

## BOOK REVIEW

Paul Bater<sup>1</sup>

*The Law of Charitable Status: Maintenance and Removal*

by Robert Meakin

Published by: Cambridge University Press, Cambridge, 2008.

ISBN: 978-0-521-51603-7 (hardback). 217 pages. Price: £75.

As the subtitle suggests, the focus of this important and useful book is concerned with an examination of the powers of the Charity Commission to remove charities from the Register of Charities following the introduction of the Charities Act 2006. Its publication is timely in the light of the current controversy regarding the meaning and implications of the amendments to the public benefit test applicable to charities effected by the 2006 Act.

The book represents a product of the extensive research conducted by the author, a former Charity Commission lawyer and currently a partner in a leading firm of charity law practitioners, in the course of his doctoral thesis. It is informed by his practical experience of advising both the leading charity regulatory body in England and Wales and individual charities responding to concerns raised by the regulator. The text is supported by comprehensive references to case law, Charity Commission documents, academic articles, and is particularly well cross-referenced to comments elsewhere within the book.

The central theme is the examination of five basic propositions advanced by the author:

- (i) the Charity Commission's powers of removal are limited;
- (ii) there is a distinction between the governing instrument of a charity and its property, the status of which may require protection in the event of a removal;

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- (iii) the Commission faces a problem of legality when seeking to remove charities due to its lack of jurisdiction to decide questions of charitable status;
- (iv) there is a need for greater clarity about the extent of the Commission's powers of removal;
- (v) charities removed from the register need access to an appropriate appeal process.

He concludes that any future attempt by the Commission to remove significant numbers of charities from the register would run the risk of a legal challenge to its powers of removal and a loss of public confidence that registered charities are charitable in law and thereby entitled to be so registered.

The analysis of these propositions begins with a review of what the author calls "the essential indicia of charitable status", the indicia being a necessary prerequisite for registration by the Commission and the loss of one or more indicia being criteria for removal. In the author's view these are: a legal obligation to carry out charitable purposes, being within the jurisdiction of the English High Court with respect to charities, having charitable purposes (including meeting the public benefit requirement), and being viable (in the sense that if the charitable purposes are impossible from the outset but a general charitable intent is expressed the property can be applied *cy-pres*). He also considers independence from the state but concludes that this is not essential.

The book then proceeds to examine in subsequent chapters: the three statutory grounds for removal in section 3(4) Charities Act 1993, the limits on the powers to remove controversial charities (such as fee charging charities and new religious movements), the application of the property of a charity following removal, the use of the Commission's investigation powers to effect removal, the effect on the powers of removal of the introduction of the Human Rights Act 1998, and the grounds for appeal against removal.

The book argues that the essential indicia lack clarity in several respects, such as the public benefit requirement and the relevance of activities to determine charitable purposes. As the statutory definition in the 2006 Act does not fully explain the nature of charitable purposes it is necessary to refer to the general law. However, reliance on the general law requires a continuing stream of judicial decisions on charitable status in the absence of which the Commission effectively becomes a *de facto* lawmaker. This in turn leads to the conclusion as to the lack of clarity about the powers of removal. The author recommends that the Commission should be given the power to issue legally binding guidance on strategic issues of charitable status. On the other hand he considers that the current appeals system, involving distinctions between appeals by way of rehearing and judicial review of the decision

process, limits charities' effective ability to appeal removal decisions and requires reform.

The book will be of practical use to charity lawyers dealing with difficult issues of charitable status. The author clarifies the grounds for and the implications of removal. He provides a detailed analysis of the potential grounds for challenging Commission decisions on the basis that they are incompatible with European human rights law (with the surprising omission of any discussion of the freedom of association). The chapter on grounds for appeal is also essential reading for any adviser faced with an adverse Commission decision.