The Charity Law & Practice Review

THE CHARITABLE STATUS OF RIFLE CLUBS: THE EXPLOSION OCCURS

Peter Clarke[1]

In February 1992, the Charity Commission, in a press release, expressed the preliminary view that rifle clubs were no longer entitled to charitable status. The author recently suggested in the *Review*[2] that the preliminary view of the Commissioners was incorrect.

However, the Commissioners, in their decision to disallow applications for charity registration from the City of London Rifle and Pistol Club and the Burnley Rifle Club, have now confirmed their provisional view; and in a 27 page statement of reasons[3] have explained the reasoning behind their decision. The Commissioners accepted that

> "the promotion of the efficiency of the Armed Forces, and thus the security of the nation and the defence of the Realm, is charitable."[4]

For this the Commissioners relied on dicta of Lord Normand and Lord Reid in *Inland Revenue Commissioners v City of Glasgow Police Athletic Association.*[5]

The Commissioners agreed that the specific authority relied on to establish the charitable status of rifle and pistol clubs was *Re Stephens*[6] (the "Majuba" case).

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1 Peter Clarke BCL MA (Oxon) Barrister, Fellow and Tutor in Law and Estates Bursar, Jesus College, Oxford.
Tel:(0865) 279700. Fax:(0865) 279 687.

2 *Vol 1 1992/3, Issue 2, p.37.*

3 *Issued in February 1993 by the Commission's Press and Information Office. Hereafter referred to as "Decision".*

4 *Decision, p 10.*

5 *[1953] AC 380 at 391 and 402.*

6 *[1892] 8 TLR 792.*

Re Stephens had been followed in *Re Good*[7] and *Re Driffill*[8]; the results in these cases - though not the principles underlying them - were criticised in the *City of Glasgow Police Case*; *Re Stephens* itself was not cited, considered, or criticised. This last point influenced the Commissioners: the absence of such criticism or comment did not mean that the House of Lords had approved the decision. This merits comment; given that the results in *Re Good* and *Re Driffill* were criticised, is there not an inference that *Re Stephens*, the case which underpins those decisions, was not itself the subject of criticism?

Re Stephens itself was restrictively construed: Kekewich J, interpreting the gift, stated that the testator had desired

> "that Englishmen should be taught to shoot with those particular weapons which were used in war for the destruction of their enemies and the protection of themselves."[9]

Likewise, Kekewich J stated that the testator meant

> "accurate shooting....to be taught amongst Englishmen *in general* [Commissioners' italics] - an object which would be promoted directly or indirectly in the Army."[10]

The judge had earlier noted

(i) that although the gift in the case before him was to the National Rifle Association, he did not consider this matter, as there was no evidence of its objects before him;

(ii) "he should not have thought that shooting at moving objects was a charitable object".[11]

As to (i), the Clubs had adopted objects in their constitutions contained in the model constitution for Rifle and Pistol Clubs published by the National Small-Bore Rifle Association.[12] As to (ii), most rifle and pistol shooting is concerned

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7 *[1905] 2 Ch 61.*

8 *[1950] 1 Ch 93.*

9 *(1892) 8 TLR at 793, cited in the Decision p.18.*

10 *Ibid.*

11 *Ibid.*

12 *It is believed that this is the successor body to the National Rifle Association.*

with firing at targets; therefore the point about "shooting at moving targets" is not a significant one.[13]

The Commissioners found

(i) that the weapons used by the particular clubs were not those which were used in time of war;

(ii) that the general public as such did not receive training at the clubs.

As to (i), this may be factually accurate: the Commissioners do not provide technical details. However, "marksmanship" is surely a skill which can be learnt with one weapon and transferred to another. Moreover, much military weaponry would not be capable of being the subject matter of a normal firearms certificate. As to (ii), the point can be made, albeit somewhat faintly, that any individual can become a member of the club: and, therefore, to that limited extent, the club does offer the facility to the public of training in the use of weaponry.

The second argument before the Commissioners was that the clubs were *capable* of contributing to the defence of the realm. The Commissioners rejected this:

> "there must be *clear evidence* [Commissioners' italics] to establish that the activities of the.....Clubs promote the security of the nation and the defence of the Realm."

The Commissioners found that this evidence was not present. There were statements from Mr Tom King (the then Secretary of State for Defence), from, the Parliamentary Under-Secretary of State, and from Sir Jeremy Moore, all of which could be readily construed as supporting the Clubs' position. The statement of Sir Jeremy Moore - which made it quite clear that skill at arms was a vital requirement in modern warfare - was not considered relevant; and the Ministerial statements were considered not to assist in the determination of the charitable status of the Clubs. This issue was addressed in the author's previous article;[14] the Commissioners, however, chose to take a view that, on the evidence, was a restrictive one. Finally, as a matter of law, the requirement of the Commissioners for "clear evidence" may be queried; this matter is further considered below.

Third, the Commissioners required that there be extensive liaison between the Clubs and the Armed Services; the absence of this confirmed their view that the activities of the Clubs no longer served to promote the security of the nation and

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13 *One can understand Kekewich J's reluctance to allow, for example, grouse shooting to be charitable!*

14 *At p. 142.*

the defence of the Realm.[15] Again, this is a matter of evidence; the Commissioners relied heavily on the fact that there was no formal link between the Clubs and the Armed Forces.[16]

Fourth, the Commissioners refused to adopt the "benignant construction" principle laid down by Lord Hailsham of St Marylebone LC in *IRC v McMullen*[17]. However, this principle operated only where there was an ambiguity; and, as there was no ambiguity, the question did not arise.[18] Given the approach adopted by the Commissioners in the other aspects of their Decision, this approach is not surprising. However, it is surely arguable that the scope of the Clubs' objects were sufficiently unclear to enable the principle to be adopted.

Fifth, the Commissioners considered that, even if *Re Stephens* had been authority for the proposition that the Clubs were charitable, there had been such a radical change in circumstances since that decision, that the Clubs were no longer charitable. In so finding, the Commissioners accepted that the change had to be "radical".[19] The evidence for such "radical" change was two-fold: (i) the strength of the modern Army did not depend on expert shooting skills of soldiers (though the statement of Sir Jeremy Moore referred to above); and (ii) the fact that the Clubs did not fulfil the role of a semi-trained third-line reserve for the Armed Forces. However, the citations from the *National Anti-Vivisection* case[20] were incomplete. There were no reference to Lord Simonds' statements that the purpose had to be "greatly to the public disadvantage"[21] and "injurious to the community"[22]. These statements indicate that it is difficult for a previously recognised charitable purpose to cease to be charitable: a point which perhaps, the Commissioners may have understated.

Even if the Commissioners' test was the correct one, however, it must be queried whether there was sufficient evidence which would "compel" the Commissioners to reach the conclusion that they did. In particular, shooting clubs are specifically

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15 *Decision, p. 17.*

16 *Ibid.*

17 *[1981] AC 1 at 14.*

18 *Decision, p 17.*

19 *Gilmour v Coats* [1949] AC 426 at 443, per Lord Simonds, cited in the Decision, p 21.

20 *[1949] AC 32.*

21 *[1949] AC 32.*

22 *[1949] AC at 74.*

mentioned in the firearms legislation; and they are given specific and preferential treatment.[23]

The next point was that the Clubs were not exclusively charitable. For this, the Commissioners relied, predictably, on the *City of Glasgow Police Athletic Association* case. They considered that the Clubs:

> "are very little concerned with the defence of the Realm or in any real way with the support of the Armed Services...but rather with the benefit of their `members'".[24]

The point of membership is of concern: the Committees of the Clubs have power to determine membership; and there are requirements of probationary membership. These points are used by the Commissioners to justify their argument that the Clubs are "exclusionary"; a better view would be that these show that the Clubs are behaving responsibly in ensuring that only those fitted to use firearms are entrusted with them: a view that the Home Office and the police forces are, entirely properly, concerned to uphold.

Finally, the Commissioners rejected the possible argument that the Clubs were charitable either as "educational" or "recreational". Given their previous findings, and given that these arguments had not been adduced by the Clubs, the answer is not surprising.

The Commissioners, however, did not deal with the question of whether the clubs could be regarded as charitable as providing sporting facilities, save for a brief reference to *Re Hadden*[25]and *Re Morgan*[26]. Given the state of the authorities, this is not surprising, but the possibility of widening the scope of charity to include sports is one that other jurisdictions have taken.[27]

Overall, therefore, it is submitted that the Commissioners have taken an unduly restrictive view of the law; it is not known if an appeal is pending; in any event, the issues that the Decision raises are of more general interest than the comparatively narrow nature of the subject matter might indicate.

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23 *Firearms Act 1968 s.11(3); Firearms (Amendment) Act 1988 s.15(1).*

24 Decision, p. 25.

25 *[1932] 1 Ch 133.*

26 *[1855] 2 All ER 632.*

27 *Cf 1 CL&PR (1992/93)2) at pp. 143-144.*