

= Charitable trusts in English law =

Charitable trusts in English law are a form of express trust dedicated to charitable goals . There are a variety of advantages to charitable trust status , including exception from most forms of tax and freedom for the trustees not found in other types of English trust . To be a valid charitable trust , the organisation must demonstrate both a charitable purpose and a public benefit . Applicable charitable purposes are normally divided into categories for public benefit including the relief of poverty , the promotion of education , the advancement of health and saving of lives , promotion of religion and all other types of trust recognised by the law . There is also a requirement that the trust 's purposes benefit the public (or some section of the public) , and not simply a group of private individuals .

Such trusts will be invalid in several circumstances ; charitable trusts are not allowed to be run for profit , nor can they have purposes that are not charitable (unless these are ancillary to the charitable purpose) . In addition , it is considered unacceptable for charitable trusts to campaign for political or legal change , although discussing political issues in a neutral manner is acceptable . Charitable trusts , as with other trusts , are administered by trustees , but there is no relationship between the trustees and the beneficiaries . This results in two things ; firstly , the trustees of a charitable trust are far freer to act than other trustees and secondly , beneficiaries cannot bring a court case against the trustees . Rather , the beneficiaries are represented by the Attorney General for England and Wales as a *parens patriae* , who appears on the part of The Crown .

Jurisdiction over charitable disputes is shared equally between the High Court of Justice and the Charity Commission . The Commission , the first port of call , is tasked with regulating and promoting charitable trusts , as well as providing advice and opinions to trustees on administrative matters . Where the Commission feels there has been mismanagement or maladministration , it can sanction the trustees , removing them , appointing new ones or temporarily taking the trust property itself to prevent harm being done . Where there are flaws with a charity , the High Court can administer schemes directing the function of the charity , or even , under the *Cy @-@* *près doctrine* , change the purpose of the charity or gift altogether .

= = Creation = =

As a form of express trust , charitable trusts are subject to certain formalities , as well as the requirements of the three certainties , when being created . These vary depending on whether the gift that creates the trust is given in life , given after death , or includes land . If the gift is given after death through a will , the will must comply with Section 9 of the Wills Act 1837 , which requires that the will be in writing and signed by the testator (or somebody else present , at the testator 's instruction) , it is clear that the testator intended to give effect to the will , and the signature is made or noted by two or more witnesses . If these are all carried out , the will is a valid document , and the gift made as part of it can create a charitable trust . If the gift is of land and made during the donor 's lifetime , it must comply with Section 53 (1) (b) of the Law of Property Act 1925 , which requires that the agreement be a written document signed by the person giving it . If the gift is of personal property and made *inter vivos* , there are no formal requirements ; it is enough that an oral declaration is made creating the trust . Once constituted properly , a charitable trust , like all express trusts , cannot be undone unless there is something allowing that within the trust instrument .

= = Advantages of charity status = =

There are a variety of advantages to charity status . Within English trusts law , a standard express trust has a relationship between the trustees and the beneficiaries ; this does not apply to charitable trusts , partially because of the special definition of trustee used and partially because there are no individual beneficiaries identified in a charitable trust . Instead , the Attorney General of England and Wales sues on behalf of beneficiaries to enforce a charitable trust . Because of this lack of a relationship , the trustees ' powers are far wider @-@ ranging , only being regulated by the Charity Commission and actions brought by the Attorney General ; the beneficiaries have no direct control .

Charitable trusts are also exempt from many formalities when being created , including the rule against perpetuities . The trustees are also not required to act unanimously , only with a majority .

Tax law also makes special exemptions for charitable trusts . They are free from the income tax paid by individuals and companies , and also the corporation tax paid by incorporated and unincorporated associations . There is no requirement for charitable trusts to pay capital gains tax or council tax , although they are obliged to pay VAT . This freedom from tax liability applies not just to charitable trusts , but also to people who donate to them . Individuals who donate via Gift Aid are free from paying tax on that amount , while companies who give gifts to charity can claim tax on the amount back from HM Revenue & Customs .

= = Definitions = =

The definitions of a trustee and a trust within charitable trusts differ significantly from the norm . In particular , according to the Charities Act 1993 (section 37) :

'charity trustees ' means the person having the general control and management of the charity ...

'trusts ' in relation to a charity means the provisions establishing it as a charity and regulating its purposes and administration , whether those provisions take effect as a trust or not , and in relation to other institutions has a corresponding meaning .

There is no statutory definition of what a charity is ; it is instead dealt with in a roundabout way . The Charities Act 2006 states in section 1 (1) that :

For the purposes of the law of England and Wales , ' charity ' means an institution which

(a) is established for charitable purposes only , and

(b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities .

= = Charitable purpose = =

The first definition of a " charitable purpose " was found in the preamble to the Charitable Uses Act 1601 . The standard categorisation (since all previous attempts to put it on the statute books were " unduly cumbersome ") was set out by Lord Macnaghten in IRC v Pemsel , where he said that " Charity in its legal sense comprises four principal divisions : Trusts for the relief of poverty ; trusts for the advancement of education ; trusts for the advancement of religion ; and trusts for other purposes beneficial to the community " . This " charitable purpose " was expanded on in Section 2 (2) of the Charities Act 2006 , but the Macnaghten categories are still widely used .

Trusts must also be for " public benefit " , which was considered at length in Oppenheim v Tobacco Securities Trust . A fund was created to benefit children of employees and former employees of British American Tobacco , which was a large number ; the total number of employees was over 110 @, @ 000 . The House of Lords found that size was not the issue ; the group did not count as a section of the public because of the " personal nexus " , or common relationship , between the settlors (British American Tobacco) and the beneficiaries . The nature of charitable trusts means that the definition of " public benefit " varies between Macnaghten 's four categories .

= = = Poverty = = =

The 1601 Act stated that charities for the benefit of the " aged , impotent and poor people " had an appropriate purpose ; it is accepted that these may appear individually . A charity does not have to be for the benefit of people who are both poor , impotent and aged to be valid , only one of them . " Poverty " is a subjective term , and in Re Coulthurst , Sir Raymond Evershed indicated that it should be treated as such ; " poverty , of course , does not mean destitution ... it [means] persons who have to ' go short ' ... due regard being had to their status in life and so forth " . This appears to indicate that a millionaire who loses half of his income may be considered " poor " , in that he is unable to have the lifestyle he is accustomed to . Some limits were set to this provision by Lord Simonds in IRC v Baddeley , where he wrote that :

There may be a good charity for the relief of persons who are not in grinding need or utter destitution ... but relief connotes need of some sort , either need for a home , or for the means to provide for some necessity or qasi @-@ necessity , and not merely for an amusement , however healthy .

The gift that creates the charitable trust , whatever the definition of poverty accepted by the courts , must be for the poor and nobody else . In *Re Gwyon* , money was left to provide short trousers to children in Farnham . While this was a necessity under the standard definition of poverty , the gift was not limited to the poor , and instead went to every child in the area . As a result , the trust failed .

The " poverty " category is a " major exception " to the rule on personal relationships laid down in *Oppenheim v Tobacco Securities Trust* . In *Dingle v Turner* , a charitable trust was established to help poor employees of Dingle & Co . While the beneficiaries were all linked by a personal relationship (their employer) , the courts ruled that poverty is an exception to the *Oppenheim* rule . Academics Richard Edwards and Nigel Stockwell argue that this is because allowing such trusts to exist relieves the rest of society for having to provide for poor people ; as a result , there is " public benefit " in a wider way . The general public benefit rule in the " poverty " category is that " gifts for the relief of poverty among poor people of a particular description " is charitable ; " gifts to particular persons , the relief of poverty being the motive of the gift " are not .

== = Education == =

As with poverty , this category is also found in the 1601 Act 's preamble , which refers to charities established for the " Maintenance of ... Schools of Learning , Free Schools , and Scholars at Universities " . The common law , over the years , has recognised a wide area covered by " education " . This includes the education of the young , a particularly wide category , described by Lord Hailsham in *IRC v McMullen* , as " a balanced and systematic process of instruction , training and practice containing both spiritual , moral , mental and physical elements " . Although wide , this excludes things that the courts feel are harmful ; in *Re Shaw* , Harman J excluded schools for pickpockets or prostitutes . " Education " also includes research , as long as the subject is useful and the gift makes some requirement that the information be made available to others and disseminated . In *Re Hopkins* , a gift was given to the Francis Bacon society to find proof that William Shakespeare 's plays were written by Bacon . Wilberforce J held that it was a valid gift , as " the discovery would be of the highest value to history and to literature " . He also gave the definition of research required for a gift to be valid :

The word education must be used in a wide sense , certainly extending beyond teaching , and the requirement is that , in order to be charitable , research must either be of educational value to the researcher or must be so directed as to lead to something which will pass into the store of educational material , or so as to improve the sum of communicable knowledge in an area which education must cover - education in this last context extending to the formation of literary taste and appreciation .

This definition was expanded on by Slade J in *McGovern v Attorney General* , where he said that :

(1) A trust for research will ordinarily qualify as a charitable trust if , but only if (a) the subject matter of the proposed research is a useful object of study ; and (b) if it is contemplated that the knowledge acquired as a result of the research will be disseminated to others ; and (c) the trust is for the benefit of the public , or a sufficiently important section of the public .

(2) In the absence of such a contrary context , however , the court will be readily inclined to construe a trust for research as importing subsequent dissemination of the results thereof . Furthermore , if a trust for research is to constitute a valid trust for the advancement of education , it is no necessary either (a) that the teacher / pupil relationship should be in contemplation , or (b) that the persons to benefit from the knowledge to be acquired should be persons who are already in the course of receiving an education in the conventional sense .

For artistic pursuits , it is not enough to promote such things generally , as it is too vague . A body for specific artistic purposes may be charitable , as in *Royal Choral Society v IRC* , as is the

promotion of a particular composer , seen in *Re Delius* . For a gift to be charitable , the courts must be convinced that the subject of advancement be of artistic merit . This includes famous composers , as seen above , and social graces , as in *Re Shaw 's Wills Trust* . When there is doubt , the courts ignore the opinions of the beneficiary and instead rely on experts , as in *Re Pinion* . This area is covered by the Charities Act 2006 , which lists " the advancement of citizenship or community development " and " the advancement of the arts , culture , heritage or science " as valid types of charitable trust .

= = = Religion = = =

For the purposes of this category , " religion " was seen to mean a faith in a higher power , and does not include ethical principles or rationalism , as in *Bowman v Secular Society* . The 2006 Act expanded this , noting that religion " includes .. a religion which does not involve belief in a god " . This extends to the support of religious buildings and sick or old members of the clergy , as in *Re Forster* . This category also covers groups with small followings , as in *Re Watson* , and with doubtful theology , as in *Thornton v Howe* . Curiously , and individually to religious charities , the public benefit requirement is justified by the assumption that , according to Cross J in *Neville Estates v Madden* , " some benefit accrues to the public from attendance at places of worship of persons who live in this world and mix with their fellow citizens " . Notably , this excludes gifts to groups which do not associate with the public , as in *Gilmour v Coats* .

= = = Other purposes = = =

Macnaghten 's fourth category contains not only individual categories of its own , but also general principles that are applied when a body seeks to be recognised as a charitable trust . The first of these " sub @-@ categories " contains trusts for the benefit of the sick and old ; the Preamble to the 1601 Act gave " aged , impotent and poor people " as acceptable beneficiaries for a charity . These acceptable beneficiaries are to be read individually ; there is no requirement to aid the aged and impotent as well as the poor , and one can even exclude the poor , such as in *Re Resch 's Will Trusts* , which dealt with a hospital that charged fees . The second sub @-@ category is for charitable trusts relating to animals . As with religious charities , the benefit is derived not from the comfort afforded to the animals , but from the " indirect moral benefit to mankind " . Again , this excludes trusts which isolate the beneficiaries from the public , as in *Re Grove @-@ Grady* , where the trust sought to provide " a refuge [for animals] ... so that they shall be safe from molestation and destruction by man " . Charities for the purpose of creating animal sanctuaries usually pass the public benefit test despite this , because they do not completely exclude the public and often have educational value .

The third sub @-@ category covers charitable trusts for the benefit of localities . A trust for the benefit of a locality has long been held only to apply to that area ; if its purpose within that area is charitable , it is valid . If the money is to be spent on non @-@ charitable purposes , the trust fails , regardless of the fact that it applies to a particular area . This class of charities can be held valid even when it only impacts on a class within a locality , as in *Goodman v Saltash Corporation* . This can apply even when the class " fluctuates " , such as in *Re Christchurch Inclosure Act* , where a gift was for the benefit of the inhabitants of a group of cottages , whoever those inhabitants might be .

Charitable trusts have historically been invalid if they include " purely recreational pastimes " , as in *IRC v City of Glasgow Police Athletic Association* ; even though the purpose of the charity was to improve the efficiency of the police force , the fact that this included a recreational element invalidated the trust . In response to this case and *IRC v Baddely* , the Recreational Charities Act 1958 was passed , which provides that " it shall be and be deemed always to have been charitable to provide , or assist in the provision of , facilities for recreation or other leisure @-@ time occupation , if the facilities are provided in the interest of social welfare " . Section 1 (1) of the Act , however , preserves the need to provide a " public benefit " . The Act also lays out what kinds of activities are in the " interest of social welfare " , stating in Section 1 (2) that it is where the facilities

" are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily provided " and in Section 1 (2) (a) " those persons have need of such facilities as aforesaid by reason of their youth , age , infirmity or disablement , poverty or social and economic circumstances " , or where , in Section 1 (2) (b) " the facilities are available to members ... of the public at large " .

This definition and the acceptance of the need for a " public benefit " allows the courts to reject charitable trusts for recreational activities , such as if they felt that the activities are harmful . The Act also excludes private clubs , unless the members fall under Section 1 (2) (a) . The courts are willing to accept charitable trusts for recreational activities if they benefit people as a whole , and not just the people covered by Section 1 (2) (a) , as in *Guild v IRC* , where Lord Keith stated " the fact is that persons from all walks of life and all kinds of social circumstances may have their conditions of life improved by the provision of recreational facilities of a suitable nature " .

= = Invalid purposes = =

= = = Political activism = = =

Charitable trusts can 't be used to promote political changes , and charities attempting such have been " consistently rebuffed " by the courts . There are two justifications for this . The first is that , even when a campaign for political change is stated to be for the benefit of the community , it is not within the court 's competence to decide whether or not the change would be beneficial . The second , laid out in *National Anti Vivisection Society v IRC* , is that the courts must assume the law to be correct , and as such could not support any charity which is trying to alter that law . Academic Alastair Hudson describes this argument as " a little thin . Given that judges contentedly take it upon themselves to interpret , limit and extend statutes (as well as occasionally recommending the creation of new statutes to shore up the common law) , it is peculiar to see judges so coy in the face of an argument being advanced that legislation might be changed " .

The leading case , *Anti Vivisection Society* , sets out a strict rule that charities cannot campaign politically . An illustration of its strictness is *Bowman v Secular Society* , where it was held that even when attempted changes to the law were ancillary to the main goals , it was still unacceptable . There is a dividing line ; charitable trusts discussing political issues can be valid , as discussed by Hoffmann J obiter dicta in *Attorney General v Ross* . This line is considered by the Charity Commission in their official guidelines , which allow the Commission to look at the wider purpose of the organisation when deciding if it constitutes a valid charity .

= = = Profit @-@ making = = =

No organisation run for profit can be a charity ; a public school may be a charitable body despite the fees paid , but not if they are directly run to make a profit , as in *Re Girls ' Public Day School Trust* . This also excludes benefit societies where the benefits are limited to those who have funded it , as in *Re Holborn Air Raid Distress Fund* .

= = = Exclusivity = = =

A charitable trust created from a gift must be exclusively charitable ; if there are any purposes which would not be charitable on their own , the trust fails . Trust instruments should ideally identify that the money is to be used for " charitable purposes " . The use of other words such as " beneficial " or " benevolent " causes the trust to fail at creation , as the words are not synonymous with charity . An example is the Privy Council decision in *Attorney General of the Cayman Islands v Wahr @-@ Hansen* , where the Council held that gifts to " organisations or institutions operating for the public good " and acting " for the good or for the benefit of mankind " failed , because the definition given was not exclusively charitable .

There are two exceptions to the rule of exclusivity ; ancillary purposes , and severance . Where the non @-@ charitable purpose is a necessary ancillary to the charitable one , the trust will not fail . This is a matter of degrees , and was discussed by Slade J in *McGovern v Attorney General* , when he said that :

The distinction is between (a) those non @-@ charitable activities authorised by the trust instrument which are merely incidental or subsidiary to a charitable purpose and (b) those non @-@ charitable activities so authorised which themselves form part of the trust purpose . In the latter but not the former case the reference to non @-@ charitable activities will deprive the trust of its charitable status .

Severance refers to the separation of charitable and non @-@ charitable purposes , dividing the funds between them . This allows the charitable element to take effect . This is only possible when the trust instrument indicates that the donor intended for the fund to be divided , and cannot work where the donor gives a list of purposes a single fund is to be used for . The standard rule for dividing the funds is based on the equitable rule that " equity is equality " ; money should be divided equally . There are exceptions where it is not practicable , as in *Re Coxon* , where of a £ 200 @,@ 000 gift to the City of London for charitable purposes , a £ 100 dinner and other small gifts to the board of trustees was funded .

= = Administration of charitable trusts = =

The administration of charitable trusts is covered primarily by the Charities Act 1993 and the Charities Act 2006 , and is widely divided between four groups ; the Attorney General for England and Wales , the trustees , the Charity Commission and the Official Custodian for Charities .

= = = Attorney General and trustees = = =

As mentioned , the Attorney General represents the beneficiaries as a *parens patriae* , appearing on the part of The Crown . Any case involving charities has him joined as a party , he may act against trustees in disputes , and take actions to recover property from third parties . His role was discussed in *Brooks v Richardson* , where the court quoted the practitioner 's text *Tudor on Charity* :

By reason of his duty as the Sovereign 's representative protecting all the persons interested in the charity funds , the Attorney @-@ General is as a general rule a necessary party to charity proceeding . He represents the beneficial interest ; it follows that in all proceedings in which the beneficial interest has to be before the court , he must be a party . He represents all the objects of the charity , who are in effect parties through him .

The next significant role is played by the charity trustees , defined in Section 97 of the 1993 Act as those persons having the general control and management of the administration of charities . As mentioned , charitable trustees have significantly more freedom to act than normal trustees , but the 1993 Act has put restrictions on who may be a charitable trustee . Section 72 excludes people convicted of a crime involving dishonesty , bankrupts , people previously removed from charity trusteeship , and people struck off as directors of companies . Those trustees appointed have many duties when administering the trust , including informing the Commission of changes to the charity or its dissolution , registering the charity and keeping proper accounts and records , to be submitted annually to the Commission .

= = = Charity Commission = = =

The Charity Commission originated as the Charity Commissioners , created by the Charitable Trusts Act 1853 to provide advice to charitable trusts . Currently governed by and exercising its functions under the Charities Act 2011 , it has five core objectives :

- to increase public trust and confidence in charities ;
- to promote the understanding of the public benefit requirement ;
- to increase the compliance of trustees with their legal obligations ;

to promote the effective use of charitable resources ;
to make charities more accountable to the donors , beneficiaries and the public .
Along with these objectives , it has six functions under the 2011 Act :
Determining whether institutions are or are not charities .
Encouraging and facilitating the better administration of charities .
Identifying , investigating and taking appropriate action with regard to apparent misconduct or mismanagement .
Issuing public collection certificates in respect of public charity collections .
Providing information relating to its functions or objectives including maintenance of an up @-@ to @-@ date register .
Giving information or advice to any Minister of the Crown with regard to the Commission 's functions or meeting of its objectives .

The Charity Commission has the power to issue an inquiry into a charity under Section 46 of the 2011 act and , if they are satisfied there has been mismanagement , they are allowed to suspend trustees or officers , appoint additional trustees , vest charity property in the Official Custodian for Charities or order debtors or people holding charity property not to transfer it without their permission . They can also remove trustees on the grounds of bankruptcy , mental incapacity , failure to act or the trustee 's absence from the country . The Commission is also authorised to appoint new trustees to replace removed ones , or even to increase the number of trustees .

The jurisdiction of the Charity Commission is concurrent with that of the High Court of Justice . The High Court possesses all the powers of the Commission , who only exercise theirs on application of the charity or Attorney General , or trustees , beneficiaries and interested people when the charity has an income of less than £ 500 . The Commission , under Section 29 of the 2011 Act , also keeps the register of charities . Under Section 110 of the Act , the Commission is tasked with giving advice or opinions to trustees relating to the performance or administration of their charity . The Commission also acts as the Official Custodian for Charities , who acts as a trustee for charities at the direction of the Commission .

= = = Schemes = = =

Both the High Court and the Charities Commission are authorised to establish schemes administering charities . These can come about when money has been left for a charitable purpose which is not specified , or with no suggestion as to how it should be administered . The scheme may be used to appoint new trustees , except when the trustee 's identity is crucial to the intentions of the testator , as in *Re Lysaght* . Schemes may also be used to fix administrative difficulties caused by uncertainty , as in *Re Gott* , or even to completely defeat the gift . Schemes can also be used , on the application of trustees , to extend powers of investment or consolidate funds . The trustees may apply to change the core purpose of the trust , which while enacted through a scheme , follows the doctrine of *Cy @-@ près* .

= = = *Cy @-@ près* doctrine = = =

The doctrine of *cy @-@ près* is a form of variation of trusts ; it allows the original purpose of the trust to be altered . The doctrine originated in ecclesiastical law , the name coming as a contraction of the Norman French *cy pres comme possible* (as close as possible) , and is typically used where the original purpose of the charity has failed , and results in the trust purpose being altered to the nearest realistic alternative . Prior to the Charities Act 1960 , this " failed purpose " situation was the only time when *cy @-@ près* could be applied ; it required the original purpose to be impossible or impractical . With the 1960 Act (the relevant provisions of which are now included in the 1993 Act) , *cy @-@ près* can be applied where the original purposes have :

- (a) been as far as may be fulfilled ; or cannot be carried out , or not according to the directions given and to the spirit of the gift ;
- (b) or where the original purposes provide a use for part only of the property available by virtue of

the gift ;

(c) where the property available by virtue of the gift and other property applicable for similar purposes can be more effectively used in conjunction , and to that end can suitably , regard being had to the spirit of the gift , be made applicable to common purposes ;

(d) or where the original purposes were laid down by reference to an area which then was but has ceased to be a unit for some other purpose , or by reference to a class of persons or to an area which has for any reason since ceased to be suitable , regard being had to the spirit of the gift , or to be practical in administering the gift ;

(e) or where the original purposes , in whole or in part , have since they were laid down been adequately provided for by other means ; or ceased , as being useless or harmful to the community or for other reasons , to be in law charitable ; or ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift , regarding being had to the spirit of the gift .

This definition was amended by the Charities Act 2006 to replace " the spirit of the gift " with " the appropriate considerations " , which are defined as " (on the one hand) the spirit of the gift concerned , and (on the other) the social and economic circumstances prevailing at the time of the proposed alteration of the original purposes " .

Failures that lead to an application for cy @-@ prè are of two sorts ; subsequent failure , where the trust , constituted properly , failed after a period of action , and initial failure , where the trust fails at creation . Subsequent failure cases are designed to have the charity 's funds applied to more effective purposes , and as such money already donated to the charity cannot be returned to the next of kin of the original money ; in Re Wright , it was said that " once money has been effectually dedicated to charity ... the testator 's next of kin or residuary legatees are for ever excluded " . Schemes for initial failure , on the other hand , ask the court to decide whether the gifts should be returned to the testator 's estate and next of kin or be applied to a new purpose under cy @-@ prè . When deciding if a gift has failed , there is a distinction made between gifts to unincorporated bodies and incorporated bodies , as laid down in Re Vernon 's Will Trust . This is because gifts to an unincorporated body must be treated as gifts to that body 's purpose , not to the body itself , since unincorporated bodies cannot hold property . As such , the gift does not revert to the next of kin because even if the body is dissolved , the gift 's purpose is (presumably) still valid .