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## The Charity Law & Practice Review

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### BOOK REVIEWS

*Charities: Law and Practice* (3rd ed 1997)

Elizabeth Cairns, Solicitor - Sweet & Maxwell

ISBN 0 421 56190 4, 379 pages

Hardback £56.00

*Fundraising for Charity: A Guide to Taxation & the Law* (1996)

Elizabeth Cairns, Solicitor - Tolley Publishing Co

ISBN 0 854 59760 3, 212 pages, excluding Index, Tables of Cases, Statutes and Statutory Instruments.

Paperback £39.50

These two books, whose prefaces are dated only three months apart, originate from the same author, Elizabeth Cairns, a practising solicitor specialising in charity law. The first of the two books dealt with in this review is a general survey and appeared in 1997; the second is a monograph on charity fundraising which appeared at the end of 1996.

*Charities: Law and Practice* is the third edition of a well received primer on the subject originally published in 1988. It now runs to 379 pages, not including the Table of Cases and Index. Some 213 pages of the book are devoted to a narrative exposition of the law, the balance being appropriated to the reproduction of statutory material, Charity Commission model documents and various useful lists.

The first chapter deals with the age old problem of defining charitable purposes. This is covered in a thoroughly workmanlike manner at none too great a length. The subject is a vast one but the main features of the jurisprudential landscape are conscientiously mapped and some of the more interesting of the Charity Commissioners' decisions in this area are noted. Thus there is passing mention of trusts for the unemployed, conservation trusts and sex equality as a charitable object. There is not, of course, the space for deeper treatment of the contentious

issues surrounding (in particular) religion and sport. Nor can there be any pretensions to comprehensiveness.

The second chapter, 'Matters Affecting Charitable Status', is concerned to address the ticklish subjects of public benefit, non-charitable activities (in which trading and individual benefits are summarily, but justly, dealt with) and political activity. The organisation and the main work of the Charity Commission are covered in Chapter 3 and then there is a welcome analysis of the procedural aspects of setting up a charity. This leads on to the key problem of the wording of the objects clause discussed in Chapter 5. 'Appointment, Retirement and Removal of Trustees' form the subject of Chapter 6 and the worrying matter of personal liability is accorded useful treatment in Chapter 7.

A bird's-eye view of Taxation and VAT is provided in Chapters 8 and 9. Chapter 10 headed, 'The Administration of a Charity', is a whistle-stop journey through the statutory powers of trustees, dispositions of charity land, benefits to charity trustees and topics as variegated as: investment, delegation, statutory duties accounting, liabilities and data protection. It is a tribute to the author's gift for concise writing that she contrives to provide in a mere 16 pages an account which is by no means superficial. The last three chapters cover 'Variation', i.e. schemes and variations of administrative powers or under express provisions, 'Appeals and Fund-Raising' and the 'Dissolution of Charities'.

As so often happens in a fast changing world, the Model Documents in the Appendix have been overtaken by new ones produced by the Charity Law Association and approved by the Charity Commission. But there are some useful objects clauses and administrative powers set out in the Appendices as well as the important statutory material and lists of useful names and addresses and of Charity Commission pamphlets and leaflets. The cut off point for citation is presumably the September 1996 date of the Preface.

Enough has been said to indicate this reviewer's approval of a succinct, logically organised and useful guide to the main outlines of charity law and practice.

*Fundraising for Charity*, to use its short title, is a detailed review of a critical area of charitable activity: raising funds to advance the work of charity. This is a field where new legislation has made considerable inroads, although the provisions relating to public charitable collections are yet to come into force. (The latest of several postponed dates is now expected to be sometime in 1998 when the relevant regulations applicable to the new regime are planned to come into play.)

The organisation of the book is straightforward enough.

Chapter 1 considers the new code or regime for professional fundraisers and commercial participators under Part II of the Charities Act 1992. The next two chapters are concerned with fundraising events. Chapter 2 deals with licences and regulations for public entertainment, theatrical and cinematic performances and licences for the sale of alcohol (to be read subject to the changes introduced by the Deregulation (Occasional Permissions) Order 1997), with the requirements of food hygiene and copyright law completing the picture. It should be added in parentheses that in the discussion of copyright requirements the position of the copyright exemption for charities and near charities in section 67 of the Copyright Designs and Patents Act 1988, most recently discussed in the last issue of this *Review* (see Volume 4, Issue 3, 1996/1997 CL&PR at 153-172) has escaped attention.

Chapter 3 covers personal liability and taxation. Betting, gaming, raffles and lotteries are the subject of scrutiny in Chapter 4 and wills, legacies and ex gratia payments in Chapter 5. The vitally important subject of trading is considered in Chapter 6 which devotes some 20 pages to such aspects of trading as its permissible ambit for a charity, the taxation of income realised from it and the VAT liabilities with which trustees are likely to be faced. 'Sponsorship - Taxation and VAT Implications' is the title of Chapter 7. The author first defines sponsorship and then attends to various questions of the use of the charity's good name and logo by commercial concerns. The tax and VAT aspects are fully discussed and ethical considerations are touched on.

#### *Acute*

The chapter on 'Miscellaneous Fundraising Methods' (Chapter 7) gathers together such variegated means as fundraising by telephone, multi-level selling schemes, advertising, direct mail shots, static collecting boxes and fundraising in schools. The résumé on independent television advertising is a little short on detail and sound broadcasting ("steam radio") is altogether ignored, as is BBC television broadcasting. When the next edition of this book is contemplated this topic should undoubtedly be expanded.

Public Charitable Collections before and after the changes to be effected under the Charities Act 1992 form the substance of Chapter 9; and 'Appeals for Special Projects Crises and Disasters' (with a discussion of the Attorney General's Guidelines on Disaster appeals) form the substance of Chapter 10. There is a thorough analysis of the statutory provisions taxing charitable giving in Chapter 11 ('Tax-effective Giving'), though readers should note that the covenant payment procedures have been changed since this book was delivered to the publisher.

Chapter 12 is concerned with 'Preventing Unauthorised Fundraising' while Chapter 13 covers 'Funding from Grant-making Trusts and the National Lottery'. Under the latter rubric the practice of the Sports Council in relation to the National

Lottery funds which it administers and the practice of the Arts Council are helpfully summarised. The last chapter of all, Chapter 14, covers the statutory requirements for accounting for the proceeds of fundraising and the Charity Commissioners' draft leaflet on the retention of reserves. Readers should note that the latest view on reserves post-dates this book and is to be found in a new Charity Commission leaflet on the subject.

This monograph is a satisfying and detailed summary of the law of fundraising for charities.

Subject to the criticisms made in this review (it is hoped in a constructive and not a carping way) about omissions (as opposed to those cases where legislation has overtaken the text since it was submitted to the publishers), the author has provided a remarkably conscientious and comprehensive guide to the subject of charity fundraising. As such it fills a welcome gap. Charities and their advisers have in this book a monograph which fulfils most needs. Its singular virtue is to have brought under one roof so many different but relevant considerations.

Hubert Picarda QC

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