

Political Activity and Charitable Status at Common Law:

In Search of Certainty

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Introduction

From my limited knowledge of US charity law, it seems to me that, whereas it is appropriate for English lawyers to approach the subject from a ‘charitable trusts’ angle, from your point of view, here in the USA, lawyers seem mainly to approach the subject from a ‘tax exemption’ point of view. It may therefore seem anomalous that I have been asked to speak to you about the common law perspective on political activity and its relationship with charitable status, which has its basis in the law of trusts. However, the US case of *Bob Jones University v United States*,¹ provides a modern authority for the proposition that, echoing the English common law position, tax exemptions under section 501(c)(3) are only available in the USA to those institutions that are of public benefit. In fact, in the *Bob Jones* case, Chief Justice Berger acknowledged that the English case of *Income Tax Special Purposes Commissioners v Pemsel*² in which Lord Macnaghten classified ‘charity’ into four principal divisions,³ ‘has long been recognized as a leading authority in this country’. It is therefore clear that, in order to be entitled to status, an institution must broadly satisfy the common law definition of charitable status, which includes an element of public benefit. It is

¹ (1983) 461 US 574.

² [1891] AC 531.

³ Trusts for: the relief of poverty; advancement of education; advancement of religion; and, other purposes beneficial to the community.

for this reason that I have been asked to consider the common law position on charities and their relationship with politics.

This paper starts by briefly outlining the general legal framework for charities under the English common law, and then moves on to consider political purposes and political activity in detail. Having outlined the legal position, the remaining part of the paper will examine some of the grey areas that exist under the current legal regime governing charities and their relationship with politics.

The General Legal Framework

The starting point for any examination of the English system for regulating political activity by charitable bodies is in the fundamental legal principles that determine the very existence and nature of charitable status itself.

An English trust must satisfy three requirements in order to be charitable: it must be for a charitable purpose;⁴ the purpose must be exclusively charitable; and there must be public benefit. The public benefit requirement impacts upon the political activity issue; the most commonly stated rationale for the general rule in English law that a charity cannot have a political purpose is that English judges are unable to determine whether or not a political purpose would be for the public benefit.⁵

⁴ See footnote 3, *supra*, for a broad definition.

⁵ *Post*.

In England, charitable status is especially prized, primarily because of the distinct legal and fiscal advantages that it brings.⁶

Legal Advantages

As well as enjoying exemption from the ‘beneficiary principle’⁷ and the ‘certainty of objects’ rule,⁸ charities are not subject to the ‘perpetuity’ rule which otherwise limits the duration of a trust.⁹ The rationale for this exemption is, in the context of this paper, worth raising. Again, the requirement of public benefit for charitable status is the key issue. Simply put, as a charitable trust is required to be for the public benefit, then *a fortiori* there is no justification for restricting its duration. However, that explanation flies in the face of the fact that those promoting a charitable trust might actually desire the shortest possible life for their initiative, there being an over

⁶ The popularity of charitable status is apparent from statistics that reveal that the total number of registered charities at the end of December 1997 was just over 184,000 (Charity Commission, *Annual Report 1997, 1998*, London: TSO, para.60).

⁷ Under *Morice v Bishop of Durham* (1805)10 Ves. 522 a trust that does not have a direct human beneficiary who could apply to the court to enforce it is generally invalid. Even though a charity usually exists for a purpose and not for a person, such a trust survives and is enforced via the Attorney General (*Leahy v Att.-Gen. for New South Wales* [1959] AC 457) or by the Charity Commission (Charities Act 1993, s.32) on behalf of the charity’s purpose.

⁸ Under this rule, the objects of a trust (the beneficiaries) must be *certain* i.e. identifiable with sufficient particularity so that the trustee (and the court, if necessary) can appreciate the precise nature of the trustee’s obligations. However, provided that the charity’s purpose is capable of being applied to a charitable purpose, then that purpose can be quite generally drawn (*Re Koeppler’s Will Trusts* [1986] Ch. 423).

⁹ *Income Tax Special Purposes Commissioners v Pemsel* [1891] AC 531, at p.581.

riding desire for the long term eradication of the particular ‘need’ in issue.¹⁰ That that, in turn, might rarely be achieved without some change in law or policy is, on one level, the simplest way of illustrating the omnipresent political dimension. It is ironic to note that the exemption from the excessive duration rule for charitable trusts presumes that it is in the public interest that a charity (and therefore the need that it is attempting to address) should last forever. As Chesterman notes:¹¹

In the eyes of the law, a statement by a charity such as Shelter¹² that ‘it exists to put itself out of business’ has non-charitable implications.

Fiscal Incentives

The fiscal incentives for the achievement of charitable status are both extensive¹³ and relevant¹⁴ to the determination of charitable status. The key elements in

¹⁰ Sprince refers to this as the ‘need conundrum’. See Sprince, A, ‘Political Activity by Charitable Organisations: An English Model with More to Learn than to Teach?’ [1997] *Trust Law International* 35.

¹¹ Chesterman, M, *Charities, Trusts and Social Welfare*, 1979, London: Weidenfield and Nicolson, at p.358.

¹² A prominent English charity concerned with serving the needs of the homeless.

¹³ The cost in terms of ‘lost’ tax revenue has been estimated at around £1.75 billion *per year* (HM Treasury News Release, *Charity Taxation Reviewed* 2 July 1997).

¹⁴ For example, in *Dingle v Turner* [1972] AC 601, at p.624, Lord Cross remarked in the House of Lords, ‘In answering the question whether any given trust is a charitable trust the courts - as I see it - cannot avoid having regard to the fiscal privileges accorded to charities.’ He went on (at pp.624-625) to describe previous decisions of the English courts as ‘pretty obviously influenced by the consideration that if such trusts as were there in question were held valid they would enjoy an undeserved fiscal immunity’.

clude, in defined circumstances, exemptions for charities from income tax,¹⁵ corporation tax,¹⁶ capital gains tax,¹⁷ and stamp duty.¹⁸ Tax incentives are also offered to donors by way of relief from income tax on donations to charities, by use of covenants,¹⁹ one off gifts²⁰ or the payroll deduction scheme.²¹ Gifts to charities are also exempt from inheritance tax.²²

Charities and Politics: Introduction

As regards charities, a line is drawn between groups with political *purposes* and groups that carry out political *activities*. It will be seen that the former groups are denied charitable status, whereas, the latter, provided that their *purposes* are charitable, can achieve charitable status. Stated very broadly, in this way, the distinction seems rather straightforward. After having considered, briefly, the broad ban on political purposes, the rest of this paper is concerned with political activity. However, by drawing this distinction for the purposes of this paper, the reader should not be led into a false sense of security. It will be revealed that, in practice, this distinction is by no means easy to draw.

¹⁵ Income and Corporation Taxes Act 1988, ss.505 and 506.

¹⁶ Income and Corporation Taxes Act 1988, s.9(4).

¹⁷ Chargeable Gains Act 1992, ss.256(1) and 257.

¹⁸ Finance Act 1982, s.129.

¹⁹ Income and Corporation Taxes Act 1988, s.660(3).

²⁰ Finance Act 1990, s.25.

²¹ Income and Corporation Taxes Act 1988, s.202.

²² Inheritance Act 1984, s.23.

In relation to charity law, and in the discussion that follows, ‘politics’ is not confined to Party Politics. It includes purposes or activities which are directed at securing or opposing changes in the law or in government policy or decisions,²³ whether in this country or abroad.²⁴ Equally, according to the case law,²⁵ to promote the maintenance of existing law, or a particular line of political administration and policy, is also considered to be a political purpose or activity.

Political Purposes: The General Prohibition

The law is now clear that a charity must not have a political purpose. In *Bowman v Secular Society Ltd.* in 1917 Lord Parker boldly stated: ‘A trust for the attainment of political objects has always been invalid’.²⁶ It should be noted, however, that this proposition, suggesting that the rule is long-standing, is difficult to support, either on the basis of judicial authority²⁷ or in the light of the evidence of the unchallenged activism of prominent charities during the eighteenth and nineteenth century.²⁸ Mof

²³ *National Anti-Vivisection Society v IRC* [1948] AC 31.

²⁴ *McGovern v Att.-Gen.* [1982] Ch. 321. (The Amnesty International Case.)

²⁵ *Re Hopkinson* [1949] 1 All ER 346.

²⁶ *Bowman v Secular Society Ltd.* [1917] AC 406, at p.442.

²⁷ For example, Lord Simonds, who gave the leading judgment in *National Anti-Vivisection Society v IRC* [1948] AC 31 frankly acknowledged, at p.63 that there was ‘undoubtedly a paucity of judicial authority on this point’.

²⁸ Chesterman gives three examples: the Howard League for Penal Reform, the Anti-Slavery Society and the Lord’s Day Observance Society. (Chesterman, M, *Charities, Trusts and Social Welfare*, 1979, London: Weidenfield and Nicolson, at p.359.)

fat concludes,²⁹ therefore, that the political ‘disqualification’ is a rather newer phenomenon than is suggested by Lord Parker. This point has recently been acknowledged in an Australian decision³⁰ which goes as far as to suggest that a trust may survive in Australia as a charity, where the object is to introduce a new law consistent with the way that the law is tending.

As referred to briefly *supra*, the reason why political purposes are not held in law to be charitable in England is that charities must be constituted for the public benefit. As Lord Parker said in *Bowman v Secular Society Ltd.*:³¹

[A] trust for the attainment of political objects has always been held invalid, not because it is illegal, for every one is at liberty to advocate or promote by any lawful means a 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 public benefit, and therefore cannot say that a gift to secure the change is a charitable gift.

Slade J. went further in the case of *McGovern v Att.-Gen.*,³² that determined that Amnesty International³³ did not have charitable status, and said:³⁴

²⁹ Moffat, G, *Trusts Law. Text and Materials*, 1994, London: Butterworths, at p.683.

³⁰ *Public Trustee v Att.-Gen. for New South Wales* (1997) 42 NSWLR 600.

³¹ [1917] AC 406, at p.442.

³² [1982] Ch. 321

³³ Amnesty seeks the release of prisoners of conscience all over the world. It defends the rights of people regardless of their political beliefs, provided only that they have not used or advocated violence. It works for fair and prompt trials for all political prisoners. It campaigns to abolish the death penalty, torture, and other cruel, in-

[E]ven if the evidence suffices to enable [the court] to form a prima facie opinion that a change in the law is desirable, it must still decide the case on the principle that the law is right as it stands, since to do otherwise would usurp the functions of the legislature.

The judges have therefore made it clear that they will not determine whether a political purpose is or is not for the public benefit. Such questions are for political debate and parliamentary determination.³⁵ The judiciary has always felt the need to remain politically neutral. This may change somewhat when the European Convention on Human Rights³⁶ is incorporated into English law by way of the Human Rights Act.³⁷ Judges will then be called upon to determine whether individuals' fundamental human rights have been infringed by a public authority. This will force the judiciary to be concerned with decisions on the morality of the conduct and not simply its compliance with the bare letter of the law. This should change the judiciary's way of thinking to such an extent that judges may feel that they are best placed to consider whether the current legal position on any given subject is compatible with overriding human rights doctrine or whether changes to the law should be made (and are there

human and degrading treatment or punishment. It is concerned to end extra-judicial executions and 'disappearances'.

³⁴ [1982] Ch. 321, at p.337.

³⁵ For a criticism of this view, see Sheridan, L, 'Charity Versus Politics' [1973] *Anglo-American Law Review* 47, at p.58.

³⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms (1953) (Cmd. 8969).

³⁷ The Human Rights Bill is currently before parliament.

fore in the public benefit). In the words of the Lord Chancellor, the coming into force of the Human Rights Act will:³⁸

create a more explicitly moral approach to decisions and decision-making; will promote both a culture where positive rights and liberties become the focus and concern of legislators, administrators and judges alike; and a culture in judicial decision-making where there will be a greater concentration on substance rather than form.

We may reach the day in the UK where judges are prepared to say that a trust set up to promote a change in the law is in the interests of the public and therefore charitable.

Political Activity: What Can Be Done

The ban on political purposes does not mean that charities are precluded from all political activity. A difficult distinction is drawn between political activities and political purposes. Charities have a long and distinguished history of contributing to social reform. They make an invaluable contribution to issues central to the well being of the community. They do so by their practical work and by their example. They also do so by the informed contribution that they make to public debate on how issues are best addressed. The Charity Commission³⁹ has acknowledged:⁴⁰

³⁸ Lord Chancellor, *Tom Sargant Memorial Lecture* 16 December 1997.

³⁹ The Charity Commission is a government department accountable to parliament through the Home Office, which registers, supports and monitors charities in England and Wales.

⁴⁰ Charity Commission, *Political Activities and Campaigning by Charities*, 1997, Leaflet CC9, London: TSO, para.3.

The nation would be impoverished if charities were cut off entirely from public debate and the opportunity to inform decision-makers.

Increasingly, charities wish to engage in high profile debating and campaigning on issues of political interest. They can contribute to public discussion, as long as it is on a basis which reflects their experience and it is in line with their objects. Charities may undertake certain activities of a political nature as a means of achieving their charitable purposes. As is so often the case in charity law, there is no clear line of demarcation between what is and what is not allowed. The 'rules' are not covered by statute.⁴¹ Legislating upon the political activities of charities was discussed and dismissed in the 1989 White Paper on Charities,⁴² since legislation would:⁴³

have the disadvantage of laying down inflexible rules instead of allowing the law to develop in the light of particular cases which may present features which cannot now be foreseen.

The 'rules' that do exist then are gleaned from a study of the relevant case law. However, there is in fact very little case law on this subject, so that there is little direct guidance from the courts on the line to be drawn between activities by charities in a political context in pursuance of their objects which are permissible and those which encroach too far into the sphere of politics. Most of the decided cases dealing with charities and politics are concerned specifically with the objects (purposes) rather than

⁴¹ There is no mention of political activity in the Charities Act 1992 or Charities Act 1993.

⁴² Home Office, *Charities: A Framework for the Future* (Cm 694), 1989, London: HMSO, chapter 2.

⁴³ *Ibid.*, para.2.44.

the activities of a charity. General advice and guidance based on general principles is readily available,⁴⁴ but, the application of general principles to specific cases can lead to different conclusions. As Dunn put it, when assessing the 1995 version of the Charity Commission's guidelines on political activities and campaigning by charities:⁴⁵

..despite the cogency these guidelines have in an abstract context, when assessed in a practical environment their immediate boundaries become less obvious.

Consequently, charitable trustees may find themselves unwittingly overstepping the boundary when entering into the political arena.

It is required that any political activity undertaken by trustees must be in furtherance of and ancillary to the charity's stated objects and within its powers. To be ancillary, activities must serve and be subordinate to the charity's purposes. They cannot, therefore, be undertaken as an end in themselves and must not be allowed to dominate the activities by which the charity undertakes to carry out its charitable purposes directly. The trustees must be able to show that there is a reasonable expectation that the activities will further the purposes of the charity effectively and so benefit the beneficiaries. For example, charities can make political statements, in the sense of seeking to secure legislative changes, either when they are commenting on draft legislation within their field of operations, or when a change in the law would further their objectives. In this way, for example, the RSPCA,⁴⁶ at the same time as

⁴⁴ See Charity Commission, *Political Activities and Campaigning by Charities*, 1997, Leaflet CC9, London: TSO.

⁴⁵ Dunn, A, 'Charity Law - A Political Scandal?' [1996] 2 *Web JCLI*.

⁴⁶ The Royal Society for the Prevention of Cruelty to Animals.

undertaking its practical animal welfare work, can support a private members' bill⁴⁷ which would ban hunting with dogs without prejudicing its charitable status.⁴⁸

There has often been confusion as to what activities are permissible for a charity, and in some cases, there has been concern that charities have gone too far in engaging in political activities.

Getting It Wrong: Charities Overstepping The Boundary

In 1991, the Charity Commission published the results of its inquiry⁴⁹ into the activities of Oxfam relating to specific projects in South Africa⁵⁰ and Cambodia.⁵¹ The Commission found that Oxfam had exceeded the limitations placed upon it by charity law.⁵² Some of the evidence to the inquiry indicated that grants had been made to clearly non-charitable bodies, including partisan political groups. Other evidence indicated that Oxfam was taking sides in political controversies within foreign countries. The Charity Commission pointed out:⁵³

⁴⁷ Wild Mammals (Hunting with dogs) Bill, withdrawn 2 July 1998.

⁴⁸ *Third Sector* 22 January 1998.

⁴⁹ Charity Commission, *OXFAM: Report of an Inquiry*, 1991, London: HMSO. For further detail, see Burnell, P, 'Charity law and pressure politics in Britain: after the Oxfam inquiry' *Voluntas*, 1992, 3:3, 311.

⁵⁰ This included a campaign in favour of economic sanctions against South Africa.

⁵¹ This included a campaign to respond to public disquiet over the Pol Pot regime in Cambodia.

⁵² The publication of the inquiry led to the revision of the guidelines on political activities and campaigning published by the Charity Commission.

⁵³ Charity Commission, *OXFAM: Report of an Inquiry*, 1991, London: HMSO, p.1.

the trustees do not appear to differentiate between stating a possible solution to a problem in reasoned fashion and campaigning to have that solution adopted.

The activity could not be regarded as ancillary. Oxfam trustees were told that the unacceptable political activities must cease forthwith. It was accepted that the trustees had acted in good faith and the Commission did not bring proceedings in breach of trust for reimbursement of funds which had been misapplied. However, it was stated that the Commission would not hesitate to do so in the future.

Whether a charity can properly engage in political activity will depend upon the nature of its purposes, its powers and the way in which the activity contributes to public debate. Where charities wish to raise issues in a way which will inform public debate and influence decisions of public bodies, great care must be taken to ensure that the issues concerned are relevant to their purposes. Charities cannot therefore engage in public campaigning to influence public opinion on political issues unrelated to their own charitable objects. For example, in *Baldry v Feintuck*⁵⁴ support by a students' union (a charity) for a campaign of protest against the government's policy of ending free milk to school children was held to be a non-charitable application of funds. The students' union was an educational charity whose purposes were wholly charitable and whose funds could be devoted to charitable purposes only.⁵⁵

⁵⁴ [1972] 1 WLR 552.

⁵⁵ See also 'Attorney-General's Guidance on Expenditure by Student Unions' reproduced in Charity Commission, *Annual Report 1983, 1984*, London: HMSO, Appendix A. See also Warburton, J, 'Students Unions, Charities and Politics' (1986) 1 *Trust Law and Practice* 47.

Charitable educational purposes undoubtedly include discussion of political issues. As Scott J. said in *Att.-Gen. v Ross*:⁵⁶

I can see nothing the matter with an educational charity, in the furtherance of its educational purposes, encouraging students to develop their political awareness or to acquire knowledge of, and to debate, and to form views on, political issues.

There ought to be a clear distinction between the discussion of political matters, or the acquisition of information which may have a political content, and a campaign on an unrelated political issue. However, there are some cases in which it is not altogether easy to distinguish between political discussion carried on for educational purposes and political campaigning. The *Amnesty International* case⁵⁷ provides illustration of how difficult that distinction may be. Campaigning against disregard of human rights by foreign governments is not charitable, but research into the observance of human rights may well be charitable. This is the case, even though an incidental effect of the publication of the research is to provide material for people campaigning against human rights abuses. This case shows that the law will only permit charitable money to be spent on what might be regarded as political persuasion if that is a mere incidental effect of expenditure for proper charitable educational purposes.

More recently, in *Webb v O'Doherty and Others*,⁵⁸ support by Anglia Students' Union for an action programme against the Gulf War was held by Hoffmann J. to be a

⁵⁶ [1986] 1 WLR 252, at p.263. It was decided in this case that the students' union of the North London Polytechnic enjoyed charitable status.

⁵⁷ *McGovern v Att.-Gen.* [1982] Ch. 321.

⁵⁸ [1991] 3 Admin LR 731.

non-charitable application of funds. Far from that being an educational purpose with incidental political effects, Hoffmann J. considered that any educational effect which the action programme may have had was simply incidental to the main purpose of attempting to influence public opinion. An injunction was therefore granted to restrain the students' union from giving funds and support to these political purposes.

Providing The Answers? The Charity Commission Guidelines

Following the Oxfam inquiry, the Charity Commission issued revised guidelines about the extent to which charities may involve themselves in political activities and campaigning. It should be noted at the outset that it remains the case that after a close reading of the guidelines, with their sole focus being on political *activity*, the practical dividing line between a political purpose and a political activity ancillary to a charitable purpose, remains largely unclear.

The latest version of these guidelines was produced in February 1997.⁵⁹ The guidelines cover a range of situations concerned with political activity, providing charities with advice, *inter alia*, upon influencing public opinion; supporting, opposing or promoting legislation; commenting on public issues; providing information; seeking support for government grants; involvement in demonstrations and direct action, and concluding with an examination of penalties. The stated aims of the guidelines are threefold:⁶⁰

⁵⁹ Charity Commission, *Political Activities and Campaigning by Charities*, 1997, Leaflet CC9, London: TSO. See also, Charity Commission, *Political Activities and Campaigning by Local Community Charities*, 1997, Leaflet CC9(a), London: TSO.

⁶⁰ Charity Commission, *Political Activities and Campaigning by Charities*, 1997, Leaflet CC9, London: TSO, Preface.

- 1 - to assist trustees to ensure that any political activities that they undertake are within the law;
- 2 - to indicate how the Commission would respond to allegations or evidence of undue political activities by a charity; and,
- 3 - to afford some reassurance to trustees who follow the guidance that they are acting properly.

The Commission acknowledges that, provided that it is in pursuance of its primary charitable purpose, a charity may properly enter into dialogue with government. Charities may publish the advice or view that they express to ministers. Charities may also seek to inform and educate the public on particular issues which are relevant to them and their purposes, including information about their experience of the needs in their field of activities and the solutions that they advocate. However, they must do so on the basis of a well founded and reasoned case and their views must be expressed with a proper sense of proportion. The manner and content of any advocacy of or opposition to legislative or policy change must be appropriate to a charitable non-political organisation.

Examples Of Unacceptable Political Activity

The Charity Commission has given examples of the kinds of activities in which, in its view, charities should *not* engage. These range from most blatant Party Political activity to much more innocuous activity which can only be considered political in the broadest sense of the word and include:

1 - A charity must not base any attempt to influence public opinion or to put pressure on the government, whether directly or indirectly through supporters or members of the public, to legislate or adopt a particular policy on data which it knows (or ought to know) is inaccurate or on a distorted selection of data in support of a preconceived position;⁶¹

2 - A charity must not participate in Party Political demonstrations;⁶²

3 - A charity must not claim evidence of public support for its position on a political issue without adequate justification;⁶³

4 - Except where the nature of the medium being employed makes it impracticable to set out the basis of the charity's position, a charity must not seek to influence government or public opinion on the basis of material which is merely emotive;⁶⁴

5 - A charity must not invite its supporters, or the public, to take action in support of its position without providing them with sufficient information to enable them to decide whether to give their support and to take the action requested. In particular, a charity must not invite its supporters or the public to write to their Members of Parliament or the government without provid

⁶¹ *Ibid.*, para.28.

⁶² *Ibid.*, para.29.

⁶³ *Ibid.*, para.30.

⁶⁴ *Ibid.*, para.31.

ing them with sufficient information to enable them to advance a reasoned argument in favour of the charity's position;⁶⁵

6 - A charity whose stated purposes include the advancement of education must not overstep the boundary between education and propaganda in promoting that purpose. The distinction is between providing balanced information designed to enable people to make up their own mind and providing one-sided information designed to promote a particular point of view;⁶⁶

7 - A charity must not provide supporters or members of the public with material specifically designed to underpin a Party Political campaign or for or against a government or particular Members of Parliament.⁶⁷

8 - A charity must not issue material which supports or opposes a particular political party or the government.⁶⁸

9 - A charity must not undertake research for another body where it is clear that body intends to use the research for Party Political or propagandist purposes.⁶⁹

10 - A charity must not support a political party;⁷⁰ and,

⁶⁵ *Ibid.*, para.32.

⁶⁶ *Ibid.*, para.33.

⁶⁷ *Ibid.*, para.46.

⁶⁸ *Ibid.*, para.47.

⁶⁹ *Ibid.*, para.54.

⁷⁰ *Ibid.*, para.41. 'Political party' includes any local, national or European political grouping (para.8).

11 - A charity must not seek to persuade members of the public to vote for or against a candidate or for or against a political party.⁷¹

Drawing The Line? Coalitions and Affiliations

It has already been noted that the guidelines, while helpful in the abstract, are often difficult to put into practice. A case in point is that of charities affiliating to other bodies by way of coalitions.

A separate aspect of the decision in *Webb*⁷² was whether Anglia Students' Union, as part of its action programme against the Gulf War, should affiliate to the National Student Committee to Stop the War in the Gulf and the Cambridge Committee to Stop the War in the Gulf. The fact that a body to which a charity affiliates is not itself formed for charitable purposes is not necessarily an objection to the affiliation.⁷³ It is, however, essential that the purpose of the affiliation should be to benefit the charitable body in pursuit of its charitable objects. What is not permitted is to affiliate to a wholly non-charitable organisation simply as a way of furthering a non-charitable purpose or of channelling funds into non-charitable activities. In *Webb*, therefore, affiliation to national bodies carrying out a similar action programme against the Gulf War was held to be unlawful.

⁷¹ *Ibid.*, para.50.

⁷² *Supra.*

⁷³ See Scott J. in *Att.-Gen. v Ross* [1986] 1 WLR 252, at p.262.

The Charity Commission also recognises that a charity may affiliate to a campaigning alliance, even if the alliance includes non-charitable organisations. However, certain conditions are laid down:⁷⁴

1 - the charity must carefully consider the alliance's activities, and the implications of the charity's being associated with them, and should only affiliate if affiliation can reasonably be expected to further the charity's own charitable purposes; and,

2 - since a charity may not undertake through an alliance activities which it would be improper for it to undertake directly, if the alliance engages in such activities the charity must dissociate itself from them and take reasonable steps to ensure that its name, and any funds it has contributed, are not used to support them.

During the 1997 UK general election campaign, the Real World Coalition was set up, made up of both leading pressure groups and charities.⁷⁵ Well known national charities such as Christian Aid, Oxfam, Save the Children and the World Wide Fund for Nature agreed to join an unprecedented alliance with non-charitable campaign groups such as Friends of the Earth, Transport 2000, New Economics Foundation and Charter 88,⁷⁶ with the aims of mobilising public concern about green and social issues, and of getting politicians to take them seriously at the forthcoming election. Their

⁷⁴ Charity Commission, *Political Activities and Campaigning by Charities*, 1997, Leaflet CC9, London: TSO, para.42.

⁷⁵ See, for example, *The Independent* 11 April 1997.

⁷⁶ This group campaigns for the incorporation of the European Convention on Human Rights into domestic law.

concern was that the main political parties were ignoring issues concerning morality, social justice and the environment, which they considered to be important to voters. The Real World Coalition's 'Action Programme for Government' advocated: higher spending on housing, community projects and overseas aid; a citizens' Bill of Rights; and, greener economic, energy and transport policies. The Real World Coalition analysed the manifestos of the three main political parties to see how they accorded with these aims. Only one party - the Liberal Democrats - was exempted from the Real World Coalition's criticism. Yet, because there were charitable groups as members of the Real World Coalition, they were not allowed to go further and to ask supporters to vote for the candidates most supportive of their agenda. Nevertheless, according to media reports⁷⁷ charitable members of the Real World Coalition were 'warned off' in a letter sent from the then Prime Minister, John Major, who accused the charities of signing up to 'a largely political statement of objectives and policy proposals' by joining the Real World Coalition. Save the Children, Oxfam and other prominent Real World Coalition members were asked by the Charity Commission to explain how their involvement with the group conformed with charity law guidelines. The Charity Commission then declared itself satisfied that the Real World Coalition's members had not (as yet) overstepped the boundaries.

For most charity trustees the rules should be reasonably clear. But the trend towards charities joining coalition groups such as the Real World Coalition may blur the boundaries. Such coalitions can support so broad a platform of issues that they easily cross over from those specific to the member charities to a more overtly politi

⁷⁷ *The Independent* 28 November 1996.

cal agenda. Charity members justify their actions by saying that they endorse only those parts of the coalition's programme that further their aims. In order to comply with the restrictions on political activities by charities, such coalitions can proceed provided that each charity monitors what is being said on its behalf, and that joint statements do not go beyond the guidelines.

John Major, in highlighting the charitable status of many members, identified both a strength and a weakness of the Real World Coalition. On the one hand, people trust charities in a way that they do not trust politicians. This should have meant that voters would have been well disposed to the Real World Coalition's agenda for reform. However, on the other hand, in order to get a decent public hearing, the Real World Coalition needed to ensure a high media profile. As many of its members are charities, funded by supporters' donations, the coalition did not have the financial freedom to spend huge sums of money on advertising. Without this, the Real World Coalition was left to rely for publicity on the media, which virtually ignored its existence.

Avoiding The Problem? Separate Organisations

Following a regime such as that in existence in England, where there is a presumed incompatibility between a charitable and a political purpose, may lead to false separations within organisations, whereby charitable and political activities are hived off into separate bodies. A number of activists groups, wishing to enjoy, at least to some extent, the benefits of charitable status have divided themselves into two organisations having separate legal structures. One will be established with charitable pur

poses⁷⁸ and the other body - a pressure group - will pursue overtly political activities. One example of this is Amnesty International (political) and its related body Prisoners of Conscience Fund (charitable). These arrangements achieve the broad aim of assimilating charitable activity, with its attendant privileges, to some form of political activity. But, even this 'partial solution' has its problems. There are practical disadvantages, particularly as regards keeping separate accounts, maintaining separate pay-rolls etc. and, more fundamentally, the Charity Commission is not always tolerant of these 'unholy alliances' with their artificial separations.

Charities and Their Connection with Political Parties

Sometimes a solution advocated by a charity will coincide with that of a political party. For example, before the 1997 UK general election, the charity Age Concern put forward proposals to end age discrimination, which were broadly in line with Labour Party thinking on the issue.⁷⁹ The charity can advocate such a policy even if advocated by a political party, but it must be made clear that the charity is not connected with the political party and that its view is independent. This is ever more difficult as Party Politics increasingly encroaches into almost every area of life - often into areas that were previously the sole concern of charities and other voluntary bodies. There is a fine line between supporting a specific policy or lobbying for new legislation that will further a charity's stated aims and endorsing or campaigning for a political party.

⁷⁸ Usually in the field of advancement of education or relief of poverty.

⁷⁹ *The Observer* 27 April 1997, discussed *post*.

Matters can become even more complicated when the growing number of single issue or focused political parties, like the Green Party, field electoral candidates, some of whom are active (or even charity trustees) in charities supporting similar causes. An example of this emerged in the Pro-Life Alliance Party, founded in 1996. There are close links between the party and the anti-abortion charitable group Life, which decided, at its annual meeting in November 1996, to support anti-abortion candidates in the 1997 UK general election in constituencies where no other candidate was prepared to speak out against abortion.⁸⁰ Due to the restrictions imposed by charity law, the charity was unable to use its charitable funds for these political ends, and therefore the separate party was set up. During the general election campaign, the Charity Commission sought clarification from Professor Jack Scarisbrick, chairman of the charity Life, about its alleged support of the Pro-Life Alliance Party, which ultimately contested 51 seats on an anti-abortion platform⁸¹ - enough to make it eligible for a televised Party Political election broadcast.⁸² There was clearly a danger here that charitable funds were being used for political ends. However, Professor Scarisbrick denied fund-raising for or any other formal links with the Pro-Life Alliance

⁸⁰ *The New Statesman* 20 December 1996.

⁸¹ The party's manifesto sets out the case *inter alia* to outlaw all abortion, except when brought about indirectly by treatment necessary to save the mother's life.

⁸² For many years the television broadcasters have allocated one five minute party election broadcast to every party contesting at least 50 seats at a general election. Fifty deposits cost £25,000 and secure a five minute broadcast on five television channels - at current advertising rates on the three commercial channels alone that would cost several million pounds. This practice may be subject to change in the future: In January 1998, the BBC and ITV, with the support of Channel 4, Channel 5 and Independent Radio, issued a Consultation paper on the reform of party political broadcasting. (BBC, *Consultation On New Plans For Party Political Broadcasting*, 1998, London: BBC)

Party. He said, however, ‘as individuals, Life people may give it support and even stand as candidates.’⁸³ The director of the Pro-Life Alliance (whose mother runs the London office of the charitable body, Life) had earlier stated that ‘officially Life is not involved.’⁸⁴

The existence of the Pro-Life Alliance Party did give a higher profile to the issue of abortion and the pro-life debate during the general election campaign. The controversy surrounding the censorship of its general election broadcast helped to publicise the cause. In what might be cynically regarded as a media stunt, the Pro-Life Alliance Party planned to use its general election broadcast as an opportunity to show footage of an aborted foetus.⁸⁵ The broadcast was refused by the BBC and the three other main television channels on the grounds that it offended decency and good taste. The Pro-life Alliance Party challenged the decision by the BBC to remove a 2 minute 13 second sequence from the broadcast in the High Court. The Pro-Life Alliance Party lost its challenge,⁸⁶ and its later appeal⁸⁷ for a judicial review of the BBC’s decision. In a strange and somewhat ironic union, the Pro-Life Alliance Party was assisted initially by Liberty, a civil rights group, in its attempt to overturn the television

⁸³ *The Observer* 2 February 1997.

⁸⁴ *The New Statesman* 20 December 1996.

⁸⁵ It appeared that the Pro-Life Alliance Party was borrowing its tactics from the more politically aggressive anti-abortion campaign in America.

⁸⁶ *R v British Broadcasting Corporation, ex p. Pro-Life Alliance Party* Queens Bench Division (Crown Office List) CO/97, 24 March 1997.

⁸⁷ *R v British Broadcasting Corporation, ex p. Bruno Febo Quintavalle (ppc for the Pro-Life Alliance)* Court of Appeal (Civil Division), 20 October 1997.

companies' decision. Liberty acknowledged⁸⁸ that, whilst supporting a woman's right to choose, it fundamentally disagreed with the party's aims and that the two organisations were 'political enemies'. However, Liberty felt that this was an important case to take up on the basis of free speech.

Nevertheless, the Pro-Life Alliance Party was not able to make abortion a decisive factor in the general election. Pro-life candidates performed uniformly poorly in the polls. Research by the National Secular Society⁸⁹ found that candidates who stood on a specifically pro-life ticket received a total of 17,600 votes throughout the 51 seats in which they stood. They came last in 18 seats, and when they contested seats with the Monster Raving Loony Party, the latter prevailed each time. In no constituency did the Pro-Life Alliance Party hold the balance of votes or even threaten the majority of the elected candidate. Neither did it retain any deposits of £500 which are returned to those candidates polling over 5% of the total votes cast.

The unfortunate experience of the charity, Life, and its connection with the Pro-Life Alliance Party may suggest that going down the separate single issue political party route is *not* the way forward for charities looking for an escape from their 'charitable status shackles'. Nevertheless, despite the Pro-Life Alliance Party's trouncing at the ballot, it is suggested that single issues pressure groups will become increasingly vociferous in British politics. The proliferation of minor parties, campaigning on single issues, wooing voters disillusioned by mainstream politics, is evi

⁸⁸ *The Independent* 23 April 1997.

⁸⁹ *The Independent* 14 May 1997.

dence of this.⁹⁰ Adopting similar methods to the Pro-Life Alliance Party, they use the electoral system to gain publicity and exert leverage on the main political parties. In this way, the issues that they want on the agenda will be discussed, promoting debate and bringing democratic pressure to bear. In many cases, as with the abortion question, the kind of moral issues that these groups consider to be of crucial importance, are the sort of questions which are subject to ‘conscience votes’ by Members of Parliament from the main political parties, and are not, therefore, the subject of party policy. These are often the very same issues about which charities have concerns. It will be interesting to follow this development and to see how the connections between charitable bodies and single issue political parties can be exploited to their mutual advantage in the future.

A Possible New Solution? Human Rights and Freedom of Speech

The ability to participate in free political debate at election time is an essential ingredient of the democratic process. Indeed, an election campaign might seem the ideal opportunity for charities to speak out on major social issues. Yet, it has been noted that the Charity Commission clearly states that charities must neither support a political party, nor seek to persuade members of the public to vote for or against a candidate or for or against a political party. It might be asked, why, at the point

⁹⁰ In the 1997 UK general election, a record 3,717 candidates stood for the 659 seats in England, Wales, Scotland and Northern Ireland, compared to 2,948 at the previous general election in 1992. Fewer than 2,000 came from the three main political parties. At least 15 fringe parties contested more than one seat. (*The Guardian* 18 April 1997.)

when the public are most engaged by political issues, should there be such tight limits on freedom of expression?

However, it is not just charities that are ‘muzzled’ at election time. A recent decision of the European Court of Human Rights,⁹¹ concerned with the general restriction on campaigning during election times,⁹² may ultimately help charities as well. It certainly brings to the fore the human rights angle of the rule that limits charities and political activities.

Mrs Bowman, a leading anti-abortion campaigner and executive director of the non-charitable Society for the Protection of the Unborn Child⁹³ (SPUC), spent £10,000 distributing 25,000 leaflets in Halifax, West Yorkshire, prior to the 1992 UK general election, setting out for voters the position of the three main candidates on abortion. She was prosecuted under section 75 of the Representation of the People Act 1983, by which it was an offence for an unauthorised person to spend in excess of £5⁹⁴ on issuing publications with the aim of promoting or procuring the election of a candidate during the six weeks prior to an election. The case was subsequently dropped as the summons had been issued outside the twelve month time limit.⁹⁵ Mrs

⁹¹ *Bowman v UK* (141/1996/762/959), 19 February 1998.

⁹² Representation of the People Act 1983, s.75.

⁹³ An organisation of approximately 50,000 members which is opposed to abortion and human embryo experimentation and seeks changes to the present UK law which permits abortion up to 22 weeks and embryo experimentation up to 14 days.

⁹⁴ At October 1998 rates, this amounts to US \$8.52.

⁹⁵ Representation of the People Act 1983, s176.

Bowman had, however, been convicted and fined for similar offences during the 1979 Ilford North by-election and the European elections in 1982.

She chose to pursue her case in Europe to establish the principle that campaigners should not be restricted in this way at election time. She applied to the European Court of Human Rights in Strasbourg, contending that her prosecution under the Representation of the People Act 1983 constituted an unjustifiable interference with her freedom of expression, contrary to article 10 of the European Convention on Human Rights 1950.⁹⁶

The Government argued that the law was designed to stop one candidate enjoying an unfair financial advantage over another. Rules restricting the expenditure of individual candidates would be made pointless, British officials maintained, if third parties were allowed to campaign and spend money on their behalf.

The initial application to the European Commission on Human Rights was brought jointly by Mrs Bowman and SPUC. Both applicants complained that the prosecution brought against Mrs Bowman violated their rights to freedom of expression under article 10 of the Convention. On 4 December 1995 the Commission declared the application admissible insofar as it concerned the complaint by Mrs Bow

⁹⁶ Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953) (Cmd. 8969) reads ‘1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ... 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.’

man under article 10. However, finding that SPUC could not itself claim to be a victim by virtue of Mrs Bowman's prosecution, it declared the remainder of the application inadmissible.⁹⁷ In its report of 12 September 1996,⁹⁸ the Commission expressed the view that there had been a violation of article 10. The European Court of Human Rights, agreeing with the Commission then held,⁹⁹ by fourteen votes to six, that there had been a violation of article 10.¹⁰⁰ The limitations placed on issuing publications during the election period by section 75 did constitute a restriction on the freedom of expression, albeit not a direct one. It was acknowledged that the restriction, prescribed by law in terms of the 1983 Act, pursued the legitimate aim of protecting the rights of others, both candidates and the electorate, by seeking to secure equality between candidates. Freedom of expression and the right to free elections were, together, the foundation of a democratic system and, while they often reinforced one another, they could come into conflict, in which case it might be necessary to limit the freedom of expression in the period prior to an election. However, in the instant case, the £5 spending restriction in section 75 acted, in practical terms, as an absolute bar to Mrs Bowman promulgating information designed to influence voters in favour of an anti-abortion candidate at the only time which would have served her purpose, and, given the lack of restrictions placed on advertising by political parties, that was not a proportionate response to the need to secure equality between candidates. Un

⁹⁷ 21 EHRR CD 79.

⁹⁸ 22 EHRR CD 13.

⁹⁹ *Bowman v UK* (141/1996/762/959), 19 February 1998.

¹⁰⁰ This was the first judgment to go against the UK since the Labour Government came into power in May 1997.

like for charitable groups, the limit on political campaign activities applied only during the six weeks before a general election, allowing Mrs Bowman to campaign freely at any other time. However this would not, in the court's view, have served her purpose in publishing the leaflets which was, at the very least, to inform the people of Halifax about the three candidates' voting records and attitudes on abortion, during the critical period when their minds were focused on their choice of representative.

As a result, the Government, which is obliged to comply with the judgment, is now faced with having either to repeal the section regulating the promotion of candidates during elections or, in what is a more likely course, to increase substantially the spending limit of £5 to comply with its obligations under the Convention. The ruling, in theory, will allow single issue pressure groups and third parties to spend heavily for or against a candidate without the money counting against the latter's tight spending limits. The government has asked Lord Neill's¹⁰¹ Committee on Standards in Public Life to examine the issue of electoral funding as part of its wider review of the funding of political parties.¹⁰² The ruling may open up the way for American-style election battles with the views of individual candidates on single issues such as abortion, blood sports and gay rights being sought and publicised. Previously, under British electoral law, such campaigning has been forbidden. Once a general election is called, groups such as CND, Greenpeace or the SPUC have had to cease hostilities. As a result, US-type electioneering, where candidates are put through the mill on all manner of issues, has passed Britain by.

¹⁰¹ As successor to Lord Nolan.

¹⁰² The Committee was due to report on this matter in 'Summer 1998'.

Relying on the decision in *Bowman*, it may be that in the future the Human Rights Act 1998¹⁰³ will be invoked by charity trustees to challenge the restrictions to their freedom of speech, imposed not by specific rules on elections, but by general rules of charity law. The current regime only leads to confusion for charities.

Different charities interpret the current electioneering laws, together with the general restrictions on charities and political activities, in different ways. The reactions of three different charities during the 1997 UK general election campaign period provide evidence of the variety of experiences.¹⁰⁴ First, Shelter, frustrated at the fact that homelessness was not on the agenda in the 1997 election, decided to put a halt to political activity during the election. Secondly, NCH Action for Children, which launched its House Our Youth 2000 project just before the election was called, distributed posters for people to put in their windows, saying: ‘My policy is to support House Our Youth 2000; What’s yours?’ The charity considered that because the project was launched before the election was called, the posters were part of a project, and not against the law. Thirdly, reflecting a middle ground, Age Concern decided that unless its views were sought by journalists during the election campaign, it would stay quiet. Before the 1997 general election, a spokesperson for Age Concern commented:¹⁰⁵

¹⁰³ This will incorporate the European Convention on Human Rights into domestic law.

¹⁰⁴ *The Observer* 27 April 1997.

¹⁰⁵ *Ibid.*

If we are asked for a comment on a Labour Party candidate's support for an end to age discrimination, we would have to say something vague, like: 'We are pleased to get support for these proposals which we put forward.'

The decision in *Bowman* will certainly lead to a change to the general rules on electioneering by individuals. Whether the *Bowman* argument can be taken further to help charities in their specific pursuit of the unfettered right to participate in the wider political process remains to be seen.

Taking The Rap: Consequences Of Engaging In Improper Political Activities

Charities have long enjoyed great respect and much affection in the UK. Giving funds to charities¹⁰⁶ and volunteering for charities¹⁰⁷ are both a vital part of British culture and are relied on heavily by the charity world. However, overstepping the political line could be regarded by the public as amounting to the use of a charity as a vehicle for the personal views of its trustees. The pursuance of a political agenda may cause loss of support or respect for the charity and may damage the good name of charities generally, by exploiting the trust that the public have in charities. The Char

¹⁰⁶ The voluntary income for the top 500 UK charities grew by 8% in real terms to £2.3 billion, bringing total income to £4.4 billion in 1996/97. (Pharoah, C, and Smeardon, M, (ed.s) *Dimensions of the Voluntary Sector. Key facts, figures, analysis and trends*, 1998, London: Charities Aid Foundation.)

¹⁰⁷ The 1997 national survey of volunteering found that 48% of the UK population volunteered as a group at least once in the previous twelve months. This represents a total number of 21.8 million volunteers in the UK, giving a total of 88 million hours per week. Davis Smith, J, *The 1997 National Survey of Volunteering*, 1998, London: National Centre for Volunteering.

ity Commission, as part of its current process of Review of the Register,¹⁰⁸ has recently commissioned MORI to carry out research on its behalf into public attitudes to charity generally.¹⁰⁹ MORI sought both quantitative and qualitative opinions on a number of aspects underlying charity law across a spectrum of ages, from school children to the retired, and across social classes. The Charity Commission report¹¹⁰ that this research showed that the absence of Party Politics was particularly important to the public; they do not want charities to be seen as partisan. Charitable donors who find that their donations are being used to fund actions that are adverse to their own political principles may stop making contributions.¹¹¹ This may be true in relation to Party Politics, but in relation to the broader aspects of political activity, with which much of this paper has been concerned, it is interesting to note that evidence to support the opposite conclusion was presented by Oxfam in the Charity Commission inquiry referred to *supra*, when the trustees suggested that their campaigning activities actually generated support for the charity's work, assisted fund-raising and helped to recruit dedicated staff and volunteers.¹¹² This suggests that donors are more likely to

¹⁰⁸ See, in general, Charity Commission, *Framework for the Review of the Register of Charities*, 1998, London, TSO.

¹⁰⁹ *Ibid.*, Annex E.

¹¹⁰ *Ibid.*, Annex A.

¹¹¹ This was one objection that was raised in the 1989 White Paper. See Home, Office, *Charities: A Framework for the Future* (Cm 694), 1989, London: HMSO, para.2.41.

¹¹² Charity Commission, *OXFAM: Report of an Inquiry*, 1991, London: HMSO, p.17.

support an organisation that they believe is doing something to rectify the problem with which it is concerned.¹¹³

More technically, the pursuit of improper political activities by charities is a misuse of charitable funds and will constitute a breach of trust by the trustees. It may give rise to personal liability on the part of the trustees to repay to the charity the money spent on those activities. Improper political activity on the part of charities can be restrained by order of the court¹¹⁴ or by the Charity Commission.¹¹⁵ It may also lead to the withdrawal of tax relief¹¹⁶ on the monies spent on those activities.

Political activity by the trustees of a charity would not normally affect its charitable status. It would not therefore be a reason for removing it from the register of charities¹¹⁷ as the issue would concern the propriety of the trustees' management of the charity, rather than the nature of the charity's purposes. However, Dunn¹¹⁸ points

¹¹³ The homeless charity, Shelter, has also recognised the partnership between campaigning and effective fund-raising. See, Trampleasure, J, and Hunter, T, 'Fund-raising and campaigning: Working towards greater effectiveness' *Journal of Nonprofit and Voluntary Sector Marketing*, 2:2, 1997, 163.

¹¹⁴ See, for example, the case of *Baldry v Feintuck* [1972] 1 WLR 552, discussed *supra*.

¹¹⁵ See, for example, the Charity Commission's powers to act for the protection of charities under Charities Act 1993, s.18.

¹¹⁶ *Supra*.

¹¹⁷ Under Charities Act 1993, s.3 most charities (unless exempt or excepted) must be registered on the register of charities.

¹¹⁸ Dunn, A, 'Charity Law - A Political Scandal?' [1996] 2 *Web JCLI*.

out that any charity ‘seeking to exploit this detail should beware of the ultimate consequences.’ In the words of the Charity Commission:¹¹⁹

If ... the trustees could argue successfully that the express purposes of the institution were wide enough to cover impermissible political activities, then the question of whether the organisation was established for exclusively charitable purposes would arise and could lead to its removal from the Register of Charities.¹²⁰

Conclusion

It is important to recognise the meaningful contribution that charities can make through contribution to public debate and political process. Yet, it has been seen that their ‘political activities’ are restricted. This is because ‘political’ is defined in wider terms than supporting new Labour or saying ‘vote for Tony Blair’. ‘Political activity’ includes attempting to influence the framing of law or to get the law changed; it includes trying to persuade the government of the day to do something or not do something. All charities can undertake such political activities if those activities can reasonably be expected to further their legal aims. Any such campaigning must be based on a well founded and reasoned case and expressed in a responsible way. A major limitation is that such campaigning must not be in general support of the poli

¹¹⁹ Charity Commission, *Political Activities and Campaigning by Charities*, 1997, Leaflet CC9, London: TSO, para.75.

¹²⁰ A body with a political purpose cannot be a charitable body. See *Bowman v Secular Society Ltd.* [1917] AC 406, discussed *supra*. Under Charities Act 1993, s.3(4) a body which no longer appears to the Commissioners to be a charity shall be removed from the register.

cies of any particular political party. By the very nature of their knowledge and social concern, some charities are well placed to play a part in public debate on important issues of the day and to make an important contribution to the development of public policy, whether this is connected to a specific political viewpoint or not. Politics often transcends charitable activity.

An examination in this paper of some of the grey areas provides evidence to support the view that there is still clearly a need for clarification of the application of charity law to political campaign activities. Even the Charity Commission admits:¹²¹

the dividing line between proper debate in the public arena and improper political activity is a difficult one to judge.

Some charities are increasingly learning to become politically sophisticated. They are ‘small p’ politically active and politically effective while remaining ‘large P’ politically neutral. For other charities, case law is considered so vague, as to what is or is not acceptable conduct by charities, that a climate of uncertainty exists. On the one hand, some charities brazenly push their luck and hope to get away with it. For example, due to the fact that they are seen to be going outside of their objects (and therefore their activity is not regarded as ‘ancillary’) the RSPCA’s links with the animal rights movement has caused the Charity Commission some concern.¹²² On the

¹²¹ Charity Commission, *Political Activities and Campaigning by Charities*, 1997, Leaflet CC9, London: TSO, para.10.

¹²² See, for example, *Independent on Sunday* 8 February 1998, where it was reported that the Charity Commission is concerned that some of the positions taken by the RSPCA placed greater emphasis on the fate of animals than humans. This conflicted with the group’s charitable status which requires the charity to seek the improvement of *mankind* through the prevention of cruelty to animals.

other hand, the threat of penalties for possible unlawful activity tends to stifle other charities, who err on the side of caution.¹²³ As Sprince concludes:

That future litigation might enable more precise parameters to be drawn will be small comfort to those trustees then facing sanction, rebuke and cost in the cases in question and those now seeking some certainty in order to determine what is permissible.¹²⁴

¹²³ See, for example, the experience of Age Concern during the 1997 UK general election, considered *supra*.

¹²⁴ Sprince, A, 'Political Activity by Charitable Organisations: An English Model with More to Learn than to Teach?' [1997] *Trust Law International* 35, at p.39.