
THE CHARITY LAW & PRACTICE REVIEW

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From the Managing Editor

EDITORIAL

The latest issue of Charity Law and Practice Review includes the harvest of some fine vineyards to which have been added the produce of some interesting domestic newcomers.

Like Cicero, who used the technique of forbearing to mention points that he wanted to make while mentioning them all the same, I pass over the first contribution. This is my summary of the Charity Commission publication *Independent Examination of Charity Accounts: Directions and Guide Notes 2001*. The publication had originally been promised by the Commission's publicity team for earlier this year, but it saw the light of day at last in August. It is hoped that readers of the review will find it a digestible introduction though it is not short! The analysis in Appendix 5 to the publication of what an independent examiner should do in the face of deliberate and reckless conduct is particularly topical and I found it of assistance in a recent case where I was advising on trustee and employee liabilities. *The Independent Examination of Charity Accounts 2001* contains much that is of use in organising financial controls within charities, in that respect transcending the narrow subject of the functions of an independent examiner.

The joint article by Robert Venables QC and James Kessler "Financing Trading Companies Owned by Charities" is a valuable and critical analysis of a subject of evergreen interest, on which both the Charity Commission and the Inland Revenue have published pronouncements, not always to the satisfaction of the writers of this article. All of this adds of course to the sum of things and, let it be said, the fun.

The innovatory use by the Charity Commission of orders under section 26 of the Charities Act 1993 to sanction the application of permanent endowment capital for income purposes is criticised by Judith Hill and Julian Smith of Farrer & Co in their article "Permanent Endowment and Total Return". They argue that it is in fact an abuse of the section because it relates not to a mere administrative matter but to alteration of the trusts of the charity. James Dutton the Legal Policy Adviser at the Charity Commission, on the other hand, takes the contrary view in his contribution "Endowed Charities: A Total Return Approach to Investment" and doughtily defends the invocation of section 26.

Socially Responsible Investment, an investment policy which combines ethical and moral grounds with financial ones is explored in the context of charities in the article by Robert Meakin of Stone King Solicitors entitled "Socially Responsible Investment by Charities". After considering the importance of such a policy, the writer addresses the general legal position of such investment and the duties of trustees in connection therewith, before exploring other themes and identifying possible future developments.

The title of Toby Haddock's contribution "Charitable Trusts for the Advancement of Religion: Judicial Rejection of Metaphysical Benefits and the Emergence of Public Interaction" is quite a mouthful. But it is none the worse for that or for being a revised and condensed version of a law degree dissertation emanating from Oxford Brookes University. The writer argues that in the field of religious trusts a concept has emerged which he identifies as "public interaction". The term is not actually used by the judges and may therefore be something of a cockshy. He argues however (and why not?) that it is insufficient as a basis for alleged public benefit because it is not tangible. There are certainly inconsistencies in the cases which the article highlights. But whether any of the proposed reforms he moots would find favour is a matter for speculation. Churches are a powerful lobby. And followers of Islam will defend the charitable status of a trust to advance their religion against all comers.

Francesca Quint is well known in the profession as a barrister specialising in charity law and to readers of this Review. Her thoughtful piece "Charities and Child Abuse: A Little Minefield" discusses some of the pitfalls and difficulties where tortious claims are launched against charities in connection with child abuse. She discusses the vicarious liability issue that arose in the House of Lords decision in *Lister v Helsey Hall Ltd* (1999) *The Times* 7th December, the European dimension, and the issues of limitation and the propriety of constituting proceedings against trustees who have replaced the originally responsible trustees. These last two issues surfaced in the case of *McDonnell v Congregation of Christian Brothers* (2001) *Daily Telegraph*, March 13th 2001 which she considers. An appeal from the decision of Mackay J in the Queen's Bench Division in that case is due to be heard in the Court of Appeal in the autumn.

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