



# Recent Developments in English Charity Law

Judge Alison McKenna  
Chamber President  
First-tier Tribunal  
(General Regulatory Chamber)



## Charities Act 2006 (now Charities Act 2011)

- \* New definition of “charity”
- \* Express public benefit test
- \* New powers for Charity Commission
- \* Created Charity Tribunal



## Tribunals, Courts and Enforcement Act 2007

New statutory framework:

“The Charity Tribunal” becomes

“The First-tier Tribunal (General Regulatory Chamber) (Charity)”

Onward appeals to:

Upper Tribunal (Tax and Chancery Chamber)

Court of Appeal

Supreme Court



## 1. Meaning of “charity”

- (1) For the purposes of the law of England and Wales, “charity” means an institution which—
- (a) is established for charitable purposes only, and
  - (b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.



## 2. Meaning of “charitable purpose”

- (1) For the purposes of the law of England and Wales, a charitable purpose is a purpose which—
- (a) falls within section 3(1), and
  - (b) is for the public benefit (see section 4).



### 3. Descriptions of purposes

- (1) A purpose falls within this subsection if it falls within any of the following descriptions of purposes—
- (a) the prevention or relief of poverty;
  - (b) the advancement of education;
  - (c) the advancement of religion;
  - (d) the advancement of health or the saving of lives;
  - (e) the advancement of citizenship or community development;
  - (f) the advancement of the arts, culture, heritage or science;
  - (g) the advancement of amateur sport;



## Charitable Purposes continued....

- (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- (i) the advancement of environmental protection or improvement;
- (j) the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (k) the advancement of animal welfare;
- (l) the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services;



(m) any other purposes—

(i) that are not within paragraphs (a) to (l) but are recognised as charitable purposes by virtue of section 5 (recreational and similar trusts, etc.) or under the old law,

(ii) that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of paragraphs (a) to (l) or sub-paragraph (i), or

(iii) that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised, under the law relating to charities in England and Wales, as falling within sub-paragraph (ii) or this sub-paragraph.



## 4. The public benefit requirement

- (1) In this Act “the public benefit requirement” means the requirement in section 2(1)(b) that a purpose falling within section 3(1) must be for the public benefit if it is to be a charitable purpose.
- (2) In determining whether the public benefit requirement is satisfied in relation to any purpose falling within section 3(1), it is not to be presumed that a purpose of a particular description is for the public benefit.
- (3) In this Chapter any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in England and Wales.
- (4) Subsection (3) is subject to subsection (2).



## Appeals against Charity Commission Decisions to enter onto the register (and to remove from the register...)

1Click

The Human Dignity Trust

Cambridge Target Shooting Association

Full Fact

Crocels Community Media Group

Graham Hipkiss

See <http://charity.decisions.tribunals.gov.uk/>



## Charities Act continued...

### **326 References by Attorney General**

(1) A question which involves—

- (a) the operation of charity law in any respect, or
- (b) the application of charity law to a particular state of affairs,

may be referred to the Tribunal by the Attorney General if the Attorney General considers it desirable to refer the question to the Tribunal.

(2) The Attorney General is to be a party to proceedings before the Tribunal on the reference.

(3) The following are entitled to be parties to proceedings before the Tribunal on the reference—

(a) the Commission, and

(b) with the Tribunal's permission—

(i) the charity trustees of any charity which is likely to be affected by the Tribunal's decision on the reference,

(ii) any such charity which is a body corporate, and

(iii) any other person who is likely to be so affected.



## Decided Charity References:

*Her Majesty's Attorney General v The Charity Commission for England and Wales and others*: [2012] UKUT 420 (TCC)

*The Independent Schools Council v The Charity Commission for England and Wales, The National Council for Voluntary Organisations, HM Attorney General and Others*: [2011] UKUT 421 (TCC)

## Discussion of Procedure for Charity References:

*“Technical Issues in Charity Law”* Law Commission Report 2017, chapter 15



**Further Reading:**

*"Appealing the Regulator"*

Not-for-Profit Law CUP 2014

*"How Does Charity Law Develop in the  
Age of the Tribunal?"*

Charity Law and Practice Review volume 20 2018