

# **Analysis of the law underpinning *The Prevention or Relief of Poverty for the Public Benefit***

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

***The Prevention or Relief of Poverty  
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 Prevention or Relief of Poverty for the Public Benefit***

## **INTRODUCTION**

1. The Commission's draft supplementary guidance, *The Prevention or Relief of Poverty for the Public Benefit*, explains how the key principles of public benefit apply to charities concerned with the prevention or relief of poverty 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 Prevention or Relief of Poverty for the Public Benefit* and necessarily uses more technical language. *The Prevention or Relief of Poverty for the Public Benefit* is based on this legal analysis and the cases referred to in it.
2. 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 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.
3. 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 relief of poverty, advancement of education and advancement of religion were presumed to be for the public benefit, unless the presumption was rebutted by evidence to the contrary<sup>1</sup>. In all other cases, public benefit had to be shown. Part 1 of the Charities Act 2006 removes this presumption of public benefit<sup>2</sup>. Apart from this removal of the presumption the law on public benefit is unaltered by the Charities Act 2006<sup>3</sup>.
4. The Commission will take the same approach as the courts and the Charity Tribunal in applying the law.

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<sup>1</sup> National Anti-Vivisection Society v IRC [1948] AC 31, 65 per Lord Simonds

<sup>2</sup> Section 3(2)

<sup>3</sup> Section 3(3)

## THE CURRENT LAW – the meaning of the prevention or relief of poverty

5. Relief of poverty is a fundamental charitable purpose. Public perception might be that the terms 'charity' and 'relief of poverty' are practically synonymous. However, it is significant that in the case of **The Commissioners for Special Purposes of the Income Tax v Pemsel**<sup>4</sup> which established the categories of charitable purpose which applied prior to the Charities Act 2006, the court considered it necessary to make the point that not all charitable purposes required the relief of poverty.

### The 'relative' nature of poverty

6. It is clear law that the courts have regarded poverty as a relative term. In **In re Coulthurst**<sup>5</sup> Evershed M.R said:

*“....poverty does not mean destitution; it is a word of wide and somewhat indefinite import; it may not unfairly be paraphrased for present purposes as meaning persons who have to ‘go short’ in the ordinary acceptation of that term, due regard being had to their status in life, and so forth.”*

7. In **Trustees of the Mary Clark Home v Anderson**<sup>6</sup> Channell J stated:

*“.....the word ‘poor’ is more or less relative.....I do not know any standard of poverty, nor how I can lay down any rule; the only thing to guide me is this; these ladies go to the institution for the sole reason that they are poor.”*

8. In **In re Gardom**<sup>7</sup> Eve J stated:

*“.....there are degrees of poverty less acute than abject poverty or destitution but poverty nevertheless.....the objects to be benefited by the bequest are ladies too poor to provide themselves with a temporary home without outside assistance.”*

9. In commenting on Eve J's judgment, Maugham J in **In re de Carteret**<sup>8</sup> said:

*“I think the learned judge was properly, if I may say so, expressing the opinion that in the Statute of Elizabeth the expression ‘poor people’ is not necessarily confined to the destitute poor, and that it would include persons who, having regard to the circumstances in which they are placed, and perhaps to the class from which they have come, may properly*

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<sup>4</sup> [1891] AC 531

<sup>5</sup> [1951] Ch 661

<sup>6</sup> [1904] 2 KB 645, 655

<sup>7</sup> [1914] 1 Ch 662, 668

<sup>8</sup> [1933] Ch 103, 111

*be regarded as persons within the language or spirit of that preamble.”*

10. In a Canadian case **re McFee**<sup>9</sup> the court considered that:

*“Even ‘poverty’ is a relative term; and, if the expression had been ‘poor, aged women’, it would not have been necessary, for the purpose of a legal charity, to confine the gift to the destitute poor.....”*

11. In **In re Lucas**<sup>10</sup> Russell J said:

*“If you can construe the gift in such a way as to hold the testator meant that the persons to be identified should be in necessitous circumstances then that introduces the ingredient of poverty.”*

12. In an Australian case **Ballarat Trustees’ Executors and Agency Co v Federal Commissioner of Taxation**<sup>11</sup> Kitto J confirmed that the expression “*necessitous circumstances*” referred to some degree of poverty and said:

*“I should say that a person is in necessitous circumstances if his financial resources are insufficient to enable him to obtain all that is necessary, not only for a bare existence, but for a modest standard of living in the Australian community.”*

13. In **Re Gillespie**<sup>12</sup> Little J said:

*“It may be said with truth that all persons who are poor are in need of financial assistance. But the converse is not true that all persons in need of financial assistance are poor or poor in the relevant sense.”*

14. To be poor in the relevant sense a person has to be in need of financial assistance in order to ensure they do not lack a necessity or quasi-necessity<sup>13</sup> or to ensure they do not ‘go short’ or to ensure a modest standard of living.

15. There are a number of poverty cases which consider the actual income of beneficiaries to ascertain whether the gift is about the relief of poverty.

For instance, in **In re de Carteret**<sup>14</sup> Maugham J considered that relief of persons with an income of between £80 and £120 per year was

<sup>9</sup> [1929] OJ N0. 341, para 17

<sup>10</sup> [1922] 2 Ch 52, 59

<sup>11</sup> (1950) 80 CLR 350, 355

<sup>12</sup> [1965] VR 402

<sup>13</sup> The term “necessity or quasi-necessity” was used by Viscount Simonds in **IRC v Baddeley** (see para 21 below).

<sup>14</sup> See above

charitable as relief of poverty. Using average earnings as the relevant calculator, an income of £80 in 1933 was equivalent to an income of £14,900 in 2006 and an income of £120 was equivalent to £22,400<sup>15</sup>. In **Trustees of the Mary Clark Home v Anderson**<sup>16</sup> Channell J indicated that a decision that everyone who had not got £1,000 a year must be considered poor would be “*wholly unreasonable*”. Using average earnings as the relevant calculator, £1,000 a year in 1904 was equivalent to £397,000 a year in 2006<sup>17</sup>.

16. In the case of **In re Clarke**<sup>18</sup> “*persons of moderate means*” was considered to refer to persons who were not able to satisfy a basic need because of a lack of financial resources. Similarly, in **In re Gardom**<sup>19</sup> ladies of limited means were considered to be persons who did not have sufficient financial means to provide themselves with accommodation. Accordingly, it is clear that the relief of poverty involves relieving needs arising from a lack of financial means.

### Prevention of Poverty

17. Because the charitable purpose has previously been limited to relief of poverty, prevention of poverty in the past was limited to those cases which could be brought within the relief of poverty. Section 2(2)(a) of the Charities Act 2006 which sets out the purpose of “*the prevention or relief of poverty*” means that this is no longer the case. Prevention of poverty can be a charitable purpose in its own right. Giving debt or money management advice, preventing people who are at imminent risk of becoming poor, or putting in a clean water supply are all potential ways of preventing poverty.
18. It has been accepted that in some cases tackling the root causes of poverty is an effective way of relieving poverty.

For instance, in the case of the Fairtrade Foundation, the promotion of a ‘fair trade mark’ was accepted by the Charity Commission as a means of relieving poverty. In that case the Commission was careful to establish there was a verifiable link between relief of poverty and the activities of the charity.

19. Similarly, for prevention of poverty there will need to be sufficient links between the activities of the charity and a measurable effect upon the beneficial class for which poverty is being prevented. In **Gilmour v Coats**<sup>20</sup> Lord Simonds referred to public benefit not including the “*remote*” or “*imponderable*”.

<sup>15</sup> measuringworth.com – authors Lawrence H. Officer and Samuel H. Williamson

<sup>16</sup> See above

<sup>17</sup> See 12 above

<sup>18</sup> [1923] 2 Ch 407

<sup>19</sup> See above

<sup>20</sup> [1949] AC 426

20. The prevention of poverty can either be a distinct purpose or it can be combined with relief of poverty.

### Relief of poverty

21. In **IRC v Baddeley**<sup>21</sup> Viscount Simonds stated:

*“.....relief connotes need of some sort, either need for a home or for the means to provide for some necessity or quasi-necessity, and not merely an amusement, however healthy.”*

By the term “necessity or quasi-necessity” Viscount Simonds appears to be referring to either a necessity or something which is such an established part of a modest standard of living that it can be regarded as a “quasi-necessity” rather than a non-essential item or activity.

22. The courts have sometimes defined poverty by having regard to the need and the inability of an individual to satisfy that need from their material resources e.g. **Trustees of the Mary Clark Home v Anderson**, and **In re Gardom**. In these cases, the court defined the beneficiaries as poor because they were persons in need of the facilities provided by the charity and they could not obtain access to such facilities without assistance from the charity. The facilities in question were provided for the purpose of satisfying a need for a necessity, namely a modest standard of accommodation.
23. In those cases where the need is the lack of resources to provide a modest standard of living having regard to general standards, the relief will be assistance in attaining those standards. It is clear from caselaw that the relief given should be commensurate with the need<sup>22</sup>.
24. While poverty is need arising from a lack of financial means, relief of poverty is not confined to providing financial assistance. Soup kitchens<sup>23</sup>, hospitals<sup>24</sup>, free legal advice<sup>25</sup> are among the facilities it has been considered charitable to provide in relieving poverty.

### Relief of those in Need by reason of Financial Hardship

25. Section 2(2) of the Charities Act 2006 lists a number of different descriptions of purposes which are capable of being charitable. The prevention or relief of poverty is section 2(2)(a). At section 2(2)(j) is listed the relief of those in need by reason of financial hardship. It follows from the fact that these purposes are listed separately that they

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<sup>21</sup> [1955] 1 All ER 525

<sup>22</sup> Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney General[1983] Ch 159

<sup>23</sup> Biscoe v Jackson (1887) 35 Ch D 460 CA

<sup>24</sup> Pelham v Anderson (1764) 2 Eden 296

<sup>25</sup> Report of the Charity Commissioners for England and Wales for 1974 paras 67-72

are not the same thing. The distinction may be that the section 2(2)(j) purpose covers a situation where the financial hardship is temporary in nature and would not fall within the scope of “poverty”. An example would be a person who was unable to afford a necessity or quasi-necessity because of a temporary situation such as a spell of illness or a bereavement. This is a distinct purpose and may not necessarily fall within the definition of relief of poverty.

## THE PRINCIPLES OF PUBLIC BENEFIT

### A. There must be an identifiable benefit or benefits

26. The public benefit for relief of poverty arises from the public perception that there is a moral imperative to ensure all people have a minimum standard with regard to quality of life. Relieving poverty promotes compassion and altruism and is generally regarded as ‘a good thing’. In many cases it is likely to be easy to demonstrate that an organisation relieving poverty is established for public benefit.
27. The inclusion of prevention of poverty does not mean that Parliament has accepted that a purpose of campaigning for legislative change to tackle poverty or for changes in government policy to tackle these issues is for the public benefit. There are many ways of preventing poverty without changing the law or government policy as suggested in paragraph 18 and in the following example.

For instance, a charity with this purpose might promote the adoption by employers of practices which would enable single parents who would otherwise have insufficient income to be able to work flexibly. It might campaign for workplace nurseries which would assist this process not as a matter of law or government policy but as a matter of good practice on the part of employers.

28. There is no change in the position that the courts are not able to state whether a proposed change in the law or government policy would or would not be for the public benefit. The position set out in the relevant cases<sup>26</sup> remains the same.
29. In the past objects for the relief of poverty have been assumed to be for the public benefit. For this reason, it is useful to look at the case-law involving relief of poverty and in particular those where the presumption of public benefit has been rebutted. Most cases relating to relief of poverty turn on whether a particular purpose is for the relief of poverty. The court in *In re Scarisbrick*<sup>27</sup> considered whether the presumption was rebutted because of the limited class of beneficiaries and considered it was not.

<sup>26</sup> McGovern v A-G [1982] Ch 321; National Anti-Vivisection Society v IRC [1948] AC 31; see also CC9 Speaking Out - Campaigning and Political Activity by Charities

<sup>27</sup> [1951] Ch 622

30. In **Dingle v Turner**<sup>28</sup> the distinction made in **In re Scarisbrick** was characterised as a distinction between a gift for the relief of poverty among a particular description of poor people and a gift to particular poor persons where the motive was to relieve their poverty. In the former case the gift was charitable; in the latter it was not.
31. Although this case on its facts is very unlikely to be followed in a modern context, **Lady Egerton's case**<sup>29</sup> raises the possibility of relief of poverty in circumstances which are against public policy not being charitable.

A contemporary example may be whether relieving poverty among immigrants denied benefits on public policy grounds would be considered not to be charitable on this basis. Given the existence of Human Rights considerations, this is unlikely to be the case.

32. In other cases where the courts have considered whether a particular gift is charitable, the issue has been whether poverty is being relieved rather than whether the presumption of public benefit is rebutted. The fact that there are so few cases on the rebuttal of the presumption of public benefit in poverty cases is an indication that, once relief of poverty is established, there are few factors which would indicate the organisation is not established for the public benefit. Accordingly in many cases it is likely to be easy to demonstrate public benefit.

#### B. **Benefit must be to the public or a section of the public**

33. It is well established that a charitable trust has to be for the benefit of the public or for an appreciably important section of the public. In the case of **In re Compton**<sup>30</sup>, the Court of Appeal formulated the principle that a gift under which the beneficiaries are defined by reference to a named propositus cannot on principle be a charitable trust as it lacks the necessary public character. This principle was approved by the House of Lords in **Oppenheim v Tobacco Securities Trust Co. LD and Others**<sup>31</sup>.
34. In the **Compton** case a gift for scholarships for the education of the descendants of named individuals was held to be a private trust and not charitable. In **Oppenheim** a gift to provide for the education of the children of employees or former employees of a specific company was held not to have the necessary public character to be a charitable trust.
35. In both **Compton** and **Oppenheim** it was accepted that there were a number of 'poverty' cases where the Compton principle did not prevent the trust being charitable. Thus, in a trust for the relief of poverty a

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<sup>28</sup> [1972] AC 601

<sup>29</sup> (1605) Duke 8. 127

<sup>30</sup> [1945] Ch 123

<sup>31</sup> [1951] AC 297

much narrower class of persons needed to directly benefit than for any other charitable purpose. It had been established in case-law that trusts for the relief of poverty of descendants of a named individual in necessitous circumstances were charitable. It was similarly the case that a trust for the relief of poverty among the employees, or their dependants, of a particular company was considered charitable.

36. In **Dingle v Turner**<sup>32</sup> the House of Lords upheld that the Compton principle did not apply to poverty cases and that there the distinction between private trusts and public trusts lay where it was drawn in **In re Scarisbrook**<sup>33</sup> i.e. a distinction between whether the gift was for the relief of poverty amongst a particular description of poor people or was merely a gift to particular poor persons, the relief of poverty among them being the motive of the gift.

37. In **In re Compton** Lord Greene MR stated:

*"There may perhaps be some special quality in gifts for the relief of poverty which places them in a class by themselves. It may, for instance, be that the relief of poverty is to be regarded as in itself so beneficial to the community that the fact that the gift is confined to a specified family can be disregarded: whereas in the case of an educational trust where there is no poverty qualification, the funds may at any time be applied for the purpose of educating a member of the family for whose education ample means are already available, thus providing a purely personal benefit....."*

38. In the case of **Gibson v South American Stores (Gath & Chaves)** LD<sup>34</sup> Harman J at first instance stated:

*"It seems to me a public object is always necessary to make a trust legally charitable and that the explanation of the poverty cases is that a much narrower object may in them be considered to work a public benefit than in the other categories."*

This view that the relief of poverty in itself supplies the necessary public element has been expressed in other cases.

39. Morton L.J. in **In re Hobourn Aero Components Limited's Air Raid Distress Fund**<sup>35</sup> stated:

*"where poverty is essential in the qualification for benefits under a particular fund, there have been cases where trusts which would appear to be of a private nature have been held to be charitable. An example of this is the case of **Spiller v Maude**,*

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<sup>32</sup> [1972] AC 601

<sup>33</sup> [1951] Ch 622

<sup>34</sup> [1950] Ch 177

<sup>35</sup> [1946] Ch 194

*which has been already mentioned. The reason, as was suggested by the Master of Rolls in **In re Compton**, may be that the relief of poverty is regarded as being in itself beneficial to the community.”*

40. In **Gibson v South American Stores (Gath & Chaves)** LD the Court of Appeal upheld Harman J’s decision that a gift to relieve employees of a particular company, and their families, who were “*necessitous or deserving*” was a valid charitable gift. However, Evershed MR quoted Lord Greene MR’s remarks from the Compton case that the “*poor relations*” cases “*must at this date be regarded as good law, although they are, perhaps, anomalous*”. He went on to say:

*“....it would, I think, be impossible for the court in the light of that observation to treat now as wrongly decided the poor-relations cases, properly so called, and it is true that Lord Greene MR earlier in his judgment had said that the explanation of them might be – not was but might be – that relief of poverty in itself supplied the necessary characteristic.”*

41. In **re Scarisbrick** Evershed MR stated:

*“The ‘poor relations’ cases may be justified on the basis that the relief of poverty is of so altruistic a character that the public element may necessarily be inferred thereby.....”*

42. The other view on the cases which establish that a sufficient section of the public for relief of poverty cases may be a more limited class than for other heads of charity is that these are anomalous. However, even on this view, Lord Simonds in **Oppenheim** remarked:

*“It is not for me to say what fate might await those cases if in a poverty case this House had to consider them. But as was observed by Lord Wright in *Admiralty Commissioners v Valverda*, while ‘this House has no doubt power to overrule even a long established course of decisions of the court provided it has not itself determined the question’, yet ‘in general this House will adopt this course only in plain cases where serious inconvenience or injustice would follow from perpetuating an erroneous construction or ruling of law.’ I quote with respect those observations to indicate how unwise it would be to cast any doubt upon decisions of respectable antiquity in order to introduce a greater harmony into the law of charity as a whole.”*

43. The House of Lords did subsequently consider the cases in question in a poverty case **Dingle v Turner**. It chose not to overrule them. Lord Cross stated:

*“In truth the question whether or not the potential beneficiaries of a trust can fairly be said to 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 on the purpose of the trust. It may well be that, on the one hand, a trust to promote some purpose, *prima facie* charitable will constitute a charity even though the class of potential beneficiaries might fairly be called a private class and that, on the other hand, a trust to promote another purpose, also *prima facie* charitable, will not constitute a charity even though the class of potential beneficiaries might seem to some people fairly describable as a section of the public.”*

44. The issue arises as to whether the removal of the presumption means that a beneficial class which would not normally be regarded as a public class continues to be a sufficient section of the public for relief of poverty for the public benefit.

*The beneficial class for relief of poverty must have a rational link with the purpose and cannot be unreasonably restricted*

45. As discussed in the *Analysis of the law underpinning Charities and Public Benefit*, the cases **Dingle v Turner**, **Gilmour v Coats** and **IRC v Baddeley**<sup>36</sup> establish that what is a sufficient section of the public depends on the purpose. This connection has to be based on their being a rational link. That is why in **IRC v Baddeley** a bridge for impecunious Methodists was considered to be a nonsense. It is also clear that for relief of poverty a more restricted beneficial class is sometimes a sufficient section of the public. However, there still needs to be rational link between the purpose and the beneficial class for this purpose.

46. The proposed amendment to the Sex Discrimination Act 1975<sup>37</sup> to make a restriction on the basis of sex in a charitable object unlawful (except where it is pursuing a legitimate aim or addressing a particular disadvantage suffered by that group which is not suffered by the other sex) indicates that society considers such restrictions to be unacceptable.

*The removal of the presumption of public benefit does not mean that the rules on beneficial class are the same for all heads of charity*

47. The presumption of public benefit previously existed for the first three heads of charity – relief of poverty, advancement of religion, advancement of education.
48. The courts have considered that what is a sufficient section of the public may vary according to the charitable purpose being furthered. They have also indicated that the relief of poverty may be of such a fundamental public character that a more restricted beneficial class than would be possible for other charitable purposes may be

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<sup>36</sup> See above

<sup>37</sup> <http://www.equalities.gov.uk/legislation/index.htm>

acceptable. However, if this situation is viewed as anomalous, it may be that the removal of the presumption means that a class of beneficiaries which is not a public class is no longer a section of the public for relief of poverty.

*What is a sufficient section of the public for the relief of poverty was not generally a sufficient section of the public for the relief of impotent persons and the relief of aged persons*

49. The first head recognised in the **Pemsel** case included not only relief of poverty but also relief of the aged and relief of the impotent. There is accordingly a public benefit issue as to whether the courts considered that a narrow beneficial class was more likely to be acceptable only in relief of poverty cases or whether this applied to the first head generally. The cases are not consistent on this issue.
50. There is a long line of authority that it was only relief of poverty that could justify the narrower beneficiary class illustrated by the comment of Jenkins LJ in *In re Scarisbrick*:

*"There is, however, an exception to the general rule, in that trusts or gifts for the relief of poverty have been held to be charitable even though they are limited in their application to some aggregate of individuals ascertained as above, and are therefore not trusts or gifts for the benefit of the public or a section thereof. This exception operates whether the personal tie is one of blood (as in the numerous so-called "poor relations" cases, to some of which I will presently refer) or of contract (e.g. the relief of poverty amongst the members of a particular society, as in **Spiller v Maude**, or amongst employees of a particular company or their dependants, as in **Gibson v South American Stores (Gath & Chaves) Ltd.**)"*

See also: **In re Clark's trust**<sup>38</sup>, **Spiller v Maude**<sup>39</sup>, **In re Drummond**<sup>40</sup>, **In re Compton**<sup>41</sup> **In re Hobourn Aero Components Limited's Air Raid Distress Fund**<sup>42</sup>, **In re Coulthurst, dec'd**<sup>43</sup> **Dingle v Turner**<sup>44</sup>, **In re Dunlop**<sup>45</sup>

51. There is an alternative view that the exception applied to all charities with purposes in the former first head, the aged, impotent and poor. In **Oppenheim v Tobacco Securities Trust Co. LD** the House of Lords considered the cases on what constituted a section of the public in an

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<sup>38</sup> (1875) Ch. D. 497

<sup>39</sup> (1886) 32 Ch. D. 158n

<sup>40</sup> [1914] 2 Ch 90

<sup>41</sup> *supra*

<sup>42</sup> *supra*

<sup>43</sup> [1951] Ch 661

<sup>44</sup> *supra*

<sup>45</sup> [1984] NI 408

education case. In doing so, they distinguished the cases involving all first head purposes from other types of case. Lord Simonds stated:

*"I am concerned only to say that the law of charity, so far as it relates to 'the relief of aged, impotent and poor people' and to poverty in general, has followed its own line, and that it is not useful to try to harmonize decisions on that branch of the law with the broad proposition on which the determination of this case must rest."*

52. **Tudor on Charities** 9<sup>th</sup> edition takes the view that impotent persons and “almost certainly” aged persons benefited from the rules on section of the public applicable to relief of poverty. The case cited as supporting this view was **re Lewis**. In that case a gift to “10 blind girls Tottenham residents if possible” and a similar bequest to “10 blind boys Tottenham residents if possible” was considered to be charitable.
53. The Commission considers that it was generally only the public character of the relief of poverty which was found capable of transforming a class of beneficiaries of a private nature into a section of the public. However, there were circumstances where the relief of the aged and the relief of the impotent was more akin to the relief of poverty than to charities for what were formerly fourth head purposes (where the beneficial class needed to be of a public character). We consider that all this may now be in doubt due to the removal of the presumption.

### **Employer-based Benevolent Funds and Family Poverty Trusts**

54. This analysis has already considered in detail the relevant cases in paragraphs 33 onwards. As Lord Cross suggested in **Dingle v Turner**<sup>46</sup>, the “poor relations” cases, the “poor members” cases and the “poor employees” cases are all anomalous”.

### **Benevolent Funds**

55. Many benevolent funds are employer based and as such the issue has arisen as to the appropriate charitable purposes of such funds. In the light of the consideration of restricted beneficial classes in the previous paragraphs, the legal cases indicated that a beneficial class limited to the employees or past employees of a particular company or employer was unlikely to be permitted except where the purpose was relief of poverty.
56. Some benevolent funds rather than being limited to employees of a particular company or employer have a beneficial class defined by occupation e.g. the wine trade, solicitors, civil servants etc. In **Hall v Derby Borough Urban Sanitary Authority**<sup>47</sup> an orphanage for the

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<sup>46</sup> [1971] AC 601

<sup>47</sup> 16 QBD 163

children of deceased railway workers was considered to be charitable as a beneficial class defined by occupation was a public class and so a section of the public.

57. In **In re Hobourn**<sup>48</sup> the court distinguished a trust for railway staff from a trust for railway staff in the employ of a particular railway company. The former was considered to be a public class and the second a "class ascertained on a purely personal basis"<sup>49</sup>. These cases were cited with approval in the House of Lords case of **Oppenheim v Tobacco Securities Trust Co. Ltd.**<sup>50</sup>
58. Accordingly, we consider that, in general, benevolent funds restricted to a particular company, for example, the employees of a specific High Street retailer, were only charitable to the extent that they relieved poverty. There may now be doubt as to whether a class of a personal nature can be a sufficient section of the public even for relief of poverty following the removal of the presumption. However, a benevolent fund with a beneficial class which is defined by occupation, for example, staff in the retail industry, may be a sufficient section of the public for the prevention or relief of poverty and other charitable purposes such as relief of those in need by reason of youth, age, ill-health, sickness, disability, financial hardship or other disability provided that there is a rational link between the beneficial class and the charitable purpose.

### **Family Poverty Trusts**

59. As indicated in the paragraphs above, poor relations trusts in the past have been accepted as charitable. We consider that there has to be a rational link between the beneficial class and the purpose which makes clear it is for the public benefit. Given that all trusts now have to establish they are for the public benefit, it may be the case that a poor relations trust or family poverty trust would be unable to show this.

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<sup>48</sup> [1946] Ch 194

<sup>49</sup> [1946] Ch 194, 206

<sup>50</sup> [1951] 1 AC 297