



# Where does charity begin & politics end?

Mark Pawlowski asks whether it is time to reconsider the line between charity & political activities

## IN BRIEF

► The law states that to be a charity, an organisation must have exclusively charitable purposes and satisfy the requirement of public benefit; therefore, political activities are not charitable.

► However, the rule against political activity forces organisations to be overly cautious in their campaigning in order to avoid the possibility of losing their charitable status.

Charities are becoming more political in character and less concerned with symptomatic relief. The concept of ‘charity’ today is one of public campaigning, lobbying and self-promotion. But to what extent has charity law reflected this increasingly important role? Is it time to review the scope and significance of the legal principle that political activities are not charitable?

## Promotion & political activity

It is trite law that to be a charity, an organisation must have exclusively charitable purposes and satisfy the requirement of public benefit. Those purposes are now conveniently described in s 3(1) of the Charities Act 2011 (CA 2011). The word ‘education’ in CA 2011, s 3(1)(b), in particular, has been interpreted broadly in the case law so as to cover both formal education in the sense of a teacher teaching a class, and less formal education which may arise more generally in the community, such as training and research in specific areas of expertise and study. But at what point does education become promotion, and to what extent is promotion necessarily political and, therefore, non-charitable? In *Bowman v Secular Society Ltd* [1917] AC 406, Lord Parker stated:

‘A trust for the attainment of political objects has always been held invalid,

not because it is illegal for everyone is at liberty to advocate or promote by lawful means any change in the law, but because the court has no means of judging whether a proposed change in the law will or will not be for the benefit, and therefore cannot say that a gift to secure the change is a charitable gift’.

In *McGovern v A-G* [1982] Ch 321, Slade J, applying *Bowman*, reiterated the difficulty the courts would face in determining whether the political objects of a trust would be for the public benefit. Encroachment on the functions of the legislature and prejudicing the courts’ reputation for political impartiality were also given as reasons for denying charitable status to political purposes.

Clearly, if the dominant purpose of the trust is to promote the political principles of one particular party, it is not charitable: *Bonar Law Memorial Trust v IRC* (1933) 17 TC 508 (concerning the Conservative Party), and *Hopkinson, Re, Lloyds Bank Ltd v Baker* [1949] 1 All ER 346 (the Labour Party). However, a trust for the education of the public in forms of government is for the advancement of education and, therefore, charitable, even if the trustees are required to hold certain political views: *Trusts of Arthur McDougall Fund, Re, Thompson v Fitzgerald* [1956] 3 All ER 867 and *Dunne v Byrne* [1912] AC 407.

It seems also that a trust for the furtherance of the principles of a political party is a valid charitable trust if combined with trusts which are charitable. In *Scowcroft, Re, Ormrod v Wilkinson* [1898] 2 Ch 638, the gift was for ‘the furtherance of Conservative principles and mental and moral improvement’. The trust was held to be charitable, although it would not have been so if the word ‘or’ had been substituted for the word ‘and’ because then the gift

would have been applied exclusively for political purposes.

## A more relaxed approach

To avoid this sort of confusion, should not the line be drawn between objects which are essentially political—for example, providing funds for promoting party political views—and objects which are of general social significance? There are many organisations which have refused to confine themselves to the narrow legal definition of ‘charity’ and have instead insisted that they make their voices heard. If they have not committed themselves to any political faction, why should they be characterised as political?

This is reflected in the Charity Commission’s *Campaigning and Political Activity Guidance for Charities*, (March 2008, CC9), which states (at 3.1) that, so long as a charity is ‘engaging in campaigning or political activity solely in order to further or support its charitable purposes, and there is a likelihood of it being effective, it may carry out campaigning and political activity’. Under this guidance, a charity may also seek to influence government and may publish comments on possible or proposed changes in the law or government policy, and advocate a change in the law or public policy, so long as these activities do not become the dominant means by which it carries out its purposes.

## A public benefit test?

Today, many voluntary organisations seek to influence public opinion in the hope that they will move the public to a certain social awareness leading to a change in the law. A real objection to the current rule against political activity is that it forces organisations to be artificially cautious in order to avoid the possibility of losing their charitable status.

What is needed is a more robust legal framework which acknowledges that there is no need for special rules relating to political objectives and that trusts for political purposes should be determined in the ordinary way by the test of public benefit. On this basis, it has been argued that political objects should be qualified in two respects only, namely:

1. a political purpose should not be allowed if the detriment to the public outweighs the benefit; and
2. a charity should not be permitted to pursue party-political objectives: see P Davies and G Virgo, *Equity & Trusts, Text, Cases and Materials* (2013) at p200.

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