

WHAT IS A CATHOLIC CHARITY?

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1. Introduction

The purpose of this article is to look at what constitutes a Catholic charity in England and Wales and to examine some of the implications of being a Catholic charity, either controlled by the Catholic Church as a Catholic Church charity or a Catholic charity without such control, from a Civil law and Canon law perspective. These implications include: having the authority to act in the name of the Church by using the term ‘Catholic’ in the title; the need to be doctrinally correct; being accountable under the Canon law procedure of hierarchical recourse; being potentially liable under the Civil law principle of vicarious liability; and, owning and being accountable under the Canon law for ecclesiastical goods owned by the Church. The article concludes with some suggested criteria for a Catholic Church charity and a Catholic charity.

2. Types of Catholic Charity

There is a wide variety of Catholic charity ranging from diocesan trusts, religious orders and charities promoting the work of the Church, to charities seen as Catholic but with no formal or exclusive relationship with the Church.

Catholic charities can be categorised² as follows: first, a Catholic Church charity (public juridic person owning ecclesiastical goods and controlled by the Church); second, a Catholic charity (private juridic person not owning ecclesiastical goods but recognised as a Catholic charity by the Church because it has certain Catholic features and controls but with more autonomy than a Catholic Church charity); and, third, a non-Catholic charity which is neither controlled nor recognised by the Church but is perceived to be Catholic.³

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² This is the author’s categorisation.

³ See Section 4.5 of this article.

The Church is defined as: ‘not only the universal Church or the Apostolic See but also any public juridic person in the Church unless it is otherwise apparent from the context or the nature of the matter’.⁴ Ecclesiastical goods are owned by the Church.⁵

The Canon law provides for a structure of juridic persons which are aggregates of persons or things established by law or by Church authority and which have perpetual succession similar to a company in the Civil law. In England and Wales, the most obvious examples of juridic persons are dioceses, parishes and religious orders. A juridic person is represented by a physical person such as a bishop, priest or abbot. Some juridic persons are collegiate juridic persons in which the members determine their actions by voting. Examples include the Bishops Conference for England and Wales and monastic communities.

Juridic persons can be public or private. The distinction is that a public juridic person⁶ is more closely governed by the Church, whereas a private juridic person⁷ enjoys more autonomy through its own statutes. A public juridic person will hold ‘ecclesiastical goods’,⁸ whereas a private juridic person does not own ‘ecclesiastical goods’ and, as a result, will not be subject to Book V of the code of Canon law which governs temporal goods of the Church and sets out requirements for the stewardship of Church property,⁹ except where otherwise provided.¹⁰

Catholic charities are recognised canonically¹¹ and are usually registered as charities at the Charity Commission, but not always.¹²

4 C 1258. References in this article are to canons of the *Codes Iuris Canonici*, 1983.

5 C 1257.

6 C 116(1).

7 C 116(2).

8 C 1257.

9 C 1282.

10 C 1263 (right of a bishop to impose an extraordinary and moderate tax), C 1265(1) (written permission required from the bishop to beg for alms), C 1267(1) (unsolicited offerings assumed to be given for the private juridic person) and C 1269 (prohibition on using sacred objects for profane purposes unless they have lost their dedication or blessing).

11 See Section 4 of this article.

12 See Section 8 of this article.

3. Civil Law: Registration as a Charity

There is a statutory definition of ‘charity’ for the purposes of registration. ‘Charity’ is defined in the Charities Act 2011¹³ as:

... an institution which

- (a) is established for charitable purposes only, and
- (b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.

Charities are required to be registered by the Charity Commission unless excepted or exempt from registration.¹⁴ Catholic Church charities and Catholic charities will typically have charitable purposes to further the mission of the Church in such ways that are charitable according to English law. Some Catholic Church charities have a questionable status in Civil law and this is discussed later in this article.¹⁵

4. The Canon and Civil Law: Structures

Usually, a Catholic charity will have a Canonical structure and a structure adopted for the purposes of compliance with the Civil law. These are described below:

4.1 Dioceses

The Roman Catholic Church is primarily made up of diocesan Churches.¹⁶ Diocesan Churches are a portion of Church members under the care of a bishop.¹⁷ The property of a diocese will be held on charitable trusts or by charitable corporations and registered as a charity.¹⁸ Property needs to be held in this way because Roman Catholic Canon law does not form part of the law of England and Wales and does not therefore provide a vehicle accepted by Civil law to hold the property. In practice, the authority of the bishop is protected in diocesan charities by giving him the power to appoint and remove trustees and a veto over key powers dealing with property.¹⁹ The diocese falls into the category of a Catholic

¹³ Charities Act 2011, s 1(1).

¹⁴ Charities Act 2011, s 22 and Sched 3.

¹⁵ Section 8.

¹⁶ C 368.

¹⁷ C 369.

¹⁸ For example, the RC Diocese of East Anglia holds its property on charitable trust by a corporate trustee with the bishop, clergy and lay people as directors.

¹⁹ See, for example, the trust deeds of the dioceses of East Anglia and Northampton.

Church charity because it is controlled by a public juridic person and it owns ecclesiastical goods.

4.2 Parishes

Within a diocese there are parishes.²⁰ Parishes are said to be under the authority of the diocesan bishop but entrusted to a parish priest.²¹ The legal title to parish property tends to be held by the diocesan trust because the parish has no Civil law status. Parishes are not separately registered as charities as they rely on the diocesan registration. It is arguable, though, that parish property is held subject to special trusts enforced by the Civil law and that the larger parishes should be separately registered as charities.²² Under the Canon law, the property of a parish is administered by the parish priest²³ with the assistance of a lay finance committee.²⁴ When administering the parish, the parish priest is under an obligation to act in accordance within the limits and administration set out by the bishop.²⁵ In the *1997 Instruction on Certain Questions Regarding the Collaboration of Non-Ordained Faithful in the Sacred Ministry of Priests*,²⁶ the parish finance committee is said to enjoy a consultative role only and cannot in any way become a deliberative structure. A parish is controlled by a public juridic person and it owns ecclesiastical goods and therefore falls into the category of a Catholic Church charity. However, there is a doubt over whether parishes are charitable²⁷ in the Civil law.

²⁰ C 515.

²¹ Ibid.

²² See Robert Meakin, 'Who owns the property of a parish Church in the Roman Catholic Church in England and Wales?' CL&PR 14 [2012] 41. For the counter argument see Richard King, 'Parish Property in the Catholic Church - A response to Robert Meakin' CL&PR 14 [2012] 65.

²³ C 532.

²⁴ C 536.

²⁵ C 1281.

²⁶ Instruction p 21, art 5. See Beal, Coriden and Green, *New Commentary on the Code of Canon Law*, Paulist Press, 2000, p 709-711.

²⁷ See Section 8 of this article.

4.3 Religious Orders

The term ‘religious order’ refers to religious institutes²⁸ and societies.²⁹ Religious orders are public juridic persons under Canon law.³⁰ Since their property is ecclesiastical goods, held in order to further the work of the Church’s mission,³¹ religious orders are bound by the Canon law³² relating to temporal goods. In addition, each religious order will have its own constitution which will establish norms for the ‘use and administration of goods, by which the poverty proper to it is to be fostered, protected, and expressed’.³³ Each religious order will have its own particular charism and this will be expressed in how it acquires goods (for example, begging in the case of mendicant orders) and the sharing of property within the order and those in need.

In addition to the order’s canonical constitution, the order’s property will be held on charitable trusts or by a charitable company. Again, this is because Canon law does not form part of the Civil law. The members of the order will be trustees of the order’s charity. The order will therefore be controlled by a public juridic person and own ecclesiastical goods. It follows that it is a Catholic Church charity.

4.4 Catholic Charities Promoting the Work of the Church

Some Catholic charities are agencies of the Church through the Bishops Conference. These will be governed as trusts or companies under the Civil law. Typically, control is exercised by the bishops through the power to appoint trustees. Examples of such charities include CAFOD³⁴ and the Catholic Trust for England and Wales.³⁵ There are also charities established by religious orders as part of their mission. In some cases, these charities will be controlled by the order but, in other cases, this will no longer be the case. To the extent that these charities are established and controlled by the Church and own ecclesiastical

²⁸ C 607(2). Examples include Benedictines, Franciscans, Dominicans and Jesuits.

²⁹ C 701. Examples include Oratorians Daughters of Charity and Paulists. For a discussion on the differences between them see Coriden James A, *An Introduction to Canon Law*, Burns & Oates, 2004, p 99-100.

³⁰ C 634(1).

³¹ C 1257.

³² These are found in Book V of the *Codes Iuris Canonici*, 1983.

³³ C 635(2).

³⁴ www.cafod.org.uk. Registered charity number 285776. Note that this charity does not have Roman Catholic purposes.

³⁵ Registered charity number 1097482.

goods, they will be Catholic Church charities. Where this is not the case, they will be Catholic charities. It is not clear to an outsider whether these charities are Catholic Church charities or Catholic charities with public or private juridic status in Canon law.

There are some specific types of charity set out in Canon law:

4.4.1 Associations

The Canon law³⁶ asserts the right of the Christian faithful to found associations for the purposes of 'charity and piety or for the promotion of the Christian vocation in the world'. In so far as the faithful express their right as part of the Church ('communio') then they will be subject to vigilance by a competent ecclesiastical authority.³⁷ Further, no association is to assume the name 'Catholic' without the consent of competent ecclesiastical authority.³⁸ It follows therefore, that where charities are formed by Catholics purporting to act in the name of the Catholic Church, there should be ecclesiastical supervision and permission to use the name 'Catholic'. Canon law sets out some prescriptions of law as to how members are admitted and dismissed from an association.³⁹

4.4.2 Schools

Canon 803 says:

A Catholic school is understood as one which a competent ecclesiastical authority or public ecclesiastical juridic person directs or which ecclesiastical authority recognises as such through a written document.

Control by the Church is not necessary if the bishop is satisfied that there are sufficient Catholic characteristics and safeguards.⁴⁰

Canon 803(3) states that even if a school is Catholic, no school shall bear the name 'Catholic school' without the consent of competent ecclesiastical authority.

³⁶ C 215.

³⁷ C 305. A private association of the faithful whilst recognised by the Church will enjoy even more autonomy than a private juridic person. Such associations will not be juridic persons (C 299). See c 298-311, 321-326. They have no institutional Canon law status and the members jointly own and are jointly liable for the debts of the association: see C 310.

³⁸ C 300.

³⁹ C 306-308.

⁴⁰ For a review of the Canonical and Civil law basis for a Catholic school see Robert Meakin, 'What is a Roman Catholic School?' CL&PR 14 [2012] 71.

Connected with Canon 803 (control or recognition by a Church authority) the Canon law confers rights on the diocesan bishop. A religious institute cannot establish a Catholic school without the consent of the bishop.⁴¹ The diocesan bishop has responsibility for those who are designated as teachers of religious instruction to see that they are outstanding in correct doctrine, the witness of Christian life and teaching skill.⁴² The bishop has the right, in his own diocese, to appoint or remove or demand that such teachers be removed if a reason of religion or morals requires it.⁴³ Finally, the diocesan bishop has the right to watch over Catholic schools in his diocese, including those run by religious orders.⁴⁴

4.4.3 Universities

For a University to call itself 'Catholic' it must have the consent of a competent ecclesiastical authority.⁴⁵ Further, the ecclesiastical authority has a right under Canon law to appoint and remove teachers and to ensure that Catholic doctrine is observed⁴⁶ and to mandate those teaching theology.⁴⁷

4.4.4 Pious Foundations

Canon law also provides⁴⁸ for a juridic person called an autonomous pious foundation which is an aggregate of things formed by a Church authority for 'works of piety, of the apostolate, or of charity, whether spiritual or temporal'. Such a foundation can be either a public or private juridic person. Canon law also provides for non-autonomous pious foundations, where property is given to a public juridic person with an obligation for a long time, to be determined by particular law, to celebrate Masses and to perform other specified ecclesiastical functions or otherwise to pursue 'works of piety, of the apostolate, or of charity, whether spiritual or temporal'. The non-autonomous pious foundation is not itself a juridic person and is similar to the Civil law position where property is transferred to a trustee to be held on trust for particular purposes.

⁴¹ C 801.

⁴² C 804(2).

⁴³ C 805.

⁴⁴ C 806.

⁴⁵ C 808.

⁴⁶ C 810.

⁴⁷ C 812.

⁴⁸ C 1303(1).

4.5 Charities Perceived to be Catholic but with no Formal Link with the Catholic Church

Many charities are seen to be Catholic but do not have exclusively Roman Catholic purposes nor are they controlled by the Church and nor do they own ecclesiastical goods. For example, the St Vincent De Paul Society (England and Wales) ('SVP')⁴⁹ has a long Catholic heritage but it is not controlled by the Catholic Church and nor does it have Roman Catholic purposes. HCPT – The Pilgrimage Trust⁵⁰ does have Roman Catholic purposes but is not controlled by the Church. If these charities are perceived to be Catholic, without any control or recognition, what therefore is the benefit of being a Catholic charity? Part of the reason might be that it will be easier to obtain permission from the bishop to fundraise at Church premises,⁵¹ although the SVP and HCPT frequently collect at Church premises.

5. Is Control By an Ecclesiastical Authority Necessary?

Control by an ecclesiastical authority is arguably necessary in the case of a Catholic Church charity. Canon 129(1) says:

Those who have received sacred orders are qualified, according to the norm of the prescripts of the law, for the power of governance, which exists in the Church by divine institution and is also called the power of jurisdiction.

The Canon goes on to say in Canon 129(2):

Lay members of the Christian faithful can cooperate in the exercise of this same power according to the norm of law.

There are four fundamental issues. First, does this mean that the power of governance resides in the clergy alone, with lay people only participating in a supporting role? This Canon suggests that is the case, but it appears to contradict the fact that more generally Canon law gives effect to Vatican II,⁵² which states that the Christian faithful share, through baptism, in Christ's priestly, prophetic and royal function and are called to express this vocation in their own way⁵³ and that all the Christian faithful are fundamentally equal.⁵⁴ The laity are called to

⁴⁹ Registered charity number 1053992.

⁵⁰ Registered charity number 281074.

⁵¹ C 1265.

⁵² In particular, *Lumen Gentium*.

⁵³ C 204.

⁵⁴ C 208.

support the Church⁵⁵ including promoting charity and social justice and assisting the poor.⁵⁶ The problem within the Church is that there are limited opportunities for the laity's vocation to be expressed in a Church where the governance of Catholic Church charities is in the hands of the ordained clergy.⁵⁷ One obvious way in which the laity can express their vocation is through charity trusteeships, but, if they do so without Church control, they will not be acting as a trustee of a Catholic Church charity, unless dispensation is granted.

Second, it is arguable that (non-Church) Catholic charities not owning ecclesiastical goods will not be caught by Canon 129(1) and will therefore allow for lay members of the Church to govern without the clergy being in control.

Third, if Canon 129's purpose is to ensure doctrinal orthodoxy, then it overlooks the fact that, from a Civil law perspective, the general skills required of a charity trustee are that of an ordinary prudent man of business⁵⁸ and not a theologian. It seems sensible for control by the clergy to be limited to doctrinal supervision especially in the case of (non-Church) Catholic charities.

Fourth, it is debatable whether the laity can be delegated the power of governance under Canon law.⁵⁹ Canon law does not specify to whom power can be delegated.⁶⁰ The Canon law permits the laity to hold several offices of governance⁶¹ but are these the exceptions that prove the rule or do they suggest it is permissible to generally delegate to the laity? The issue has not been resolved.

⁵⁵ C 222.

⁵⁶ C 222(2).

⁵⁷ See Beal, Coriden and Green, *New Commentary on the Code of Canon Law*, Paulist Press, 2000, p 184-185.

⁵⁸ Per Lord Blackburn in *Speight v Gaunt* (1883) 9 App Cas 1 at 19 although note a higher duty of care is expected of professional trustees: *Re Rosenthal* [1972] 1 WLR 1373. Note the statutory duty of care under the Trustee Act 2000 in respect of exercising the powers of investment, buying land, appointing agents, nominees or custodians or taking out insurance. Section 1 of that Act sets out the duty of care to exercise such care and skill as is reasonable in the circumstances depending on any special knowledge or experience that the trustee has (or claims) and, in the case of a professional trustee, any knowledge or experience they ought to have.

⁵⁹ See Beal, Coriden and Green, *New Commentary on the Code of Canon Law*, Paulist Press, 2000, p 185.

⁶⁰ C 131.

⁶¹ For example, finance officer of the diocese (C 492) and a religious institute (C 636), member of a diocesan finance council (C 492), lay person in charge of a parish (C 517(2)), administrator of ecclesiastical goods (C 1279), judge (C 1421(2)), auditor (C 1428), promoter of justice (C 1435) and defender of the bond (C 1435).

The Civil law requires trustees to be Church members in the case of Church charities including charities run in furtherance of the mission of Churches.⁶² This principle applies just as much to the Church of England as to the dissenting Churches including the Roman Catholic Church.⁶³ It follows that, where a Catholic Church charity or a Catholic charity has lay trustees, they should be Roman Catholics.⁶⁴ In practice, the Charity Commission will accept a majority of the trustees being Roman Catholic where there are safeguards to ensure that this is always the case.⁶⁵

6. Implications of Being a Catholic Church Charity

There are both Canonical and Civil law issues with being a Catholic Church charity.

6.1 Canon Law

First is the canonical right of hierarchical recourse. This is a procedure whereby a request can be made to the superior to confirm, amend or revoke the subordinate's administrative decision.⁶⁶ In exercising this right, the faithful must take into account the common good of the Church, the rights of others, and their own duties towards others.⁶⁷ This means that the exercise of rights should not be on an individualistic basis but for a greater good. A key ground for recourse is where a decision is made without proper consultation. The ancient maxim 'what touches all, as individuals, should be approved by all'⁶⁸ provides rights to a wide range of beneficiaries and stakeholders. A recent example of a successful application for hierarchical recourse is the parish Church of SS Peter and Paul, New Brighton whose closure was declared null and void.⁶⁹ Where a charity is recognised as Catholic but not controlled by an ecclesiastical authority, it will be difficult for the faithful to be able to exercise their right to Canonical recourse.

⁶² See *Re Norwich Charities* (1837) 2 M & C 275 at 305; *Re Stafford Charities* (1857) 25 Beav 28 and *Baker v Lee* (1860) 8 HL Cas 495 at 513. See Section 4.4 of this article for examples of charities with purposes to further the mission of the Catholic Church.

⁶³ See *Baker v Lee* (1860) 8 HL Cas 495 at 513.

⁶⁴ As defined by C 205.

⁶⁵ See Stonyhurst College.

⁶⁶ C 119(3).

⁶⁷ C 223(1).

⁶⁸ C 119(1).

⁶⁹ www.c20society.org.uk.

6.2 Civil Law

From a Civil law perspective, if a charity is controlled by the Church then there might be issues of potential liability for the Church through the law of vicarious liability. Vicarious liability is not based on the fault of the person or organisation held liable for the wrongful actions of another, but rather whether a Court considers it fair and reasonable to impose such liability.

An agency relationship between the Church and a person or organisation involved in a Church enterprise will suffice for the purpose of establishing vicarious liability.⁷⁰ It is possible that, if the Church has a power of appointment of trustees of a charity, then it might run the risk of vicarious liability. Certainly 'control' is a factor in determining liability.⁷¹ If the Church actively exercises its power to control charities by removing non-compliant trustees, then it runs the risk of being held liable by the court on the basis that it does actually control charities in more than a theoretical sense. Equally, if the Church remains passive and does not exercise its power to appoint and remove trustees then it could be held liable by omission. The solution to this problem might be to align the power of appointment and removal of trustees to purely doctrinal issues connected to the recognition of such charities through the award of the title 'Catholic' in their name. Even this course of action runs the risk of liability for the Church on the basis that there is an agency relationship between the Church and the charity.

7. Doctrinal Orthodoxy

Even though the Canon law⁷² reflects Vatican II's teaching that the laity share in the priesthood of the Church, there are apparent differences of interest between the clergy and the laity. Several Catholic Church charities and Catholic charities mainly run by the laity have experienced conflict with the Church on doctrinal issues. For example, the Hospital of St John and St Elizabeth (previously run by an order of nuns) was ordered by Cardinal Cormac Murphy O'Connor to draw up a code of practice to reflect Catholic teaching on matters such as abortion, contraception and gender reassignment operations in 2006 after a dispute between its trustees over the admission of a local NHS GP practice on the hospital

⁷⁰ *JGE v 1.The English Province of Our Lady of Charity 2.The Trustees of the Portsmouth Catholic Diocesan Trust* [2011] EWHC 2871 at para 34 quoting the Supreme Court of Canada decision in *Doe v Bennett and Others* [2004] ISCR 436 at para 27.

⁷¹ *Ibid* at para 42. See also *Various Claimants v Institute of the Brothers of the Christian Schools* [2010] EWCA Civ 1106.

⁷² C 129.

premises. The intervention triggered the resignation of four of the trustees who were asked to resign by the Cardinal.⁷³

The Catholic Church charity CAFOD, which is an agency of the Bishop's Conference, was involved in controversy over its stance on artificial contraception which was taken 'in some quarters as indicating the organisation was at odds with Church teaching on the prevention of the spread of HIV/AIDS and causing Cardinal Murphy O'Connor to confirm the Church's position'.⁷⁴

A more recent example is the lay parent governors of the Cardinal Vaughan Memorial School who appealed unsuccessfully to the Court of Appeal⁷⁵ against the appointment of governors by the Archbishop of Westminster with a view to, inter alia, ensuring that diocesan policy that the school had an admission policy admitting baptised Catholics whose family attended Church was enforced, rather than an elaborate series of tests devised by the governing body to include active participation.

It was recently reported that the pastoral letter by the Archbishops of Westminster and Southwark on the Church's opposition to gay marriage caused considerable dissent.⁷⁶ These tensions were also present in the Catholic adoption agency case. As part of its charitable objects Catholic Care (Diocese of Leeds) adoption agency would not provide adoption services to same sex couples or civil partners because to do so would be outside the tenets of the Roman Catholic Church which taught that the model of family life is the Holy family of Nazareth. Although there was an exception under the legislation in respect of the supply of goods and services by an organisation relating to religion and belief⁷⁷ this was not available here because the charity had contracted with the state to provide adoption services.⁷⁸ Catholic Care (Diocese of Leeds) tried to amend its objects to take advantage of an exception for charities which have objects discriminating in favour of a particular category of person if it is a proportionate way of achieving a legitimate aim or for the purpose of preventing or compensating for a disadvantage limited to the characteristic, in this case religion.⁷⁹ The Charity Commission refused to give

⁷³ The Independent, 23 February 2008.

⁷⁴ The Universe, 12 December 2004. See also Ann Smith 'Where Cafod Stands' The Tablet, 25 September 2004.

⁷⁵ See *R (the application of Parent Governors of the Cardinal Vaughan Memorial School) v Roman Catholic Archbishop of Westminster* [2011] EWCA Civ 433.

⁷⁶ The Tablet, 16 March 2012.

⁷⁷ Equality Act 2010, Sch 23, para 2(1)(2).

⁷⁸ Equality Act 2010, Sch 23, para 2(10) (a)(b).

⁷⁹ Equality Act 2010, s 193.

consent for the amendment because it was not persuaded that there would be an increased number of adoptions through its approach and therefore a legitimate aim. The charity appealed to the Charity Tribunal⁸⁰ against the Charity Commission's decision arguing that unless it could discriminate in this way it would be inevitable that the charity would close and this would result in a reduction of adoption services overall and therefore the discrimination was a proportionate way of achieving a legitimate aim (or in other words justified). The Tribunal found that on the evidence it was not clear that this was the case.

A critical factor in Catholic Care (Diocese of Leeds) failing to succeed at the Charity Tribunal was that it was unable to demonstrate that it would not be supported by Catholics if it placed children for adoption with same-sex couples. In fact, it had received a letter from the Roman Catholic Caucus of the Lesbian and Gay Christian Movement which stated that the other Catholic adoption agencies that had changed the way that they operated in order to comply with the Equality Act 2010 had continued to attract support from Catholics. The Tribunal concluded that there was a whole variety of opinion amongst donating Catholics and therefore it was impossible to conclude that voluntary income would inevitably be lost if the charity operated an open adoption agency. This contradicted the evidence given by the Bishop of Leeds who said that he thought that the receipt of donations and the promotion of the Nazarene structure went hand in hand.⁸¹ Consequently, Catholic Care (Diocese of Leeds) lost its appeal.

Contrast the outcome of this case with the successful lobbying conducted by the Catholic Church in 2006, which asked its lay membership to write to the government over the proposal to impose a 25% quota of non-believers on faith schools.⁸² The level of support from the laity, protective of its valued Catholic schools, shows that the laity are selective in their support for the Church.

There is a much more important question at stake for the Church here than the expediency of any particular case. One of the fundamental reforms of Vatican II was to confirm the status of the laity through baptism to an apostolate, sharing in the priesthood of the Church.⁸³ It called for the laity to actively engage, evangelise and transform the world, according to their position in the world, but underpinning the exhortation is the underlying assumption that the laity will be promoting the doctrines of the Catholic Church. As shown by these examples, the laity can be

⁸⁰ *Catholic Care (Diocese of Leeds) v The Charity Commission* Decision dated 26 April 2011, First-tier Tribunal (Charity) CA/2010/0007.

⁸¹ Ibid at para 28.

⁸² See www.cesew.org.uk.

⁸³ Decree Apostolicam Actuositatem (1965). See also *Christifideles Laici* (1989) and C 225.

selective in their support for the Church. From a hierarchical perspective, this tends to suggest that the Church should be careful to continue to control Catholic charities at least in terms of doctrinal issues.⁸⁴

8. Qualified Recognition in Civil Law

Some Catholic Church charities are not recognised by law as being charitable or have a doubt about whether they are charitable under the Civil law. Others have a doubt about whether they can continue in their current form. These are enclosed contemplative religious orders, parishes and religious orders which no have so few members that they are no longer able to carry out charitable activity and should consider collaboration or merger.

Religious orders⁸⁵ will only be recognised in Civil law as being charitable where they allow public access to their services or carry out activities for the benefit of the public in terms of missionary work, hospitals, schools and such like. Roman Catholic enclosed contemplative orders are not charitable in law. The House of Lords in *Gilmour v Coats*⁸⁶ decided that an enclosed contemplative religious order is not charitable because the value of intercessory prayer is incapable of proof in law and the nuns' edification by the example of their lives of prayer was too vague and intangible to satisfy the test of public benefit. In practice, the Charity Commission will register enclosed contemplative religious orders if the order can show some interaction with the wider community through retreats, guest houses and access through a website.⁸⁷

The *Gilmour v Coats* decision has far more reaching effect. The Church needs to be mindful that not all of its activities are regarded by the Civil law as charitable when it adopts charitable purposes for its charities. A gift to promote the Catholic Church as the bishop might prescribe has been held⁸⁸ to be not charitable because it could include, for example, distributing funds to an enclosed contemplative order.

There is also a doubt about the charitable status of Catholic parishes. Under the Civil law, parishes (albeit Church of England) are not automatically considered to

⁸⁴ C 205 defines full communion with the Catholic Church, which includes acceptance of ecclesiastical governance.

⁸⁵ See section 4.3.

⁸⁶ *Gilmour v Coats* [1949] AC 426.

⁸⁷ See Conventus of Our Lady of Consolation, more commonly known as Stanbrook Abbey, registered charity number 1092065.

⁸⁸ *Ellis v IRC* [1949] TR 273. See also *Oxford Group v IRC* [1949] 2 All ER 537.

be charitable.⁸⁹ In *Farley v Westminster Bank*⁹⁰ the House of Lords decided that a gift for 'parish work' was too vague to constitute a charitable religious purpose. Similarly, in *Re Stratton, Knapman v AG*⁹¹ the Court of Appeal decided that a gift to the vicar of a particular parish 'to be by him distributed at his discretion among such parochial institutions or purposes as he shall select' was not charitable. Lord Hanworth commented that:⁹²

In law it is not every parochial purpose which is a charity. Many objects are commonly called charitable, but if they are merely benevolent, or humanitarian, then, however excellent they may be, they are not necessarily charitable in the legal sense.

By way of contrast, the Court of Appeal in *Re Bain, Public Finance v Ross*⁹³ decided that a gift to the vicar of a particular Church 'for such objects connected with the Church as he shall think fit' was charitable on the basis that the gift was construed to be for the Church i.e. the Church building, its fabric and services and that these purposes were charitable. Significantly, in this case, the court considered itself bound by the rule of law that required it to take a benignant construction in favour of charity, when faced with the choice of an effective gift for charity and one which would hold that the gift was void.⁹⁴

Some comfort can be taken from the analogous position of parochial Church councils of the Church of England. These bodies are corporate bodies⁹⁵ which constitute parishes in the Church of England. They used to be excluded from the definition of 'charity'⁹⁶ which meant they were not registered as charities but, following the Charities Acts 2006 and 2011⁹⁷ this is no longer the case and they may now need to be registered if their gross income exceeds £100,000.⁹⁸

⁸⁹ For a discussion on this point, see Simon Pulleyn, 'Is your Charity a Trust? A Case Study' CL&PR 13 [2010-11] 51.

⁹⁰ *Farley v Westminster Bank* [1939] AC 430.

⁹¹ *Re Stratton, Knapman v AG* [1931] 1 Ch 197.

⁹² *Ibid* at 200-201.

⁹³ *Re Bain, Public Finance v Ross* [1930] 1 Ch 224.

⁹⁴ Applying *Bruce v Presbytery of Deer* (1867) LR 1 HL (Sc) 96 at 97.

⁹⁵ Constituted and governed by the Parochial Church Council (Powers) Measure 1956.

⁹⁶ Charities Act 1993, s 96 (2).

⁹⁷ Charities Act 2006, s 78(3) and Charities Act 2011, s 10(2).

⁹⁸ Charities Act 2011, s 30(2) (b) (c). Unless the Charity Commission makes a unifying direction, under Charities Act 2011, s 12(1)(2), that they are treated as forming part of the diocesan trust for the purpose of registration.

The Parochial Church Councils Measure 1956, constituting parochial parish councils in the Church of England, does not set out exclusively charitable purposes. However, the Charity Commission has registered those parochial parish councils requiring registration with objects: ‘promoting in the ecclesiastical parish the whole mission of the Church’⁹⁹ despite the fact that, under the common law, it is not certain that property held for parish work is charitable. As registration confers a conclusive presumption for all purposes that an institution is a charity¹⁰⁰ then parochial Church councils will be presumed to be charitable. By way of analogy, Roman Catholic parishes should, in practice, be treated as charitable unless registration is successfully challenged by an interested person.¹⁰¹

Finally, there is a doubt about the charitable status of religious orders which are so small due to diminishing numbers that they are unable to carry out charitable activity and therefore lack public benefit. The Charity Commission accepts that religious orders can look after their aging members by providing accommodation and pensions. The Commission takes the view that the members have given up their possessions when they joined on the expectation that their modest needs would be met in return for their charitable work. It might be that looking after the members of the order could be regarded as in furtherance of the charity’s objects and that any private benefit is incidental to the overall public benefit. The Charity Commission has also stated that it might be that, in other circumstances, it might take the view that the benefits are more than incidental.¹⁰² It is unclear what the Charity Commission means by this, but it cannot mean that such charities cease to be charitable in law. This is because there is a general principle in law that ‘once a charity always a charity’¹⁰³ and therefore the appropriate course of action where there are insufficient trustees is to appoint new trustees or, where in the case of a religious order the members of the order are part and parcel of the charitable purposes, consider an application for cy-près application of property.¹⁰⁴

⁹⁹ For example, see Parochial Church Council of the Ecclesiastical Parish of St Mary the Virgin, Primrose Hill with St Paul, Avenue Rd, registered number 1132701. For an example of the Charity Commission construing the objects of a charity governed by statute where they are not expressly set out, see: *Decision of the Charity Commissioners for England and Wales; made 2nd April 2001 relating to the Application for Registration as a Charity by the General Medical Council.*

¹⁰⁰ Charities Act 2011, s 37(1).

¹⁰¹ Charities Act 2011, s 36(1). Usually HMRC.

¹⁰² See Charity Commission, ‘The Advancement of Religion for the Public Benefit’ (December 2008, amended December 2011) E4.

¹⁰³ Per Lord Simonds in *National Anti-Vivisection v IRC* [1948] AC 31 at 74.

¹⁰⁴ Charities Act 2011, s 61.

The Charities Act 2011 requires trustees to take steps to apply property cy-près when a cy-près occasion arises under the Act.¹⁰⁵ Of particular relevance to this situation, is the cy-près occasion where the property available by virtue of the gift and other property applicable for similar purposes can be more effectively used in conjunction to common purposes.¹⁰⁶ Before deciding whether the property is to be applied cy-près, there needs to be consideration by the Charity Commission between (on the one hand) the spirit of the gift concerned and (on the other hand) the social and economic circumstances prevailing at the time of the proposed alteration of the original purposes.¹⁰⁷ This will be difficult for trustees of religious orders who have given their lives to the order and its charitable works, but the Canon law does encourage mergers, especially where there seems to be reasonable hope for growth and development of an institute as a result of the merger.¹⁰⁸

9. Suggested Criteria for a Catholic Church Charity and Catholic Charity

The Canon law makes a clear distinction between a Catholic Church charity and a Catholic charity by its distinction between public and private juridic persons. In the case of a Catholic Church charity, control by the Church is required, whereas, in the case of a (non-Church) Catholic charity acting in the name of the Church, permission is needed for the charity to use the term 'Catholic' in its name. In determining whether to grant this recognition, the bishop will review the charity's governing document and he might or might not insist on some form of control by the Church. It would be helpful if the Canon law set out what sort of key provisions should be present. They might include:

- 9.1 The term 'Catholic' in the name to be licensed by the Church;
- 9.2 Whether the charity is a public or private juridic person;
- 9.3 Charitable purposes to advance the Roman Catholic faith and its charitable purposes as expressed in the Canon law but only in such ways that are charitable according to the Civil law;
- 9.4 Trustees/members of the charity to be Roman Catholic as defined by Canon law;
- 9.5 Power for an ecclesiastical authority to appoint and remove trustees/members;

¹⁰⁵ Ibid.

¹⁰⁶ Charities Act 2011, s 62(1)(c)(1)(2).

¹⁰⁷ Charities Act 2011, s 62(2).

¹⁰⁸ C 582. See Vat II, decr Perfectae caritatis, 21, Paul VI, mp Ecclesiae Sanctae, August 6, 1966, Acta Apostolicae Sedis, Rome, 58 (1966).

- 9.6 Doctrinal issues to be determined by an ecclesiastical authority;
- 9.7 Ecclesiastical goods to be administered in accordance with Canon law;
- 9.8 A dissolution provision to provide for property to be transferred to the Catholic Church to be applied for the same or similar charitable purposes; and,
- 9.9 Provision that the governing document cannot be amended without the consent of an ecclesiastical authority.¹⁰⁹

In the case on a (non Church) Catholic charity, a majority of trustees/members could be Roman Catholic¹¹⁰ and clause 9.5 would not be required.

10. Conclusion

There needs to be a strategic review of Catholic charities to decide on the level of control necessary by the Church. It has been suggested in this article that the control for (non-Church) Catholic charities should be limited to doctrinal supervision, so long as the other Catholicity safeguards are in place. Removing actual control will assist the Church in defending claims in Civil law for vicarious liability. A clearer distinction between Catholic Church charities, Catholic charities and non-Catholic charities would assist in terms of transparency and accountability. In an age of increasingly professional fundraising, it might assist if the Church issued a kite mark.

¹⁰⁹ In the case of a company the ecclesiastical authority will need to be a member or have a representative member act on its behalf. Entrenched provisions can only be amended with the unanimous consent of the members so this means that the ecclesiastical authority or its representative will have a right to veto amendments: Companies Act 2006, s.22(3)(a).

¹¹⁰ See Section 5 of this article.