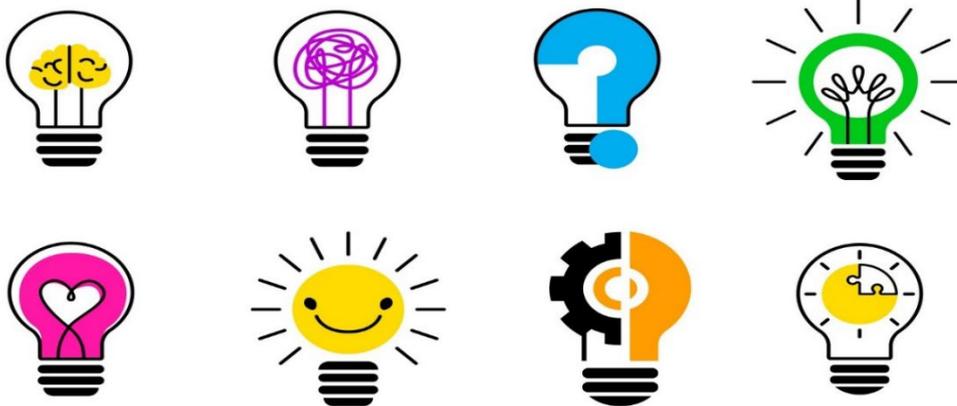


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Refused entry to the register: understanding why

**A thematic report from the Charity Commission
for Northern Ireland**



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Chart 1: Breakdown of registration applications that have been Registered, Refused or Withdrawn.

Table 1: Overview of questions the Commission considers when determining the charitable status of an organisation.

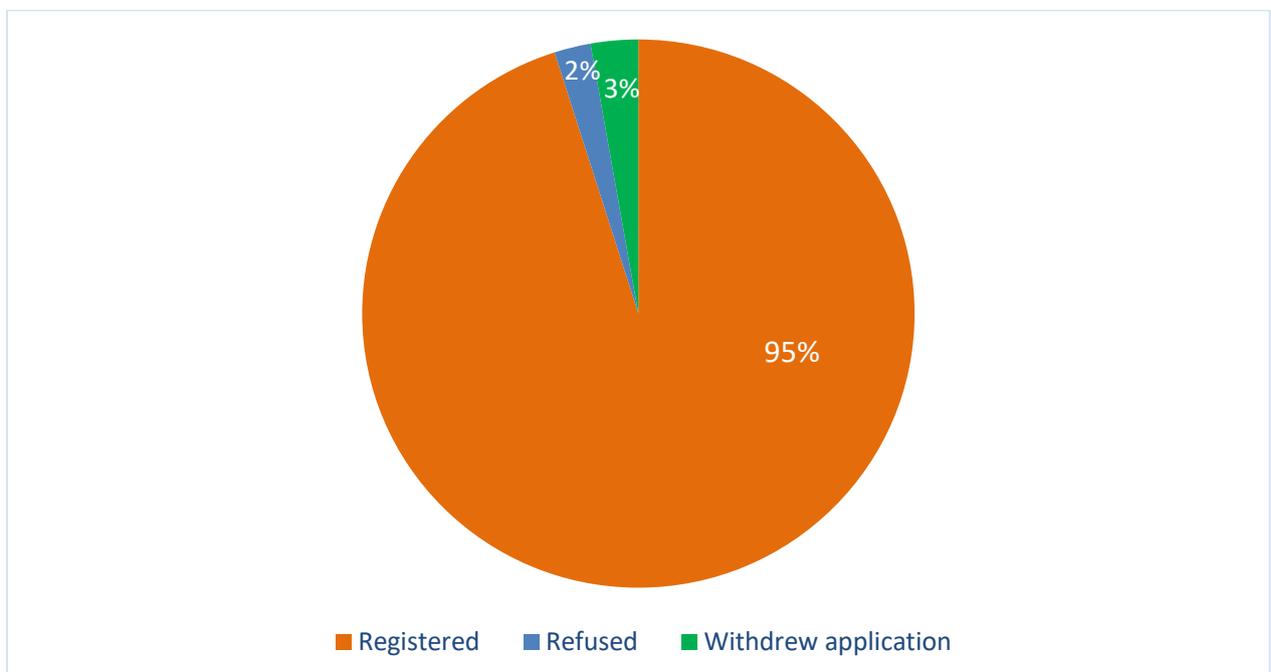
Introduction

Charity registration is currently compulsory for every institution which is a charity under the law of Northern Ireland. Charity trustees must apply to the Commission for their charity to be placed on the public *register of charities* and to provide the Commission with the required documents and information that will allow the Commission to reach a decision on their application.

If an organisation does not meet the definition of a charity, as set out in the Charities Act (Northern Ireland) 2008 (the Charities Act), they cannot be registered by the Commission. While only a small number of organisations are refused registration the reasons why they are refused are important to the sector.

Since registration began in December 2013 the Commission has received just over 8,500 registration applications, by 31 December 2023 only 178 of those have been refused. See the Chart 1 below.

Chart 1: Breakdown of registration applications that have been Registered, Refused or Withdrawn.



Reasons for refusal:

There are three issues that the Commission considers when determining the charitable status of an organisation:

1. Is it an institution?
2. Is it established for charitable purposes only?
3. Is it subject to the control of the Court in Northern Ireland?

If an organisation cannot demonstrate to the Commission that it satisfies all three conditions, then it will be refused entry on to the *register of charities* and cannot call itself a charity.

In this report we explain how each of these issues are assessed, so that a decision can be reached, and provide examples to illustrate the issues involved. As registration decisions are based on complex legal considerations, we have also provided more detailed legal information in Appendix 2. When reading an example, if there is a reference to Figure 1, 2, 3 etc, you will find some relevant legal information in [Appendix 2](#).

We hope this thematic report will assist charity trustees who have still to apply for registration and inform the public why organisations are not considered charitable, under the Charities Act.

Table 1 below provides an overview of these questions and the issues the Commission considers when determining the charitable status of an organisation:

Is it an institution?	Is it established for charitable purposes only? (1)	Is it established for charitable purposes only? (2)	Is it subject to the control of the court in Northern Ireland?
<p>Is it independent:</p> <ul style="list-style-type: none"> do the charity trustees have control and management of the administration of the charity? That is, how the charity is run. are the trustees responsible for their own decisions. 	<p>Do all of its purposes fall under one or more of the 12 descriptions of charitable purposes listed in the Charities Act?</p> <ul style="list-style-type: none"> The purposes cannot be political or unlawful. The dissolution clause must make it clear that if the charity closes its assets remain within the charity sector. The amendment clause must be limited so the trustees cannot change the governing document in a way that causes the charity to cease being a charity. 	<p>AND</p> <ul style="list-style-type: none"> all the purposes must be for the public benefit. For the general public or a section of the public <p>AND</p> <ul style="list-style-type: none"> not provide a private benefit to individuals unless the benefit is incidental and necessary to achieving the purpose. Different rules for the relief or prevention of poverty. 	<p>These factors can indicate that it is:</p> <ul style="list-style-type: none"> the governing document adopts the law of Northern Ireland to govern it (for example, a company registered in NI or an unincorporated association constituted in NI). the majority of the charity trustees reside in Northern Ireland. most of the organisation's property is located in Northern Ireland. the organisation's centre of administration is based in Northern Ireland.

Section 1: Is the applicant an institution?

Reaching a decision about whether or not the applicant is an institution requires the Commission to establish the nature of the organisation. An institution is an independent body, the hallmarks of which include having control and direction over its governance and resources.

There are two common types of institution: incorporated and unincorporated. The table below defines each of these.

An incorporated institution	An unincorporated institution
An incorporated charity is a legal form that gives the charity its own legal personality (for example, a company limited by guarantee). This means it can own property and sign contracts in the charity's name. Incorporation gives charity trustees greater protection from being personally liable.	An unincorporated charity doesn't have its own legal personality, and so the members are personally liable for the charity's debts and obligations. An unincorporated institution includes charitable trusts.

For detailed legal considerations of these types of institutions see [Figures 2, 3, and 4](#) in Appendix 2.

A charity's governing document should set out clearly what it is set up to achieve, how it will be run and who its trustees are. Charity trustees are the people who serve on the governing body of a charity and are responsible for the general control and management of the administration of a charity. They may be referred to as charity trustees, directors, board members, governors or committee members.

Where an organisation is part of a structure with a parent body, it is the trustees of the parent body that will have control and management of the charity. To be a separate charitable institution with sufficient autonomy an organisation must be responsible for its own decisions.

The following examples illustrate refusal based on the applicant not being a separate charitable institution within the meaning of the Charities Act.

Example 1: A youth club applied for charity registration however its governing document demonstrated that it did not have sufficient independence over its own governance and resources. Its property and resources were controlled by its parent charity. The youth club was a project delivered by the parent charity and not a charitable institution in its own right. Therefore, the application for registration as a charity was refused.

Example 2: A benevolent fund was refused registration as it did not have autonomy over its governance and resources. The benevolent fund's governing document demonstrated that its property and resources were controlled by the parent body. The fund is an integral part of the parent body and not a charitable institution in its own right.

Section 2: Is it established for charitable purposes only?

A charity's purposes set out what the charity seeks to achieve and are usually stated at the beginning of its governing document. Sometimes purposes are referred to as objects or aims.

According to the Charities Act, the organisation **must** be established for charitable purposes only. To meet this definition all the organisation's purposes **must**:

- fall under one or more of the 12 descriptions of charitable purposes listed in the Charities Act; **and**
- be for the public benefit.

It only takes one purpose within an institution's governing document not to fall within one of the 12 descriptions of charitable purpose for that institution to be determined not to be a charity. A list of the 12 descriptions of charitable purposes is available in [Appendix 1](#).

In addition, a purpose is not exclusively charitable if:

- it is political or
- it is unlawful.

In charity law, a political purpose is not simply a purpose that is concerned with party politics. The term *political purpose* means any purpose, whether in this country or overseas, that is aimed at:

- furthering the interests of a particular political party
- securing or opposing any change in the law, whether in the UK or overseas
- securing or opposing a change in government policy or decisions of government or other public bodies, whether in the UK or overseas.

Below are examples of an institution that cannot be a charity if it has a political purpose ([Figure 9](#)).

Example 1: An organisation was refused registration as its purpose was to *promote, support or oppose proposed legislation or decisions by Government Department or Local Authority affecting the Area of benefit*. This is a political purpose. It is established in case law that purposes categorised as “political” are generally not charitable.

Example 2: An organisation was refused registration as it displayed a degree of government control and stressed the institution’s objectives were consistent with and promoted government’s strategic objectives. The level of control was such that the institution had an unwritten non-charitable purpose to undertake its main activities in accordance with policies of government. Registration was refused as this was a political purpose and purposes categorised as “political” are generally not charitable.

A charity can carry out political activity if it facilitates or supports the delivery of its charitable purposes.

It may also carry out non-political campaigning activities if this is clearly a means of furthering its charitable purposes.

Dissolution clauses

Most governing documents contain a dissolution clause that sets out how the charity’s funds and assets must be distributed when it is closing. An organisation cannot be a charity if its dissolution clause permits its funds and assets to be distributed to non-charitable purposes following its decision to close. For example:

An organisation was refused registration as its dissolution clause permitted its remaining assets, if the organisation closed, to be transferred to a non-charitable organisation. Therefore, it cannot be said that the institution was established for ‘*charitable purposes only*’ and so registration was refused.

Amendment clause

Most governing documents contain an amendments clause. This clause in a governing document outlines how certain changes can be made to the document and procedures of the charity. An organisation is not a charity established for exclusively charitable purposes if its amendments clause permits the trustees to introduce a non- charitable purpose. The power to amend the governing document of a charity must therefore be limited to amendments which do not cause the charity to cease to be a charity. For example

An organisation was refused registration because its amendment clause stated, "*The constitution will only be changed through agreement by majority vote at an AGM or EGM.*" As this clause is not restricted, changes could be made to the constitution which would mean it was no longer a charity in law.

Using Companies House Model Memorandum and Articles of Association

If the organisation has used Companies House Model Articles as their governing document it is vital that they are amended and adopted to suit the charity. If unchanged, the model documents are not suitable for charitable registration because, amongst other things, they do not have an objects clause which expressly limits the organisation to charitable purposes only. An organisation with unlimited objects is not capable of being registered as a charity.

Are the purposes clear, certain and unambiguous?

The Commission interprets the wording of the purposes of each particular institution to ensure that they are clear, certain and unambiguous. This is the approach taken by the Court. For example

An organisation was refused registration with the purpose *"To promote the benefit of traditional civil and religious rights and liberties in the exercise of the law in Northern Ireland and Great Britain."*

This purpose was assessed as vague and uncertain as it was not clearly tied to any particular set of rights and liberties, and the use of the word "traditional" is subjective and open to interpretation. Therefore, registration was refused.

Some applications for registration have a governing document in which the purposes of the organisation are not clear or certain, or there is no governing document, which may have been lost. In these cases, the Commission may consider relevant factual background information and activities to assist in assessing whether the implementation of the purposes would achieve a charitable outcome. For more detailed legal information see [Figure 7](#) in Appendix 2.

2.1 Are all the purposes for the public benefit?

Not only do the applicant's purposes have to fall into one or more of the 12 descriptions set out in the Charities Act, they must also satisfy [the public benefit requirement](#). The public benefit requirement is set out in section 3 of the Charities Act, see [Figures 10 and 11](#) in Appendix 2.

As charity law is not static, and can change over time, a purpose that was for the public benefit before the Charities Act of 2008 may no longer be for the public benefit. Therefore, the public benefit requirement is to be judged against the law of Northern Ireland as it is currently understood. See [Figure 12](#) in Appendix 2.

The Commission has produced [Public benefit requirement: Statutory guidance](#); all trustees must have regard to this guidance through all stages of a charity's life.

Public benefit has two distinct elements:

1. There must be a benefit
2. That benefit must be for the public.

For an institution's purposes to satisfy the benefit element of the public benefit requirement, the benefit must

- flow from the purpose,
- be capable of being demonstrated; and
- any detriment or harm that results from the purpose must not outweigh the benefit

For an institution's purposes to satisfy the public element of the public benefit requirement, the intended beneficiaries must be identifiable, able to be recognised. How they might benefit must also be capable of being recognised. The benefit which may flow from the purposes must:

- be to the general public or to a section of the public; and
- not provide a private benefit to individuals unless the benefit is incidental.

The Commission has prepared a podcast to help understand the registration process. Part 2 of this podcast may help you [Understand the public benefit requirement](#) it is available on the [Registration page](#) of the Commission's website.

2.2 Different rules for the relief or prevention of poverty

In general, for a purpose to be charitable it must satisfy both the *public* and *benefit* aspects of public benefit. However, if the purpose is to prevent or relieve poverty, the position is different.

In the case of charities for the relief, and in some cases the prevention, of poverty the courts consider the public benefit requirement can be met by satisfying the *benefit* element only. In these cases, there is no separate consideration of the *public* element.

Only charities with a purpose to relieve, and in some cases to prevent, poverty can define who can benefit by reference to:

- their family relationship (that means their descent from one individual)
- their employment by an employer

- their membership of an unincorporated association.

However, a charity must not have a purpose which is for the benefit of **named individuals**, whether or not they are poor. This is so even if the motive is to relieve poverty and the named individuals happen to be poor.

The following examples illustrate registration refusals based on the applicant's purposes not satisfying the public benefit requirement, even though the general public might assume these organisations were charitable.

2.3 Private benefit – is it incidental and necessary?

Private or personal benefit flowing from purposes must be incidental and necessary.

Example 1: An organisation had a purpose of promoting trade, commerce and enterprise. It argued that there was a benefit to the public due to the increase in profitability of businesses and their contribution to the reduction in unemployment. The organisation was found not to be charitable because its purpose provided for private benefit to individuals engaged in trade, commerce or enterprise and the potential benefit to the public was considered too remote.

It should be noted, however, that the promotion of industry and commerce is capable of being charitable but public benefit is key and any private benefit must be incidental and necessary to the advancement of the charity's purposes. See example 2 below

Example 2: An organisation was established to advance the appreciation of cultural heritage in the local town. It planned to regenerate rundown buildings of historical interest and open them to the public for educational purposes. This may lead to an increase in tourism in the area which would benefit local hospitality providers. This benefit is an incidental by-product of a charitable purpose and is not a purpose in itself. Therefore, it is a private benefit that is likely to be acceptable.

Example 3: An institution for the benefit of widows was refused registration as its purposes did not satisfy the public benefit requirement. The Commission determined, on the evidence presented, that the purpose '*to afford assistance to widows of deceased [...] by grants of money*' did not evidence a charitable need. Northern Ireland case-law has determined the term '*widow*' does not imply '*poverty*', unlike case-law authorities in England and Wales. This case also involved a private class which is an issue in charity law and is explained below.

2.4 Is it a private class?

An institution established to benefit a private class, regardless of the size of that class, cannot be regarded as benefitting a section of the public.

Example 4: An organisation was refused registration where its purpose was to provide financial support to the employees and their dependents of a particular profession. It is established in law that, except in the case of charities for the prevention or relief of poverty ('the poverty exception'), beneficiaries cannot be identified on the basis of their link to a particular employer, society or person. If they are identified in this way they will be regarded as constituting a private body of individuals or private class, rather than a section of the public. (See [Figures 13 and 14](#) in Appendix 2). As the beneficiaries were defined by a private class and the poverty exception did not apply, the purpose did not satisfy the '*public*' element of the public benefit requirement.

Example 5: A trust was established to provide support to orphans belonging to a group with restricted membership. Based on the evidence presented, the Commission agreed that the purposes of the organisation fell within the description; *the relief of those in need by reason of youth, age, ill health, disability, financial hardship or other disadvantage* and *the advancement of education.*'

However, the purposes failed to satisfy the public element of the public benefit requirement. This is because the beneficiaries were defined by their connection to a group with restricted membership, which made them a private rather than a public class. The trust's purpose of providing support to the beneficiaries also went beyond *'the prevention or relief of poverty'*. So, the trust could not rely on the '*poverty exemption*' in relation to its restricted class of beneficiaries. Therefore, charity registration was refused.

Section 3: Is the institution subject to the Court's charity law jurisdiction?

The final component which is an essential requirement of charitable status is that the institution must be subject to the Court's charity law jurisdiction. This means that the High Court of Northern Ireland must have the power to make decisions about the administration and purposes of an institution. To be a charity, an organisation must be independent of outside control so that this does not prevent it from being subject to the control of the High Court. For more information see [Figure 15](#) in Appendix 2.

An institution must be governed by law. If an institution's governing document does not state clearly what law it is governed by, then it will be governed by the law with which it is most closely connected. See [Figures 16 and 17](#) in Appendix 2.

The following factors can indicate that an institution falls within the High Court of Northern Ireland's charity law jurisdiction:

- the governing document adopts the law of Northern Ireland to govern it, for example a company registered in Northern Ireland, or an unincorporated association constituted in Northern Ireland.
- the charity trustees reside in Northern Ireland
- most of the organisation's property is located in Northern Ireland.
- the organisation's centre of administration is based in Northern Ireland.

The following examples illustrate registration refusals based on the applicant not satisfying the requirement that it is subject to the *control of the Court in the exercise of its jurisdiction with respect to charities*.

Assets, trustees, beneficiaries, and activities located in another jurisdiction

Example 1: An organisation applied for registration with a governing document which gave no indication as to the institution's governing law. Its assets were held outside Northern Ireland, the majority of the trustees were resident outside Northern Ireland, the beneficiaries were based in Britain and its activities were conducted in England and the Republic of Ireland. The institution was established in England and was not subject to the control of the Courts in Northern Ireland in the exercise of its jurisdiction with respect to charities. Therefore, the application for registration was refused.

Governed by the law of another jurisdiction

Example 2: An organisation was refused registration as its governing document, a Deed of Trust, specified that it was governed by the law of England and Wales. It was therefore not subject to the control of the Courts in Northern Ireland in the exercise of its jurisdiction with respect to charities.

Conclusion

The purpose of registration is to increase public trust and confidence in charities by creating a more transparent and accountable charitable sector. To this end the public need to be sure that any organisation promoting itself as a charity is in fact a charity, as defined by law.

Refusals will occur when an organisation's governing document does not meet the legal criteria outlined in this report. While processing an application the Commission will give applicants the opportunity to resolve any barriers to registration within the governing document, however the decision to make any changes sits exclusively with the organisation's trustees. It is essential, therefore, that charity trustees, understand what defines a charity in charity law.

The three key areas to consider are: not being an institution, not being established for exclusively charitable purposes and not being subject to the jurisdiction of the Court in Northern Ireland. Just because something may meet the general understanding of being charitable does not mean it is actually a charity in law.

We hope the examples highlighted in this thematic report will help the public and applicants to better understand why not all good causes are charities in the eyes of the law.

Appendix 1: The 12 descriptions of charitable purposes

The Charities Act sets out a list of 12 descriptions of charitable purposes. An institution's purposes must fit within one or more of the descriptions for it to be charitable. Where any of the terms used in the description of charitable purposes has a particular meaning under case law, it retains the same meaning. The 12 descriptions of charitable purpose are:

1. The prevention or relief of poverty
2. The advancement of education
3. The advancement of religion
4. The advancement of health or the saving of lives
5. The advancement of citizenship or community development
6. The advancement of the arts, culture, heritage or science
7. The advancement of amateur sport
8. The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
9. The advancement of environmental protection or improvement
10. The relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
11. The advancement of animal welfare
12. Any other charitable purposes.

The Charities Act does not define what each of these descriptions of purposes means. However, it does provide some definitions, or partial definitions, for some of the descriptions. These are set out in section 2(3) of the Charities Act, see [Figure 5](#) Appendix 2. The Commission has produced a suite of [supporting documents](#) on these charitable purposes to help support applicants in understanding these descriptions.

Appendix 2

Below are the legal considerations used by the Commission

1. Is the applicant an institution?

Figure 2

Section 180 of the Charities Act defines 'institution' as:

"any institution whether incorporated or not and includes a trust or undertaking"

Figure 3 – what does case law tell us

Lawton LJ in **Conservative and Unionist Central Office v Burrell (Inspector of Taxes) [1982] 1 WLR 522 (CA)** defined an unincorporated association as:

"two or more persons bound together for one or more common purposes, not being business purposes, by mutual undertakings. Each having duties and obligations, in an organisation which has rules which identify in whom control of it and its funds rests and upon what terms and which can be joined or left at will."

Trusts are defined by the Charities Act as *"the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by way of a trust or not, and in relation to other institutions has a corresponding meaning."*

Figure 4 – defined in section 180 of the Charities Act (NI) 2008.

Special trusts are defined as:

"property which is held and administered by or on behalf of charity for any special purposes of the charity, and so held and administered on separate trusts relating only to that property."

2. Is it established for charitable purposes only?

Figure 5

Section 2(3)

- (a) in paragraph (c) "religion" includes—
 - (i) a religion which involves belief in one god or more than one god, and*
 - (ii) any analogous philosophical belief (whether or not involving belief in a god);**

- (b) in paragraph (d) "the advancement of health" includes the prevention or relief of sickness, disease or human suffering;*

- (c) paragraph (e) includes—
 - (i) rural or urban regeneration, and*
 - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities;**

- (d) in paragraph (g) "sport" means sports or games which promote health by involving physical or mental skill or exertion;*

- (e) paragraph (h) includes the advancement of peace and good community relations; and*

- (f) paragraph (j) includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph."*

Subsection (4) defines other purposes which are recognised as charitable under the law of Northern Ireland.

Figure 6

- "(a) any purposes not within paragraphs (a) to (k) of subsection (2) but recognised as charitable purposes under existing charity law or by virtue of section 1 of the Recreational Charities Act (Northern Ireland) 1958 (c. 16);*
- (b) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of those paragraphs or paragraph (a) above; and*
- (c) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised under charity law as falling within paragraph (b) above or this paragraph."*

Figure 7

In R (Independent Schools Council) v The Charity Commission for England and Wales [2011] UKUT 421 (TCC). The Upper Tribunal stated *"the question of whether an institution is "established" for charitable purposes only is to be answered by deciding, as a matter of construction, whether its purposes (a) fall within one of the descriptions of purposes listed in section 2(2) and (b) satisfy the public benefit test. The ordinary meaning, and we would suggest generally the most natural meaning of the word "established" is directed to what the institution was set up to do not how it would achieve its objects or whether its subsequent activities are in accordance with what it was set up to do."*

Figure 8

Helena Partnerships Limited v Revenue and Customs

Commissioners [2011] UKUT 271 (TCC). This case identifies principles established by the court in determining when extrinsic evidence and relevant factual background information may be taken into account in ascertaining purposes of an institution and whether those purposes are charitable.

Figure 9

Bowman v Secular Society Ltd [1917] A.C. at paragraph 442.

"The abolition of religious tests, the disestablishment of the Church, the secularization of education, the alteration of the law touching religion or marriage, or the observation of the Sabbath, are purely political objects. Equity has always refused to recognize such objects as charitable. It is true that a gift to an association formed for their attainment may, if the association be unincorporated, be upheld as an absolute gift to its members, or, if the association be incorporated, as an absolute gift to the corporate body; but a trust for the attainment of political objects has always been held invalid, not because it is illegal, for every one is at liberty to advocate or promote by any lawful means a change in the law, but because the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift."

2.1 Are all the purposes for the public benefit?

Figure 10

Section 3(2) of the Charities Act provides:

"In determining whether the public benefit requirement is satisfied in relation to any purpose falling within section 2(2), it is not to be presumed that a purpose of a particular description is for the public benefit."

Figure 11

Section 3(3) of the Act requires that "any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in Northern Ireland".

Figure 12

The Upper Tribunal in **R (Independent Schools Council) v The Charity Commission for England and Wales [2011] UKUT 421 (TCC)** considered the nature of the public benefit requirement and stated that:

"...it must be remembered that the concept of what is and is not for the public benefit (as seen by society generally, and as reflected in judicial recognition of the views of society) changes over time. As we will see, changing social perceptions have, in the past, resulted in changes in what is seen as for the benefit of society and, accordingly, of what is properly to be accorded charitable status."

Figure 13

Oppenheim v Tobacco Securities Trust [1951] A.C. 297 at page 305

"It is a clearly established principle of the law of charity that a trust is not charitable unless it is directed to the public benefit. This is sometimes stated in the proposition that it must benefit the community or a section of the community. Negatively it is said that a trust is not charitable if it confers only private benefits.... These words "section of the community" have no special sanctity, but they conveniently indicate first, that the possible (I emphasize the word "possible") beneficiaries must not be numerically negligible, and secondly, that the quality which distinguishes them from other members of the community, so that they form by themselves a section of it, must be a quality which does not depend on their relationship to a particular individual. It is for this reason that a trust for the education of members of a family or, as in ***In re Compton ([1945] Ch. 123)***, of a number of families cannot be regarded as charitable. A group of persons may be numerous but, if the nexus between them is their personal relationship to a single propositus or to several propositi, they are neither the community nor a section of the community for charitable purposes."

Figure 14

Dingle v Turner [1972] A.C. 601 held that a trust for “poor employees” was capable of being a valid charitable trust.

In **Attorney General v Charity Commission etc (poverty Reference) [2012] UKUT 420** the Upper Tribunal summarised the poverty exception as applying to beneficiaries identified by reference to:

- i) their relationship to one or more individuals
- ii) their or a member of their family’s employment or former employment
- iii) their membership of an unincorporated association

3. Is the applicant subject to the control of the courts in Northern Ireland?

Figure 15

Section 180(1) of the Charities Act defines “the Court” for the purposes of the Charities Act and “*subject to Article 14(b) of the County Courts (Northern Ireland) Order 1980 (NI 3), means the High Court*”.

Figure 16

The Hague Trusts Convention 1984 article 7 explains the concept of 'closely connected'.

"Where no applicable law has been chosen, a trust shall be governed by the law with which it is more closely connected.

In ascertaining the law with which a trust is most closely connected reference shall be made in particular to –

- (a) The place of administration of the trust designated by the settler*
- (b) The situs of the assets of the trust*
- (c) The place of residence or business of the trustee*
- (d) The object of the trust and the places where they are to be fulfilled."*

Figure 17

The same principle applies at Common law as demonstrated by the cases of **Chellaram v Chellarm [1985] 1Ch 409 at 431** and **Chellaram v Chellarm (No 2) [2002] 3 All Er 17 at 166**. **Chellaram v Chellarm [1985] 1Ch 409 at 431** confirmed the principle that in the absence of a choice of governing law a trust is usually governed by the law where its trustees are located. *"It is well established in English Law that the essential validity of a testamentary trust of moveables is governed by the law of the testators domicile. But there is no reason why a testator should not by will establish a trust to be governed by some other law other than the law of his domicile. His ability to create the trust may be subject to the law of his domicile, but subject thereto he is, in my view, as able by will to make a foreign settlement as he is able to do so inter vivos."*

Chellaram v Chellarm (No 2) [2002] 3 All Er 17 at 166 applied the principles of the Hague Convention *"By Article 7 of the Hague Convention, in the absence of a choice of the applicable law, a trust is governed by the law with which it is most closely connected. In ascertaining that law reference is to be made "in particular" to (a) the place of administration designated by the settlor — no such place was designated; (b) the situs of the assets of the trust(c) the place of residence or business of the trustees.....(d) the objects of the trust and the places where they were to be fulfilled.... In the light of the paucity of authority at common law, I doubt if there is any significant difference between the Article 7 and the likely approach at the common law."*

Further information

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