
The Charity Law & Practice Review

BOOK REVIEW

The Law and Practice Relating to Charities by Hubert Picarda QC

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If I were to attempt to sum up this seminal work in one word it would be "substance", for here is a weighty book indeed, running to comfortably in excess of a thousand pages — the contents outline alone runs to nearly 20 pages — its 52 chapters accounting for around 800 pages and the balance made up of a clutch of Appendices comprising the relevant source materials.

The legally qualified reader will be delighted by no less than 65 pages of case references comprising not only our own law but that of that of several American States and Commonwealth Countries. That there is so much relevant case law going back to the beginning of the eighteenth century, and earlier, is a tribute to the well-seasoned nature of charity law (nobody needs reminding that the statute law goes back to the Charitable Uses Act 1601).

Picarda opens by attacking the elusive and deceptively simple question of "What is charity?" with typical intellectual gusto, and helpfully distinguishes between the statutory definition and the legal meaning of the word; nor does he shrink (such is his commitment to completeness) from a review of the meaning of the word in a number of overseas jurisdictions. For instance, acknowledging the multifaith society in which we now live in England, he turns to India and Sri Lanka for guidance on whether Hindu ceremonies and rituals fall within the "advancement of religion" rubric, and this fascinating review extends even to Chinese religious rites. It is back to America for support for the proposition that the promotion of family planning falls within the "promotion of health" rubric.

The opening chapters in Part I abound in insights into the rich tapestry that makes up the answer to this central question — the author at one point conceding that "it is a moot point whether a trust to feed birds is charitable" but then resorting to Ireland and America for support.

Part II — we are in for eight parts in all — tackles the question of the creation of charitable trusts. If Part I gave the academic reader plenty to chew on, there is much here which will be of direct assistance to the practitioner. "The three

certainities" receive comprehensive (and, again, international) treatment, including a discussion of the meaning of the words "or" and "and".

Schemes — including the arcanelly-named but highly topical doctrine of *cy-près* — merit a dedicated Part of their own. Here, as in the subsequent section on "Administration", there is a welcome treatment of the relevant ecclesiastical law — although in the latter section issue could be taken with the exclusion of trustees from the definition of "officers" of charities, particularly if incorporated.

The account of trustees' duties necessarily omits a treatment of The Charities (Accounting and Reports) Regulations 1995 but any reader who notices and returns the order form printed before the Preface is promised a free Supplement on the topic. Other supplements are promised in the Preface — which points to the advantage of the ring-binder format over the bound volume. One such might touch on The Charities (Qualified Surveyors' Reports) Regulations 1992 which, though set out in Appendix 2, are surprisingly omitted from the section on the new statutory regime governing dispositions.

That section also omits any reference to the precedents available from HMLR for the various forms of certificates of trustees, which practitioners might have found helpful. Indeed, if there is a weakness in the book from the point of view of the practitioner, it would be its lack of any precedent, which would be helpful in a work dealing not only with the law but with the practice relating to charities.

The chapter on "The Charity Commissioners" is comprehensive but a passing reference to their power to appoint receivers and managers could perhaps have been amplified by reference to the instances where such appointments have been made.

The control of fundraising regime is dealt with in an orderly fashion although without reference to the amendments made by the Deregulation and Contracting Out Act 1994 and does not deal with the tax reasons why the statutory form of agreement may also need to be entered into with any relevant trading subsidiary, a point with which practitioners will be familiar. Against that must be set the extremely thorough treatment of broadcasting in relation to charities generally.

An account of taxation and rating as they affect charities, together with a medley of incidental legal considerations, including last but not least Europe, conclude this magnum opus.

The Preface explains that in the interests of putting some limit on the length of the book, discussion of trading by charities, trustees' remuneration and trustee indemnity insurance has been omitted. To that list might be added the topic of reserves, and practitioners would undoubtedly welcome a supplement on those topics from this leading expert.

Is it user friendly? For all its bulk, it is, and the lightness of touch and felicitous turns of phrase which feature in the Preface are sustained, against all the odds, throughout the work. Anything it may lack in terms of precedents, practice or ring-bound format is more than made up for by its scope and thoroughness.

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