
The Charity Law & Practice Review

THE MEDIA AND THE MESSAGE: AN EVALUATION OF ADVERTISING BY CHARITIES AND AN EXAMINATION OF THE REGULATORY FRAMEWORKS

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Introduction

In the last decade the number of charities has grown significantly, whilst their social, economic and political importance has taken on a new dimension. Their role and responsibilities have changed out of all recognition. Charities now find themselves in the position of commercial businesses competing for a foothold in the marketplace. Charities find a need for promotion, both to raise public awareness and to generate donations or to recruit volunteers.² Charities are therefore becoming more professional in their marketing as they attract a higher calibre of management (including marketing directors) from the commercial sectors.

In the light of the increasing reliance on charity-led services, the need to raise substantial funds is unlikely to be diminished. The increasing number of new charities being registered every year,³ falling public donations,⁴ the increasing number of annual major events, such as telethons, challenging traditional sources of revenue, plus the addition of the National Lottery, all suggest that the industry is likely to become even more competitive.

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² The effectiveness of promotional activity aimed generally at profile raising and public awareness is difficult to assess.

³ During the year 1994, 11,616 charities were added to the register: [1994] *Charity Commissioners Report*, p 6.

⁴ See, for example, *Dimensions of the Voluntary Sector*, 1995, pp 51-55 (Charities Aid Foundation, London).

Growing competition among charities for what increasingly seems a finite pot of donations has meant that advertising now plays a key part in the commercialisation of charities and has created a rich seam of business for the advertising industry. Evidence suggests⁵ that the bigger charities are turning to advertising agencies in order to defend and expand their share of public giving, at the expense of those that cannot afford to do so. This had led to the emergence of a 'super league' of charities, which are sophisticated, well resourced and able to fashion more coherent campaigns and strategies. The professionalisation of charity marketing carries the same penalties as advertising in any other product sector. Donors are 'floating voters' unless already involved with the cause. Their brand loyalty can be bought with effective marketing and the right image; the basic message should still be sound, but it may be the packaging which catches the eye first. Could it be that people find it more satisfying to support a charity whose marketing and image they admire? To many, this may seem an alarmingly shallow and arbitrary basis on which to make a donation, but one charity has found that it is based on fact. Scope, formerly the Spastics Society, abandoned a widely-recognised name, because the word 'spastic' was offensive to people with cerebral palsy. More important than this, perhaps, was the reluctance of givers, particularly corporate donors, to support the organisation. There is evidence⁶ that since the society decided on the name and image change and the re-launch became public knowledge, a far higher number of groups and organisations have been seeking affiliation.

As well as using professional fundraisers, charities are increasingly embarking upon joint promotions with commercial manufacturers and retailers in order to associate their charitable cause with products offered for sale. Companies are aware that giving is good for business, and in this area self-interest and philanthropy are seen conveniently to coincide. The increasing number of these deals is another sign of the growing professionalism of the charity sector. Cadbury's work with Save the Children and British Telecom's link with the Samaritans, for which it raised funds to buy a new telephone system, are both good examples. The competition between charities for one of these relationships is intense.⁷ Adapting to this new world of marketing professionalism is not always easy for charities, steeped in a century-old tradition of fund-raising through appealing to the better natures of donors.

⁵ Register-MEAL (which collects data on advertising) revealed that 52 charities spent a total of £32.5m on agency-placed advertisements in the first six months of 1994: 'A New Brand of Competition', *The Guardian*, 25th January 1995.

⁶ 'A Better Way of Giving: The Medium And The Message', *The Observer Supplement*, 2nd October 1994.

⁷ See, for example, 'When Charity Begins With A Pitch', *Marketing*, 23rd June 1994.

Research undertaken at the University of Loughborough⁸ revealed that charities are viewed in contradictory ways.⁹ They should be amateur in style and motive, yet professional in their efficiency and effectiveness. In seeking funds, they should inform the donor about why funds are needed and what the consequences of donation might be. Emotional appeals are suspect, yet readily conceded to be necessary because effective. The public recognise the need to have their lapels grabbed, their attention sought, their minds focused on need. Yet, undue tin rattling, emotional blackmail, invasion of privacy or personal space is resented.

Although advertising experience by charities has increased in recent years,¹⁰ a Mintel survey in November 1993 revealed that only 17% of those questioned agreed with the statement that charities spend too much on advertising.¹¹ This suggests that, at present, charities have achieved a good balance between prudence and extravagance.

Research¹² has however revealed that the appeal to the public via advertisements to use their credit cards in order to make charitable contributions was seen by some as an unsuitable method of eliciting funds — donations on credit may not be seen as true donations. The element of sacrifice involved in giving was plainly diminished. There was a sense of false generosity — a notion of 'buy yourself satisfaction now and pay later' that did not fit the act of charitable giving.

Types of Advertising

Advertising can be carried out by or on behalf of charities in a variety of ways, including by means of: television and radio; newspapers, journals or magazines; cinemas; and posters.

⁸ Fenton N et al, *Charities, Media and Public Opinion: Final Report On Home Office Project, Reference RP89/76/301/1*, 1993. Communication Research Centre, University of Loughborough (hereinafter, 'Loughborough Report').

⁹ Loughborough Report, p 2.

¹⁰ Mintel Market Intelligence, *Report On Charities*, May 1994, p 15, shows that advertising expenditure by charities increased by 71% between 1989 and 1993. It grew from £18.8m in 1989 to £32.2m in 1993.

¹¹ Mintel Marketing Intelligence, *Report On Charities*, May 1994, figure 12.

¹² Loughborough Report, p 22.

(1) Television and Radio

On 4th September 1989, the Independent Broadcasting Authority announced the lifting of the restriction on paid-for charity advertising on independent television and local radio, so that charities can now buy airtime in order to publicise their needs and objectives on television and radio.¹³ In a study carried out as part of the research undertaken at the University of Loughborough, viewers who were surveyed criticised television advertising because it arrived unannounced, diminishing the choice of viewers.¹⁴ Television advertisements were thought to be an exorbitant use of funds as were full page magazine or newspaper spreads, where respondents expressed cynicism regarding cost effectiveness.¹⁵ When questioned, less than half of the sample had ever seen a television advertisement, 6.3% of those who had seen a television advertisement could not recall the name of the charity, 20.1% could remember the subject but not the name of the charity and 5.8% named charities who have never advertised on television!¹⁶

It would be assumed that the most powerful form of media — television — would hold great potential for charities, for both fund-raising and general publicity. But, since 1989, charities have tended not to use this type of advertising medium as much as had been widely expected. Evidence¹⁷ shows a slight shift in advertising media from the press to television, but this has been slow to take effect since the lifting of the ban. This can be attributed to several reasons: firstly, the very high cost involved in purchasing creative work and air time; secondly, charities are aware that over-use of television advertising may cause consumers to reach saturation point and be less inclined to give donations due to 'donor fatigue'; thirdly, charities perceive the need *to be seen* to use revenue responsibly without incurring excessive advertising costs;¹⁸ fourthly, the associated administrative difficulties, such as having enough telephone lines available to deal with the response, may deter some charities. Unlike press advertising or direct mail, television simultaneously reaches a mass audience and problems handling the generated response can cause more damage to a charity's standing than if it had

¹³ See Morris D, 'Broadcast Advertising By Charities' [1990] *Conveyancer* 106.

¹⁴ Loughborough Report, p 22.

¹⁵ Loughborough Report, p 22.

¹⁶ Loughborough Report, p 50.

¹⁷ Mintel Marketing Intelligence, *Report On Charities*, October 1992, figure 8.

¹⁸ Some NSPCC advertisements have been sponsored by HFC bank (Mintel Market Intelligence, *Report On Charities*, May 1994, p 14) - this is a tactic which charities are increasingly adopting, primarily for financial reasons, but also because they are aware that they must not be seen by the general public to be wasting money.

not advertised at all. One leading charity's own research found that if the general public respond to an appeal by telephoning a direct response telephone number and find all lines constantly busy, they are likely to feel disgruntled and, ultimately, alienated by that appeal, and may be discouraged from attempting to give in this way again.¹⁹

The level of costs incurred in producing television advertising has been a major factor in largely confining use of the medium to larger charities. For example, in 1991, of the 39 charities identified by the Independent Television Commission as having broadcast advertisements on television, 30 were included in the Charities Aid Foundation's top 400 fund-raising charities.²⁰ In fact, 19 of the top 50 charities in the listing had undertaken television advertising. Nevertheless, some smaller local charities are making use of local television stations in order to market their product. For example, Chester Zoo, with a modest advertising budget of £167,000 (3.3% of its expenditure), now spends 75% of its budget on television advertisements.²¹ Budgets mean that television advertising is concentrated in the Granada, Central, Yorkshire and Harlech regions with 30 and 10 second advertisements. Advertisements are broadcast immediately prior to and during peak visiting periods, supported by regional and local press advertisements, with some radio advertisements and public relations activity.

Unlike television, radio is relatively inexpensive and reaches a wide range of audience segments. It is cheap to prepare advertisements and to change them. But radio does not have the prestige that television has, and, like television, its message evaporates as soon as it is broadcast. Radio is the most under-used means of fund-raising by charities, seeing only 1% of media expenditure.²² Perhaps this is because of the sector's need to generate a response through the use of powerful images. However, it should not be forgotten that radio may be very attractive, especially to local charities, whose events can be publicised on local radio at far less cost than on television.

¹⁹ Mintel Market Intelligence, *Report On Charities*, May 1994, p 14.

²⁰ Charities Aid Foundation, *Charity Trends 1991*, 14th ed p 125. Charities Aid Foundation, Tonbridge, Kent.

²¹ Dibb S and Simkin L, *The Marketing Casebook: Teacher's Manual*, 1994. Routledge, London p 139 and p 143.

²² Mintel Market Intelligence, *Report On Charities*, October 1992, p 2.

(2) Newspapers, Journals and Magazines

Overall, the press remains the favourite medium for charities because of its suitability for targeting certain sectors of the population. Newspapers and magazines have to be purchased to be read, indicating a higher degree of involvement on the part of the reader. Print allows for longer copy. Because there are so many newspapers and journals, they offer much flexibility in adjusting messages to various geographic areas and known readership. They are published frequently and advertisements can be run without much advance scheduling in response to a natural or man-made disaster. The cost is relatively low.

(3) Cinema

With cinema attendance on the increase, several charities are seeing the big screen as an appropriate medium for promotion. Advantages of the cinema include lower distribution costs and targeted audiences. With television, there is a much broader spectrum of viewers. An example of a successful cinema advertising campaign is evidenced from the Samaritans' experience in Scotland. Following the creation of a national telephone number in Scotland, the Samaritans showed promotional films in cinemas in Glasgow and Edinburgh and it was found that 30% more people called the telephone number from the two areas.²³

(4) Posters

Posters can carry only very short messages. They have little demographic selectivity and rarely attract the reader's full attention. But, they are cheap, allow for much repetition, run 24 hours a day, and can be focused on specific areas. The Multiple Sclerosis Society, for example, has been running a very successful poster campaign for several years.

(5) Broadcast Appeals

Regular appeals, broadcast weekly on BBC Radio 4 and monthly on BBC 1 television and ITV, are the backbone of broadcasters' commitment to charitable appeals. Broadcast charitable appeals are nothing new — the first public appeal for charitable funds was made in 1923, and, since 1926, *The Week's Good Cause* has been a regular Sunday morning radio feature. However, before the 1980s, the image of charity appeals on television had always been staid and boring. From 1980 onwards, BBC Children in Need, Thames TV Telethon and Live Aid showed that appeals could change their old-fashioned appearance and take on young, lively

²³ 'Cinema Goers Pay Attention', *Charity*, March 1994.

and glamorous images. Broadcast appeals proved that they could provide broadcasters with the very tangible benefit of high audience ratings.

The first extended BBC Children in Need appeal in 1980 raised £1.25m and the first Thames TV Telethon in the same year raised the same amount.²⁴ Such events have now become a regular feature on national television, both on BBC and independent channels. Comic Relief, Telethon, and Children in Need²⁵ contributed £72.6 million in revenue in 1990, while the corresponding figure for 1992 is £56.8 million (a decline of 22%).²⁶ This highlights the problems faced by the industry in terms of donor fatigue and the effects of the recession. In fact, the ITV Telethon has now been abandoned, and instead charities simply have the option of paying for advertisements.

Although considerably revamped now, the style of regular appeals is still more sober and factual than that of the annual extended appeals. Despite, or perhaps precisely because of their style, regular appeals continue, week after week, month after month, to raise money for selected charities. For example, the BBC's *Lifeline* on television and *The Week's Good Cause* on radio attracted £57,940 and £138,681 respectively, for broadcast appeals in January to March 1995.²⁷ The organisation and the speaker may affect amounts collected, but an examination of the figures reveals no pattern.

Charities allocated BBC appeals are offered, for a charge, the opportunity to give a standard address for donations and to use telephone back-up facilities for the receipt of credit card donations. The service is provided by Broadcasting Support Services (BSS) who report²⁸ that postal donations still form the bulk of the total, with credit card donations from appeals administered through BSS currently accounting for some 20% of the total.²⁹

Research has shown that regular television appeals were watched by just over half of the sample population.³⁰ Only 0.2% of those surveyed said that they always

²⁴ Charities Aid Foundation, *Charity Trends 1990*, 13th ed p 147. Charities Aid Foundation, Tonbridge, Kent.

²⁵ These are in effect both fund-raising and grant making trusts created by broadcasting organisations. They raise money first and then decide to whom to give that money.

²⁶ Mintel Market Intelligence, *Report On Charities*, October 1992, p 5.

²⁷ BBC, *Results of BBC Broadcast Appeals*, 1995.

²⁸ BBC, *Notes on Charitable Appeals On BBC TV And Radio*, 20th June 1995.

²⁹ See text at footnote 12 *supra*.

³⁰ Loughborough Report, Table 3.20.

respond with a donation and only a minority watched them with any regularity. Less than a third of the sample listened to radio appeals — of these 78.1% had never made a donation after listening.³¹ 84% of the sample said that they had watched the big annual charity appeals at some time.³² This is a far greater percentage than for any other broadcast appeals.

Regulation

All the forms of advertising and appeals discussed above are controlled by a great deal of legislation and relevant Codes of Practice. For example, the Committee of Advertising Practice has identified over 100 statutes and regulations which may affect advertising and promotions.³³ It is noted that the list 'is not exhaustive'. What follows is an examination of some of the main provisions which may concern charities wishing to advertise. This piece does not, however, cover the provisions of Part II of the Charities Act 1992 which place controls upon 'professional fund-raisers' and 'commercial participators'.

Above all else, non-commercial advertisers, such as charities, pressure groups and non-profit making organisations, must be legal, decent, honest and truthful, in the same way as those who have commercial interests. They must not mislead by inaccuracy, ambiguity, exaggeration or omission. Overstepping the line between presenting a possibly distressing, but accurate, picture of their cause and misinforming people about an issue by exaggerating or stretching the truth, exploits the trust that the public have in charities. Charities must have documentary evidence to support all the factual claims that they make because they may be asked for it. Advertisers can express their opinions freely, but it should be clear that what is being expressed is an opinion rather than a statement of fact.

Advertising standards can create special problems for charities. Advertisements are supposed to be honest and truthful and should not offend public decency. But a lot of the issues that charities are concerned with would offend public decency if they were honest and truthful about them. It is desirable to present positive images of people, but starving to death is not very positive, however it is presented.

When the Advertising Standards Authority publishes reports criticising voluntary sector advertisers, they can attract a great deal of media attention which may ultimately damage the advertiser. On the other hand, this criticism may give even

³¹ Loughborough Report, p 52.

³² Loughborough Report, Table 3.21.

³³ *The British Codes Of Advertising And Sales Promotion*, February 1995, pp 75-78.

more publicity to the charity concerned. For example, in October 1995, the Advertising Standards Authority issued its monthly report and it criticised a number of voluntary bodies (including Greenpeace, NSPCC, Friends of the Earth and International Fund for Animal Welfare).³⁴ This led to more media attention being given to the various campaigns (which included one suggesting that chemicals dumped in the sea caused male genitals to shrink,³⁵ and another linking opponents of legislation protecting wild animals with an American mass murderer)³⁶ which were, after all, under attack by the regulatory body.³⁷

(1) The Independent Television Commission's Code of Advertising Standards and Practice

The Broadcasting Act 1990³⁸ imposes a duty on the Independent Television Commission (ITC) to draw up a Code. The ITC's Code of Advertising Standards and Practice applies to all television services regulated by the ITC (ITV, Channel 4, UK direct broadcasting satellite services and other satellite services operating out of the UK).

Under Rule 12, advertisements soliciting donations or promoting the needs or objects of bodies whose activities are financed wholly or mainly by donations may be accepted only from registered charities, or those able to produce satisfactory evidence that their charitable status has been officially recognised.³⁹

The general ITC Code rules on content, tone and style, for example on offensive treatments, remain relevant to charity advertising, but a need was perceived for these to be supplemented by more specific restraints in order to avoid an appearance either of trivialising the problems to which a charity's work relates or of unfairly exploiting the audience's own emotions. At the same time, to be

³⁴ *ASA Monthly Report*, Number 53, 1995.

³⁵ The Greenpeace advertisement had the headline 'You're not half the man your father was' and it featured a photograph of the abdomen, thighs and genital area of a male statue.

³⁶ The International Fund for Animal Welfare advertisement said 'What kind of person mutilates small animals? Before graduating to mass murder and necrophilia, Jeffery Dahmer mutilated birds, rodents and domestic animals.'

³⁷ See, for example: 'Charities Defend "Shock Tactics"', *The Daily Telegraph*, 5th October 1995; 'Greens' Adverts "Overstep the Line"', *The Guardian*, 4th October 1995; and 'Needy Charities Accused Of Resorting To Sensationalism', *The Times*, 4th October 1995.

³⁸ Broadcasting Act, 1990 s.9.

³⁹ For example, through the acceptance of the organisation's charitable status by the Inland Revenue.

effective, the advertising must reflect the real needs of the charities. A series of guidelines are therefore contained in Appendix 4 to the Code in relation to the content, tone and style of charity advertising.⁴⁰ These are intended to prevent misrepresentation, in particular by those seeking to exploit public generosity for private or undisclosed ends, and more generally to ensure that the means of expression used in charity advertising reflect a broad sense of ethical responsibility. The guidelines include the following:

- the need to handle with care and discretion material likely to arouse strong emotions in the audience;
- the need to avoid presenting an exaggerated impression of the scale or nature of the social problem to which the work of the charity is addressed, for example, by illustrating the message with non-typical extreme examples. An advertisement for a charity researching into cures for the common cold that showed people dying would no doubt be objectionable on this ground;
- charity advertisements must not suggest that anyone will lack proper feeling or fail in any responsibility through not supporting a charity. For example, advertisements which make vulnerable sectors of the community (perhaps the elderly) feel guilty for not contributing to a particular charitable cause would probably be unacceptable.

A number of basic checks on the status of would-be charity advertisers are included in the Code.⁴¹ Advertisers will normally be expected to submit full details of their constitution, aims and objects, membership of governing body and recent and current activities. The ITC reserves the right to seek such additional information as it considers appropriate, including, for example, audited accounts.

Advertisers will also be required to give certain assurances.⁴² For UK charities,⁴³ licensees must obtain assurances from the advertising charities that:

- they do not involve themselves in transactions in which members of their governing body or staff have a financial interest;

⁴⁰ Appendix 4, para 5.

⁴¹ Appendix 4, para 1.

⁴² Appendix 4, para 3.

⁴³ Advertisements may be accepted from non-UK bodies provided that licensees comply with the requirements laid down in Appendix 4, para 2.

- the response to their proposed advertising, whether in cash or kind, will be applied solely to the purposes specified or implied in the advert;
- they will not publish or otherwise disclose the names of contributors without their prior permission.

Advertisements by commercial advertisers which promote, either as a main or incidental purpose, the needs or objects of organisations that would be acceptable in their own right under Rule 12 are also acceptable provided that there is evidence that the organisation concerned has given its consent to the proposed advertising.⁴⁴ In the case of commercial advertisements which include a promise that the advertiser will donate part of the proceeds of sale to charity, each advertisement must specify the charity or charities which will benefit and make clear the basis on which the sums to be donated will be calculated.⁴⁵ There is also a requirement that donations should not be conditional on sales reaching a certain level. This ensures that every member of the public who responds can be content that their purchase would lead to a donation. Clearly, the content of advertising of this kind will need to be particularly carefully considered.

The ITC's Code states that the companies which run advertisements by charities on their networks are responsible for ensuring compliance with the conditions for acceptance laid down in the Code.

Charities whose purposes include the advancement of religion may also be regulated by Rule 11 and Appendix 5.

(2) Radio Authority Code of Advertising Standards and Practice

The Broadcasting Act 1990⁴⁶ imposes a duty on the Radio Authority to draw up a Code. The Radio Authority Code of Advertising Standards and Practice and Programme Sponsorship applies to all advertisements and sponsorship on radio services licensed by the Authority. The rules for charity advertising are found in rule 28 and Appendix 5 and are broadly the same as those that apply to television advertising.⁴⁷

⁴⁴ Appendix 4, para 4.

⁴⁵ Appendix 4, para 4; see also Charities Act 1992 s.60.

⁴⁶ Broadcasting Act 1990, s.93.

⁴⁷ Charities whose purposes include the advancement of religion may also be regulated by Rule 30 and Appendix 7.

(3) The British Codes of Advertising and Sales Promotion

Charity advertisements and charity-linked promotions in newspapers and other printed publications, on cinema screens and on posters are regulated by the Advertising Standards Authority (ASA) and should conform to the British Codes of Advertising and Sales Promotions (CAP)⁴⁸ devised by the Committee of Advertising Practice. While the ASA does not seek to restrict the freedom of advertisers to express opinions in their advertisements, misleading or distressing material must be avoided. For example, charities should ensure that they are not causing unnecessary offence or distress to the objects of their charity or even encouraging what their charity is seeking to prevent.

General rules in the CAP, such as those on decency, fear and distress, violence and anti-social behaviour, exploitation of the individual, safety and children, must also be observed. This broad application of the CAP is a recent development. Until 1993, the Codes provided exemption for advertisements which addressed controversial issues within areas of public policy. This meant that many non-commercial advertisements could not be tested for factual accuracy by the ASA. The number of advertisements in this category has increased significantly over the past 15 years, and, following wide consultation with those most likely to be affected and their professional bodies, the Codes were amended to encompass such advertisements.

Models are sometimes used by charities to protect the identity of individuals. The Codes require advertisers to declare that a model has been used if the consumer's response is likely to be affected by the appearance of a real-life subject. While there is no objection to a story being based on a composite of case histories, it should be clear that this is the case. Some charities have been cautioned by the ASA for implying that harrowing stories related to named individuals when in fact they were detailing a composite of case histories.⁴⁹

The Codes also require⁵⁰ that commercial promotions claiming that participation will benefit registered charities or good causes should:

- name each charity or good cause that will benefit, and be able to demonstrate to the ASA that those benefiting consent to the advertising or promotion;
- when the object is not a registered charity, define its nature and objectives;

⁴⁸ New editions of which took effect on 1st February 1995.

⁴⁹ Advertising Standards Authority, *Background Briefing: Charities And Pressure Groups*, June 1993.

⁵⁰ Sales Promotion Code, Clause 42.1; see also Charities Act 1992 s.60.

- specify exactly what will be gained by the named charity or cause and state the basis on which the contribution will be calculated;
- state if the promoters have imposed any limitations on the contribution that they will make out of their own pocket;
- not limit consumers' contributions — any extra money collected should be given to the named charity or cause on the same basis as contributions below that level;
- not exaggerate the benefit to the charity or cause derived from individual purchase of the promoted product;
- if asked, make available to consumers a current or final total of contributions made; and
- take particular care when appealing to children.

All advertisements and promotions addressed to children should not exploit their susceptibility to charitable appeals and should explain the extent to which their participation will help in any charity-linked promotions.⁵¹

(4) Central Appeals Advisory Committee

Charities wanting to raise money via a broadcast appeal apply to the Central Appeals Advisory Committee (a body of experts with wide experience of the charitable world) which exists to advise the BBC and ITC on the selection of charities most suitable for the allocation of an appeal slot. Appeals policy has evolved over the years since the first Advisory Committee was established in 1927. The present Statement of Policy and Practice, last revised in 1975 and shared (since 1962) with the ITC, incorporates the accumulated experience of over 60 years of appeals broadcasting.

The main provisions of the Statement of Policy and Practice have been summarised as follows:⁵²

- applicants should be registered charities or able to provide other evidence of charitable status. They must be able to demonstrate a need for funds for specified purposes which cannot be provided from income or reserves;

⁵¹ Specific Rules, Clause 47.4(e).

⁵² *BBC Appeals Policy*, 31st March 1995.

- organisations should be concerned directly or indirectly through preventative work, with the alleviation of human suffering, or they should aim to promote social, physical, cultural, mental or moral well-being;
- occasional exceptions may be made 'for the sake of variety' and these may include animal charities and charities concerned with 'preservation of the national heritage', the general aim being to achieve a catholic range of interests over a period of time;
- normally no organisation may appeal more than once in 3 years;
- unsuccessful applicants are eligible to re-apply after 2 years, subject to meeting the criteria.

Exceptions may be allowed if:

- the organisation is mainly dependent on the proceeds of broadcast appeals;
or
- a number of organisations combine to present a joint appeal; or
- a need arises which could not possibly have been foreseen at the time of the earlier appeal.

The Broadcast Appeals Consortium was formed by BBC Children in Need, Charity Projects/Comic Relief and ITV Telethon, together with Broadcasting Support Services, Community Service Volunteers, and the Disasters Emergency Committee. Its aim is that charitable broadcast appeals should establish and abide by high standards of conduct. To this end, it published a charter⁵³ and recommendations for broadcast appeals in June 1994.⁵⁴ Under the charter, all broadcast appeals must *inter alia*:

- respect the dignity of the beneficiaries in the promotion of the appeal and the distribution of the funds;
- ensure that any companies connected to or established for the appeal are controlled by an appeal charity, to which all profits must be covenanted;
- convey clearly the purpose for which donations are being sought and how they can be made;

⁵³ The Charter has been welcomed by the Charity Commissioners.

⁵⁴ Broadcast Appeals Consortium, *Charter and Recommendations for the Conduct of Broadcast Appeals*, 1994.

- honour all reasonable requests for individuals seeking a refund of their donations; and
- make clear how the funds raised will be distributed and publicise the results.

Recommendations for the conduct of broadcast appeals cover such areas as the content and style of the broadcast and the administration and distribution of money or other assistance offered. For example, in relation to the content and style of broadcast, in order to ensure that the dignity of the beneficiaries is respected, it is recommended that:⁵⁵

- the beneficiaries of the appeal should be protected so as to guard against offensive images or material being used;
- the appeal should avoid portraying the beneficiaries as passive or helpless recipients of charity, whose needs might in consequence elicit solely emotional responses. Particular care should be taken to avoid portraying people in unfair stereotypical ways, such as 'brave heroine' or 'helpless victim'. Besides consulting with beneficiaries where possible, offering beneficiaries themselves the opportunity to speak directly will be a means of avoiding inappropriate presentation.

In relation to refunds,⁵⁶ it is recommended that all reasonable requests by individuals seeking a refund of their donation should be honoured (subject to a deduction to cover reasonable administrative charges). Requests will count as reasonable provided that:

- it can be verified that the individual made the donation;
- the request for a refund has been made in good faith;
- a period of no longer than 8 weeks has elapsed from the time the donation was made; and,
- no part of the donation was an agreed purchase or a bid in an auction.

It is recommended⁵⁷ that when credit or debit card donations of over £50 are made by telephone during a broadcast appeal, donors should be informed that they

⁵⁵ Recommendation 3.1 and 3.2.

⁵⁶ Recommendation 4.5; see also Charities Act 1992 s.61.

⁵⁷ Recommendation 4.6.

may alter their donation provided that they do so within 14 days of making the donation.

The BBC has also published producers' guidelines which include a chapter covering issues of concern to charitable appeal programme makers.⁵⁸

Particular Areas of Concern in Charity Advertising

(1) Shock Tactics and Image

Whereas in business and industry products are promoted in the best possible light, with charity advertising there appears to be an assumption that the type of images most likely to prove effective are those which evoke feelings of pity and guilt in the perceiver. The results of a study in the USA featuring anti-child abuse public service advertisements and emphasising the relative effectiveness of dramatic emotional advertising appeals, go some way to proving that this assumption is correct. The more emotionally intense advertisements in the study stimulated a strong desire to help and to contribute to support the goals of the charities concerned.⁵⁹ A similar study in this country, which examined a variety of Mencap posters, found that the posters which generated feelings of guilt, pity and sympathy were also those which generated the greatest desire to donate. Conversely, those which attempted to present positive images (illustrations of people with a mental handicap having the same rights, value and capability as non-handicapped persons) did not elicit the desire to donate.⁶⁰ A later British study, however, suggested, more optimistically, that donors may be prompted to give money by causes which do not emphasise the need for money but which challenge prejudices and ignorance with positive messages.⁶¹

Nevertheless, it cannot be denied that high impact advertisements generate widespread public attention. Given that most charities will have a limited advertising budget, this must be a relevant factor, since advertisements that evoke strong emotions and stimulate empathy could require fewer exposures, yet be successful in influencing attitude formation and decision making. On the other hand, critical research has pointed to the potential damage which charities using

⁵⁸ BBC, *Producer's Guidelines*, 1993, Chapter 40, BBC, London.

⁵⁹ Bagozzi R P & Moore D J, 'Public Service Advertisements: Emotions and Empathy Guide Prosocial Behaviour', *Journal of Marketing*, Vol 58 (January 1994) 56.

⁶⁰ Eayrs C B & Ellis N, 'Charity Advertising: For or Against People With A Mental Handicap?', *British Journal of Social Psychology* (1990) 29, 349.

⁶¹ Doddington K et al, 'Are Attitudes to People with Learning Disabilities Negatively Influenced by Charity Advertising?', *Disability and Society*, Vol 9, No 2, 1994, 207.

these tactics may do to the very groups whom they purport to represent. The negative influence of charity advertising on public attitudes has been particularly studied in the field of learning disabilities.⁶² For example, Mencap has been the focus of particular criticism from a variety of sources.⁶³ The criticism has largely focused on the negative images which this organisation has used in the past to portray images of people with learning disabilities.

Increased competition has pushed charities into increasingly extreme campaigning, reaching a pinnacle of newsworthiness. The effect is twofold: it arrests the public's attention and, more importantly, it generates more media coverage than the charity would ordinarily be able to afford to finance.

The regulatory bodies are well aware of the risk of 'emotional overkill' and are keen to prevent it. The choice of medium and the audience will be taken into account in assessing whether an approach is likely to cause undue offence, especially where children may find the images distressing. For example, an advertisement by the charity, Anti Slavery International with the headline 'Read This You Piece of Shit' in giant type received a mixed reaction, with the national press (including *The Guardian*) refusing to run it, and other publications (including *New Statesman and Society* and *Everywoman*) offering to carry it for free.⁶⁴ These judgments are necessarily subjective and, for that reason, not everyone will agree about the extent of the offence caused.

For example, as figures reveal record levels of cruelty against pets, the RSPCA is often accused of adopting shock tactics. One hard-hitting newspaper advertisement included a harrowing photograph of a dog with its jaw hanging loose, its mouth half open in a grimace of pain and its left eye hanging out of its socket. The £100,000 fund-raising campaign highlighted three cases of abused and neglected dogs. The picture was accompanied by the words 'sorry if this is hard-hitting but so was the man who did it'. The photograph, taken by an RSPCA inspector, produced another furore over the charity's shock tactics. Previous controversial campaigns, showing a dead horse hanging from a meat hook and a pile of dead dogs, provoked similar widespread protests. Nevertheless, these advertisements are effective — the RSPCA's series of full-page newspaper advertisements in 1993 — 'before your lamb is marinated in garlic and rosemary

⁶² McCormack B, 'Voluntary Fund-Raising - A Disservice to People with Severe Learning Difficulties?' in McConkey R and McGinley P (eds) *Concepts and Controversies in Services for People with Severe Learning Disabilities*, 1988, Bros of Charity and St Michael's House Research Trust, Galway.

⁶³ Corbett J and Ralph S, 'Empowering Adults: The Changing Image of Charity Advertising' [1994] *Australian Disability Review* 5. See also Evans J 'The Iron Cage of Invisibility' *Ten 8 International Photographic Magazine*, (1988) No 29.

⁶⁴ 'Media: When They Just Don't Ad Up', *The Guardian*, 21st August 1995.

it is soaked in urine and excrement' — were powerfully instrumental in getting ferry companies to ban exports of live animals.

But shocking advertisements do not always have their desired effect. A 'distressing' advertisement for an asthma sufferers' charity was reprimanded after it triggered off an attack in a man.⁶⁵ The advertisement — for a fundraising premium rate telephone number — showed a vivid representation of an asthma attack and then described the seriousness and extent of the disease. The ITC received 13 complaints, with one woman saying that her adult son had an attack after watching it. Following the complaints, the National Asthma Campaign withdrew the advertisement. In a statement the charity said that it had taken expert opinion which found the image was shocking but would not cause an attack. The charity found itself in a dilemma, being constantly asked by bereaved relatives to highlight the fact that asthma is a life-threatening condition.

The tensions between the need to sell an image which attracts financial support and to campaign for equal rights and dignity were clearly illustrated by the chairperson of Mencap, Sir Brian Rix:

"On the one hand, we must present a positive image of mentally handicapped people, to persuade the public to accept them as friends and neighbours. On the other, we must encourage the view that extra resources in the form of state funds and voluntary donations should be made available to meet their special needs".⁶⁶

(2) Politics and Campaigning by Charities and Voluntary Bodies

While education is a charitable activity, 'propaganda' is not. The Charity Commissioners have refused charitable status to many 'pressure groups' seeking reforms with which few would quarrel. Some existing charities have been warned for straying into the 'political' arena and campaigners must bear in mind that a charity's trustees can be held personally liable for funds spent on activities judged by the Commissioners not to be charitable.⁶⁷

As well as charity law rules affecting charities, both campaigning groups (without charitable status) and charities are falling foul of strict broadcasting rules on advertising.

⁶⁵ ITC, *Television Advertising Complaints Report*, January 1994.

⁶⁶ Rix B, 'How To Influence Public Attitudes', *Parents Voice*, Autumn 1984.

⁶⁷ See, in general, Charity Commission, *Political Activities and Campaigning by Charities*. Leaflet CC9, July 1995.

The Broadcasting Act 1990 states that advertisements are illegal if they are 'inserted by or on behalf of any body whose objects are wholly or mainly of a political nature'.⁶⁸ Similarly 'any advertisement which is directed towards any political end' is banned. The ITC Code then added the rider: 'the term political is used here in a wider sense than party political. The prohibition precludes, for example, issue campaigning for the purposes of influencing legislation or executive action by central or local government.'⁶⁹

In July 1995, in a decision likely to hit many other campaigning bodies, two High Court judges upheld a ban on the human rights pressure group, Amnesty International, advertising on radio, ruling that broadcasting regulators were entitled to conclude that the organisation's objectives were 'mainly political' and that it should be denied access to Britain's commercial airwaves.⁷⁰

Amnesty had argued that the veto imposed by the Radio Authority on a national radio advertising campaign about atrocities in Rwanda⁷¹ was an unacceptable irrational interference with freedom of speech. But Kennedy LJ, sitting with McCullough J, said: 'In addition to freedom of communication there are other rights to be protected, such as freedom from being virtually forced to listen to unsolicited information of a contentious kind.' A balance had to be struck, and this — provided it acted reasonably — was a matter of discretion for the Radio Authority and not the courts. The judge also said the listening public had to be protected against the danger of the wealthy buying access to the media and 'distorting the democratic process'. McCullough J added that the fact that Amnesty pursued its objectives 'with impartiality as between political regimes or groupings or parties' was not to the point.

The court also rejected the Amnesty claim that the ban contravened Article 10 of the European Convention on Human Rights, which deals with freedom of speech. The judges, while recognising that it was 'an important case', refused Amnesty leave to appeal, which means it must now ask the Court of Appeal directly to hear its challenge. If that fails, it is considering raising the Article 10 issue with the European Commission of Human Rights, the first hurdle before going to the European Court of Human Rights.

Amnesty's argument that, if a particular advertisement was found to be of a political nature, it would be caught in any event by the Broadcasting Act, and that

⁶⁸ Broadcasting Act 1990 s.92(2)(a)(i).

⁶⁹ Rule 8, Practice Note (a).

⁷⁰ *R v Radio Authority ex p Bull* [1995] 4 All ER 481.

⁷¹ The campaign, urging listeners to 'break the silence' about human rights abuses, featured the actor John Hurt.

there was therefore no need for the complete bar, was rejected. The court considered that it was clearly the intention of Parliament that, if a body itself had objects wholly or mainly of a political nature, it was right to impose a total ban on it advertising and so avoid the need for the Authority to have to analyse advertisements on a case-by-case basis. This means that Amnesty 'cannot even advertise that it is holding a concert, with tickets at certain prices, or that it has Christmas cards for sale'.

The court's decision will be of importance to other humanitarian bodies which have had radio or television advertisements blocked, including Survival International, a charity which campaigns for tribal people, and Index on Censorship, which was denied air time for an advertisement featuring the plight of a tortured Haitian journalist. Survival International was originally banned from advertising under the Act, although the ban has since been rescinded. Its advertisement, starring the actor Richard Gere, was due to be shown on certain satellite and cable music channels, but was dropped after the stations consulted the ITC. Upon the lifting of the ban, several television stations donated airtime for the advertisement to be run.⁷² Whilst the television ban was in existence, the campaign was nevertheless screened in cinemas after the ASA, which controls film advertisements, deemed it met its criteria by being 'legal, decent, honest and truthful'.

Charities and voluntary organisations are now calling for clarification of the Broadcasting Act 1990. They say that the law, which forbids politically-motivated advertising, is vague and that the decision in the Amnesty case will gag many non-political good causes by preventing them from using radio and television advertising to make their case. Following the decision, a survey by the media charity, the Media Trust, found that three quarters of the top 15 charities wanted clarification of the Act.⁷³

Conclusion

Advertising by charities is increasingly becoming more sophisticated. With the myriad of charities in competition for public donations and the growing sophistication of charity advertising, is there a risk that the public will weary of the altruistic messages and develop the twentieth century disease of compassion fatigue? Or, worse still, a potential donor may choose to give to the organisation with the slickest campaign rather than the greatest need. Charities will have to be mindful of the level of donor fatigue and the need to avoid exhausting public goodwill by continually asking for donations to so many causes. The losers in this

⁷² 'Survival Ad Finally Hits The Small Screen', *Third Sector*, 7th September 1995.

⁷³ 'Charities: Political Silence', *The Guardian*, 19th July 1995.

increasingly sophisticated battle for funds are the charities that cannot afford to compete through advertising. Even where substantial resources have been built up, one has to bear in mind that the British tend to react against a charity that is seen to be too overtly business-like. 'On the one hand, the public expects its money to be efficiently spent; on the other, it overwhelmingly prefers "small, homely charities" in spite of suspicion that they are inefficient. They have the underdog's appeal, and are supposed (quite wrongly) to spend a smaller proportion on administration.'⁷⁴

The fact that advertising usually involves some element of expenditure (often heavy) cannot be forgotten. For this reason, Hubert Picarda suggests that 'charitable trustees will be astute to exploit public relations opportunities. This means they should look for free publicity by issuing press releases and where appropriate organising press conferences. A good news story or even stunt can generate effective free publicity about the particular needs of a particular charity.'⁷⁵

Charities may often have to resort, therefore, to effective public relations in order to ensure that their voices are heard. It is unfortunate, therefore, to learn that, in November 1995, Professor Nicholas Deakin, chairperson of the Commission on the Future of the Voluntary Sector, warned that charities should not assume that the Press will always help them to campaign and 'burnish their images'. He considered that the media, 'sniffing about for evidence of voluntary organisation failures and scandals, real or presumed', could eventually turn the tide of public opinion away from charities.⁷⁶

It is also interesting to note that research into voluntary sector news management has consistently demonstrated that 'well-resourced, professionalised organisations are both more likely and better able to provide a steady stream of news releases, publicity gimmicks and PR material, than poorer and more informal organisations'.⁷⁷ It seems that the larger charities win both ways — they have the money to invest in advertising and they are also most adept at gaining free publicity.

⁷⁴ Nightingale B, *Charities*, 1973, Lane, London, p 116.

⁷⁵ Picarda H, *The Law And Practice Relating To Charities*, 2nd ed. 1995, pp 635-636, Butterworths, London.

⁷⁶ *Charities Aid Foundation Newsletter*, December 1995.

⁷⁷ Deacon D et al, 'Communicating Philanthropy: The Media and the Voluntary Sector in Britain', *Voluntas* 6.2, 119 at 130. In this piece the authors explore how voluntary activity is reported by mainstream news media, and how these presentations are framed by media professionals' perceptions of, and value judgments about, different types of voluntary actions.