

## **Donor Intent and Avoiding the Dead Hand – A UK Perspective**

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### **1 Introduction**

1.1 Donors play as vital a role in British philanthropy in the 21<sup>st</sup> century as in 1601. Indeed some argue that the friendly embrace of the State, so marked a development of recent decades, gives philanthropic donors a new importance in preserving the independence of the voluntary sector in Britain. Yet the theme of donor intent and the ‘dead hand’ is muted in current debate and reform. The emphasis is more on the efficiency of philanthropy – convincing would-be donors that charity remains an effective basis for achieving philanthropic goals. Charity law and regulation in Britain thus approaches the historic inheritance of donor intent and the ‘dead hand’ from a distinctive, perhaps novel, perspective.

1.2 Indeed neither ‘donor’ nor ‘dead hand’ feature in the indexes of either of the textbooks on charity law which Hubert Picarda or Peter Luxton with Judith Hill have produced – though Picarda does include the historic terms of settlor and Mortmain. This reflects the fact that charity continues to be the dominant legal and institutional basis for philanthropy in the three jurisdictions of the United Kingdom of Great Britain and Northern Ireland (England and Wales, on which this paper concentrates, Scotland and Northern Ireland). Despite stirrings among reformers that the time had come to replace charity with a modern code of not-for-profit law, the Charities Act 2006 bears testimony to the continuing vitality of, or at least commitment to, charity, both colloquial, among ordinary givers, and institutionally, among lawyers and in the voluntary sector. Indeed, the fact that the British continue to respond to charitable appeals and retain confidence in charity is one of the basic motive forces for the reform – modernization – of charity, institutionally at the Charity Commission and legally through the Act. And the fact that this ‘modernization’ explicitly preserves charity law and its mechanisms, modernizing the language more than the substance, reinforces this observation. So far as donor intent and

the ‘dead hand’ are concerned the Act develops the cy pres mechanism, introducing yet more flexibility in adapting intention to changing circumstances in order to avoid the ‘dead hand’. This paper will inevitably focus on cy pres and its development.

## **2 Charity Law and Donor Intent**

2.1 The concept of charitable trust and trusteeship remains at the heart of English charity law and practice, despite the transformation of voluntary and philanthropic action and organization in recent years. Paradoxically, the development of charity registration and the role of the Charity Commission, introduced by the Charities Act 1960 and greatly extended over the last dozen years, has imposed elements of trust law on the more ‘modern’ forms of charity organization, such as charitable companies alongside charitable trusts to which the Commission’s jurisdiction had previously been confined. Charitable trusts, in the literal sense, continue to be established – a recent example (with some unhappy consequences arising from litigation in the USA!) is the Diana, Princess of Wales Memorial Trust – though most charity lawyers advise clients to use other forms in the interests of flexibility and trustee protection. And the charitable trust is the essential mechanism in English charity law for giving effect to a donor’s intentions and protecting and preserving them. A valid charitable trust encapsulates a clear charitable purpose (its ‘objects’), whether executed in the form of a deed or will – or indeed as an intent, as in collections ‘impressed with charity’. The trustees’ duty is to seek to give effect to that charitable purpose. While charity law, particularly as administered now, is permissive in respect of the activities which trustees may undertake in pursuance of their objects if they can reasonably argue that the activities contribute to fulfilling the charity’s purposes, including, for example (nowadays anyway), a tolerant approach to advocacy and political campaigning activities, the objects themselves have to be observed and may only be changed according to strict criteria – the cy pres principle, to be discussed at greater length in the body of this paper. (This division between objects and activities is central to English charity law. Safeguarding a charity’s objects is the first duty of its trustees, and the focus of Charity Commission accountability. Although there is more flexibility over changing the objects of charitable companies this philosophy does influence the approach to them.)

2.2 Thus through the protection of the objects of charitable trusts English charity law offers protection to donor intent. And one of the benefits and privileges of charitable status is 'perpetuity'- once a charity, always a charity. Resources devoted to charity must only be used for charitable purposes (and the essence of cy pres is to provide a mechanism to ensure that this can be realized, even when the original purposes of a charity become unfulfillable). The 'dead hand' thus threatens charity, subject only to the relief afforded by cy pres.

2.3 The Charitable Uses Act of 1601, the Statute of Elizabeth, is the origin of modern English charity law and continues to exercise an influence, at least in spirit - the word itself being taken into the new Charities Act, reflecting the old judgment that the 'spirit and intendment' of the 1601 Act Preamble is the basis for the determination of charitable purposes. It is, however, well recognized that the 1601 Act was not concerned with the definition of what constitutes charity so much as the recognition and enforcement of charitable trusts - ensuring that the purpose which made the trust charitable was adhered to. This 'dead hand' of supervision, for all the fluctuations of the last four centuries, has characterized charity regulation. It is to be noted, however, that it is the charitable purpose which has to be enforced. The donor's intentions are upheld because, and in so far as, they incorporate a public benefit charitable purpose, not the donor's intentions as such, just because they are the donor's intentions. Picarda comments that 'it is quite clear that the motive of the donor or testator is immaterial in determining whether a gift is charitable'. He points out that the test is an objective one, not a subjective one of intent. That is to say, the donor's intent is realized through a charity only if the object, expressed in terms which are sufficiently clear to be enforceable (by the courts if necessary), provides for a purpose or purposes which are charitable, i.e. serves the public benefit, as the law on charitable status has been developed over the centuries. Of course, Picarda's use of the word 'motive' is loaded. The example he gives is of educational gifts which the benefactor intends to commemorate his, or a relative's, memory. It is the educational purpose, not the commemoration, which makes the gift charitable and attracts the protection of the

law. This is relevant to the nature of the protection of donor intent through English charity law, and the mechanism of cy pres, as it has developed to deal with the threat of the ‘dead hand’. The spirit of English charity law and administration is to preserve the charitable – public benefit – purpose, in the public interest rather than in respect for the benefactor. In the modern context, the effectiveness of charity is one important consideration, to be set alongside, indeed where appropriate to override, donor intent. Considerations of donor motive, what will encourage the well-to-do to become benefactors, and the question of the extent to which they want security for their intentions, have to be balanced by the wider public interest. At risk of oversimplifying one might go so far as to say that donor intent is only respected in English charity law to the extent that doing so directly or indirectly serves the public interest, by providing public benefit or by encouraging philanthropy.

### **3 Determination of Charitable Purposes**

3.1 To attract the protection in perpetuity which charitable status affords donors, they must frame their intentions in ways which meet the requirements of charity law. As noted above the purpose must be clear (‘objective’) and enforceable; and it must be recognized by the law as charitable. To describe the determination of charitable status under English law, as it has developed up to the present, requires an essay in itself, for which there is neither space nor need here. But a brief outline, both of the common law inheritance up to now and the modernization introduced in the Charities Act 2006, is necessary as background to the key topic of the cy pres mechanism.

3.2 It is well known that charity in ‘modern’ English law derives from the Preamble of the 1601 Statute of Elizabeth. This lists charitable purposes as they were – or as the State then wanted them to be, i.e. the purposes which were regarded as of public utility in Tudor England – purposes to which the State wanted public-spirited people of means to devote their wealth in the interests of the community at large. It is not necessary to list these purposes here, now in any case generally regarded as of historic interest only. It is relevant to note that the Preamble’s list is the starting point for a process of development

over the subsequent four centuries, so that the list of purposes recognized by English law as charitable now is substantially different to that in the 1601 Act. (Of course if it were not, charity law could hardly claim to be a viable basis for the not-for-profit sector in the modern world!) Charity in the nineteenth century was classified (rather than defined) in Lord Macnaghten's famous Pemsel judgement with the 'heads' of relief of poverty, advancement of education, advancement of religion, and other purposes beneficial to the community. Public benefit lies at the heart of the Pemsel heads, but prior to the reforms of the new Charities Act purposes falling under the first three were presumed to be of public benefit, subject to demonstration in any particular case that the public benefit was not served in this instance; whereas '4<sup>th</sup> head' charities, i.e. those covering the wide range of other purposes, had, notionally at least, to demonstrate public benefit. Thus a charity for health, the environment or heritage, for example, had to show that the way its purpose was framed specifically served the public interest. Under the 2006 Act all would-be charities have to pass this public benefit test. In practice, of course, well-established purposes, such as health, well represented and therefore well precedented, pass this positive test as easily.

3.3 The relevance of this process to donor intent is that determining whether a purpose is charitable in the common law system is essentially a case-by-case process, and a dynamic one. Charity law does not approach a donor's intention to set up a charity by a deed or will by pigeonholing it into a set framework of accepted purposes – though for the most part that is, in practice, what happens since well precedented cases slot easily into the framework which has, in effect, been developed by the courts through this common law approach and now given a statutory basis (but without substantive change). It is with novel or borderline cases that the difference is evident. Charity law consists of a body of decided cases which guide new decisions. Textbooks like Picarda and Luxton, referred to above, are based on the analysis and presentation of the body of case law – and inevitably exceed 1000 pages in doing so! Even following the new Act, a full answer to what constitutes charity is only to be found in such textbooks, and the interpretation, in novel or difficult cases, of the precedents is a skilled task. (It has been said that the dynamic

flexibility of the common law of charity has been maintained at the expense of clarity and comprehensibility!)

3.4 While this approach might seem to call for radical overhaul, the British Government and Parliament has in effect endorsed it as a suitable basis for charity in the modern world: the new Act explicitly retains the common law inheritance and mechanisms for determining charitable status (with the exception noted above of requiring all charities to pass a positive public benefit test). What the 2006 Act does is provide a statutory framework for the continuing application and development of the common law. The lack of a clear, authoritative modern definition, or at least description of what constitutes charity now, is one of the fundamental drivers of modernization. For the first time in English law there will be a statutory framework for charitable status – a list in the body of the Act, not a preamble as in 1601. For what the Act does is list 12 purposes which are charitable. In essence, however, they are – intentionally – purposes already accepted as charitable under the existing law. The list does, nevertheless, have a modern flavour to it, incorporating the forward-looking approach which the Charity Commission has brought to the determination of charitable status, especially since it established its systematic review of the Register of Charities some ten years ago. Thus, alongside such long-accepted charitable purposes as the advancement of health, it includes such recently accepted purposes as ‘the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity’. As noted above the Act does remove the presumption that organizations for poverty, education and religion are for the public benefit. Their contribution to the public benefit will, as is already the case for other purposes, have to be positively established in each instance. As noted above, however, the distinction is not as sharp as it appears (and the extent to which this change will affect the determination of charitable status has attracted controversy and disagreement over the politically fraught issue of the charitable status of ‘public’, i.e. fee-paying, schools).

3.5 The new list in the Act also puts into statute the 4<sup>th</sup> head, accepting as charitable other purposes not specifically listed. This is not, however, defined by reference to public benefit. (4<sup>th</sup> head charities under the new provision will, of course, continue to have to establish that they are for the public benefit, the test which all organizations will in future have to pass to qualify as charities.) The way the new provision is framed reflects the way in which new charitable purposes have been developed over the centuries – the importance of the 4<sup>th</sup> head mechanism. Purposes which are ‘analogous to, or within the spirit of’, purposes already recognized as charitable, as listed in the Act, or developed in this way, will be charitable (always provided that they pass the public benefit test). This distils the approach the courts and the Charity Commission have developed for determining whether new purposes can be regarded as charitable. Thus it is not enough, nor will it in the future be enough, for a new purpose to be deemed – by the Charity Commission or the courts – as serving the public interest; it will have to fit into the body of charitable purposes as developed by a process of analogy (the approach the Commission has long favoured, following one tradition of court judgments) or be within the spirit of the 1601 Preamble as developed by the courts subsequently (a formula used in other court judgments). Thus the Preamble and subsequent judgments provide a sort of reference point for addressing the charity of new issues. The proponents of this approach argue that it is sufficiently flexible to enable the Commission to add new charitable purposes as circumstances change and new needs arise (the approach of Lord Wilberforce in a famous judgement) within a principled framework of tradition, rather than by having to rely solely on their ‘subjective’ judgement of what is for the public benefit. The importance of this for donor intent is, of course, that the whole notion of charitable purpose is a flexible, moving concept, not one fixed by reference to a purpose or intent expressed at a particular point in time. The cy pres mechanism thus fits into a flexible framework of which it is a flexible part, dealing, as described below, with the modernization of existing charities within the framework which is itself moving forward as circumstances or needs change. But before turning to cy pres it is appropriate to say something about Mortmain – the ‘dead hand’ itself; and to describe briefly the Charity Commission.

#### 4 The 'Dead Hand' – Mortmain

4.1 Provision for (or rather, against) the 'dead hand' featured in English law in the Mortmain Act 1736 and earlier statutes. The purpose was originally to 'prevent the accumulation of land in the dead hand of artificial persons who never died, and in particular monasteries', as Picarda puts it. For present purposes one cannot do better than quote further from Picarda: 'brief mention should be made of the statutory restrictions known as the law of mortmain and now fortunately swept away'. (The Mortmain Act was repealed by the same legislation which repealed the Charitable Uses Act 1601 – but preserved its Preamble - the Mortmain and Charitable Uses Act 1888.) The reason why references to mortmain may be brief is that it is now essentially historical; the reason why there must be reference at all (besides the fact that it would be odd to omit all references to it at a conference with the 'dead hand' in its title!) is that the Mortmain Act did exert a significant influence over the development of charitable status, an influence which continues to be felt, if unconsciously.

4.2 The reason why it is fortunate that the mortmain restrictions have been swept away is that, as enacted in 1736, they were a blunt and distorting way of tackling the problem of the deadening effect of donor intent over time. Indeed the Act cut the Gordian knot of the dead hand by making bequests of land to charity, and thereby charitable in perpetuity, invalid (subject to what Luxton calls compliance 'with a complex procedure' during the testator's lifetime). Parliament's motive in passing this law (at a time when charity was less prized than before or since) is graphically set out in the 1736 Act's Preamble (worthy to stand alongside the 1601 Preamble!):

'Whereas gifts or alienations of lands, tenements or hereditaments, in Mortmain, are prohibited or restrained by Magna Carta, and divers other wholesome laws, as prejudicial to and against the common utility; nevertheless this publick (sic) mischeif (sic) has of late greatly increased by many large and improvident alienations or dispositions made by languishing or dying persons, or by other persons, to uses called Charitable uses, to take place after their deaths, to the disherision of their lawful heirs.'

4.3 It suffices for present purposes to mention two unintended consequences of the 1736 Act. Philanthropically minded people in the eighteenth century got round the restrictions of the Act by converting their bequest into money, not covered by the legislation. Luxton thus comments that the Act ‘encouraged associated philanthropy [subscriptions and donations] whenever land was required’. Many eighteenth century charity schools and hospitals were founded on this basis. Of more continuing importance is the paradoxical effect of the Mortmain Act in leading the courts to pronounce bequests charitable – in order to invalidate them and avoid disinheriting the rightful heirs! This was, of course, the intention of the Act; but it has the effect that many apparently liberal judgments in the mortmain period were motivated not by commitment to charity, but by a wish to prevent bequests going to charity. The case of *Thornton v Howe* (1862 - before the repeal of the 1736 Act) is an extreme example which can serve to illustrate the point. This concerned a bequest of land ‘for the publication of the works of one Joanna Southcote, who had claimed that she had been made pregnant by the Holy Ghost and would give birth to a second Messiah’ (Luxton). The court held this (‘though very foolish, not immoral’) to be charitable as being for the advancement of religion – and the bequest therefore invalid.

## **5 The Charity Commission**

5.1 The creation and development of the Charity Commission is an important element in the way English charity law and administration seeks to deal with the issue of donor intent and the problem of the ‘dead hand’. This is not the place for a detailed discussion of the Commission, but a brief description is necessary in order to understand the way in which the cy pres mechanism operates. The Commission is described as the regulator of charities. This is, at best, a shorthand and a potentially misleading one at that, both in terms of the Commission’s origins and, more importantly, the breadth of its current role.

5.2 The Commission’s role is, in effect, to determine what bodies are charities, to maintain a public register of them, to oversee their public accountability, to provide advice and (certain sorts of) assistance, and to investigate and remedy abuse. As reformed by the

Charities Acts 1993 and 2006, the Commission is a Government department (but one not subject to direction and control by ministers or the political process) which exercises both administrative and legal (sometimes called ‘quasi-judicial’) powers. It was, however, established (in 1853) as an extension of the courts, to provide quick and effective (and free) legal remedy. (The time-consuming cost and rigidity of the Chancery Court in the nineteenth century, the only mechanism for using such remedy as the law offered for change and enforcement, made charitable trusts a very unattractive basis for philanthropy.) As such, its powers were essentially those of the courts until the fundamental reforms of the 1960 Act.

5.3 Since the 1980s, the Commission has been subject to progressive modernization, culminating in the provisions in the new Charities Act, and associated administrative reforms. These reforms are presented as confirming the Commission as a modern regulator. While its investigatory powers are being strengthened, the label of regulation should not be understood to mean that the Commission adopts a detached, far less a critical, stance in relation to charities. The Commission’s ‘mission’ is to maintain public confidence in the integrity of charities. While this does mean setting standards of good governance and administration and where necessary intervening to enforce them, the core of the Commission’s role is to work constructively and cooperatively with charities, promoting good practice and giving advice and guidance. In the context of this paper, the Commission’s key role is to use its power to help charities modernize their constitutions and practices effectively. It is thus as much a partner of the charitable sector as a regulator. The fact that it is a specialist body - and not, for example, an arm of the tax authorities - gives it a commitment to charity and voluntary action.

5.4 As reformed under the provisions of the Charities Act, the Commission is overseen by a non-executive board with a part-time Chair. The Commission is led by a Chief Executive (previously a charity finance director) with some 500 staff. Its role in determining which voluntary bodies meet the requirements of charity law means that, since 1960, the Commission has been the main agent for the development of charity law, rather than the

courts. (The fact that few status cases have gone to the courts in the last fifty years is a matter of concern to some lawyers.) The fact that the Commission increasingly approaches charity law with a flexible modernizing spirit means that the ethos of change is deeply embedded in it. This is relevant to donor intent in that the notion that charity is and should be something which develops with the times is part of the Commission's culture.

5.5 Much of the Commission's work is informal, based on cooperation with charities. In effect, registration is entering into a continuing relationship between a charity and the Commission. Registered charities are encouraged to seek advice and guidance from the Commission. Its formal powers are extensive, if essentially constructive and (resulting from investigations) remedial (putting a charity to rights if things have gone wrong, for example, as a result of abuse or mismanagement). The Commission has been given many of the powers of the courts in respect of charities. In the present context it is relevant to note its powers to make schemes and orders to amend charities' constitutions. This is the mechanism for using the flexibility which *cy pres* gives, to which this paper now turns.

5.6 First, however, it is worth noting a reform which the Charities Act introduces – perhaps the most novel feature of the Act. Questions are often raised about the Commission's own accountability, especially as it is not subject to political direction. Hitherto decisions of the Commission were subject (under historically complicated provisions) to appeal and review by the courts. The Act establishes a Charity Tribunal which will be able to give a speedier and more informal review of the Commission's exercise of its powers.

## 6 *Cy Pres*

6.1 As Hubert Picarda writes, 'the doctrine of *cy pres* is one of cardinal importance in the law of charities'. The word itself is very old, probably of Norman French origin, said to mean 'as near as possible'. Certainly that expresses the original principle of the *cy pres* doctrine, namely that the change to a charitable purpose should be to one as near as

possible to the original purpose. That begs the question of what circumstances permit a charitable purpose (or donor's intent) to be changed. Originally, cy pres was strictly limited, namely where the purpose or intentions, for example of a charitable gift, had become impossible or impracticable to perform. Of course, much depended on how strict the tests for impossibility and impracticability were. It is said that after an early period of liberality, a rigorous approach was adopted until the nineteenth century. Then, as part of the modernization of charity law and administration, more flexible uses of cy pres, in particular in the context of education and often by means of legislation, began to develop. Thus, while in the eighteenth century the courts would not sanction schemes to allow schools established for the teaching of Greek and Latin to widen their curricular, Picarda cites a stream of nineteenth century Acts for this purpose. Two examples illustrate the flexibility with which the cy pres mechanism could be used. As a result of pressure from the newly formed Charity Commissioners among others, the charities of the individual parishes of the City of London were reorganized by cy pres schemes made by the Commissioners under the City of London Parochial Charities Act 1883. The resulting City Parochial Trust remains one of the most important London grant-giving charities. While in nineteenth century circumstances recourse to Parliamentary legislation was often necessary, the courts could act directly, as is shown by the case of the Attorney-General v Ironmongers' Company 1834, under which a charity for the redemption of Christian slaves captured by the Barbary pirates was converted into a charity for the benefit of charity schools.

6.2 The principle of the cy pres doctrine was that it is directed to 'keeping in existence a gift to charity so that it may continue as a public benefit from generation to generation', as the Nathan Committee put it in its 1952 report which laid the basis for the reform of the Charity Commission and its powers. Its reforms included provisions, given effect in the Charities Act 1960, to give the Commission more flexibility in the application of cy pres. Hitherto the rationale for using cy pres to alter a charity's purpose was, in the words of Hubert Picarda, that 'the courts were guided by a supposed discovery of intention on the part of the donor to devote the subject of his gift at all events to charity'. In other words,

interfering with the overt intention of the donor was rationalized as preserving, in the circumstances changed since the donation, his or her underlying intentions, or at least the intentions he or she might reasonably be supposed to have had if the gift had been made in the new circumstances. By the mid-twentieth century, when the Nathan Committee was addressing the need for the reform of charity law and administration in the post-war England of the Welfare State in which much that had previously been left to charity had been taken over as the responsibility of public services, the need to be able to modernize old charities had to be given weight alongside the need to respect a donor's intentions. Prior to the 1960 Act reforms 'inexpediency was not enough : nor was partial impossibility' to trigger use of cy pres (Picarda). The 1960 Act added a number of circumstances under which cy pres action can be taken, in particular where restrictions to a particular area or class of persons have 'ceased to be suitable, regard being had to the spirit of the gift, or to be practical in administering the gift' (section 13 (1)(e)(i); and where the original purposes have ceased to be 'a suitable and effective method of using the property available by virtue of the gift, regard being had to the spirit of the gift' (section 13 (1)(a)(iii)). It will be seen that the 1960 Act reforms made a fundamental break with the fiction that cy pres was used to give effect to the donor's putative intentions. At best, respect for the 'spirit of the gift' had to be observed. Thus a conscious balance was struck between respecting donor intent and not allowing its 'dead hand' to prevent effective use of his or her philanthropy.

6.3 Many examples of the use of the 1960/1993 Acts cy pres powers could be given. One may stand as illustration of its power, namely the reform of the Bridge House Estates Trust. This is an ancient city charity, originally established in the twelfth century (out of revenues from tolls and rent from London Bridge) to provide and maintain bridges over the River Thames between the City of London and the South bank. (Provision of bridges is one of the charitable purposes specified in the 1601 Preamble.) Over the centuries Bridge House became very wealthy. While maintenance of the Thames city bridges, such as the replacement of London Bridge and the upkeep of Tower Bridge, continue to be proper expenses, and even the provision of the new pedestrian Millennium Bridge, it was

not sensible to devote its whole wealth to this narrow purpose. As a result of a Charity Commission order, the City Bridge Trust (as it is now known) has been converted into a major grant-giving charity for the whole of the Greater London area.

## **7 The Charities Act Reforms**

7.1 The latest reforms move significantly away from the principle of upholding the donor's intent. That remains a consideration; but the provisions of the Act now give equal weight to the needs of current circumstances. Thus where the provisions of the previous Charities Act required the courts and the Commission, as described above, to have regard to the spirit of the gift, the provisions as amended by the Act set consideration of 'the social and economic considerations' of the present alongside the spirit of the gift. Schemes to give effect to the use of cy pres now require the Commission (and the courts) to have regard to 'the need for the relevant charity to be able to make a significant social or economic impact', alongside the established considerations of 'the spirit of the original gift' and 'the desirability of securing that the property is applied for charitable purposes which are close to the original purposes'. Thus the Commission, subject to appeal to and review by the new Charity Tribunal and the courts, is required to bring its own judgment (prompted, of course, by the views of the trustees of the charity concerned) of what use is socially and economically desirable for the property of the charity in the circumstances of the present day. Potentially, this opens the way to significantly greater adaptation of past charitable purposes. This is in keeping with the emphasis on the impact charities should make which informs the new Act's reforms.

7.2 Whether the prospect of future changes altering their intentions will inhibit potential donors remains to be seen. Much will no doubt depend on the spirit with which the Commission approaches the use of the new powers. It is significant, however, that lobbying from the foundation world led to a complementary change in the Act which bears on the Commission's use of its cy pres powers. The Act now requires the Commission to perform its functions in ways which are 'compatible with the

encouragement of all forms of charitable giving'. Thus it will have to consider, at least in general terms, the possible effect of altering a donor's intent on potential future giving.

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October 2005, updated February 2008