there is strong evidence that English trusts' conceptual and structural frameworks are rooted in *Waqf* origins from around the twelfth century. Similar to the institution of *Waqf*, the role of trusts has been crucial in institutionalising charity in English society.

Waqf originated as an Islamic charitable institution and constantly maintained its religious character throughout history. The religious nature of *Waqf* entailed many distinctive implications for the institution, which distinguish it from English trusts. the *Waqf* is necessarily required to comply with *Shari'ah* in terms of its structural formation, administrative framework, intended objectives and applied methods of management. In comparison, despite having close affinities in its structural formation with *Waqf*, English trusts transformed into a secular device, free from religious regulation.

Waqf and trusts both have their own history of effectively serving a multitude of charitable objectives within their own contexts. However, the two institutions witnessed divergent experiences of prosperity and decline during the phases of their prolonged history. After functioning actively for almost one thousand years, during the nineteenth and twentieth centuries, *Waqf* encountered setbacks, which posed serious threat to its viability as an institution. In comparison, trusts experienced no significant negative experience hindering progression. Despite this difference, the revival of *Waqf* in the modern age is in progress and promises to enable the institution once again to compete with equal effectiveness of trusts.

As far as the comparative effectiveness of the two institutions is concerned in the present day, there is no scope for generalisation. In contrast, the effectiveness of specific *Waqf* or trusts can be assessed and ascertained by juxtaposing their functions, management and outreach on an individual basis.

In general, there are discrepancies between *Waqf* and trusts' management practices in the UK. Firstly, whereas there are a number of well established charitable trusts functioning purely on the basis of permanently endowed lump sum capital, specialised *Waqf*-based endowment on a parallel footing are negligible. Secondly, whereas, most of the examined trusts place a substantive proportion of their capital in equities, Muslim charity organisations scarcely invest *Waqf* donations into stock. Instead, investment in the property market is, evidently the priority area for *Waqf*-based capital investment. This divergence in the approaches between *Waqf* and trusts causes a comparative disadvantage for *Waqf* in terms of return on investment. Thirdly, since most Muslim charities have comparatively smaller levels of capital investment, there are limitations for the proper diversification of their investment portfolios. Finally, there is a shortage of *Shari'ah*-compliant investment avenues for the investment of *Waqf*-based capital and this phenomenon limits available options for Muslim charities into a limited area of possible investment vehicles.

This paper examined the areas of similarity and difference between *Waqf* and trusts in their conceptual, structural and administrative frameworks, and a critical analysis of their objectives and comparative effectiveness, particularly in the context of the UK charity sector. For the purpose of developing a comprehensive understanding of how the functions, structures and management of trusts in the UK are different from that of *Waqf*, the annual reports of five selected trusts were examined and analysed. The main focus of the study was to pinpoint the most critical elements of success in trusts and to study the prospects for their incorporation into *Waqf*. The paper presented recommendations aimed at enhancing the institution of *Waqf* in a contemporary context and to improve its effectiveness vis-à-vis English trusts in the UK. It was found also that *Waqf* management practices in the UK are not as effective as practices within trusts' management. The fundamental difference between the two institutions lies in the orientation of their deeds, precision of their objectives, flexibility of their structures, professionalisation of their approaches, policies regarding the treatment of their capital and strategies of their investment.

Also, this paper highlighted areas for further research with recommendations on how to address existing disparities between the practices of *Waqf* and trusts' management in the UK. Finally, the paper recommended more focused research on the process of reviving *Awqāf* along with ascertaining underlying areas of disparity from traditional *Awqāf*.

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Appendix

Interviewees

Prof. Habib Ahmad

Prof. Monzer Kahf

Prof. Timur Kuran

Prof. Mohammad Tahir Sabit

Prof Rodney Wilson

Europe Trust

Manchester Islamic Education Trust

Muslim Hands

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Europe Trust, UK

Manchester Islamic Education Trust, UK

Muslim Hands, UK

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