

No perpetuity rule : It is not usually legal to set up a trust that lasts forever, which is known as perpetual duration. The maximum time is a lifetime plus 21 years or 80 years, whichever is the longer, though it has increased to 125 years under the Perpetuities and Accumulations Act 2009. This rule does not apply to charitable trusts, which can last for any length of time.

❖ Tax advantages

Charities would usually own property, which would produce income such as rents or dividends. They do not have to pay income tax if this money is applied for charitable purposes. When people donate money to charity, if they covenant to do so, the charity can claim the tax on the donation.

Donations to charities during the donor's life are exempt from capital transfer tax and when the donor dies, from inheritance tax. Charities are also exempt from capital gains tax and stamp duty.

Charitable premises can claim an 80% reduction in non-domestic rates. Charities do not have to pay value added tax on the goods that they supply, if those goods are made by beneficiaries to the charity.

The Charity Commission

This body was originally established in 1853 but is now governed by the Charities Act 2011. It acts on behalf of the Crown but is independent of the direction or control of any Minister of the Crown or any government department (s 13 of 2011 Act)

The Commission's objectives

The Commission has the following objectives—

1The public confidence objective

The public confidence objective is to increase public trust and confidence in charities.

2The public benefit objective

The public benefit objective is to promote awareness and understanding of the operation of the public benefit requirement.

3The compliance objective

The compliance objective is to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.

4The charitable resources objective

The charitable resources objective is to promote the effective use of charitable resources.

5The accountability objective

- ❖ *Gilmour v Coats* [1949] AC 426 - Lord Simonds at 449 : '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 not adopted the same measure in regard to different categories , but accepted different standards in different branches'.

This was confirmed in: *R (Independent Schools Council) v Charity Commission for England and Wales , AG v Charity Commission and the Independent Schools Council* [2012] 1 All ER 127

- ❖ **Incorporated Council of Law Reporting for England and Wales v Attorney General** [1972] Ch 73 - The question was whether the production of a system of law reports was charitable or not. Did it just benefit a small and usually affluent section of society, the legal professions ?
- ❖ **Held: It was charitable** , either under the second head, the advancement of education, or the 4th head, general purposes beneficial to the public.

Sachs LJ at 95 :

'Does it benefit a sufficiently wide section of the community ? As satisfactory administration of the law in practice depends on there being a proper system of law reporting, it can well be said that the whole community benefits from the purposes of the council: but even if the benefits were confined to those who have to make judicial decisions and to the members of the legal profession advising clients and appearing for them in court, none the less a sufficiently large section of the community would derive the relevant benefits.'

The Charities Act 2011 and public benefit

S.4 of the Charities Act 2011 requires that all charities, under whichever head , must demonstrate that they are for the public benefit.

It has always been permissible for charities to charge for their services, as long as the charity is non profit making --> **Joseph Rowntree Memorial Trust v Attorney General** [1983] Ch 159 and **Re Resch's Will Trusts** [1969] 1 AC 514.

Key point : Charitable benefits do not have to be provided for free.

- ❖ **Scottish Burial Reform and Cremation Society v Glasgow Corporation** [1968] AC 138 , **Lord Reid** : *'In the present case the appellants make a charge for the services which they provide. But it has never been held that objects, otherwise charitable, cease to be charitable if beneficiaries are required to make payment for that they receive... But no authority and no reason has been put forward for holding that... the objects and activities of the non profit earning charitable organization ceases to be charitable.'*

It follows that I am satisfied that a gift to the poor and needy of the class of persons set out in the second schedule to the will falls on the charitable side of the line, wherever that line has to be drawn'

The exception ever extends to poor employees of a company :

- ❖ **Dingle v Turner [1972] AC 601** - Frank Dingle established a trust in his will to pay pensions to poor employees of E Dingle and Co Ltd , who were aged or incapacitated. The company had over 600 employees and a substantial number of ex- employees.
- ❖ Held: This fell within the poverty exception

Lord Cross of Chelsea observed that the definition of public benefit was different under the Education Head of Charity

He urged a reconsideration of public benefit, which would take account of the fiscal benefits of charitable status i.e tax saving

The particular case, however, fell within the poverty exception, where public benefit was treated differently.

'But the 'poor members' and the 'poor employees' decisions were a natural development of the 'poor relations' decisions and to draw a distinction between different sorts of 'poverty' trusts would be quite illogical and could certainly not be said to be introducing 'greater harshness' into the law of charity. Moreover, though not as old as the 'poor relations' trusts , 'poor employees' trusts have been recognised as charities for many years; there are now a large number of such trusts in existence; and assuming one must, that they are properly administered in the sense that benefits under them are only given to people who can be fairly said to be, according to current standards, 'poor persons' , to treat such trusts as charities is not open to any practical objection'

Lord Cross did not want to remove charitable status from trusts that had been operating for some time to help the poor, particularly as there was no evidence that charities to relieve poor employees were being abused to gain tax advantages.

Some thought that s.3 of the Charities Act 2006 (now s 4 of Charities Act 2011) changed the law, by requiring all categories of charity , including charities for the relief of poverty, to prove that they were for the public benefit. In this category of charity it is unnecessary to prove that its benefits are available to the general public.

- ❖ **Attorney- General v The Charity Commission for England and Wales [2012] WTLR 977** -The law was not changed by the 2006 Act. There were two aspects of the public benefit requirement :

- ❖ **Re British School of Egyptian Archaeology [1954] 1 All ER 887** - The school discovered knowledge about ancient Egypt, published on this subject, and trained students in excavation.
- ❖ **Held : Harman J** : I cannot doubt that this was a school for the diffusion of a certain branch of knowledge, namely, knowledge of the ancient past of Egypt, and that the school has a direct educational purpose, namely to train student in that very complicated branch of knowledge known as Egyptology. On that view, the school is clearly a charity.

Research will also be charitable as long as the research was communicated to the general public :

- ❖ **Re Hopkins Will Trusts [1965] Ch 669** - The testatrix left part of her estate to establish ' The Francis Bacon Society' . Its objects were to find the 'Bacon - Shakespeare manuscripts' , to study the works of Francis Bacon, and 'to encourage the general study of evidence in favour of Francis Bacon's authorship of the plays commonly ascribed to Shakespeare'

Held: Wilberforce : *'I think, therefore that the word 'education' as used by Harman J in Re Shaw [1957] must be used in a wide sense, certainly extending beyond teaching, and that the requirement is that, in order to be charitable, research must either be of educational value to the researcher or must be directed as to lead to something which will pass into the store of educational material, so as to improve the sum of communicable knowledge in a area which education may cover -education in this last context extending to the formation of it, by taste and application I accept that research of a private character, for the benefit only of the members of a society, would not normally be educational - or otherwise charitable.. But I do not think that the research in the present case can be said to be of a private character for it is inherently inevitable and manifestly intended, that the result of any discovery should be published to the world.*

...It would seem to me that a bequest for the purpose of search , or research, for the original manuscripts of England's greatest dramatist would be well within the law's conception of charitable purposes. The discovery of such manuscripts, or of one such manuscript, would be of the highest value to history and to literature'

- ❖ **Re Lopes [1931] 2 Ch 130** - Lopes left money in her will towards an upkeep of the London Zoological Gardens. The object of the London Zoological Society were the 'advancement of zoology and animal physiology and the introduction of new and curious subjects of the animal kingdom'. The next of kin questioned whether the zoo was a charity, as food and amusements were also provided.
- ❖ **Held: Farwell J** : It was an educational charity, as the food and amusement were provided in aid of the main charitable objective.

- ❖ **Re Delius [1957] Ch 299** - Roxburgh J : *I do not find it necessary to consider what the position might be if the trustees were for the promotion of the works of some inadequate composer. It has been suggested that perhaps I should have no option but to give effect even to such a trust. I do not know, but I need not investigate that problem, because counsel who have argued before me have been unanimous in the view that the standard of Delius' work is so high that the question does not arise in the present case.*

If the education proposed appears a little strange, the courts may deny charitable status. Charitable status cannot be used to force the testator's eccentric views upon the public. This is regarded as mere 'propaganda':

- ❖ **Re Shaw's Will Trusts [1957] 1 WLR 729** - The will of the playwright ,George Bernard Shaw , left money to
 - i. ascertain by inquiry how much time and money could be saved by a new British alphabet of 40 letters
 - ii. translate 'Androcles and the Lion' into a new language and advertise this by sending copies to public libraries. This would be an example of how good the alphabet would be.

Held : Harman J : There is no element of teaching or education combined with this, nor does the propaganda element in the trust tend to more than persuade the public that the adoption of the new script would be a good thing and that, in my view, is not education. Therefore I reject this element.

Key point : The court may decide that the 'education' provided is not worthwhile and therefore deny charitable status.

Political purposes

Trusts to promote a political purpose cannot have charitable status. The courts do not wish to be drawn into conflict with the Parliament or the government . Nor do the courts wish to assess whether a change in the law would be beneficial or not.

- ❖ **Bowman v Secular Society [1917] AC 406** - The Secular Society, as the name suggests, campaigned against religion
- ❖ **Held: Lord Parker** '*...The abolition of religious tests, the disestablishment of the Church, the secularization of education, the alteration of the law touching religion or marriage... are purely political objects. Equity has always been held invalid , not because it is illegal, for everyone is at liberty to advocate or promote by any lawful means a change in the law, but because the court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift.*'

More modern example where a religious charity had split and some followers of the religion no longer wished to worship with the others:

- ❖ **White and others v Williams and others [2010] PTSE 1575** - The trustees of the Bibleway Church UK held a number of churches which were used by local congregations. There was a schism in the Church, which divided into 2 factions. The Lewisham congregation decided to leave entirely and establish itself as the Tabernacle Ministries of Great Britain, but wanted the church they used to be transferred to them
- ❖ **Held** : It was no longer suitable or acceptable for the Lewisham congregation to remain under the control of Bibleway, who were not sympathetic to their beliefs. The original spirit and intention of the gift, which must be respected, was that the local congregations should have somewhere to worship, so the church building was transferred to the Tabernacle trustees

Key point : Cy-pres means that the charitable property is given to a similar charity to reflect, as far as possible, the original intention of the settlor or testator.

Subsequent failure

This is where the property has been given to a valid, operating charity that then ceases to operate. In cases of subsequent failure, the charitable property has been dedicated to charity and is always applied to another similar charity.

- ❖ **Phillips v The Royal Society for the Protection of Birds [2012] EWHC 618 (Ch)**- The will of Vera Spear left money to 'The New Forest Owl Sanctuary Ltd' (NFOS). Mrs. Spear died on 5 Jan 2007, but NFOS has ceased to operate by 13 July 2006. It has been removed from the register of charities on 17 Aug 2006, but NFOS was not dissolved as a company until 6 Feb 2007.
- ❖ **Held**: Mrs. Spear's property was given to charity on the date of her death, 5 Jan 2007. The charity did not fail until a month later, so her property remained charitable and did not revert back to her relatives

Initial failure

This is where the charity failed from the start, usually the date of death of the testator. It can sometimes be hard to determine whether it is a case of initial or subsequent failure:

- ❖ **Kings v Bultitude [2010] EWHC 1795 (Ch)** - Mrs Schroder died in 2008 and left the residue to 'The trustee of the Ancient Catholic Church of the Good Shepherd at present meeting at Rockwood Road, London..for the general purposes of the said Church'. The Primate of this Church, which was a breakaway Roman Catholic church, had been Mr Schroder, the husband of