

**Analysis of the law underpinning  
*The Advancement of Education for the  
Public Benefit***

**This legal analysis is designed to be read in  
conjunction with**

***The Advancement of Education for the Public Benefit  
(December 2008)***

## **PUBLIC BENEFIT: STATEMENT OF THE BASIS FOR THE CHARITY COMMISSION'S ROLE AND ACTIONS**

In 2006, Parliament passed new legislation for charities which, amongst other provisions, gave fresh emphasis to the requirement for all charities' aims to be, demonstrably, for the public benefit. It is in both our interests, as the regulator of charities in England and Wales, and the interests of the charities that we regulate, that our approach to public benefit maintains and, if possible, increases the public's trust and confidence in charities.

Our approach to assessing public benefit comes from the statutory objective set for us by Parliament in the Charities Act 2006, 'To promote awareness and understanding of the operation of the public benefit requirement', and our corresponding duty to produce statutory guidance to help fulfil this objective.

We believe that the statutory objective and the requirement to issue guidance, together with our responsibilities as regulator, mean that we have an obligation to set out a coherent set of principles on public benefit derived from our interpretation of the underlying case law which already exists.

We interpret this case law in the context of modern circumstances, taking into consideration the new framework for charitable status set out in the Act, the existing case law, and the fact that the presumption of public benefit for some types of charities has been removed.

We also consider the impact of the Human Rights Act, which requires fair and equal treatment of the application of the public benefit principles to different types of charity, and that any differences in treatment are necessary, proportionate and legitimate.

Our role is to bring all these elements together and, where necessary, interpret the law to deal with areas that lack clarity. Our interpretation of our new responsibilities is underpinned by our general guidance on the principles of public benefit which we published on our website at the start of 2008.

We will be transparent about the basis on which we take decisions about public benefit and proportionate in the actions we take. Where our decisions affect whether a charity remains as a charity, or indeed whether the way in which it operates is for the public benefit, the charity, or anyone affected by our decision, who disagrees with the regulatory action that we take, can challenge that action with the Charity Tribunal or the Courts where appropriate.

December 2008

# Analysis of the law underpinning *The Advancement of Education for the Public Benefit*

## INTRODUCTION

11. The Commission's supplementary guidance, *The Advancement of Education for the Public Benefit*, explains how the key principles of public benefit apply to charities concerned with the advancement of education in language that is as clear as it can be to ensure that as many people as possible can follow and understand it. This document is intended to be a summary of the Commission's view of the law underpinning the guidance contained in *The Advancement of Education for the Public Benefit* and necessarily uses more technical language. *The Advancement of Education for the Public Benefit* is based on this legal analysis and the cases referred to in it.
12. This analysis is not intended to be a comprehensive legal digest, but a useful reference point for trustees, their advisers and the public. It reflects law and practice at December 2008. It is not binding in law and does not affect any rights to challenge decisions either through the courts, the Charity Tribunal in appropriate cases or the Commission's internal Decision Review process. It should be borne in mind that it offers a general analysis of the law, but whether the analysis is appropriate in a particular case will depend on all the facts of that case. In deciding individual cases we will apply the law.
13. To be a charity, an organisation has to be established for a purpose recognised by the law as capable of being charitable, and for the public benefit. Previously, under charity law, purposes for the advancement of education (together with purposes for the relief of poverty and advancement of religion) were presumed to be for the public benefit, unless the presumption was rebutted by evidence to the contrary. In all other cases, public benefit had to be shown. Part 1 of the Charities Act 2006 removes this presumption of public benefit for poverty, education and religious purposes. Apart from this removal of the presumption the law on public benefit is unaltered by the Charities Act 2006.
14. The Commission will take the same approach as the courts and the Charity Tribunal in applying the law.

## Part 1. THE MEANING OF THE ADVANCEMENT OF EDUCATION

- 1.1 The ‘advancement of education’ is a description of purpose in section 2(2)(b) of the Charities Act 2006. Other descriptions of purposes in that section deal with matters currently at least partly within the ambit of education (citizenship, community development, arts, culture, heritage, science, sport). Those matters will be the subject of further guidance and are not fully dealt with below. In the future some aims that have traditionally been classified under the second description may also be classified under another. It has always been the case that some charities have purposes which could, if shown to be for the public benefit, be charitable by reference to more than one of the recognised charitable heads, including education<sup>1</sup>.
- 1.2 The Commission considered the scope of education in its decision relating to Millennium College<sup>2</sup>. That decision sets out the legal framework for the advancement of education today. The Commission concluded that education:
- is carried out by means of a wide range of activities undertaken by charities;
  - may take a number of forms;
  - may be developed in communities in a way which develops individual capabilities, competencies, skills and capacities;
  - may include less traditional or formal processes (provided they are capable of leading to learning) including providing information in a structured manner<sup>3</sup> (organisation of material and/or processes) to advance the knowledge or abilities of recipients.
- 1.3 ‘Education’ (as something whose advancement for the public benefit is charitable) has the same meaning as it does in contemporary speech<sup>4</sup>. Lord Hailsham in the *McMullen* case said<sup>5</sup>

*‘I do not share the view .... that the words "education" and "educational" bear, or can bear, for the purposes of the law of charity, meanings different from those current in present-day educated English speech. .... What has to be remembered however, is that, as Lord Wilberforce pointed out in In re Hopkins' Will Trusts<sup>6</sup> and in Scottish Burial Reform and Cremation Society Ltd. v.*

<sup>1</sup> For example, *Re Shakespeare Memorial Trust* [1923] 2 Ch 398; *Re Hopkins' Will Trusts* [1965] Ch 669; *Construction Industry Training Board v A-G* [1971] 1 WLR 1303; *Incorporated Council of Law Reporting for England and Wales v A-G* [1971] 3 All ER 1029

<sup>2</sup> Millennium College decision 27.04.2004 - see <http://ww2charity/Library/registration/pdfs/millcolldecision.pdf>

<sup>3</sup> See *Millennium College* decision para 5.7; *Tudor on Charities*, 9<sup>th</sup> ed para 2-020; Picarda: *The Law and Practice Relating to Charities*, 3<sup>rd</sup> ed p 59. See further paragraph 1.15 below.

<sup>4</sup> The Shorter Oxford English Dictionary (fifth ed, 2002) gives a meaning for ‘educate’ as to bring up (children) in particular manners, habits or ways of life; and for ‘education’ as the systematic, instruction, schooling or training of children and young people, or by extension instruction obtained in adult life; and the development of mental or physical powers; moulding of (some aspect of) character.

<sup>5</sup> Lord Hailsham in *IRC v McMullen* [1981] AC 1 at page 15

<sup>6</sup> [1965] Ch 669, 678

*Glasgow Corporation*<sup>7</sup>, both the legal conception of charity, and within it the educated man's ideas about education, are not static, but moving and changing. Both change with changes in ideas about social values. Both have evolved with the years. In particular in applying the law to contemporary circumstances it is extremely dangerous to forget that thoughts concerning the scope and width of education differed in the past greatly from those which are now generally accepted.'

1.4 In the same case he also pointed out that it was relevant in deciding what is or is not an educational purpose in contemporary circumstances to consider what parliament considered educational in the then current Education legislation setting out the statutory state system of education, and the duties of the local education authorities and the government in establishing and maintaining the system.

1.5 It may be of some assistance to consider what statute says about the meaning of education in the context of maintained schools. This is not conclusive of what is meant by education in charity law but illustrates the education that the state has decided to fund. The duty of the local education authority for every area is now set out in s13 Education Act 1996 which provides:

*'A local education authority shall (so far as their powers enable them to do so) contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary education [and secondary education] are available to meet the needs of the population of their area.'*

1.6 Such an education authority must also secure that adequate facilities are included for recreation and social and physical training<sup>8</sup>. The *Education Act 2002*<sup>9</sup> now sets out the curriculum requirements for maintained schools (see the main guidance).

1.7 Lord Hailsham in the *McMullen* case went on...

*'There is no trace in [the relevant sections of Education statutes in force at the date of the judgment] of an idea of education limited to the development of mental, vocational or practical skills, to grounds or facilities the special perquisite of particular [educational institutions], or term-time, or particular localities, and there is express recognition of the contribution which extra-curricular activities and voluntary societies or bodies can make even in the promotion of the purely statutory system envisaged by the Act. .... I would be very reluctant to confine the meaning of education to formal instruction in the classroom or even the playground.'*

1.8 In *Re Shaw's Will Trusts*<sup>10</sup>, Vaisey J considered a trust to bring 'masterpieces of fine art within the reach of the people of Ireland of all classes" and for the teaching 'of self control, elocution, oratory, deportment, the arts of personal contact, of social intercourse, and the other arts of public, private, professional and business life'. He held:

<sup>7</sup> [1968] AC 138 especially at p. 154

<sup>8</sup> s 508(1)

<sup>9</sup> s78

<sup>10</sup> [1952] Ch 163 page 172

*'I strongly dissent, as did Lord Greene M.R. in Royal Choral Society v. Inland Revenue Commissioners, from the statement that the only education worth having is the education given by a master or mistress in class. I think "education" includes .... not only teaching, but the promotion or encouragement of these arts and graces of life which are, after all, perhaps the finest and best part of the human character.'*

### 1.9 In addition, 'education' includes:

- training of the mind<sup>11</sup>.
- raising the artistic taste of the community.  
 In *Royal Choral Society v IRC*<sup>12</sup> the Court of Appeal considered an object for the advancement of choral singing. The Inland Revenue argued that promoting artistic pursuits may be admirable but is not an educational purpose. There was a distinction between giving performances, even of the highest class, and promoting education. Lord Greene MR held that a very large number of people can become instructed listeners with a trained and cultivated taste: *A body of persons established for the purpose of raising the artistic taste of the country is established for educational purposes, because the education of artistic taste is one of the most important things in the development of a civilised human being.*
- research<sup>13</sup>.  
 A gift to a society to encourage the general study of the evidence in favour of Francis Bacon's authorship of the plays commonly ascribed to Shakespeare was held charitable in *Re Hopkins Will Trusts*<sup>14</sup>. Wilberforce J held: *"education" ..... must be used in a wide sense, certainly extending beyond teaching .... the requirement is that, in order to be charitable, research must either be of educational value to the researcher or must be so directed as to lead to something which will pass into the store of educational material, or so as to improve the sum of communicable knowledge in an area which education may cover—education in this last context extending to the formation of literary taste and appreciation (compare Royal Choral Society v Inland Revenue Comrs).*
- transmitting information so as to advance the knowledge and abilities of recipients<sup>15</sup>.

### 1.10 There are limits. The particular purpose must have demonstrable educational value (to be assessed by the court, if necessary on the basis of evidence)<sup>16</sup>. Educational value is considered in Part 2.

<sup>11</sup> *Re Dupree's Trust Deed* [1945] Ch 16

<sup>12</sup> [1943] 2 All ER 101

<sup>13</sup> The leading court decisions (see also para 2.9 below) with regard to charitable research establish the broad propositions that a trust for research will ordinarily qualify as a charitable trust only if:

- the subject matter of the proposed research is a useful subject of study
- it is contemplated that knowledge acquired as a result will be disseminated to others
- the trust is for the benefit of the public or a sufficiently important section of the public

<sup>14</sup> [1964] 3 All ER 46

<sup>15</sup> see the *Millennium College* decision

<sup>16</sup> See *Re Pinion* [1965] Ch 85

### **Not all experience is educational**

- 1.11 The purpose must not simply be ‘educational’ in the loose sense in which all experience is educational.

In a case concerning a trust for *"the promotion of the religious social and physical well-being"* of a restricted class (*IRC v Baddeley*<sup>17</sup>) Viscount Simonds said:

*.... regarded as a whole, the sum of the activities permissible under the deed can only be regarded as educational in the sort of loose sense in which all experience may be said to be educative, and that, if such activities are examined one by one, it would be impossible to regard many of them as in even the loosest sense educational.*

### **Education or mere increase in knowledge**

- 1.12 With regard to the provision of information, Harman J's view in *Re Shaw*<sup>18</sup> that *'the mere increase of knowledge ... is not in itself a charitable object unless it is combined with teaching or education'* has to be understood in its context and says nothing more than that the piling up of facts is not educational unless it is directed to advancing education as understood above.
- 1.14 To be educational, the particular purpose must be directed to advancing people's education in a meaningful way: *'...so long as information ... is provided in a structured manner and for a genuinely educational purpose -- that is, to advance the knowledge or abilities of the recipients -- ..... it may properly be viewed as falling within the advancement of education'*<sup>19</sup>.
- 1.15 In the Millennium College decision the Commission said:

*'.... although simply imparting information which was unstructured and of no or little educational value could not be charitable, there were cases where an individual's education could be advanced solely through the processes and methods used, where they were intended to and could be shown to develop an individual's capabilities, competencies, skills or understanding. For example, the intention may be to develop the individual's analytical skills, through the processes employed. The fact that the individual's factual knowledge may or may not be increased in the process is incidental. In these cases, the educative quality of the material imparted may be of less significance. The extent of the necessary educative nature of the material itself will therefore depend upon the circumstances of each particular case.'*

<sup>17</sup> [1955] AC 572, at page 585

<sup>18</sup> *Re Shaw, Public Trustee v Day* [1957] 1 WLR 729

<sup>19</sup> *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue* [1999] 169 DLR (4th)

### **Education or promoting a particular point of view**

- 1.16 A body which has a political purpose cannot be a charity<sup>20</sup>. For example, Vaisey J in *Re Hopkinson*<sup>21</sup> held that: ‘*Political propaganda masquerading — I do not use the word in any sinister sense — as education is not education within the Statute of Elizabeth*<sup>22</sup>. In other words, it is not charitable.’
- 1.17 The court has considered that a body that promotes a point of view is not advancing education (although it may be promoting another purpose which may be charitable). That does not mean that advancing education for the benefit of the public requires an absolute neutrality of view. The fact that the education starts from a generally accepted position that something is beneficial does not mean it promotes a point of view in a way that is not charitable<sup>23</sup>.
- 1.18 Questions have arisen as to whether education has to be an entirely a neutral, fact-imparting process as would seem to be implied by *Re Bushnell*<sup>24</sup>. This case considered a testator’s promotion of his own theory of socialised medicine by propaganda, which did not involve a desire ‘*to educate the public so that they could choose for themselves, starting with neutral information*’, to support or oppose the theory and concluded that the purpose was not educational but political.
- 1.19 It is clear that the law recognises that education can start from certain basic moral premises (for example, *Re Webber*<sup>25</sup> held the instruction of ‘*boys of all classes in the principles of discipline, loyalty and good citizenship*’ was educational<sup>26</sup>).
- 1.20 Although, as pointed out by Lord Simonds in *National Anti-Vivisection Society v IRC*<sup>27</sup>, the charity law understanding of ‘political objects’ is neither a narrow one nor is it confined to objects of controversy, more recent judicial opinion has taken into account in considering whether purposes are political, the fact that this consideration may be affected by a general acceptance of the proposition in question as uncontroversial.
- 1.21 The Court of Appeal in *Southwood v AG*<sup>28</sup> (Chadwick LJ) endorsed the finding at first instance that there is:

*‘nothing controversial in the proposition that a purpose may be educational even though it starts from the premise that peace is preferable to war, and puts consequent emphasis on peaceful, rather than military techniques for resolving international disputes; and even though one purpose of the education is to “create a public sentiment” in favour of peace. The important distinction from the “political” cases [In re Hopkinson and in re Bushnell] mentioned above, is that the merits or otherwise of the Labour Party’s views on education, or (in the*

<sup>20</sup> *Bowman v Secular Society* [1917] AC 406; *McGovern v AG* [1982] Ch 321

<sup>21</sup> [1949] 1 All ER 346

<sup>22</sup> (43 Eliz, c 4)

<sup>23</sup> *Countryside Alliance* decision para 13 - see <http://ww2charity/Library/registration/pdfs/countrydecision.pdf>

<sup>24</sup> [1975] 1 All ER 721

<sup>25</sup> [1954] 3 All ER 712

<sup>26</sup> and also cf the statutory curriculum requirements cited above

<sup>27</sup> [1948] AC 31 at 62-63

<sup>28</sup> [2000] All ER (D) 886

early 1940s) of a state health service, were matters of political controversy. The desirability of peace as a general objective is not.'

- 1.22 The court noted that the purpose became a political purpose when it included promoting a controversial means to achieve peace, in that case by promoting unilateral disarmament.
- 1.23 It remains the case that the mere promotion of an opinion which is not shown to have educational value (say a particular position on a matter of public controversy<sup>29</sup>) will not be for the advancement of education or to put it another way, the attempt to inculcate a particular point of view not exhibiting a general educational tendency will not be for the advancement of education.

### ***Education can be advanced in a very wide range of ways***

- 1.24 Education may be given in institutions and in formal ways. Since the earliest times 'the maintenance of .... schools of learning and free schools and scholars of universities'<sup>30</sup> has been capable of being charitable. Universities are established with broad objects (e.g. for the promotion of Arts Sciences and Learning<sup>31</sup>). The advancement and propagation of education and learning generally for the public benefit are well established charitable purposes<sup>32</sup>. Universities have always been seen as having aims for the advancement of education<sup>33</sup>. They will typically<sup>34</sup> see their mission as to contribute to society through the pursuit of education, learning, and research at the highest levels of excellence. Similarly schools,<sup>35</sup> and institutions such as museums and galleries and learned societies<sup>36</sup>, are capable of being charitable if they are established for public and not private benefit.
- 1.25 Education can also be furthered in less formal or structured ways (see the Commission's decision with regard to *Millennium College*).
- 1.26 In *Re Koeppler*<sup>37</sup>, the Court of Appeal considered a gift for the furtherance of the work of Wilton Park 'as long as Wilton Park remains a British contribution to the formation of an informed international public opinion and to the promotion of greater co-operation in Europe and the West in general'. This essentially was achieved by a series of conferences for a broad range of persons, such as politicians, academics, civil servants, industrialists and journalists, considered to be capable of influencing opinion in member states of the Organisation for Economic Co-operation and Development. The conferences (which were private and unofficial) enabled

<sup>29</sup> see *Re Hopkinson*; and the Margaret Thatcher Foundation decision AR 1991 Appendix D

<sup>30</sup> preamble to the *Statute of Charitable Uses 1601* 43 Eliz 1 c4

<sup>31</sup> e.g. Charters of the University of Bristol and the University of Birmingham

<sup>32</sup> *Whicker v Hume* (1858) 7 HL Cas 124

<sup>33</sup> cf *Tudor on Charities* 9<sup>th</sup> ed para 2-021

<sup>34</sup> See for example the University of Cambridge <http://www.admin.cam.ac.uk/univ/mission.html>

<sup>35</sup> Schools, of course, operate within their communities. It is generally understood that the advancement of the education of pupils at a particular school may in some circumstances take on a wider community dimension by getting the school and its pupils to engage with others (either children being educated elsewhere or groups in the community). In 2003, we agreed that charitable independent schools could in appropriate cases restate their objects and include additional activities as part of their aims where those activities were incidental to the provision of the school.

<sup>36</sup> *Royal College of Surgeons of England v National Provincial Bank Ltd* [1952] AC 631; *Re Lopes, Bence-Jones v Zoological Society of London* [1931] 2 Ch 130

<sup>37</sup> [1985] 2 All ER 869

participants to exchange views on political, economic and social issues of common interest.

*It was held that '... the concept of education is now wide enough to cover the intensive discussion process adopted by Wilton Park in relation to a somewhat special class of adults, persons influencing opinion in their own countries, designed .... to dent opinions and to cross-fertilise ideas.' '.... As to the element of public benefit, the participants in the courses appear to have been selected from widely drawn categories, as persons likely to influence opinion in their own country. .... I find little difficulty in inferring that not only they themselves are likely to benefit from the courses, but are likely to pass on such benefits to others. .... The activities of Wilton Park are not of a party political nature. Nor, so far as the evidence shows, are they designed to procure changes in the laws or governmental policy of this or any other country: even when they touch on political matters, they constitute, so far as I can see, no more than genuine attempts in an objective manner to ascertain and disseminate the truth. In these circumstances I think that no objections to the trust arise on a political score, similar to those which arose in the McGovern case. .... I consider that the trust purpose of that gift was the furtherance of the work of the Wilton Park project and that that purpose was charitable as being for the advancement of education.'*

### **Vocational or professional education**

- 1.27 Vocational or professional education is capable of being charitable. That would include any lawful useful means of obtaining a livelihood. In *Re Central Employment Bureau for Women and Students' Careers Association Incorporated*<sup>38</sup> Simonds J considered the purpose of 'educating women, and, in so far as they are not self-supporting, helping them to earn their living by whatever means a committee may propose'. He held:

*'It is clear that, so far as it is educational, it is a good charity, because I cannot distinguish between a gift for the advancement of education in general terms and a gift for the purpose of educating individuals in such manner as will be most conducive to their earning their living, as, for instance, if this had been a gift for apprenticeships.'*

- 1.28 Such educational activities may involve a personal benefit to individuals engaged in the particular employment. For instance, a purpose to publish materials essential for the study of a particular subject (but directly of use as a professional tool) (*Incorporated Council of Law Reporting v AG*<sup>39</sup>); or for the 'due promotion and encouragement of the study and practice' of the art and science of surgery (*Royal College of Surgeons of England v National Provincial Bank Ltd*<sup>40</sup>) may also benefit those who practise that vocation. This will be acceptable if incidental to the main purpose of advancing education for the public benefit.

---

<sup>38</sup> [1942] 1 All ER 232

<sup>39</sup> [1971] Ch 626

<sup>40</sup> [1951] Ch 485

1.29 Once people are in employment, a purpose which enables them to engage in their profession or vocation to greater advantage to themselves or their employer may involve a higher likelihood of private and personal benefit. If the particular professional assistance (including professional training and education) is directed to advancing the professional interests of the members of that profession, who may be the members of the organisation, it is not then likely to satisfy the public benefit test. It may be useful to ask whether the purpose as deduced from the objects and the factual matrix is to educate the public for public benefit or to advance education on issues on which members wish to be educated.

1.30 In *Chartered Insurance Institute v Corporation of London*<sup>41</sup>, Wilbforce J said,

*'... it does not to my mind at all follow that, because the institute is mainly engaged in tuition and examination activities, therefore its main object is concerned with the advancement of education. In one sense the word "education" may be used to describe any form of training, any manner by which physical or mental aptitude, which a man may desire to have for the purpose of his work, may be acquired. If that was what was intended it would not be apt, in my judgment, to use the words "for the advancement of education". Those words suggest that the organisation is to be concerned with education for its own sake. No one can doubt, for example, that a university gives education in that sense although it may very well be that one of the ancillary advantages of obtaining a university degree is to enable a man to do better in a profession. ... It follows that if the true view of the objects and work of this institution is that although it is engaged in tuition and examination activities mainly, those tuition and examination activities are designed for the benefit of the members of a particular profession in order to enable them to practise their profession to greater advantage, then the institution is not concerned with the advancement of education..... [this body] is concerned with the benefit of the members of the profession themselves in order to enable them to practise their profession to greater advantage. For that reason I think that the conclusion of quarter sessions was right, and that the appeal should be dismissed.'*

---

<sup>41</sup> [1957] 2 All ER 638 for the promotion of the efficiency, progress and general development among persons engaged or employed in insurance

- encouragement of the study of subjects bearing on any branch of insurance
- publication of a journal
- testing of candidates for certificates of the institute
- promotion of intercourse between members of the institute
- holding of conferences and meetings for the discussion of professional affairs
- compilation of lists, registers and records of events and proceedings
- ascertainment of the law and practice relating to all things connected with insurance
- improvement in the status of their members and the dignity of the profession
- relief of necessitous members of the profession

outcome -

- benefits the insurance profession and its members
  - aims to obtain a reputable body of insurance personnel
  - one way in which it did so was to provide educational facilities for its members
  - not concerned with the advancement of education for the public benefit
- (cf *Midland Counties Institute of Engineers v IRC* and *Institute of Mech Eng v Cane*)

## Part 2. PRINCIPLES OF PUBLIC BENEFIT

- 2.1 It is the Commission (or the Charity Tribunal or the Court) which determines whether there is public benefit. In *Re Grove-Grady*<sup>42</sup> it was noted that ‘a wide divergence of opinion may exist as to the expediency, or utility, of what is accepted generally as beneficial. The court must decide whether benefit to the community is established.’

### **Principle 1: There must be identifiable benefit or benefits – Educational value or merit**

- 2.2 In *Re Pinion*<sup>43</sup> there was a bequest of studio, pictures and other objects to be kept intact together and maintained as a collection. The utility of this particular gift was in question. Expert evidence was that the collection was of low quality and had not educational value. The judge held there was no useful purpose in ‘foisting on the public this mass of junk’. No public utility and no educational value meant no charity. ‘Where a museum is concerned and the utility of the gift is brought in question it is, in my opinion, and herein I agree with the judge, essential to know at least something of the quality of the proposed exhibits in order to judge whether they will be conducive to the education of the public. So I think with a public library, such a place, if found to be devoted entirely to works of pornography or of a corrupting nature, would not be allowable.’ Similarly: ‘A school for prostitutes or pickpockets would obviously fail.’
- 2.3 The Commission publication *Museums and Art Galleries* (RR10) (A2-17) maintains that a criterion of merit is needed in relation to collections in museums and galleries.
- 2.4 In a case to do with George Bernard Shaw’s will<sup>44</sup>, the court considered a trust to research the time and resources which would be saved by substituting an expanded new British alphabet and to transliterate one of the testator’s plays (*Androcles and the Lion*) into the proposed British alphabet. Harman J held: ‘The research and propaganda enjoined by the testator seem to me merely to tend to the increase of public knowledge in a certain respect, namely, the saving of time and money by the use of the proposed alphabet. There is no element of teaching or education combined with this, nor does the propaganda element in the trusts tend to more than to persuade the public that the adoption of the new script would be “a good thing”, and that, in my view, is not education.’
- 2.5 Slade J in *McGovern v AG*<sup>45</sup> thought that doubtless ‘in some cases a purpose may be so manifestly beneficial to the public that it would be absurd to call evidence on this point’ (He went on to say that in ‘many other instances, however, the element of public benefit may be much more debatable. Indeed, in some cases the court will regard this element [as] being incapable of proof one way or the other and thus will inevitably decline to recognise the trust as being of a charitable nature’).

---

<sup>42</sup> [1929] 1 Ch 557

<sup>43</sup> [1964] 1 All ER 890

<sup>44</sup> *Re Shaw, Public Trustee v Day* [1957] 1 WLR 729

<sup>45</sup> [1981] 3 All ER 439

- 2.6 In the case of education, if the purpose is held to be beneficial, it is not relevant to inquire into questions of whether the chosen means to advance it are the most effective. In the case of Mrs Shaw's will<sup>46</sup>, Vaisey J said:

*'It was suggested in argument that the purposes which the testatrix had in mind were those of a sort of finishing school for the Irish people and, on the whole, I think that that is the right view to take. ... [The] will provides excellent material for the allocution of a somewhat pragmatical headmistress at an annual speech day, or other ceremonial occasion, with its judicious admixture of criticism of awkward manners and vulgarities of speech, and admonitions to a higher degree of self control and improved deportment. ... Whatever may be my own personal views about this type of education, they have nothing to do with the case. It is education of a desirable sort, and which, if corrected and augmented and amplified by other kinds of teaching and instruction, might have most beneficial results.'*

**Principle 1a: It must be clear what the benefits are**

- 2.7 In many cases there will be clear benefits. Education (understood as a process which develops an individual's relevant capabilities, competencies, skills and capacities) will often involve benefit for the individual whose outcomes can be measured and shown in material terms. Schools, colleges and universities are often regulated with recorded outcomes, frequently published in tables. The promotion of commercial education<sup>47</sup>, knowledge of foreign languages and of professional and vocational education<sup>48</sup> will produce not only benefits to individuals in the nature of qualifications securing more satisfying and better paid employment but also benefits in the general economic, trading and industrial performance of the country. Similarly the promotion of education in physical and psychological healing<sup>49</sup> produce benefits for the persons being educated and for the general public in increasing the availability of healers. Providing facilities for physical education and development<sup>50</sup> will provide and benefit for those being developed and a wider societal benefit in having a healthy and fit population more ready to engage with the intellectual and social aspects of life and less demanding of state healthcare resources.
- 2.8 A substantial body of case law relates to other educational institutions in the form of learned societies and institutions for the advancement of science, whose outputs contribute to the increase in scientific and useful knowledge. In *Re Lopes*<sup>51</sup> it was found that the objects of the Zoological Society of London ('the advancement of zoology and animal physiology and the introduction of new and curious subjects of the animal kingdom') were '*clearly educational - for the advancement of scientific knowledge - and, therefore, charitable. The introduction of non-indigenous animals, exhibited under proper conditions, is distinctly an educational object. It must widen the mind and outlook of everyone to see in the flesh animals, now becoming scarce in many parts of the world, which otherwise people might not see at all. Taking a broad view of the society's objects, I am satisfied that they are charitable, on the*

<sup>46</sup> *Re Shaw's Will Trusts* [1952] Ch 163

<sup>47</sup> *Re Koettgen* [1954] Ch 252

<sup>48</sup> *Construction Industry Training Board v AG*

<sup>49</sup> *Re Osmund* [1944] Ch 206

<sup>50</sup> *IRC v McMullen* [1981] AC 1

<sup>51</sup> [1930] All ER Rep 45

ground that they are for the advancement of education.’ Learned societies such as the Royal Geographical Society may similarly be able to point to increases in public knowledge on subjects of educational value as a result of their activities directly contributing to recognised public benefit.

- 2.9 Research is often conducted in conditions where educational value will be enjoyed first by the researcher personally but also by the wider community when its fruits become available on publication. The principles were set out by Slade J in *Re Besterman’s Will Trust*<sup>52</sup>.
- 2.10 Where it is a question of education being a process which promotes more generally the spiritual, moral, cultural and mental development of people and of society, and prepares people more generally for the opportunities, responsibilities and experiences of adult life, then those outcomes will be less susceptible of precise concrete measures of success. Nevertheless it is unlikely that there will be problems in pointing to a common understanding of informed and reasonable opinion that such outcomes are for the public benefit. This will clearly include public opinion where we can be assured that it is objective, informed and reasonable<sup>53</sup>. So the provision of education in recognised ethical principles<sup>54</sup> or the improvement of Christian knowledge (as an educational purpose)<sup>55</sup> or the arts of social intercourse or the principles of loyalty, discipline and good citizenship (for example the Scouts Movement) should still be able to point to a consensus of informed opinion which would recognise it as a public good.

### **Principle 1b: The benefits must be related to the aims**

- 2.11 The Charities Act 2006<sup>56</sup> defines a charitable purpose as a purpose which falls within certain descriptions of purposes and is for the public benefit. Public benefit is an essential and integral element of the purpose. Section 3(2) of that Act goes on to provide that the public benefit requirement is to be satisfied in relation to “any such purpose”.
- 2.12 The benefit from incidental or other activities not related to the charity’s purpose will not count. It follows that any incidental activity carried out by the charity however beneficial, which is not directly or indirectly related or connected with furthering its expressed purposes, equally cannot count towards meeting the public benefit requirement.<sup>57</sup>

<sup>52</sup> see reference in *McGovern v AG* [1982]: A trust for research will ordinarily qualify as a charitable trust if, but only if (a) the subject-matter of the proposed research is a useful subject of study; and (b) it is contemplated that knowledge acquired as a result of the research will be disseminated to others; and the trust is for the benefit of the public, or a sufficiently important section of the public. (2) In the absence of a contrary context, however, the court will be readily inclined to construe a trust for research as importing subsequent dissemination of the results thereof. (3) Furthermore, if a trust for research is to constitute a valid trust for the advancement of education, it is not necessary either (a) that a teacher/pupil relationship should be in contemplation or (b) that the persons to benefit from the knowledge to be acquired should be persons who are already in the course of receiving ‘education’ in the conventional sense. (4) In any case where the court has to determine whether a bequest for the purposes of research is or is not of a charitable nature, it must pay due regard to any admissible extrinsic evidence which is available to explain the wording of the will in question or the circumstances in which it was made.

<sup>53</sup> approval by the common understanding of enlightened opinion: *National Anti-Vivisection case* [1947] 2 All ER 217, 223.

<sup>54</sup> *Re South Place Ethical Society* [1980] 1 WLR 565

<sup>55</sup> *AG v Stepney* (1804) 10 Ves 22

<sup>56</sup> (s2 (1))

<sup>57</sup> *Commissioners of Inland Revenue v Yorkshire Agricultural Society* [1928] 1 KB 611, 631

**Principle 1c: Benefits must be balanced against any detriment or harm**

- 2.13 The first of Slade J's criteria in *Re Besterman* is that the subject matter of the proposed research is a useful subject of study and the last is that it be for the public benefit. It is difficult to predict the value of blue skies research or demonstrate in advance its public benefit. But if carried out under the auspices of a reputable and recognised institution of higher education, practically any subject matter is admissible in the case of academic research.
- 2.14 The case of *National Anti-vivisection Society*<sup>58</sup> illustrates how the court would balance the harm, in that case that research involving animal experimentation occasions in terms of animal welfare and some aspects of morality, against the benefit, in that case the research has for medical education and human health.

---

<sup>58</sup> [1948] AC 31

## Part 3. PRINCIPLES OF PUBLIC BENEFIT - *Principle 2: Benefit must be to the public, or section of the public*

- 3.1 To support as charitable an educational purpose, the beneficiary group must be public in character and not merely a group of private individuals. A public outward looking interest should be promoted rather than the narrower personal benefit and interests of the individual members of a group. That question is one of degree and of fact<sup>59</sup>. This is relevant in a number of contexts - not only in the case of educational bodies such as societies run for the benefit of a closed membership, but also to self-help educational groups such as closed or restricted play-reading or book clubs. It was pointed out in the House of Lords (Lord Simonds) in *Oppenheim* that "a trust established by a father for the education of his son is not a charity. The public element, as I will call it, is not supplied by the fact that from that son's education all may benefit."<sup>60</sup>

### *Principle 2a: The beneficiaries must be appropriate to the aims*

- 3.2 What constitutes 'an appreciably important' section of the community to support as charitable a purpose for their education will depend upon the nature of the particular purpose in each individual case<sup>61</sup>.
- 3.3 In some cases, the public educational benefit can be achieved as a consequence of some more immediate benefit to an individual or a class. For example, the provision of facilities for the recreation, rest and recuperation of teaching staff<sup>62</sup> (even the staff of a particular institution only, where the close connection of common employment

---

<sup>59</sup> "On that point Lord Justice Atkin said this..."If it were a substantial part of the object that it should benefit its members I should think that it would not be established for a charitable purpose only. But, on the other hand, if the benefit given to its members is only given to them with a view of giving encouragement and carrying out the main purpose which is a charitable purpose, then I think the mere fact that the members are benefited in the course of promoting the charitable purpose would not prevent the Society being established for charitable purposes only".....Is the poise one which shows that it was devoted to the service of the public notwithstanding that to the members there accrue some benefits : or was the poise one by which the members enjoyed the privileges of the association and some sort of advantages accrued to and might be rightly claimed to have accrued to the public at large?" **Geologists' Association v IRC** (1928) 14 TC 271, 281 per Ld Hanworth MR. Later, in the same case, Greer LJ said "...there may be associations...with two objects, one being the promotion of an object which is charitable, and the other being the promotion of the interests of the individual members of the association. Then it becomes a question which is one of some degree. There may be a question of fact, or it may be a question of law upon the evidence given, as to whether the benefits conferred upon the members of the society are only incidental to the public objects of the society or whether on the other hand they are largely intended, or mainly intended, for the benefit of the members. If you come to the conclusion, as you may in many cases, that one of the ways in which the public objects of an association can be served is by giving special advantages to the members of the association, then the association does not cease to be an association with a charitable object because incidentally and in order to carry out the charitable object it is both necessary and desirable to confer special benefits upon the members." **Geologists' Association v IRC** (1928) 14 TC 271 at page 283 per Greer LJ. See also Ld Normand **IRC v City of Glasgow Police Athletic Association** [1953] AC 380, 395: "The case (*Re Hobourn Aero Components Ltd's Air Raid Distress Fund* [1946] Ch 87) is authority against recognising as a charity a body that merely applies the subscriptions of its members to their own recreation."

<sup>60</sup> [1951] AC 297, 306

<sup>61</sup> per Lord Somervell in *IRC v Baddeley* [1955] AC 572

<sup>62</sup> *Re Estlin* (1903) 72 LJ Ch 687, 89 LT 88 (home of rest for lady teachers) (1903)

might be expected to pose difficulties over public benefit<sup>63</sup>) may be charitable. Although such facilities give immediate benefit to the staff who use them, their main benefit is the consequential benefit to the pupils who have refreshed teachers as a result.

- 3.4 In the same way, if a student union can demonstrate that it exists to further the purposes of an educational institution (where, say, it is constitutionally supported by the institution and provides material facilities and encouragement to students) it itself will be providing a public benefit which is charitable. In *London Hospital Medical College v Inland Revenue Commissioners and another*<sup>64</sup> the purpose was to ‘promote, encourage and co-ordinate social, cultural and athletic activities amongst the members so as to add to the comfort and enjoyment of the students.’ The college made substantial contributions to the union. The court found that the union existed solely to further, and did further, the educational purposes of the college: the union was accepted as important to the success of its own educational activities – union members enjoyed the benefits of membership with a view to giving encouragement to and to carrying out the main purpose of the college. Equally, the support of facilities (such as the provision of a library<sup>65</sup>) at an educational institution may be charitable. The public benefit of such a purpose may be demonstrated by reference to the public benefit of the educational purpose of the institution combined with the directness of the contribution made by the pursuit of such a supporting purpose to the institution’s success in delivering public benefit.

**Principle 2b:** *Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted by:*

- *geographical or other restrictions; or*
- *ability to pay any fees charged*

- 3.5 There is case law to the effect that limited classes (such as the pupils at a particular school<sup>66</sup>) can be regarded as constituting a sufficient section of the community (depending on the particular purpose) to support as charitable a purpose for their education. This will include educational trusts for people adhering to a particular form of religion or denomination<sup>67</sup>. A trust for the supporting or founding of a free school for poor children in a particular parish is charitable<sup>68</sup>. However, the fact that there may be some consequential and remoter benefit to the public in the widest sense from some narrowly focused main aim to benefit a restricted class will not convert a non-charitable purpose into a charitable purpose. The fact that society or the public may benefit generally in the widest sense may not itself justify, as charitable, benefits intended to be enjoyed by a narrowly limited class. So, in *Oppenheim v Tobacco Securities Trust Co Ltd*<sup>69</sup> the fact that society generally may benefit from a well educated person did not save as charitable for the benefit of the

<sup>63</sup> cf *Re White’s Will Trusts* [1951] 1 All ER 528 per Harman J

<sup>64</sup> [1976] 2 All ER 113

<sup>65</sup> *AG v Marchant* (1866) LR 3 Eq 424

<sup>66</sup> *Oppenheim* – see above

<sup>67</sup> See Tudor on Charities 9<sup>th</sup> ed para 4-025 citing *Craigdallie v Aikman* (1812) 1 Dow 1, 16; see also *IRC v Pemsel* [1891] AC 531

<sup>68</sup> *Re Hedgman* (1878)

<sup>69</sup> [1951] AC 297, 306; cf *IRC v Educational Grants Association Ltd* [1967] Ch 993

public what was otherwise an educational purpose directly benefiting an insufficient section of the public.

- 3.6 Educational charities having a beneficiary class of less than the public generally can now (and will remain able to) be for the benefit of potentially many individuals (such as those to be engaged in an entire industry such as the construction industry<sup>70</sup>) or very few, such as the pupils at a particular school<sup>71</sup>.
- 3.7 Nevertheless, if a beneficiary classes is confined to members of a particular family or to individuals who are (or who are ascertained by reference to their relationship to) employees of a particular business, then (no matter how large the beneficiary class), well-established case law<sup>72</sup> will continue to exclude purposes for their benefit from charitable status as they have done hitherto. The same is true of a beneficiary class which is numerically negligible.
- 3.8 Though it is possible to restrict the beneficiary class, as indicated above and in the general guidance, nevertheless to satisfy the public benefit requirement it must be clear that the possible beneficiaries must not be numerically negligible. Further, the quality by reference to which they are restricted and which distinguishes those beneficiaries from other members of the community must not depend on their relationship to a particular individual by ties of blood or contract<sup>73</sup>.
- 3.9 In this connection, in educational bodies, founder's kin<sup>74</sup> and preference cases (see the following three paragraphs) are difficult to reconcile with this principle of the public benefit requirement.
- 3.10 Founder's kin cases relate to ancient provisions endowing a school or college with money subject to the direction that in its application in the granting of scholarships or fellowships preference should be given to the founder's kin. Such cases were considered charitable, apparently on the basis set out by Lord Greene MR in *Re Compton*<sup>75</sup> that the object was to endow the educational institution and the preference for kin or descendants was merely a method of effecting this. According to the decision in *Caffoor v Income Tax Commissioner (Colombo)* (Privy Council)<sup>76</sup> such provisions "*were commonly accepted as validly instituted, though there seems to be virtually no direct authority as to the principle upon which they rested, and they should probably be regarded as belonging more to history than to doctrine*". It is unlikely that the Tribunal, court or the Commission would perpetuate the precedent today.
- 3.11 *Re Koettgen*<sup>77</sup> suggests, against the usual principles, that where a beneficial class is a public class which is subject to a preference for a private class, this preference does not prevent a purpose for its benefit from being charitable. This potential

<sup>70</sup> *Construction Industry Training Board v AG* [1973] Ch 173

<sup>71</sup> see *Oppenheim v Tobacco Securities* [1951] AC 297, 306

<sup>72</sup> *Re Compton* [1945] Ch 123; *Davies v Perpetual Trustee Co Ltd* [1959] AC 439; *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297; *Dingle v Turner* [1972] AC 601

<sup>73</sup> *ibid*

<sup>74</sup> *Spencer v All Souls* (1762)

<sup>75</sup> *Re Compton* [1945] Ch 123

<sup>76</sup> [1961] AC 584

<sup>77</sup> [1954] Ch 252

anomaly is solved, however, by reference to *IRC v Educational Grants Association*<sup>78</sup> (holding that the actual application of a very high percentage of income for the benefit of a preferred class was not a charitable application of assets). Generally cases now concern educational charities with objects for the benefit of a wide public class with a preference, which is sometimes a mandatory preference, for a class which standing by itself would not be a public class. Whether or not a class is a public class will be assessed by considering whether it is shown that the assets must in fact be applied for educational purposes for the public benefit (a single test, as is now clearly the case under the Charities Act 2006).

3.12 Preferences should, in accordance with the law in relation to the exercise of trustee discretion, in any event only apply after an appropriate survey across the whole beneficiary class. It would be wrong to prefer a less qualified member of the restricted preferred class to a member of the wider public class who is better qualified for benefit. It is not open to charity trustees to exhaust assets in favour of a preferred class if that class is a private class, and it would be an unreasonable exercise of a power to select preferential beneficiaries from a private class in such a way that too large a proportion goes to the preferred (non-public) class<sup>79</sup>. It seems clear today that a trust for a public class with an imperative preference for a private class within it would be regarded as a trust for the application of assets at the discretion of the trustees between charitable and non-charitable objects and, therefore, would not be charitable. And it seems equally clear that in cases of a discretionary preference trustees in selecting beneficiaries must exercise their discretion in accordance with their trustee duties for example by making their decision based on the educational needs of the beneficiaries.

3.13 In principle bodies for the

- education of the children of certain classes (such as missionaries<sup>80</sup>) or of persons holding specified religious beliefs<sup>81</sup>;
- training within the whole of one industry<sup>82</sup>;
- the education of persons who have the common qualification that they have already had part of their education at a named school<sup>83</sup>, including prizes, scholarships and bursaries at a college, university or school (provided that this is a sufficient section of the public);

may still, depending on their circumstances, be capable of being for the public benefit.

**Principle 2c: People in poverty must not be excluded from the opportunity to benefit**

3.14 The guidance *The Advancement of Education for the Public Benefit* does not address the impact of whether people in poverty are excluded from the opportunity to benefit where that exclusion is related to the ability to pay fees or charges. The

<sup>78</sup> [1967] Ch 123

<sup>79</sup> See the Commission's Annual Report for 1978 paras 86-89.

<sup>80</sup> *German v Chapman* (1877) 7 Ch D 271

<sup>81</sup> See Tudor on Charities 9<sup>th</sup> ed para 4-025

<sup>82</sup> *Construction Industry Training Board v AG* [1973] Ch 173

<sup>83</sup> *Oppenheim v Tobacco Securities* [1951] AC 297, 306 'there is no doubt that such trusts are public charitable trusts and are among the most securely established charitable trusts known to the law' Lord Normand

guidance on that issue, and the underpinning legal analysis, are set out in our separate guidance on *Public Benefit and Fee Charging*.

**Principle 2d: Any private benefits must be incidental**

- 3.15 The Court of Appeal has considered issues of private benefit in, for example, the context of membership organisations. In *Geologists' Association v IRC* the court considered an organisation promoting some studies tending indirectly to the promotion of education generally. Lord Justice Greer said: '*If you come to the conclusion, as you may in many cases, that one of the ways in which the public objects of an association can be served is by giving special advantages to the members of the association, then the association does not cease to be an association with a charitable object because incidentally and in order to carry out the charitable object it is both necessary and desirable to confer special benefits upon the members*'.
- 3.16 He contrasted this with the situation where the opposite was true: '*It may be on the other hand that the main object is the advantage of the individuals composing the association, and it is only incidentally to that main object that the association confers benefits which are in the nature of charitable benefits upon the public*'.
- 3.17 In that case, the court concluded that the scientific association was in fact established mainly for the benefit of its members and not for the benefit of the public.
- 3.18 Thus, personal or private benefits can be provided if they directly further the public charitable purpose and/or are incidental to the carrying out of those purposes (a necessary but secondary consequence of a decision by the charity trustees directed at furthering the organisation's charitable purposes (and not providing private benefit) and the amount of the private benefit is reasonable). But the principle will, as it has in the past, continue to exclude organisations principally directed to increasing benefits for private individuals or concerns.
- 3.19 So in *Re Leverhulme*<sup>84</sup> the court held not charitable a bequest in trust for the benefit of the Staff Training College of Lever Bros Ltd, of Port Sunlight. The College was carried on in a building belonging to the company for the purpose of educating employees of the company only and attendance at the college was compulsory for employees within certain age limits and was during ordinary working hours. The college through its records and advice placed the company's young employees in positions suitable to their abilities.
- 3.20 Other similar examples might involve closed learned societies and self-help groups, or private research facilities, as well as professional bodies (see the *Chartered Insurance Institute* case above), founder's kin cases and commercial research calculated to enhance the profitability of business entities.

---

<sup>84</sup> [1943] 2 All ER 143