

THE REVIEW OF THE  
REGISTER OF CHARITIES

## Recognising New Charitable Purposes

*October 2001*



## The Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public confidence and trust. Most charities must register with the Commission, although some special types of charity do not have to register. There are some 180,000 registered charities in England and Wales. In Scotland the framework is different, and the Commission does not regulate Scottish charities.

The Commission provides a wide range of advice and guidance to charities and their trustees, and can often help with problems. Registered charities with an annual income over £10,000 must provide annual information to the Commission. The Commission has wide powers to intervene in the affairs of a charity where things have gone wrong.

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## The purpose of this publication

1. This publication sets out briefly the legal principles that govern charitable status and the scope which the Commission has for recognising new charitable purposes.

## What is a charity?

2. For an organisation to be a charity it must fall within the law's understanding of "charity" and be subject to the jurisdiction of the High Court (**Charities Act 1993, s.96(1)**). In order to fall within that definition an organisation must have purposes which are exclusively charitable and must be set up for the benefit of the public.
3. In order to determine which purposes are charitable the law uses a process of precedent and analogy. The courts have decided that those purposes are charitable which fall within the objects set out in the Preamble to the Charitable Uses Act 1601 or have been held to be analogous to those objects. The Preamble contains a list of purposes which were regarded as charitable in Elizabethan times.

## Four heads of charity

4. The courts added to the list of purposes which were accepted as charitable over the years and in 1891 Lord Macnaghten in the **Pemsel** case<sup>1</sup> classified charitable purposes under four heads:
  - the relief of poverty (1st head);
  - the advancement of education (2nd head);
  - the advancement of religion (3rd head); and
  - other purposes beneficial to the community (4th head).

The classification has been used since as a matter of convenience but it is not a definition.

5. Although the courts still use the Preamble as a touchstone and refer to the **Pemsel** classification, they have long recognised that what is accepted as a charitable purpose must change to reflect current social and economic circumstances. So a purpose will be charitable not only if it is within the list in the Preamble but also if it is analogous to any purpose either within it or since held to be charitable. Nowadays many charities are set up for purposes that are not mentioned in the Preamble.
6. In this way charitable purposes have been extended and developed, by decisions of the courts and of the Charity Commissioners, so that the development of the law has reflected changes in social and economic circumstances.

## The Commission's powers to recognise new charitable purposes

7. Under section 3(1) of the Charities Act 1993, the Charity Commission has an obligation to keep a Register of institutions that are charities. In fulfilling this obligation we have the power to recognise a new purpose as charitable in circumstances where we believe the court would do so.
8. We have the same powers as the court when determining whether an organisation has charitable status and the same powers to take into account changing social and economic circumstances - whether to recognise a purpose as charitable for the first time or to recognise that a purpose has ceased to be charitable. We interpret and apply the law as to charitable status in accordance with the principles laid down by the courts. Faced with conflicting approaches by the courts, we take a constructive approach in adapting the concept of charity to meeting the constantly evolving needs of society. The Register of Charities is therefore a reflection of the decisions made by the courts and our decisions following the example of the courts.

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<sup>1</sup> **Income Tax Special Purpose Commissioners v Pemsel** [1891] AC 531

9. The courts are increasingly setting out the underlying principles when deciding cases on charitable status and providing guidelines for future cases. The analysis, by Slade J. in **McGovern v Att.-Gen.**<sup>2</sup> of the rules relating to political purposes is an example of this approach. In the same way, where appropriate, we will clarify the underlying principles raised by a particular application for registration in order to provide guidance for future applications. For example, the Commissioners, in reaching a decision on the charitable status of the Church of Scientology (England and Wales), considered and set out the underlying principles raised by that particular application for registration as a charity in order to reach their decision and so provide guidance for future applications<sup>3</sup>.

## Need for a flexible legal framework

10. The courts recognise that there is a need for a flexible legal framework by which new charitable purposes can be recognised in the light of changing social and economic circumstances. Lord Simonds, for example, said in the case of **National Anti-Vivisection Society v IRC**<sup>4</sup> that purposes regarded as beneficial to the public and charitable in one age may not be so regarded in a later age, and vice versa. As the courts have power, in limited circumstances, not to follow previous court decisions, so do we.
11. The courts have stressed that the law is not static and, as Lord Hailsham pointed out in **IRC v McMullen**<sup>5</sup>, the law must change as ideas about social values change. This has two implications: first, new objects and purposes not previously considered charitable may be held to be so; secondly, objects and purposes previously regarded as charitable may no longer be held to be charitable. Lord Wilberforce summarised the principle to be applied in **Scottish Burial Reform and Cremation Society v Glasgow Corporation**<sup>6</sup> when he said that the court's decisions "have to keep the law as to charities moving according as new ideas arise or old ones become obsolete or satisfied."
12. The courts have clearly indicated that they will not be rigidly bound by precedent and that a particular purpose may cease to be charitable as social circumstances change. Thus, in **National Anti-Vivisection Society v IRC**<sup>7</sup>, Lord Wright said that:

".....trusts [providing particular remedies thought to relieve the distress caused by advanced age, sickness, disability or poverty] may, as economic ideas and conditions and ideas of social service change, cease to be regarded as being for the benefit of the community. And trusts for the advancement of learning or education may fail to secure a place as charities, if it is seen that the learning or education is not of public value."

## Changing social circumstances

13. We also recognise the need to apply the law in changing social circumstances, although we are only able to determine which purposes are charitable in the way that the courts have done or in a way that we anticipate the courts would do. In deciding whether novel purposes are charitable or not, we seek to predict the decision the court would reach if it were to consider the matter.

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<sup>2</sup> [1982] Ch. 321

<sup>3</sup> See report of the decision of the Commissioners on the application for registration by the Church of Scientology (England and Wales) which can be found on our website [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

<sup>4</sup> [1947] 2 All ER 217, 238; [1948] AC 31, 74

<sup>5</sup> [1981] AC 1, 15E

<sup>6</sup> [1968] AC 138, 154

<sup>7</sup> [1948] AC 31, 42

14. The Commission is the first level at which an organisation may obtain a decision as to whether or not it is charitable in law. Given our predictive role in assessing whether an organisation may be charitable in anticipation of what a court itself might decide when faced with a novel charitable purpose, we may be able to recognise a new charitable purpose where the legal framework permits. It may be the case that we could also depart from previous contrary legal precedent where there has been a significant change in circumstances from when those court decisions were taken.
15. We are therefore in a position to apply the law in response to changing social and economic circumstances more quickly, and at less cost, than the courts may be. This does not, of course, detract from an organisation's right to appeal to the High Court against our decision in relation to its charitable status or from the authority of the courts to decide ultimately issues of charitable status.

## General approach

16. As explained in paragraph 4 above, for the sake of convenience charitable purposes are usually classified under four heads.
17. New charitable purposes often arise under the fourth head, described as purposes beneficial to the community<sup>8</sup> or of a general public utility<sup>9</sup>, but new or innovative ways of furthering the first three heads of charity may also be recognised. (See Annex B for examples of where these have been recognised in the past.)
18. It is clear law that not all purposes beneficial to the community or of public utility are charitable<sup>10</sup> and over the centuries the courts have considered the steps to be followed in determining whether a novel purpose is charitable.
19. Broadly, the general practice adopted by the courts and by us is first to determine whether the novel purpose is analogous with either a purpose set out in the Preamble to the Charitable Uses Act 1601 or analogous to charitable purposes as decided by the courts. The second step is to decide whether that purpose results in a benefit to the public as recognised in charity law. That is to say it is of real and substantial benefit and that those benefits are available to either the community at large or to a sufficient section of the community.
20. Given our role in determining charitable status, following the introduction of the Charities Act 1960, analogies may also be drawn to decisions previously made by the Commission as to charitable purposes. The analogy test is required in order to determine whether the nature of the public benefit arising from a charitable purpose is of a kind that has been recognised as charitable.
21. Arguments in favour of the two step test set out in paragraph 19 above are that it provides sufficient flexibility for both the Court and the Commission to keep the concept of charity and the recognition of new charitable purposes in pace with the changing needs of society.

## The two step test

22. As explained above, we adopt a two step test in the consideration of new charitable purposes, that is to determine that the purpose:
  - is analogous to a purpose previously accepted as charitable; and
  - satisfies the requirement that the purpose benefits the public.

These requirements are discussed in more detail below.

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<sup>8</sup> **Income Tax Special Purpose Commissioners v Pemsell** [1891] AC 531

<sup>9</sup> **IRC v. Baddeley** [1955] AC 572, 608 per Lord Reid

<sup>10</sup> **Re McDuff** [1896] 2 Ch 541; **Williams' Trustees v. IRC** [1947] AC 447, 455

## The need for an analogy to an existing charitable purpose

23. In 1985 we reviewed our policy for deciding whether novel purposes are charitable<sup>11</sup>. Having examined the legal authorities, the Commissioners concluded that they must follow the courts' approach in seeking an analogy<sup>12</sup>. An up to date interpretation of that policy is as follows:

**The Commission will take a constructive approach in adapting the concept of charity to meet constantly evolving social needs and new ideas through which those needs can be met. Acting within the legal framework which governs the recognition of new charitable purposes, we would aim to act constructively and imaginatively.**

**In considering new purposes as charitable we will look closely at those purposes which have already been recognised as charitable either under the Preamble or in subsequent decisions of the Court or the Commission. We will also look at contemporary needs of society and relevant legislation passed by Parliament and, where Convention rights are in issue, to the European Convention on Human Rights and decisions of the European Court of Human Rights and the European Commission of Human Rights.**

**In identifying a new purpose as charitable we will, following the legal framework, need to be clear that there exists a sufficient correlation between those new purposes and purposes already accepted as charitable. While in most cases a sufficiently close analogy may be found, in others an analogy may be found by following the broad principles which may be derived from the scope of the Preamble or from decided cases of the Court or the Commission.**

**In addition we will need to be clear that the purpose is not a political purpose as understood in charity law and that the purposes are expressed with clarity and certainty to facilitate monitoring by us and any subsequent control by the court should that be necessary.**

24. In effect, our view is that we will look for a suitable analogy in order to confirm whether or not the way in which a purpose will benefit the public is charitable. We also believe it will nearly always be possible to find an analogy, if the nature of the benefit is really of a kind that ought to be recognised as charitable.
25. Other legal authorities suggest that analogy with specific purposes already accepted as charitable is not strictly needed but that a broader analogy with the kinds of purposes already accepted as charitable is sufficient. Examples of where the courts have taken this view are set out in Annex A. We will adopt this approach where there is clear benefit to the public.

## The effect of the European Convention on Human Rights on the use of analogies

26. The extent to which the European Convention on Human Rights impacts on the use of analogies by the Commission in its registration of charities is by no means clear. Where Convention rights apply in relation to any application for registration, following the introduction of the Human Rights Act 1998, the Commission, as would the Court when determining charitable status, will only be able to apply analogies and precedents to the extent that those are compatible with the Convention rights. If precedents cannot be construed as compatible then it may well be inappropriate to use them as such. The scope for use of some analogies therefore may become restricted or they may need to be construed in a way compatible with Convention rights. In other cases they may not be applicable at all.

<sup>11</sup> See Commissioners' Annual Report 1985 paras 24-27

<sup>12</sup> In *Barralet v. Attorney General* [1980] All ER 918, 926-7 per Dillon J

27. Whilst the Commission will not be reviewing generally the applicability of precedent analogy in the light of the European Convention on Human Rights, the extent to which certain precedents are compatible with Convention rights will be considered on a case by case basis when dealing with applications for registration. Where the promoters of organisations wishing to register as charities believe that any particular analogy, or lack of it, is affected by human rights considerations they should make a case that this is so in their application.

## The need for benefit to the public

28. It is an essential requirement of all charities that they should benefit the community or an appreciably important section of the community. In other words charity should have a *public character*. Detailed guidance on this requirement can be found in our separate publication **RR8: The Public Character of Charity**.

29. A purpose will be accepted by the courts and the Commission as charitable only if it is for the benefit of the public. This will be possible only if two conditions are satisfied:

- (i) First, the organisation must be capable of having a positive effect, and not cause harm to the public.
- (ii) Secondly, those eligible to receive benefits must (except in the case of organisations set up exclusively to relieve financial hardship) comprise a large enough group to be considered as the public or a sufficient section of the community and no personal or private relationships must be used to limit those who may benefit.

30. The general rule is that a purpose, albeit expressed in a charitable form, is not charitable unless it is also directed towards the benefit of the public<sup>13</sup>. In deciding whether a particular purpose is charitable, the court has always applied this overriding test of public benefit. However, the nature of the test varies between the four heads of charity and in particular between the first three heads and the fourth head.

31. The law, subject to evidence to the contrary, assumes that purposes under the first and third heads of **Pemsel** will deliver benefit to the public, although the presumption may be readily rebutted. But benefit to the public has to be positively demonstrated by any organisation claiming charitable status under the second and fourth heads<sup>14</sup>. Nevertheless, this may not be a difficult task if the benefit is self-evident<sup>15</sup>. In general, the benefit to the public under the fourth head should be a tangible one, although an intangible benefit may suffice if there is “approval by the common understanding of enlightened opinion for the time being” that there is benefit to the public<sup>16</sup>.

32. Although the requirement of benefit to the public is an essential element in determining what is and is not charitable, it may be appropriate to consider the different test of public benefit applicable to fourth head charities in the light of human rights principles which are considered below.

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<sup>13</sup> **Oppenheim v. Tobacco Securities Trust** [1951] AC 297; **AG v. National Provincial Bank** [1924] AC 262

<sup>14</sup> **National Anti-Vivisection Society v. IRC** [1948] AC 31

<sup>15</sup> **McGovern v. Attorney General** [1982] Ch 321, 333G-334B per Slade J., approved by Chadwick LJ in **Southwood v. AG** 28 June 2000 unreported (CA)

<sup>16</sup> **National Anti-Vivisection Society v. IRC** [1948] AC 31, 49 per Lord Wright



## The effect of the European Convention on Human Rights on the public benefit requirement

33. Our view is that the public benefit requirement is a fundamental requirement for all charities. The fact that the way in which the requirement must be demonstrated varies between different heads of charity does not compromise European Convention on Human Rights principles, so long as each case is individually tested for public benefit. Under the first three heads of charity, public benefit is recognised as established and self-evident and need not be demonstrated unless doubt arises. Under the fourth head, benefit to the public must be demonstrated where the purposes are novel in order to justify charitable status (although there may be some cases where benefit to the public is virtually self-evident).
34. It will be apparent, therefore, that the public benefit requirement is one which must be applied to all prospective charities individually, regardless of the different heads of charity under which the prospective charity falls<sup>17</sup>. **Our view is that the Human Rights Act 1998 has no impact on the need to determine benefit to the public in accordance with existing legal precedents** (cf the use of analogies in paragraphs 26-27 above).

## Our practice in recognising new charitable purposes

35. We approach the determination of novel charitable purposes in the same way as the courts. Our broad approach is to consider firstly whether the novel purpose is analogous either to purposes set out in the Preamble to the Charitable Uses Act 1601 or to other charitable purposes as decided by the courts or recognised by the Commission. The second step is to decide whether that purpose results in a real and substantial benefit to the public. We favour this approach because of the flexibility it provides to keep pace with the changing needs of society in determining novel charitable purposes.
36. In determining these novel purposes there is a strong emphasis on benefit to the public and clear evidence should be produced to satisfy us that this requirement can be met. It is important therefore for us to clearly articulate what we understand by this requirement to demonstrate benefit to the public. This is why we have produced guidance on this in our separate publication **RR8: The Public Character of Charity**.
37. Circumstances where we could recognise new charitable purposes or organisations as charities might arise where:
- a new purpose is proposed to us and demonstrated to be analogous to a purpose already accepted as charitable and which satisfies the public benefit requirement; or
  - there are changes in social and economic circumstances and attitudes in society in general to the value of a particular activity or idea not previously recognised as charitable; or
  - new legislation indicates a change in society's views about the benefits of a particular activity or idea and/or takes the activity or idea out of the realm of political activity (eg where we accepted the promotion of racial harmony as a charitable purpose - see Annex B); or
  - where there is an existing legal precedent to the contrary, we could recognise a purpose as charitable where whatever prevented its recognition no longer applies<sup>18</sup>.

<sup>17</sup> See report of the decision of the Commissioners on the application for registration by the Church of Scientology (England and Wales) which can be found on our website [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

<sup>18</sup> Eg Roman Catholic and non-conformist religious purposes were considered illegal in the 17th Century but could later be accepted as charitable once the illegality of the purposes was removed

38. In determining the charitable status of organisations with novel purposes, we adopt a practice of considering from the available evidence whether any benefit to the public might arise from the organisation's declared objects. Following the policy we set out in 1985, we would take a constructive approach to this, having regard to the needs of modern society and the benefit that might arise from the organisation's work.
39. We may also consider the activities carried out by the organisation where it is unclear what the purpose of the organisation actually is or whether its purposes are of benefit to the public. If we are satisfied that there is benefit to the public, we would identify the purpose for which the organisation is set up taking account of its expressed purposes and its activities. We would then consider whether this purpose was already recognised as charitable or was indeed a new purpose which may potentially be charitable.
40. If the purpose is novel, the next step is to consider whether the purpose, and benefit to the public arising from that purpose, is of a kind that is charitable. In order to decide this, we would follow the policy set out in 1985, to seek either some specific or general analogy with a purpose or purposes in the Preamble, or a purpose or purposes previously held to be charitable by the courts or by us. If an analogy can be found, we are likely to consider the novel purpose charitable, subject to certain limitations.

## Summary

41. In considering the development and recognition of new charitable purposes, the following rules apply:
  - New charitable purposes must be analogous to other purposes previously recognised as charitable, by the courts or the Charity Commission.
  - For any new charitable purpose it will be necessary to demonstrate what benefit to the public will flow from it (where no assumptions about benefit to the public can be made).
  - Charitable purposes must be clear and certain. (This is important for all charities but it is particularly important in the case of new charitable purposes to ensure that charities with those purposes operate within the newly identified boundaries of charitable status. It is also important to help us monitor and regulate charities and so that, in the last resort, the charity could if necessary be administered under the direction of the Court).
  - An organisation set up for political purposes is not charitable. (We therefore look at novel purposes in this light and also consider whether the organisation's activities in fact lead to the attainment of a political purpose.)

## Annex A - The Courts' approach to the use of analogy

### The general requirement for an analogy

- A1. As mentioned in paragraph 23 above, the Commissioners decided in 1985 that they were bound to follow the Court's approach<sup>19</sup> in seeking an analogy as a necessary requirement in order to conclude that a purpose beneficial to the community actually produces a charitable benefit to the public.
- A2. Other legal authorities suggest that an analogy with a specific already accepted charitable purpose is not strictly needed but that a broader analogy with the kinds of purposes already accepted as charitable is sufficient. Some examples of where the courts have taken this broader view are set out below.

### Williams Trustees v. IRC

- A3. The judgement in **Williams Trustees v. IRC**<sup>20</sup> indicates that, in determining whether a trust is charitable, the trust must first be properly regarded as being *within the spirit and intendment* of the Preamble to the Charitable Uses Act 1601 and, secondly, that its purpose must be beneficial to the community in a way that is charitable.

### Scottish Burial Reform and Cremation Society v. Glasgow Corporation

- A4. In the case of **Scottish Burial Reform and Cremation Society v. Glasgow Corporation**<sup>21</sup> Lord Wilberforce set out a test whereby a purpose would be shown to be for the public benefit and therefore charitable if it came within the spirit and intendment of the Preamble by which, he said, he meant that *it came within the scope and effect of decisions previously made by the court*. This is how he envisaged the law of charity could be kept moving with the changing needs of society<sup>22</sup>. He said:  
*"It is now accepted that what must be regarded is not the wording of the Preamble itself, but the effect of decisions given by the courts as to its scope, decisions which have endeavoured to keep the law as to charities moving according as to new social need arising or old ones become obsolete or satisfied"*.
- A5. Lord Wilberforce therefore saw no need for following specific analogies in order to recognise new charitable purposes.

### Incorporated Council of Law Reporting for England & Wales v. Attorney General

- A6. A further test was developed by Sachs LJ in the case of **Incorporated Council of Law Reporting for England and Wales v. Attorney General**<sup>23</sup>. Rather than considering the case on the basis of analogies, Sachs LJ preferred the wider test of considering whether the purpose was something beneficial to the community,  
*"the answer being eminently a matter of first impression derived from an overall view of the Preamble coupled with the general trend of some centuries of decisions"*.

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<sup>19</sup> **Barralet v Attorney General** [1980] All ER 918, 926-7 per Dillon J

<sup>20</sup> [1947] AC 447, 519 per Lord Simonds

<sup>21</sup> [1968] AC 138

<sup>22</sup> **Ibid**, 154

<sup>23</sup> [1972] Ch 73

**A7.** A different test was put forward in the same case. Russell LJ reversed the question and his test was to ask “*whether the purpose was such that it fell outside the equity of the Statute of 1601*”<sup>24</sup>. Russell LJ seems to have found the need for a search for analogy or for a purpose to come *within* the equity of the Statute to be too narrow or refined an approach. Russell LJ’s very wide approach has not been followed in subsequent cases.

## In Re Strakosch

**A8.** In the earlier case of **In Re Strakosch**<sup>25</sup>, Lord Green also indicated that specific analogies were unnecessary by his statement that the public benefit “***does not have to be in any way eisdem generis with the recited purpose but it has to be charitable in the same sense***”.

**A9.** We would be in favour of taking this broad approach to the analogy issue, in the absence of a specific analogy, where there is clear benefit to the public.

## Examples of charitable purposes recognised as analogous to the Preamble

**A10.** The following purposes have been found to be analogous to the purposes set out in the Preamble:

- The provision of public works and services.
- The provision of public amenities.
- The protection of life and property.
- The preservation of public order.
- The defence of the realm.
- The promotion of the sound development and administration of the law.
- The social relief, resettlement and rehabilitation of persons under a disability and deprivation.
- The promotion of certain patriotic purposes.
- The promotion of health and the relief of sick, ill and disabled people.
- The care, upbringing and establishment in life of children and young people.
- The training and retraining of and finding work opportunities for unemployed people.
- The promotion of regeneration for the public benefit in areas which are socially or economically deprived.

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<sup>24</sup> **Incorporated Council of Law Reporting for England and Wales v Att-Gen.** [1972] Ch 73, 88E

<sup>25</sup> [1949] Ch 529

## Examples of charitable purposes recognised as analogous to other charitable purposes

**A11.** The following purposes are not directly analogous to the purposes in the Preamble but have nevertheless been found to be charitable by analogy with purposes previously determined as charitable by the courts:

- The promotion of commerce and industry for the public benefit.
- The protection of the environment.
- The promotion of moral and spiritual welfare or improvement of mankind.
- The prevention of cruelty to and protection of the welfare of animals.
- The promotion of good race relations, the elimination of discrimination and the promotion of equality of opportunity.
- The promotion of ethical standards of conduct and compliance with the law in the public and private sectors.

## Annex B - Examples of the constructive use of the Commission's powers to recognise new charitable purposes

### Decisions taken as part of the Review of the Register

#### Promotion of urban and rural regeneration

- B1.** In 1999 we recognised the promotion of urban and rural regeneration in areas of social and economic deprivation as charitable. In considering whether this purpose was charitable we considered that it was within the spirit and intendment of, or analogous to, certain purposes with the Preamble to the Charitable Uses Act 1601, including:
- The repair of bridges, ports, havens, causeways, churches, sea banks and highways.
  - The supportation, aid and help of young tradesmen, handicraftsmen and persons decayed.
- B2.** In addition, many of the activities of organisations involved in social and economic regeneration could be reflected by a number of accepted fourth head purposes, such as:
- Maintaining or improving the physical infrastructure in deprived areas.
  - Relieving people who are at a disadvantage because of their social and economic circumstances.
  - The provision of works and services.
  - The provision of public amenities.
  - The social relief, resettlement and rehabilitation of persons under a disability or deprivation.
  - The training and retraining of, and finding work opportunities for, unemployed people.
- B3.** These purposes had already been accepted by the courts for being of general benefit to the community or of general public utility in a charitable sense. Our view was, therefore, that the promotion of urban and rural regeneration for the public benefit in an area of social and economic deprivation could properly be regarded as analogous to those purposes<sup>26</sup>.

#### Promotion of community capacity building

- B4.** In 2000 we decided that the promotion of community capacity building in relation to communities which are socially and economically disadvantaged (or, in some cases, which are simply socially disadvantaged) could be accepted as a charitable purpose.
- B5.** The term 'community capacity building' means different things to different people. When we had previously considered this we found it difficult to pin down what community capacity building meant. As a result we could not conclude that it was for the benefit of the public if we could not be certain what it entailed. Even if we could have been certain about this, we initially feared that the kind of benefits conferred on particular individuals and local groups by this activity would be more than would be acceptable for a charitable purpose.
- B6.** As a result of our in-depth review about community capacity building and the way it is carried out, which included consulting publicly on the issues, we feel able to say what we mean by it, identify a benefit to the public as a whole and put the benefits to individuals and groups into perspective.

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<sup>26</sup> See our publication **RR2: Promotion of Urban and Rural Regeneration**

- B7.** We understand community capacity building to mean developing the capacity and skills of the members of a community in such a way that they are better able to identify, and help meet, their needs and to participate more fully in society. As we understand it, community capacity building is therefore concerned with:
- providing opportunities for people to learn through experience - opportunities that would not otherwise be available to them; and
  - involving people in collective effort so that they gain confidence in their own abilities and their ability to influence decisions that affect them<sup>27</sup>.
- B8.** The acceptance of this new charitable purpose complemented our earlier decisions to recognise the promotion of urban and rural regeneration and the relief of unemployment as charitable purposes. It also illustrates our willingness to take a constructive approach in adapting the concept of charity to meet changing social and economic circumstances.

## Conservation of the environment

- B9.** In 2001 we recognised conservation of the environment as a charitable purpose in its own right, which includes organisations which conserve the environment by promoting biological diversity [or biodiversity]<sup>28</sup>.
- B10.** Although there were already organisations on the Register undertaking activities associated with conservation, they had not previously been able to include the term “conservation of the environment” in their stated objects as it had no legal meaning.
- B11.** Conservation charities have become more prolific, demonstrating the public concern for the environment which first manifested itself in late nineteenth and early twentieth century organisations, such as animal and bird protection societies. More recently, this concern has been evident in the pressure to implement initiatives such as the UN Convention on Biological Diversity and the UK Biodiversity Action Plan of 1994. Whilst some guidelines had been built up over the years and the Commission itself had demonstrated a flexible approach especially in the area of conservation, the problem of avoiding personal advantage while encouraging public access in particular still needed to be comprehensively addressed.
- B12.** As a result of our review we concluded that “conservation of the environment” now has a well-established meaning such that we can recognise it as a charitable purpose beneficial to the community. We have suggested suitable objects for organisations promoting this purpose and guidelines on:
- demonstrating that the organisation’s land or habitat or the particular species with which it is concerned is worthy of conservation;
  - meeting the requirements for public access; and
  - how to avoid unacceptable private benefit (such as where a former owner occupies part of the premises)<sup>29</sup>.

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<sup>27</sup> See our publication **RR5: The Promotion of Community Capacity Building**

<sup>28</sup> diversity of plant and animal life

<sup>29</sup> See our publication **RR9: Preservation and Conservation**

## Other decisions of the Commissioners

### Good community relations

**B13.** Before 1983 it was considered by some that the promotion of racial harmony could not be a charitable purpose. The Court of Appeal in **Re Strakosch**<sup>30</sup> had held both that the appeasement of racial feelings between different ethnic groups in a community was a political purpose and also that such a purpose was too vague and might include very wide objects some plainly not charitable. In 1983, we reconsidered the position in the context of contemporary Britain and in the light of changed social circumstances. We decided that organisations opposing racial discrimination and promoting good community relations could be registered as charities also. Parliament, in race relations legislation, had recognised their public benefit. There were also analogies to other purposes which had been held by the courts to be charitable (particularly charities for the preservation of public order, and for mental and moral improvement, and for the promotion of equality of women with men).

### Recreational bodies for ethnic and other minorities

**B14.** Legislation<sup>31</sup> confirms that it is charitable to provide recreational facilities for people in need by reason of youth, age, infirmity or disablement, poverty or social and economic circumstances. It was not clear whether those categories may (without affecting charitable status) be further defined by reference to race, nationality, ethnic or national origins or religion. We considered the matter in 1995 and determined that, where we are satisfied that a special need exists, it would be charitable to set up a community association or other recreational organisation primarily for the use of some identifiable racial minority group.

### Charities operating overseas

**B15.** In 1963 we had advised that, whilst organisations under the first three heads of the **Pemsel** categorisation were charitable when acting abroad, those under the fourth head would be charitable only if they could show benefit to the community within the United Kingdom. We took a fresh look at this in 1992 and formulated the rather more helpful test that, in determining the charitable status of bodies operating abroad, we should first consider whether they would be regarded as charities if their activities were confined to the United Kingdom and then deny charitable status only if there were good public policy reasons to do so, including whether or not the activities are legal in the country concerned.

### Promoting ethical standards in business and corporate responsibility

**B16.** A relatively modern development in society is that ethics are increasingly incorporated into management practice (reflecting an acceptance by businesses of the need to act to high moral and ethical as well as legal standards). This is accompanied by a recognition of the need to advise and protect vulnerable employees faced with ethical dilemmas in the course of their work. Would an organisation promoting high ethical standards and enabling employers and employees together to fulfil a business's responsibility to society (and helping employees in moral dilemmas) be charitable? There was little in the way of direct judicial authority to help us with the question in 1993. But we were able to develop a line of cases relating to mental and moral improvement in order to recognise the charitable status of an organisation with appropriately worded objects.

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<sup>30</sup> [1949] 1 Ch 529

<sup>31</sup> The Recreational Charities Act 1958



## Trading fairly

**B17.** In 1995, proposals were put to us for the registration as a charity of an organisation which would award a simple symbol or “fair trade mark” to be placed on the packaging of some consumer goods (whose production processes had been vetted) on sale in supermarkets in this country. The claim was that the mark would denote for consumers that their purchase of a particular brand of goods would have the effect of relieving the conditions of life of deprived third world workers employed abroad in its production. We were naturally concerned that this should not be a screen for improved profits by middlemen and commercial enterprises. This proposal also at first appeared to be an attempt to stimulate consumer interest in particular goods by the reassurance that certain requirements relating to the basic conditions of life for workers in their production processes were being met. We could see that that might increase sales and would consequently benefit those engaged in the commercial processes of marketing the goods. But it at first appeared to have only a very indirect link with any actual relief of deprivation amongst the workers at the end of the commercial chain. We considered the proposals in some depth as these proposals were refined by the promoters and were convinced by later detailed evidence that there was in fact a principal aim to relieve poverty by a fresh and imaginative mechanism which was responding to a widely felt desire to help on the part of many consumers in this country. In particular, we were convinced by evidence that the organisation, when established, would be able to show that there was a direct connection between the award of the fair trade mark and an actual and observable improvement of conditions in the third world. True, that mechanism may produce some commercial profits for businessmen and retailers, but any such profits were shown to be necessarily incidental to the primary purpose of relieving need. We therefore decided that this means of putting into practical effect the desire of a substantial number of consumers for improved conditions of life for deprived producers and workers should be formally recognised as charitable.

## General Medical Council

**B18.** The General Medical Council (the GMC) is, in essence, the public regulator for registered medical practitioners in the UK. It is the statutory body responsible for the registration of qualified medical practitioners (doctors) in the UK and for the regulation of training for, and the practice of, medicine by registered medical practitioners. Its statutory functions fall into three areas:

- (i) The registration of medical practitioners.
- (ii) The oversight of their professional conduct and fitness to practice.
- (iii) The oversight of medical education.

**B19.** The GMC was originally established in 1858, but is currently governed by more recent legislation, the Medical Act 1983 as subsequently amended. In 1928 the Court of Appeal, in **General Medical Council v IRC**<sup>32</sup> determined that (for the purposes of taxation) the GMC, as it was then constituted, was not charitable. That decision was later affirmed by the House of Lords in 1959 in **General Nursing Council v St Marylebone Borough Council**<sup>33</sup>. In 1999 the GMC made an application to the Commission for registration as a charity.

**B20.** The Commissioners considered the application in view of the current constitution and activities of the GMC and the social and economic environment within which it operates, and reviewed the relevant law. They concluded that there had been sufficient changes in these areas taken together for them to reconsider the charitable status of the GMC, despite previous court decisions.

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<sup>32</sup> [1928] All ER 252

<sup>33</sup> [1959] AC 540

- B21.** The Commissioners considered further the functions and activities of the GMC and concluded that it is established **for the purpose of the protection, promotion and maintenance of the health and safety of the community by ensuring proper standards in the practice of medicine**. They concluded that such a purpose is a charitable purpose in law, falling within the fourth head of charity by way of analogy to the protection of human life and the promotion of public health, which are established charitable purposes. They also considered that the GMC is established for the benefit of the public, any benefit to medical practitioners being incidental.
- B22.** The Commissioners considered that if the matter were to come before the Courts today, the Courts would come to the same view about whether the GMC is a charity, both in terms of its purposes and in relation to its benefit to the public. Accordingly, it was open to the Commissioners to come to a similar conclusion<sup>34</sup>.

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<sup>34</sup> See report of the decision of the Commissioners on the application for registration by the GMC which can be found on our website [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

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