

CHAPTER 2

Public Benefit

GENERAL¹

Before discussing in detail the various heads of charity it is convenient to consider the general rule (to which there is only one exception) that a purpose is not charitable unless it is directed to the public benefit. 'This is sometimes stated in the proposition that it must benefit the community or a section of the community. Negatively it is said that a trust is not charitable if it confers only private benefits.'² The court, in determining whether particular named purposes are charitable, has always applied this overriding test. But the difficulty lies in determining what is sufficient to satisfy the test.

It is as well to remember that the requirement of public benefit has two aspects. There must be a *benefit* and it must be a *public* benefit. In *Gilmour v Coats*,³ for example, it was held that the purposes of a community of cloistered and contemplative nuns were not legally charitable because the benefit to mankind of intercessory prayer and of the example of pious lives was too vague and incapable of proof. The benefit itself was in question.

PRIVATE BENEFITS

In other cases there is a discernible benefit, but not to the public, merely to private individuals. A trust for the protection of private investors confers merely private benefits:⁴ so do trusts for the education of relations or the descendants of named persons,⁵ or of the children of employees of a particular employer,⁶ or of

1 For public benefit under the Charities Act 2006, see at 30 below. For earlier discussions, S Maurice (1951) 15 Conv NS 328; G H L Fridman (1953) 31 Can Bar Rev 537; P S Atiyah (1958) 21 MLR 138.

2 *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297 at 305 per Lord Simonds.

3 [1949] AC 426, HL; see also *Cocks v Manners* (1871) LR 12 Eq 574.

4 *Foreign Bondholders Corp'n v IRC* [1944] 1 KB 403, CA. So too a pig marketing board: *Pig Marketing Board (Northern Ireland) v IRC* [1945] NI 155.

5 *Re Compton* [1945] Ch 123, CA. And see *Re Worth Library* [1995] 2 IR 301 (library for use of three office holders: no public benefit educationally, but upheld under the fourth head as advancing hospital objects).

6 *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297, HL.

30 Ch 2 Public benefit

children of members of a masonic order.⁷ For the same reason the provision of a convalescent home for members of a trade union and their wives is not charitable.⁸

Many mutual benefit schemes where there is no means test fail to achieve charitable status. For example in *Re Hobourn Aero Components Ltd's Air Raid Distress Fund*⁹ a contributory fund for the relief of air raid distress among the contributors who were employees of a particular company was held to be private and therefore not charitable. Lord Greene MR commented thus:¹⁰

'the point to my mind, which really puts this case beyond reasonable doubt is the fact that a number of employees of this company, activated by motives of self-help, agreed to a deduction from their wages to constitute a fund to be applied for their own benefit without any question of poverty coming into it. Such an arrangement seems to me to stamp the whole transaction as one having a personal character, money put up by a number of people, not for the general benefit, but for their own individual benefit'.

A mutual benefit society¹¹ such as a friendly society¹² or a trade union¹³ is not a charitable organisation, although of course such a society may hold particular property on trust for a stated charitable purpose.¹⁴ An accident fund for the relief of employees of a company disabled by accident funded by the employees of the company is likewise not charitable.¹⁵ Gifts to societies for promoting the interests of the members of a particular profession are gifts which do not promote a public benefit but rather a private benefit.¹⁶ So too a body formed to register and regulate the members of a profession is not charitable.¹⁷

7 *Thompson v Federal Taxation Comr* (1959) 102 CLR 315. A masonic lodge is not a sufficient section of the public: *Queensland Trustees Ltd v Woodward* [1912] SR Qd 291.

8 *Re Mead's Trust Deed* [1961] 2 All ER 836, [1961] 1 WLR 1244.

9 [1946] Ch 194, CA.

10 *Ibid* at 200.

11 *Carne v Long* (1860) 2 De GF & J 75; *Re Dutton* (1878) 4 Ex D 54; *Re Linen and Woollen Drapers' Institution* (1887) 4 TLR 345; *Re Hobourn Aero Components Ltd's Air Raid Distress Fund* [1946] Ch 194, CA; *Lord Nuffield v IRC* (1946) 175 LT 465; *IRC v Royal Naval and Royal Marine Officers' Association* (1955) 36 TC 187; *Waterson v Hendon Borough Council* [1959] 2 All ER 760, [1959] 1 WLR 985; cf *Perpetual Trustees Co Ltd v Ferguson* (1951) 51 SRNSW 256.

12 *Re Clark's Trust* (1875) 1 Ch D 497; *Cunnack v Edwards* [1896] 2 Ch 679, CA; *Braithwaite v A-G* [1909] 1 Ch 510.

13 *Re Amos* [1891] 3 Ch 159; *Re Mead's Trust Deed* [1961] 2 All ER 836, [1961] 1 WLR 1244.

14 *Pease v Pattinson* (1886) 32 Ch D 154 (where the headnote wrongly states that a friendly society is a charity).

15 *Doust v A-G* (1904) 4 SRNSW 577.

16 *R v Income Tax Special Comrs, ex p Headmasters' Conference* (1925) 41 TLR 651, DC (headmasters); *Geologists' Association v IRC* (1928) 14 TC 271, CA (geologists); *Midland Counties Institution of Engineers v IRC* (1928) 14 TC 285, CA; *Honourable Co of Master Mariners v IRC* (1932) 17 TC 298; *Chartered Insurance Institute v London Corp'n* [1957] 2 All ER 638, [1957] 1 WLR 867, DC.

17 *Miley v A-G for Ireland* [1918] 1 IR 455, CA (Royal College of Surgeons in Ireland); *General Medical Council v IRC* (1928) 97 LJKB 578, CA; *General Nursing Council for Scotland v IRC* 1929 SC 664; *General Nursing Council for England and Wales v St Marylebone BC* [1959] AC 540, HL; and see Samuels 'Fiscal Relief for Professional Bodies as Charities' (1963) 27 Conv NS 469.

APPRECIABLY IMPORTANT SECTION OF THE COMMUNITY OR PUBLIC

On the other hand a gift may be for the public benefit in the eyes of the law even though by its very nature only a limited number of persons are likely to avail themselves, or are, perhaps, even capable of availing themselves of its benefits. There is, as Viscount Simonds pointed out in *IRC v Baddeley*,¹⁸ a distinction

'between a form of relief extended to the whole community yet, by its very nature, advantageous only to the few, and a form of relief accorded to a selected few out of a larger number equally willing and able to take advantage of it'.¹⁹

The former type may still be for the public benefit, even though confined to the inhabitants of a particular area, but the latter type is not for the public benefit. Even then, Viscount Simonds' dictum requires amplification. In a sense, any limitation of benefits to a section of the community results in a relief being accorded to a selected few out of a larger number equally willing and able to take. It all depends on what is meant by 'few'. Lord Wrenbury delivering the judgment of the Privy Council in *Verge v Somerville*²⁰ said that to be a charity a trust must be for the benefit of the community or of an *appreciably important class* of the community.²¹ The inhabitants of a parish or town, or any particular class of such inhabitants might, he continued, be the object of such a gift, but private individuals or a fluctuating body of private individuals cannot. It has, however, been established that a trust cannot qualify as a charity within the fourth class in *Pemsel's* case (ie as being of general public utility) if the beneficiaries are a class of persons not only confined to a particular area but selected from within it by reference to a particular creed.²² A masonic lodge, for example, is not a sufficient section of the public.²³ But a trust to relieve poverty among members of a masonic lodge is charitable because public benefit is not required in the case of a trust for relief of poverty.²⁴ On the other hand a trust for the advancement of education of children of freemasons is charitable: in such a case there is a sufficient element of public benefit because freemasons (as opposed to a masonic lodge) are a sufficient section of the public.¹

One comes then to the problem: What is an appreciably important class of the community? Buckley LJ, as long ago as 1915, observed that in his view the salient point to be considered in ascertaining whether a charity is public or private is to see whether the class is one which extends to a substantial body of the public.²

18 [1955] AC 572.

19 Ibid at 592.

20 [1924] AC 496.

21 Ibid at 499.

22 *IRC v Baddeley* [1955] AC 572.

23 *Queensland Trustees Ltd v Woodward* [1912] SR Qd 291.

24 *Perpetual Trustees Co Ltd v Ferguson* (1951) 51 SRNSW 256.

1 There are two Royal Masonic Schools, one for boys and the other for girls.

2 *Shaw v Halifax Corpn* [1915] 2 KB 170, CA at 182.

32 Ch 2 Public benefit

Likewise Lord Simonds discussing the meaning of the phrase ‘section of the community’ in *Oppenheim v Tobacco Securities Trust Co Ltd*³ said that the words conveniently indicated; (1) that the *possible* beneficiaries must not be numerically negligible; and (2) that the quality which distinguishes them from other members of the community so that they form by themselves a section of it, must be a quality which does not depend on their relationship to a particular individual or particular individuals.⁴

THE COMPTON TEST

A group of persons may be numerous but if the nexus between them is their personal relationship to a single *propositus* or to several *propositi*, they are neither the community nor a section of the community for charitable purposes.⁵ (This test has been referred to as the *Compton*⁶ test.) Counsel⁷ for the appellants in the *Oppenheim* case pointed to some of the anomalies that might flow from this principle. Those following a profession or calling—clergymen, lawyers, colliers, tobacco workers and so on—are a section of the public. Applying the test of relationship to a single *propositus*, one reaches strange results where, as in the case of railwaymen, those who follow a particular calling are all employed by one employer. Would a trust for the education of railwaymen be charitable but a trust for the education of men employed on the railways by the Transport Board not be charitable? And what of service of the Crown, whether in the civil service or the armed forces?⁸ Is there a difference between soldiers and soldiers of the King? Lord Simonds⁹ stated that he was not impressed by this sort of argument and would consider on its merits any case where the description of the occupation would enable one to know the name of the employer.

Criticisms of the Compton test

All the same, the points taken by counsel for the appellants in the *Oppenheim* case are (it is submitted) valid criticisms of the *Compton* test as a universal solvent and they caused one of the learned law lords to dissent. Lord Macdermott¹⁰ agreed with the result arrived at in the *Compton* case itself and did not doubt that the *Compton* test might often prove of value and lead to a correct determination of the question, but he was unable to regard it as a criterion of general applicability and conclusiveness. Used in that way he considered the *Compton* test to be

3 [1951] AC 297.

4 *Ibid* at 306.

5 *Ibid* at 306.

6 *Re Compton* [1945] Ch 123.

7 Pennycuik KC (as he then was).

8 An educational trust for the children of Crown servants is altruistic and should be upheld: (1951) 67 LQR 164 (ALG).

9 [1951] AC 297 at 307.

10 *Ibid* at 317.

a very arbitrary and artificial rule. Moreover the test necessarily made the quantum of public benefit a consideration of little moment. He also considered that the educational value and scope of the work actually to be done must have a bearing on the question of public benefit.¹¹ Finally he suggested that the *Compton* test was likely to unsettle the law.¹² He put the case of a trust for the provision of university education for boys coming from a particular school and commented:¹³

‘The common quality binding the members of that class seems to reside in the fact that parents or guardians all contracted for their schooling within the same establishment or body. That the school in such a case may itself be a charitable foundation seems altogether beside the point and quite insufficient to hold the *Compton* test at bay if it is well founded in law.’

In fact Lord Simonds expressly classified a trust of that kind as charitable:¹⁴ the *Compton* test does not affect a trust for the benefit of an existing institution. Furthermore in the example put there is an absence of self-interest which is not so when the trust is designed to make the conditions of service with one employer better than those with a competitor.¹⁵

There is also some support for the view that there must be a rational connection or relevance between the nature of the gift and the class of beneficiaries chosen to enjoy it. In *IRC v Baddeley* when the case was before the Court of Appeal the Master of the Rolls in his judgment repeated a rhetorical question asked by counsel for the Revenue in argument: ‘Who has ever heard of a bridge to be crossed only by impecunious Methodists’. As has been seen Viscount Simonds thought that a distinction ought to be drawn between a form of relief extended to the whole community yet by its very nature advantageous only to the few and a form of relief accorded to a selected few out of a larger number equally willing and able to take advantage of it. A bridge which is available for all the public may undoubtedly be a charity and it is indifferent how many people use it. But confine its use to a selected number of persons, however numerous and important, it is then clearly not a charity. It is not of general public utility, for it does not serve the public purpose which its nature qualifies it to serve. Putting it another way, the class is not an adequate class of the community for the purpose of the particular charity.

The Nathan Committee on Charitable Trusts adverted to the practical difficulties canvassed by Lord Macdermott but concluded that it would be a mistake to alter the law by providing that the element of public benefit should not be excluded by reason only of the nexus of common employment.¹⁶ Accordingly it was not surprising that the Charities Act 1960 left the law unchanged.

11 Ibid at 318.

12 Ibid.

13 Ibid at 319.

14 Ibid at 306.

15 See (1951) 67 LQR 164 (ALG).

16 [1952] Cmd 8710, paras 135 and 136.

QUESTION OF DEGREE

In *Dingle v Turner*¹⁷ Lord Cross of Chelsea in referring to the *Oppenheim*¹⁸ case pointed out that although in that case the majority evidently agreed with the view that the *Compton*¹⁹ rule was of universal application outside the field of poverty it would no doubt be open to the House of Lords without overruling *Oppenheim* to hold that the scope of the rule was more limited. The question did not arise in *Dingle v Turner* but Lord Cross indicated that his inclination would be to draw a distinction between the practical merits of the *Compton* rule and the reasoning by which Lord Greene MR sought to justify it. That reasoning, based on the distinction between personal and impersonal relationships was in his view not very satisfactory and he felt the force of the criticism to which Lord Macdermott subjected it in his dissenting speech in *Oppenheim*. The phrase a 'section of the public' was, he said, a vague phrase which might mean different things to different people. In the law of charity judges have sought to elucidate its meaning by contrasting it with a 'fluctuating body of individuals'. But he found the antithesis of little help because there was no true contrast: the same aggregate of persons might well be describable both as a section of the public and as a fluctuating body of private individuals.²⁰

Whether the beneficiaries constitute a section of the public

'is a question of degree and cannot be by itself decisive of the question whether the trust is a charity. Much must depend upon the purpose of the trust.'²¹

The other law lords who included Lord Macdermott agreed with what Lord Cross had to say about the phrase 'section of the public'. In the light of these remarks the Charity Commissioners have canvassed the possibility that if another and entirely altruistic educational trust were to come before the House of Lords, the personal link of common employment which proved fatal in the *Oppenheim* case might well be found not by itself to jeopardise charitable status if the size of the company was sufficiently large.¹ This may, however, be an oversimplification. For Lord Cross of Chelsea and Lord Simon a trust for the education of the children of employees, however numerous, is a company and not a public purpose, which the courts and taxpayers should not subsidise.²

POSSIBLE RELEVANCE OF FISCAL PRIVILEGES

In deciding whether or not an element of public benefit is present in the case of an alleged charitable trust it is an open question whether the courts should have

17 [1972] AC 601.

18 *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297.

19 *Re Compton* [1945] Ch 123, CA.

20 [1972] AC 601 at 623 where Lord Cross itemises the ratepayers of the Royal Borough of Kensington and Chelsea.

21 [1972] AC 601 at 624.

1 [1971] Ch Com Rep 9, para 21.

2 [1972] AC 601 at 625.

regard to the fiscal privileges accorded to charities. In *Dingle v Turner*³ Lord Cross, with whose speech Lord Simon concurred, thought that the courts should take those fiscal privileges into account, but the other three law lords expressed their doubts on this point. Certainly there is no case in which the fiscal implications of a determination in favour of charity have been expressly considered. But Lord Cross thought that the decisions in *Compton*⁴ and *Oppenheim*⁵ 'were pretty obviously influenced by the consideration that if such trusts as were there in question were held valid they would enjoy an undeserved fiscal immunity':⁶ a trust for the education of the children of employees of a company represents a 'fringe benefit' for the employees which ought not to be purchased at the expense of the taxpayer. There was not the same danger of abuse in the case of trusts for the relief of poverty among employees and Lord Cross considered that the privileged position of such trusts in the law of charities might be justified on the practical ground that such a tax-free trust does not constitute a very attractive 'fringe benefit'. For the same sort of reason a trust to promote religion among employees of a company might, he thought, perhaps safely be held to be charitable provided it was clear that the benefits were to be purely spiritual, though purposes under Lord MacNaghten's fourth head if confined to a class of employees would clearly be open to the same sort of objection as educational trusts so confined.⁷

VARIATIONS IN THE STANDARD OF PUBLIC BENEFIT

The necessary quantum of public benefit may well vary from charity to charity. This emerges from the speech of Lord Simonds in *Gilmour v Coats*⁸ in which he dealt with an argument that, just as the endowment of a scholarship open to public competition was a charity, so also was a gift to enable any man or woman to enter a fuller religious life a charity. After observing that the law of charity had been built up not logically but empirically Lord Simonds continued:⁹

'It would not, therefore, be surprising to find that, while in every category of legal charity some element of public benefit must be present, the court had adopted the same measure in regard to different categories, but had accepted one standard in regard to those gifts which are alleged to be for the advancement of education and another for those which are alleged to be for the advancement of religion, and it may be yet another in regard to the relief of poverty.'

Lord Somervell of Harrow made a similar point in *IRC v Baddeley*¹⁰ when he declared himself unable to accept the principle:

3 [1972] AC 601, HL.

4 [1945] Ch 123.

5 [1951] AC 297.

6 [1972] AC 601 at 624–625.

7 [1972] AC 601 at 625.

8 [1949] AC 426, HL.

9 [1949] AC 426 at 449.

10 [1955] AC 572.

36 Ch 2 Public benefit

‘that a section of the public sufficient to support a valid trust in one category must as a matter of law, be sufficient to support a trust in any other category ... There might well be a valid trust for the promotion of religion benefiting a very small class. It would not follow at all that a recreation ground for the exclusive use of the same class would be a valid charity, though it is clear ... that a recreation ground for the public is a charitable purpose.’¹¹

Again, the courts’ notion of public benefit may vary with the passing of time. A decision on public benefit is not therefore a *res judicata* precluding a later investigation of the presence or absence of public benefit. In *Re Foveaux*¹² the Court of Appeal upheld an anti-vivisection trust, but in *National Anti-Vivisection Society v IRC*¹³ the House of Lords denied that the anti-vivisection cause was charitable. Two of the learned law lords commented on the changing standards of public benefit. Lord Wright said¹⁴ that:

‘Where a society has a religious object it may fail to satisfy the test [of public benefit] if it is unlawful, and the test may vary from generation to generation as the law successively grows more tolerant ... It cannot be for the public benefit to favour trusts for objects contrary to the law. Again eleemosynary trusts may, as economic ideas and conditions and ideas of social service change, cease to be regarded as being for the benefit of the community, and trusts for the advancement of learning or education may fail to secure a place as charities, if it is seen that the learning or education is not of public value.’

Lord Simonds for his part said¹⁵ that:

‘if, today, a testator made a bequest for the relief of the poor, and required that it should be carried out in one way only, and the court was satisfied by evidence that that way was injurious to the community, I should say that it was not a charitable gift, though three hundred years ago the court might, upon different evidence, or in the absence of any evidence, have come to a different conclusion.’

PUBLIC BENEFIT UNDER THE CHARITIES ACT 2006

Introduction

The public benefit element posited by English case law¹⁶ is now explicitly dealt with by legislative provision. For the purposes of the law of England and Wales a charitable purpose is a purpose which falls within any of the descriptions of purposes set out in the Charities Act 2006¹⁷ and is for the public benefit.¹⁸ The

11 Ibid at 615.

12 [1895] 2 Ch 501.

13 [1948] AC 31, HL.

14 Ibid at 42.

15 Ibid at 69.

16 See the discussion at 31–36, below and in Chapters 3–15.

17 CA 2006, s 2(1)(a) and (2)(a)–(m).

18 Ibid, s 2(1)(b).

requirement that a listed charitable purpose (or one analogous to such a purpose) must be for the public benefit if it is to be a charitable purpose is subject to two interpretative subrules.¹⁹ First, in determining whether the requirement is satisfied in relation to a particular purpose, it is not to be presumed that a purpose of a particular description is for the public benefit. This provision is described by some commentators as ‘reversing the presumption of public benefit’,²⁰ a notion imported into the effective redefinition of charity so as to put, as it is said, all charities on a ‘level playing field’. Within the Act itself or, more particularly, within the Part of the Act dealing with the meaning of charity and charitable purpose, any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in England and Wales.¹ The negation or reversal of the presumption of public benefit is thus allegedly absorbed into the proper understanding of the term ‘public benefit’.² Otherwise, the Act does not contain any new definition of public benefit or suggest how charities should go about proving or demonstrating the presence of the public benefit requirement.

The Act, then, refrains from defining public benefit explicitly. Instead, the Charity Commission is given the statutory duty of issuing guidance in pursuance of its public benefit objective.³ That objective is ‘to promote awareness and understanding of the operation of the public benefit requirement’.⁴ The Commission is empowered to revise from time to time any guidance.⁵ In that connection the Commission is directed to carry out such public and other consultation as it considers appropriate before issuing any guidance prescribed under the Act or unless it considers it unnecessary to do so before revising any such guidance.⁶ Publication of such guidance is accordingly directed. The Commission must publish any guidance issued or revised under the Act in such manner as it considers appropriate.⁷ The charity trustees of a charity must have regard to any such guidance when exercising any powers or duties to which the guidance is relevant.⁸

New public benefit requirement: Charities Act 2006

Proclaimed abolition of presumption and strengthening of public benefit requirement Following the acceptance by the government of the report of the Prime Minister’s Strategy Unit, the Charities Act 2006, it is proclaimed, abolishes

19 For ‘reversing’ the presumption of public benefit see at 84 (advancement of education) and 136 (advancement of religion) below.

20 CA 2006, s 3(3).

1 Ibid, s 3(4).

2 Ibid, s 4(1).

3 Ibid, s 4(2).

4 Ibid, s 4(3).

5 Ibid, s 4(4).

6 Ibid, s 4(5).

7 Ibid, s 4(6). Successive versions of the Charity Commission’s Guidelines were issued in January 2005, March 2007 and December 2008.

8 (1893) 69 LT 819; see also *Re British Red Cross Balkan Fund* [1914] 2 Ch 419.

38 Ch 2 Public benefit

removes or reverses the presumption of public benefit.⁹ It also imposes a duty on all charities to demonstrate, explicitly, that their purposes are for the public benefit.¹⁰ All charities are to be on a 'level playing field'.¹¹ The consequence is that the existing case law will remain in place and continue to apply but to all charities subject to the removal of the presumption. Charities are not equal animals and the need to have a 'level playing field' among disparate charities appears to have had ideological origins. Such a level playing field was counter to the common law and was not needed. The evidence for such a need was significantly undiscovered in any other jurisdiction and was from the start slim unparticularised and implausible.¹² The authorities testify to the fact that there are variations in the standard of public benefit within each of the heads of charity reflecting the differing aims and constituencies of for example education and religion.¹³ So the courts have not understandably sought to harmonise or make logically consistent the degree of public benefit in each case.¹⁴

The tension between these two propositions is apparent and is further analysed below. It surfaced in the debates before the Joint Committee in 2004 in which the original expressed view of the Charity Commission, and of several commentators,¹⁵ was that the removal of the presumption would 'probably' not change the law and in particular would not affect the charitable status of the independent schools.

Compromise of two views in a 'Concordat' The Home Office on advice took a different view. In the result the Home Office and the Charity Commission reached a hasty compromise between the two views sentimentally described as a 'concordat', a term more accurately referable to arrangements between church and state. The Concordat was expressed in a letter sent to the Joint Committee stating that with regard to fee paying charities the Commission would look at

9 See for example Baroness Scotland QC Charities Bill 2nd Reading House of Lords 20 January 2005 col 885; P Luxton *Making Law? Parliament v The Charity Commission* (Politeia, 2009) 1–42 quoting Baroness Scotland's speech at 24.

10 Charity Commission, *Charities and Public Benefit: The Charity Commission's general guidance on public benefit* (January 2008). Cf; Jeffrey Hackney 'Charities and the Public Benefit' (2008) 98 (July) LQR; Charlotte Buckley 'The Charities Act 2006: Consolidation or Reform?' 11(1) CL& PR 1–42 (2008); Anne Sanders 'The Mystery of Public Benefit' 10(2) CL&PR 33–57 (2007).

11 The annexation of this marketing term devised in the late 1970s to cover fairness in the marketplace, is annexed for use (though not in the Act) in connection with a posited 'need' for equality of treatment for all charities. The hackneyed level playing field metaphor is neither defined nor used in the Charities Act 2006 itself.

12 Report of the Joint Committee on the Draft Charities Bill Written Evidence (DCH 297 Hubert Picarda QC).

13 See Lord Simonds in *Gilmour v Coats* [1949] AC 426 at 449 about the standard or measure of public benefit varying from one *Pemsel* head to another.

14 See also Lord Somervell of Harrow in *IRC v Baddeley* [1955] AC 572 at 615 (a recreational case) about the acceptability of 'a valid trust for the promotion of religion benefiting a very small class' but not of a recreation ground for the same very small class.

15 Report of the Joint Committee on the Draft Charities Bill Vol III (2004) HL paper 167–111 HC paper 660–111 Ev 591 (Professor Peter Luxton) Ev 625 (Hubert Picarda QC).

public benefit on a case by case basis the approach adopted in *Re Resch*.¹⁶ An asserted case by case approach does not, it is suggested, preclude assessment of the contribution that an institution may be able to make to an overall benefit to the community or commonwealth, on the footing that the whole is greater than the sum of its parts or in the words of the provincial adage 'many a mickle makes a muckle'. Each school may contribute to the pool of overall educational benefit and likewise a hospital charging fees may nevertheless provide indirect benefit to the community.

Principles set out in the Concordat The principles set out in the Concordat were that:

- (1) both direct and indirect benefits to the public or a sufficient section of the public may be taken into account in deciding whether an organisation does or can operate for the public benefit;
- (2) the fact that charitable facilities or services will be charged for and will be provided mainly to people who can afford to pay the charges does not necessarily mean that the organisation does not operate for the public benefit; and
- (3) an organisation which wholly excluded poor people from any benefits direct or indirect would not be established and operate for the public benefit and therefore would not be a charity.

Quite what the status of the Concordat will be now that the consultations have been completed remains to be seen.

Consultation and guidance duties The Charity Commission in response to the duty laid on it by the Charities Act 2006 to carry out public consultations on public benefit and issue guidance thereon has carried out consultation generally and on certain marked out segregated subsectors. The subsectors were the prevention and relief of poverty, advancement of education, advancement of religion, fee charging and the advancement of moral and ethical movements. It is a much debated point whether the public benefit test developed by the courts has been changed by the Charities Act 2006. More exactly the question is as to the effect therein of a statutory enactment of a public benefit 'requirement' whose observance is to be aided by guidance now issued by the Charity Commission.

Some commentators take at face value the supportive explanatory material issued by the Charity Commission and various Government departments, without noting the shifts in target as the Bill was transmogrified into its final form as an Act. The planned requirement was originally described as a 'public character' test but as Parliamentary debate removed the possibility of a defined 'test' the next best option was simply to say that the new Act 'highlights' the public benefit requirement by explicitly including public benefit in the definition of a charitable purpose and that this delivers a strengthened need to demonstrate public

16 [1969]1 AC 514, PC. The case is far from conclusive, has occasioned differing readings, and unsurprisingly has not had its rationale set out in the Guidance: see HL Deb, Vol 672 col 794 (7 June 2005) where Lord Phillips of Sudbury said of *Re Resch* 'read, and read, and read ye may but a certain conclusion you (sic) may not find.'

39A Ch 2 Public benefit

benefit by evidence, there being no remaining presumption of public benefit in the case of the first three heads set out in *Pemsel's* case.

Change in the element of public benefit? There is, then, a continuing disagreement as to whether, or to what extent, the public benefit element developed by the courts has been changed by the Charities Act 2006. Some take the purist view that notwithstanding the proclamations of intention that are extra-statutory, the effect of the wording used in the Act has not in fact changed the law on public benefit. This view is expressed from varying perspectives. One such view set out below points to the elliptical and non-specificatory way in which Act says what is not to be presumed and underlines the overriding quality of the retention of the case law in existence prior to the date on which the Act received the Royal Assent and its inconsistency with fee charging guidelines. Others emphasise the modern purposive approach to statutory interpretation or see no problem.¹⁷ The Charity Commission in response to the duty laid on it by the Charities Act 2006 to carry out public consultations on public benefit and to issue guidance thereon and has carried out consultation generally and on certain marked out segregated subsectors. The subsectors were the prevention and relief of poverty, advancement of education advancement of religion fee charging¹⁸ and, a late arrival, the advancement of moral and ethical movements. Consultations on the first four were completed by 11 July 2008 and revised guidance was expected for the end of that year. However the last mentioned consultation began in September 2008 for completion by 5 January 2009.

What then are the constituent elements in public benefit 'requirement' whose observance is to be aided by guidance issued by the Charity Commission? Public benefit it is said is the legal requirement that every organisation set up for one or more charitable aims must be able to demonstrate that its aims are for the public benefit if it is to be recognised and registered as a charity in England and Wales. This is known as the public benefit requirement.

From the guidance documents issued to date the critical elements upon which the guidance appears to proceed seems to be as follows:

- (1) The fundamental proposition is that the Act has abolished and reversed the presumption of public benefit
- (2) The effect is to require public benefit to be proved no matter what the purpose
- (3) The case law must be reinterpreted by reference to the abolition or reversal and by reference to new social and economic conditions

Abolition or reversal of the presumption of public benefit Before considering the technique for abolishing a presumption a threshold issue must be what precisely is the presumption to which allusion is made.

17 F Quint Schools and the Reform of Charity Law: The Draft Charities Bill [2004] Edu LJ 151-3.

18 Public Benefit and Fee Charging (December 2008)

(i) **The mythical presumption** The text books on the law of evidence made no mention of a presumption of public benefit in relation to charities. The history of the matter corroborates the absence of any presumption that requires such textbook coverage. Public benefit was so inherent and embedded in the concept of charity in the statute of 1601 that its presence hardly needed to be articulated. It was the key to the statute. The twin themes of relief of poverty and public utility were plain to behold in the designated purposes set out in the preamble. Public utility was perceived in municipal betterments for the improvement of divers communities, bridges, harbours streets and other public works¹⁹ and of course in education and learning.²⁰ This was not a matter of some kind of artificial presumption. It was a self evident accepted truth that generated a huge body of case law enunciating what is charitable. The undoctinaire common law accepts that the benefit in the public benefit if required to be on parade can be a direct or indirect benefit, the latter it would seem even on its own.¹

(ii) **Statutory language of abolition or reversal** The explanatory material issued by the Cabinet Office refers to the abolition or reversal of the presumption of public benefit. But significantly in the legislation itself the language in which the alleged abolition or reversal is couched is far from precise. Indeed one critic has suggested that this was designedly so. There is after all a simple up to date method of reversing or abolishing a presumption. And it has been used twice within the last decade. This is to confront the task head on; to announce in the rubric to the abolitionist section what is afoot; to define the presumption that is to be abolished; and then in clear language to use express comprehensive words of abolition. For example section 34 of the Crime and Disorder Act 1998 abolished the ‘doli incapax’ rule (the rebuttable presumption that a child aged between 10 and 13 is incapable of committing a criminal offence). It did so in the most simple and direct way providing under the rubric ‘Abolition of rebuttable presumption’ specifying:

‘The rebuttable presumption of criminal law that a child aged 10 or over is incapable of committing an offence is hereby abolished’

Similarly in the case of the conclusive (irrebuttable) presumption known as the year and a day rule, the rule or conclusive presumption was subjected to an equally clear and direct provision under the express rubric ‘Abolition of “year and a day” rule. Section 1 of the Law Reform (Year and a Day Rule) Act 1996 provides:’

‘1. The rule known as the “year and a day rule” (that is, the rule that, for the purposes of offences involving death and of suicide, an act or omission is conclusively presumed not to have caused a person’s death if more than a year and a day elapsed before he died) is abolished for all purposes.’

19 Gareth Jones *History of the Law of Charity* (Cambridge University Press 1969) at 27.

20 See Professor WK Jordan of Harvard *Philanthropy in England 1480–1660* (1959) 275–279 (municipal betterment) 284.

1 *Re Resch* [1969] 1 AC 514, PC (hospital) was a first head case which lay forty years in the wilderness or in Limbo until pressed into service by the Commission, narrowly construing Lord Wilberforce’s reference to ‘indirect as well as direct benefit’ coming into account, as precluding indirect benefit to the poor as sufficient on its own. See also Charlotte Buckley ‘The Charities Act 2006: Consolidation or Reform?’ 11(1) CL&PR 1–42 (2008) at 27–28.

39C Ch 2 Public benefit

It is true that the rubric in the latter case refers to the abolition of a rule of law, the year and a day rule, and not, save at one remove, to a conclusive presumption. But the content of the rule is identified and it sets out, with particularity, the circumstances in which and the ambit of what is being ‘conclusively presumed’.

Presumably the draftsman in the Charities Act 2006 considered these recently used and no doubt stored clarificatory formulae and, for some good reason, avoided or rejected them. The inability to define the ambit of a presumption not known to the law or anywhere articulated with precision and incapable of operating coherently with a case law on public benefit (which is expressly retained) is reason enough and might be accounted a telling point against the existence of such a ‘presumption’ let alone one that needs to be ‘reversed’.

Public benefit now has to be proved no matter what the purpose The proposition that public benefit now has to be proved in the case of charities for the relief of poverty for the advancement of education and for the advancement of religion is advanced by the Charity Commission in its guidance and was to the fore in the Government statements accompanying the bringing in of the Charities Bill and then the Act. However a further underlying motivation is discernible in the desire, proclaimed extra-statutorily, to apply a ‘strengthened’ (in other words more onerous) public benefit criterion to all charitable purposes. This it is suggested will help to enhance the role of the Commission. Again and again it is said that benefit has to be demonstrated explicitly and that a ‘strengthened’ test is now to be applied. It is however unclear how this matches either the language used in the Act or the plain acceptance in Lord Macnaghten’s seminal formulation of the beneficial nature of the first three heads of charity identified by him. The modern law laid down by Lord Macnaghten in *Pemsel’s* case, which is part of the common law test of what is charitable, was to the effect that ‘trusts for the relief of poverty, trusts for the advancement of education and trust for the advancement of religion and trusts for other purposes beneficial to the community not falling under any of the preceding heads’ were accepted by the law as charitable. The statement is about the benefit element or requirement of charity law in relation to the purposes falling under those heads and not about the public accessibility nature or character of the benefits conferred.² The indicative formulation of other purposes beneficial to the community not falling under any of the preceding heads plainly signalled that the preceding three heads were accepted as ‘beneficial to the community’.

On the other hand while there is no statutory definition of public benefit on the face of the statute there is a statutorily derived description of the public benefit requirement. Section 3(3) of the 2006 Act provides that ‘For the purposes of this Part any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in England and Wales’. The consequence is that the existing case law will remain in place and continue to apply subject to the asserted removal of the undefined ‘presumption’. The interface of these propositions is confusing and unclear.

² Charlotte Buckley ‘The Charities Act 2006: Consolidation or Reform?’ 11(1) CL& PR 1–42 (2008 (an extract from a dissertation) citing Anne Sanders ‘The Mystery of Public Benefit’ 10(2) CL&PR 33–57 (2007) at 36 and 57.

No unreasonable restriction on the class to be benefited The assertion contained in the guidance, that the class to be benefited must not be unreasonably restricted, rests on no secure authority but is an innovation imported or extrapolated from other heads of charity. Reasonableness is a flexible notion with risks of unsatisfactory, line drawing arbitrariness. One possible reform mooted with no particular enthusiasm is ‘a sheer numbers approach.’³ But Lord MacDermott in his dissenting speech in *Oppenheim v Tobacco Securities Trust Co Ltd*⁴ thought that the distinction between private trusts and public trusts should be made according to individual circumstances mainly the number of ‘beneficiaries’. In that case the numerical strength of the class was ‘considerable on any showing’ though the implication is that a numerical handful would be private.⁵

Activities test The presence and degree of public benefit is to be assessed on a continuing basis by looking at the activities of the institution in question, not merely at its purposes.⁶ This appears to be a misreading of the authorities which accept that activities may be looked at to establish that a stated purpose is a masquerade⁷ or sham,⁸ but carry not a hint of an entitlement in the courts or the Commission to go beyond looking at activities to see whether they are consistent with a body’s charitable purposes and might therefore be in breach of trust. As to looking at those activities to see whether they show a public benefit, the latter approach is unsupported by authority.

No charity if the ‘poor’ are excluded from the opportunity to benefit In the latest formulation of its general guidance the Commission abandoned its earlier phraseology about people on lower incomes as descriptive of the beneficial class to be saved from exclusion. Instead it is provided that people in poverty must not be excluded from ‘the opportunity to benefit.’ The fact that the services will be charged for and therefore provided mainly to people who can afford to pay does not necessarily mean that it would not be for the public benefit. So it would not, for example, in such a case be the organisation’s aims that are not for the public benefit. However, if an organisation excluded people from the opportunity to benefit because they could not pay the fees, then its ‘aims’ would not be enough (or so it is suggested) to reduce very high fees slightly to enable more ‘middle income’ people to benefit, if people in poverty were still excluded from the opportunity to benefit. It may be queried why the matter should have been

3 P Luxton *Making Law? Parliament v The Charity Commission* (Politeia, 2009) 1–42; Jeffrey Hackney ‘Charities and the Public Benefit’ (2008) 98 (July) LQR; Charlotte Buckley ‘The Charities Act 2006: Consolidation or Reform?’ 11(1) CL& PR 1–42 (2008) an extract from a dissertation; Anne Sanders ‘The Mystery of Public Benefit’ 10(2) CL&PR 33–57 (2007) (a closely reasoned account doubting at 55–57 whether charging high fees should exclude charitable status or allow the Commission to demand concessions for the poor).

4 [1951] AC 397.

5 *Gilmour v Coats* [1949] AC 426 at 449 per Lord Simonds identifying variations in the measure of public benefit from one *Pemsel* head to another. Cf *IRC v Baddeley* [1955] AC S72 at 615 per Lord Somervell of Harrow.

6 This progression from the previous gateway approach adopted by the Commission on first registration goes beyond the authorities cited in the next two footnotes.

7 *Re Hopkinson* [1949] 1 All ER 346.

8 *Southwood v AG* [2000] WTLR 1199.

39E Ch 2 Public benefit

defined in terms of aims a newly devised criterion of an elusive kind conjured it would seem from a newfangled conflation of activities with purposes.

Changes in social and economic conditions The Charity Commission claims to be empowered to apply their interpretation of what relevant changes have occurred in the social and economic circumstances.⁹ It is claimed that this enables the Commission to secure a robust enforcement of the so called strengthened public benefit requirement. In essence this is a rework of the discarded earlier dodge of using a newly blessed (but not enacted) ‘public character test’ suggested for the Bill and giving public character a new meaning as a test licensed by the previously devised, but eventually jettisoned, social and economic impact objective.¹⁰ The comment of Lord Simonds in the case of *National Antivivisection Society v IRC*,¹¹ a case under the fourth head, that a purpose in one age may be differently viewed in another was linked to an example where what may have been valid in 1700 on evidence then before the court may be invalid in 1900 on different evidence. But social and economic conditions do not render the benefit of relief of poverty or of the advancement of school education or of the advancement of an established religion obsolete. Public opinion polls and recent tendencies cannot easily displace the abiding and accepted benefits of the purposes of charities in a settled society.

Tested by reference to authority it is, according to some, arguably fallacious to assert that by reason of section 3(2) of the Charities Act 2006:

- (1) charities are now required to ‘prove’ public benefit;¹²
- (2) charities are now required to show that their activities are now producing public benefit;¹³
- (3) that charity cannot exclude the poor as where a charity charges high fees.¹⁴

The common law requires public benefit to be contained in a charity’s purposes not in its activities let alone creatively conjured up aims. The Charities Act 2006 does not change that common law position. Accordingly the Commission cannot lawfully derive authority from an approach and guidance that proceeds on such hypotheses.

It is understood that a legal challenge to the legitimacy of the guidance issued by the Commission is being progressed by way of an application for judicial review. Meanwhile trustees must pending further clarification continue to show in their annual reports¹⁵ that they have consulted the guidance issued by the

9 Charity Commission, Analysis of the law underpinning Charities and Public Benefit (January 2008) Part 1 (Modern Social conditions) paras 1.7–1.10.

10 The Public Character of Charity RR8, The Charity Commission (February 1991).

11 [1948] AC.

12 P Luxton ‘Making Law? Parliament v The Charity Commission’ (Politeia, 2009) 18–20.

13 P Luxton ‘Making Law? Parliament v The Charity Commission’ (Politeia, 2009); Cf Charlotte Buckley ‘The Charities Act 2006: Consolidation or Reform?’ 11(1) CL& PR 1–42 (2008).

14 P Luxton ‘Making Law? Parliament v The Charity Commission’ (Politeia, 2009) 1–42 at 21–22 (exclusion of the poor); Anne Sanders ‘The Mystery of Public Benefit’ 10(2) CL&PR 33–57 (2007).

15 Charities (Accounts and Reports) Regulations 2008 SI 2008/629.

Charity Commission even if they decide not to follow it.¹⁶ Trustees are reminded that they can only depart from the guidance if they have good reason to do so.¹⁷

CHARITY OVERSEAS AND THE PUBLIC BENEFIT

It by no means follows that the public to be benefited under the doctrine of public benefit must be the United Kingdom public. Certainly there are a number of authorities holding that a trust for the benefit of a foreign public may be charitable. For example in *Re Geck*¹⁸ it was held that a trust for the poor in a certain German town was a valid charity, while in *Re Robinson*¹⁹ a trust for the relief of German soldiers disabled in the First World War was held by Maugham J to be valid. So too a hospice set up in a foreign country for the care of patients in the terminal stages of an incurable disease or illness may be registered as charitable;²⁰ and a trust to promote the prevention of disability, and the rehabilitation, integration and full participation of disabled persons in society anywhere in the world is likewise registrable as a charity.¹ And the advancement of religion abroad by missionaries has long been considered charitable.² That a trust for the benefit of a foreign public, or of a section of such a public is valid, is implicit also in other decisions.³

But in *Camille and Henry Dreyfus Foundation Inc v IRC*⁴ Lord Evershed MR indicated that there might be some limits to charity abroad with this observation:⁵

‘It may be that on very broad and general grounds, relief of poverty and distress in any part of the world, or the advancement of the Christian⁶ religion in any

16 Charity Commission, C4 Charities and Public Benefit: The Charity Commission's general guidance on public benefit (January 2008). In following the advice trustees may reserve their position.

17 Ibid.

18 (1893) 69 LT 819; see also *Re British Red Cross Balkan Fund* [1914] 2 Ch 419.

19 [1931] 2 Ch 122.

20 *The Gdansk Hospice Fund* [1990] Ch Com Rep 7 para 32 and *The Nairobi Hospice* [1990] Ch Com Rep 7 para 32.

1 *The Global Project in Support of the United Nations Decade of Disabled Persons* [1990] Ch Com Rep 7 paras 35–37.

2 See *Re Redish* (1909) 26 TLR 42 and the other cases discussed under ‘Trusts for missionary and cognate purposes’ at 92–93 below.

3 *A-G v Sturge* (1854) 19 Beav 597; *Lyons Corp v East India Co* (1836) 1 Moo PCC 175 at 295. 4 [1954] Ch 672.

5 Ibid at 684. On setting out soldiers in a hostile state see *Re Lowin* [1967] 2 NSW 140 at 146 per Wallace P and Holmes JA. Cf *Re Robinson* [1931] 2 Ch 122 at 128 (civilised actions take care of enemy wounded: is it to maintain peace?); *Re Pieper* [1951] VLR 42 (distress in Europe because of hostilities against Hitler's Reich). Other potential cases of public policy negating public benefit occur in the field of education (a school for pickpockets or suicide bomb terrorists) and in connection with abortion and euthanasia.

6 Seemingly that a gift by an English testator to promote a non-Christian religion abroad would be non-charitable. A fund for the purpose of encouraging idolatry would not be for the benefit of the inhabitants of Dacca: see *Mitford v Reynolds* (1842) 1 Ph 185 at 193 per Lord Lyndhurst LC.

39G Ch 2 Public benefit

part of the world, would be regarded as being for the benefit of the community in the United Kingdom. I see, however, formidable difficulties, where the objects of the trust were, say, the setting out of soldiers or the repair of bridges or causeways in a foreign country. To such cases the argument of public policy (meaning United Kingdom public policy) might be the answer.⁷

A similar view has been taken by the Charity Commissioners.⁷ They entertain no doubt that the advancement of religion, the advancement of education and the relief of poverty are charitable purposes in whatever part of the world they are carried out. In the case of poverty however (which is to be interpreted as including the relief of poor refugees or victims of a disaster) the Commissioners think that it must actually exist in observable cases and not merely be inferred from statistics. Moreover the measures designed to relieve it, eg irrigation, must have a reasonably direct result. If, however, the measures are directed merely to improving the general economy or standard of living of an overseas community they would not in the Commissioners' eyes be charitable subject to what is said below about public works within the British Commonwealth. Charities within the fourth head of the classification in the *Pemsel* case, ie for other purposes beneficial to the community will, according to the Commissioners, only be charitable if of benefit to the community of the United Kingdom. Such benefit, they say

'need not be material or direct but must not be too remote. Charities with general humanitarian objects (eg cancer research) can benefit the community of the United Kingdom even if carried on in foreign countries. But where the purposes are the local provision of public works or development projects such as roads and irrigation these will generally be charitable only if ... they are a reasonably direct means to the end of relieving existing poverty in observable cases; but they appear not to be charitable if the purpose is the general economic improvement of another country.'

They also suggest that a benefit to the United Kingdom community might arise from charitable purposes for the general benefit of a British Commonwealth country which is in close association with the United Kingdom.⁸

There are certainly cases in the books upholding trusts for the advancement of education abroad.⁹ However in an Australian case a bequest to establish musical prizes for the composition of orchestral works and song cycles in Austria was initially held invalid.¹⁰ The judge said:¹¹

'It is necessary in the particular context of foreign charitable purposes to consider the nature of the gift and the relationship between this State and the for-

7 [1963] Ch Com Rep para 72; (1993) 1 Decisions 16 in Appendix 9. See also *Evans* (1965) 29 Conv NS 123.

8 Cf *Mitford v Reynolds* (1842) 1 Ph 185 (where the country was India).

9 *A-G v Sturge* (1854) 19 Beav 597 (school in Genoa); *Whicker v Hume* (1858) 7 HL Cas 124 (in every part of the world); *President of United States v Drummond* (1838), cited in *Whicker v Hume* *ibid* at 155 (increase of knowledge among men); *Re Marrs' Will Trusts* [1936] Ch 671 (school in Scotland); *Re Masoud* [1961] OR 583 (Can) (education of schoolchildren in Mount Lebanon, Syria).

10 *Re Lowin* [1965] NSW 1624; *re*vsd [1967] 2 NSW 140.

11 [1965] NSW 1624 at 1627 per Jacob J. His conclusion (but not approach) was held wrong.

foreign jurisdiction.... Anything which is a need in this State and which is recognised as involving a community obligation will involve the same need and the same community obligation towards the foreign jurisdiction.... The provision of hospitals¹² or the assistance of those who are in some need, even though it be not a financial need, are all obligations which go beyond the bounds of any particular country, but the encouragement of musical competitions or the encouragement of the fine arts in a particular country seems to me to be very much a matter internal to the country itself. I do not think that it is sufficient that it may result in an overflow of cultural endeavour.’

This approach, which has much to commend it, has not yet been adopted by the courts in England.

In *Re Shaw's Will Trusts*¹³ a trust for (in effect) the promotion of culture in Ireland was held by the English court to be valid; and there is American authority to the same effect.¹⁴

Examples are also to be found of valid charitable trusts for purposes abroad not being for the relief of poverty or distress or for the advancement of education or religion or for the promotion of health. A trust for charitable objects in Cephalonia has been upheld.¹⁵ A trust for the prevention of cruelty to animals abroad has also been held charitable,¹⁶ as has a gift to the Government of Bengal to be applied to charitable beneficial and public works at and in the city of Dacca in Bengal for the exclusive benefit of the native inhabitants in such manner as they and the Government might regard as most conducive to that end.¹⁷ In Canada a trust for the upkeep of a municipal cemetery in France was held good.¹⁸ In *Re Jacobs*¹⁹ a gift ‘for the purpose of planting a grove of trees in Israel to perpetuate my name on the eternal soil of the Holy Land’ was held to be a valid charitable gift being a gift for re-afforestation, which is charitable;²⁰ the report of the decision does not, however, indicate whether the question of public benefit was argued and having regard to what was said by Lord Evershed MR in the *Camille and Henry Dreyfus Foundation Inc v IRC* it is open to doubt whether the gift ought to have been sealed with charitable exemption.

12 See *Kytherian Association of Queensland v Sklavos* [1959] ALR 5; *Re Burnham* (1958) 17 DLR (2d) 298 (Can) (poor, sick and afflicted in Montenegro, Macedonia and Armenia).

13 [1952] Ch 163.

14 *Martin v Haycock* 140 NJ Eq 450 (1947) (US) (for library in Irish town).

15 *Re Vagliano* [1905] WN 179. In *Re Dreyfuss* 276 NY Supp 438 (1934) (US) a bequest to city officials of a German city for charitable purposes was upheld; and see *The USSR Support Charity* [1990] Ch Com Rep 7 para 33.

16 *Armstrong v Reeves* (1890) 25 LR Ir 325; *Re Jackson* (1910) Times, 11 June.

17 *Mitford v Reynolds* (1842) 1 Ph 185.

18 *Re Oldfield Estate (No 2)*, [1949] 2 DLR 175 (Manitoba).

19 (1970) 114 Sol Jo 515; see also *Re Storr* (1970) 91 WN (NSW) 704 but cf *Jewish National Fund Inc v Royal Trust Co and Richter* [1965] SCR 784.

20 On the principle of *IRC v Yorkshire Agricultural Society* [1928] 1 KB 611.

EXCEPTION TO RULE REQUIRING PUBLIC BENEFIT

In one category of charitable trusts the element of public benefit does not appear to be required. This is where there is a trust to relieve the poverty of a very limited class of beneficiaries, not being named or designated individuals. For example, the courts have upheld trusts for the benefit of poor relations,¹ poverty-stricken employees and ex-employees (or their families) of a company,² and members of a club who have fallen on evil days.³ Public benefit is wholly absent from such trusts, unless one accepts that the relief of poverty is of so altruistic a character that the public benefit may be necessarily inferred.⁴

<http://www.pbookshop.com>

1 See 47 et seq, below.

2 *Gibson v South American Stores Ltd* [1950] Ch 177; *Dingle v Turner* [1972] AC 601, HL.

3 *Re Young's Will Trusts* [1955] 1 WLR 1269.

4 See *Re Scarisbrick* [1951] Ch 622 at 639 per Evershed MR.