

The Register Review so far

The concept of charity is slow to change. Key decisions remain with us from 1601 and 1891. In 1997 the Charity Commission, responsible for determining what charity means in England and Wales, set up a proactive process called 'Review of the Register'. Nigel Siederer reviews progress so far.

The Commission's problem is that it has been bound by precedent set by outdated decisions, by analogy with past decisions in much changed modern circumstances, and by higher court decisions. In 1997, the Commission tried to tackle this through a pro-active review, which has produced a series of papers under the theme *'Review of the Register'*. This might have been an ominous process, as Commissioners had been known to observe that some older charities would be refused registration if they applied afresh now. But actually, the Commission wanted to find a way of being more flexible. By applying charity law in a more intellectually robust way, it had found its flexibility limited in several areas where the range of precedents, analogies, and court decisions seemed too weak to bring about the necessary modernisation of charity law. Few aspiring charities would challenge in the High Court the Commission's reluctance to register them. The time and expense made it impossible. Instead they would apply for registration with carefully re-drafted objects that would pass the Commission's muster. The real cost was that it became increasingly difficult to find out charities' real purposes by reading their ostensible objects.

The incoming Labour Government in 1997, though anxious for good relations with the voluntary sector, declined to undertake a general review of charity law, but instead encouraged the Commission to continue the *Review of the Register* process, with the implication that radical thinking would be welcomed. The re-elected Government has implicitly - but probably not consciously - changed this decision by setting up the Cabinet Office Performance & Innovation Unit review of charity law and regulation (see page ?). For all the openmindedness of that review, it is as well to remember that politicians' caution on charity law may be justified. Any fundamental review runs the risk of blowing up a storm on two politically hot potatoes: the charitable status of religion and public schools. No politician takes these on lightly, and the *Review of the Register* may yet prove to be all we get.

So how has the Review gone?

The Commission has published its own progress reports. It asserts that it is allowed to modernise charity and recognise new charitable purposes in any way that a higher court would do, taking into account changing social and economic circumstances. It cannot alter higher court decisions, but can resolve conflicts between them in a constructive way. It says that it can take a broad view of what is analogous to past decisions, provided that the purpose benefits the public. It cites a long list of topics that have become charitable in recently years, many of them as a result of the *Review of the Register* process:

- Promotion of urban and rural regeneration
- Prevention of unemployment
- Promotion of health

- Relief of sickness and disability
- Promotion of industry and commerce
- Protection and conservation of the environment
- Prevention of cruelty to animals and promotion of animal welfare
- Promotion of good race relations and equality of opportunity and elimination of discrimination
- Promotion of community capacity building
- Providing recreational facilities for ethnic and other minorities
- Promoting ethical standards, corporate responsibility and fair trading in business
- Promoting community amateur sport and recreation (see page?)

The Commission says that it will take into account the Human Rights Act 1998 where necessary to set aside old precedents that may be incompatible with human rights principles. It has *not* however ruled that promotion of human rights is itself charitable.

Essential characteristics

The Commission has also set out some general characteristics that all charities must have. The main ones are:

- Being essentially public and altruistic in character, not providing individual benefits or personal professional or commercial advantages in ways that outweigh any public benefit, and not having restrictive conditions of membership
- *Not* being harmful to humankind, illegal or party political
- Being independent.

What does this mean for grant-makers

Charitable trusts with general purposes can make grants for any of the above purposes. As soon as the Commission broadens or clarifies the law, it broadens and clarifies the ambit of general charitable grant-making. The Commission is very willing to say this privately, but only one of its *Review* papers has said so publicly, despite repeated efforts by ACF. There is no significance in the silence; it is just that the Commission is a *registering* body, and grant-making seems to pass it by.

What has the *Review* changed?

The real effects of the *Review* are difficult to assess, as the Commission does not publish figures for the number of charities registered under newly recognised charitable purposes. Nor *can* it tell when more general charities - whether service-providing or grant-making - have broadened their ambits in consequence. The number of new registrations may be quite small, and some areas are still hedged around with what may prove to be very restrictive qualifications. For example, in promoting urban regeneration, what is the proper boundary between the charitable and the privately profitable? But there are clearly some advantages, and an implicit invitation to charitable trusts to experiment. Commission 'community amateur sport' paper is far less cautious than the consultation paper that preceded it, and the Commission clearly expects a flurry of new registrations.

Even though this decision is still not absolutely clear-cut, it goes far enough to allow grant-makers to help local amateur sport and recreation clubs.

What's next?

There are still some difficult papers to come, notably on the charitable status of ethnic minority organisations and self-help organisations. The problem here is over an interpretation of 'public benefit' that requires the benefit to go to the public as a whole or a sufficiently broad section of it. What is 'sufficiently broad'? Problems have already been eased by the Review paper on the *Public Character of Charity*, though there is still a danger of public benefit coming into conflict with multi-culturalism.

Two recently published papers concern organisations that support charities behind the scenes. Each is notably better written than most in the *Review* series. The first - *The Promotion of the Voluntary Sector for the benefit of the Public* - deals with the charitable status of resource and umbrella organisations, both nationally and locally. It argues that this should be a charitable purpose in its own right, allowing these bodies to avoid the legal sophistry that presently saddles them with general charitable objects such as relieving poverty and promoting community benefit. By treating 'the voluntary sector' as an industry, it avoids a hook on which the Commission has too frequently and unnecessarily impaled itself: when such bodies advise the private sector about charitable work, aren't they providing a private benefit? The second paper deals with the similar topic of *Promoting the Efficiency and Effectiveness of Charities and the Effective Use of Charitable Resources*. The Commission argues that this is charitable, but cautiously. This is because many non-charitable organisations provide services for charities, and only a body with *exclusively* charitable purposes can itself be registered as a charity. 81 bodies with this explicit purpose have been registered, 85% of them in the last ten years. Responses are called for by 28 February 2002.

The Review of the Register of Charities, RRI; Recognising Charitable Purposes, RRIA; and *Review* papers: *The Promotion of the Voluntary Sector for the benefit of the Public* and *Promoting the Efficiency and Effectiveness of Charities and the Effective Use of Charitable Resources* - all available from the Charity Commission at its usual addresses and its website at www.charity-commission.gov.uk

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