The Legal meaning of Charity and how the Public Benefit Test affects Animal Protection Organisations

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Section 1 of the Charities Act 2011 (the Act) states that "*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*". According to section 2 of the Act, charitable purposes set out in section 3 must be for public benefit. As this article will explain, the public benefit that animal welfare charities must satisfy is to raise the moral standard and educational level of human beings and any benefit achieved to animals is only indirect.

The first cases concerning animal welfare charities arrived before the English courts over three centuries ago. At the time society did not give thought to the relationship between humans and animals. John Locke was one of the first philosophers who saw that there existed similarities between Man and beasts.[1] However, in the 18th century his views on the benefits of treating animals well had not yet taken effect can be seen in *Attorney General v Whorwood (1750),*[2] in which a gift for feeding sparrows was found to be invalid as Lord Hardwick found it to be for *"odd or whimsical use"*.

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In the 1800's philosophers as well as higher classes of society having had advantage of access to information and education began to express their disapproval of the way animals were used in scientific experiments, hunting, bull – baiting, and farming. In this period Bentham's utilitarian views came to light. An Act to Prevent Cruel and Improper Treatment of Cattle became the law. The Society for the Prevention of Cruelty to Animals (SPCA), which was later renamed to RSPCA, was established in 1824. It is from here on that the influence of charities would appear to bring positive legal outcomes to animal welfare charities. Most cases from this period concerned gifts left in Wills to animal causes. The case of *London University v Yarrow (1857)*[3] concerned the establishment of an animal hospital that was to study and cure animals useful to Man as well as giving lectures to this end. As this was clearly of use to mankind the public benefit was evident and the gift was therefore seen as charitable.

In the post–Albert Victorian period a number of still existing animal welfare charities came into existence notably the Battersea Dogs Home in 1860 and Blue Cross in 1897. Frances Power Cobbe, a witness to vivisection abroad, founded the British Union for the Abolition of Vivisection in 1875. A year later the Cruelty to Animals Act came into force to control experiments on animals. This legislation not only brought vivisection under legal control but also barred public scrutiny, as licences were granted in secret, which is still ongoing today, to hide it from the eye of the societies who had sprung up in the defence of the animals.[4]

Meanwhile in courts as more people left gifts for animal charities in their Wills many next of kin raised objections, often claiming the gifts were not for charitable purposes, and

[1] John Locke, *An Essay Concerning Human Understanding* [1690].

[2] 1 Ves Sen 534.

[3] *1 DE G&J 72.*

[4] Hills (2005) pp. 16 - 17 *"It became on offence to perform an experiment giving pain to a living animal, unless that experiment would advance physiological knowledge, reduce suffering or prolong life."*

tried to have the gifts failed. In 1864 the case of *Tatham v Drummond*[5] confirmed that a gift for an animal welfare charity could be valid if it was for public benefit. However, in this case the gift was not allowed as it involved the purchase of land. A subjective test was applied in *Re Douglas* where the court was contemplating whether the testatrix meant to leave a gift for two animal welfare charities. With reference to *University of London v Yarrow* the court found the gifts to be valid as that was the intention of the Will. In *Re Cranston [1898]*[6] Holmes LJ stated *"gifts the objects of which is to prevent cruelty to animals and to ameliorate the position of the brute creation are charitable…If it is beneficial to the community to promote virtue and to discourage vice, it must be beneficial to teach the duty of justice and fair treatment to the brute creation, and to repress one of the most revolting kinds of cruelty"*.

In 1891 Lord Macnaghten delivering a judgement in the *Pemsel*[7] case categorised charitable purposes into four categories. Animal welfare charities continued to be seen by the courts to have indirect benefit to the public yet still be able to be charities and as such an animal welfare organization wishing to become a charity still had to prove to be for public benefit just as prior to this case law. The three cases in that period that come to attention with regard to public benefit and animals were *Re Joy (1888),*[8] *Armstrong v Reeves (1890)*[9] *and Re Foveaux (1895)*.[10] All three cases were concerned with gifts for anti-vivisection societies and the approach of the courts in these cases was quite different from the one adopted in 1948.

In *Re Joy* a gift left for two societies was put to question before Chitty J as the societies in question had since the writing of the Will amalgamated. It can be seen from this case that anti-vivisection societies were seen to be charitable and the new united society received both gifts left for them in the Will. In *Armstrong v Reeves* it was held by the Vice-Chancellor of Ireland that anti-vivisection societies had a charitable purpose as a sub-standing under cruelty to animals. The debate in this case focused on whether the gift was based on an honest belief by the testatrix that the societies were charitable and as the judge found this to be the case the gifts were allowed. In *Re Foveaux* Chitty J referred both to *Armstrong and Pemsel* in accepting that anti-vivisection fell under charitable status, but he expanded on the reasoning. He argued that anti-vivisection organisations fall under the type of societies that operate for the prevention of cruelty to animals and as such are for public benefit. He saw the distinction as one of *"what is and what is not justifiable is a question of morals, on which men's minds may reasonably differ and do in fact differ."* As such he found that a dialogue of this kind promotes *"morals and education among men"* and further commented that it is not the courts but society that should decide upon what is for public benefit.

What is interesting, and was refuted in 1948, is that in all three cases the judges were focused on the honest belief of the testators and were willing to accept their opinion as relevant, as long as the named charity gave benefit to a sufficiently large section of the public. In 1898 in *Re Cranston*[11] a gift was left for a vegetarian society that intended to promote benefits of abstaining from meat and through that improving the morals of people. Although the intention was seen to be for public benefit the gift was found not to be of charitable nature as "it was a universal habit to kill animals for food".

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At the beginning of the 20th century attitudes towards animals began to change radically. The Protection of Animals Act 1911 was passed to include "any animal". This legislation as today, however, did not include animals used in scientific research. A number of interesting cases also saw light. In *Re Wedgwood [1915]*[12] the claim was that the gift was too wide and therefore not seen as charitable. The defendant had been entrusted, by the testatrix, with a sum towards the *"protection and benefit of animals"* which in private dialogue had been voiced as, for instance, to forward municipal abattoirs to provide humane slaughtering methods. The court held that it was a valid trust as *"objects of general mercy to animals of all kinds…are charitable"*. This case shows how the courts mainly looked at gifts from the view of the testatrix and whether they had had an honest belief in the charitable purpose of the receiving charity and

[5] (1864) 4 De GJ & Sm 484, 887.

[6] 1 I.R. 457.

[7] [1891] AC 531.

[8] 60 LT.

[9] 25 LR Ir 325.

[10] 2 Ch 501.

[11] 1IR 431

[12] 1 Ch 113

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if said charity could be said to fulfil the public benefit test. They had, as in *Re Foveaux,* avoided passing judgement on the morals of the beneficiaries.

Re Grove Grady [1929][13] concerned a gift to the establishment of a charity that was, among other objectives, to provide sanctuaries where animals could be left free from mankind. The Court of Appeal failed this gift on the ground of insufficient public benefit as the sanctuary would not be accessible and provide a benefit to Man. Russell LJ in this case referred obiter to *Re Foveaux* that cases of anti–vivisection *"might possibly in the light of later knowledge in regard to the benefits accruing to mankind from vivisection be held not to be charities"*.

How right he was, as in 1948 the National Anti-Vivisection Society[14] appealed to the House of Lords to defend their charitable status against the Inland Revenue Commissioners' claim that should the National Anti =– Vivisection Society succeed in their purpose the detriment to society would outweigh the benefit of the improved morals of Man and that their cause was one of political issue, rather than for public benefit solely. The House of Lords (4:1) held that the anti-vivisection society could not be exempted from income tax as a charity as the object of their work was both political and, should they succeed, would outweigh the public benefit of vivisection. Despite Lord Porter's dissenting voice the decision was to overturn the subjectivity test applied in Re Foveaux in favour of a test of objectivity where it is up to the court to decide whether a charity is more detrimental to society or of greater benefit.

In *Re Moss (1949)*[15] a gift left *"for the welfare of cats and kittens needing care and attention"*[16] was held to be of benefit as it brought up the *"finer side of human nature"*.[17] The gift in *Re Vernon (1957)*[18] was left in order to build a drinking fountain for animals but as only half of the money was spent on the first fountain, another was built with the rest of the money due to the *cy–pres* doctrine. This was found to be *"a good charitable gift"* by Vaisey J.

Further change of Man's positive changing attitude towards animals can be seen with time. In *Re Murawski's Will Trust [1971]*[19] and in *Re Green's Will Trust [1985]*[20] the courts again confirmed that gifts for animal welfare charities would be valid if for public benefit. These cases were based on technical issues.

In 2003 the Wolf Trust applied to become a registered charity in order to *"[p]romote the conservation, rights and welfare particularly of wolves but also of other predators and related wildlife"*. The trust's application was not accepted by the Charity Commission as in its opinion, for the Trust to succeed they would have to bring about a change in government policy and as such they were seen as having a political purpose. However, it was stated that *"conservation of dangerous animals"* could be seen, in some instances, to have a charitable purpose.[21] Here it can be seen what a powerful regulator the Charity Commission is as they are in effect able to sidestep previous case law such as *Re Wedgwood*.

The issue of charities and the public benefit test came to light again at the end of last year when the RSPCA was warned that its alleged involvement in political campaigning might compromise the organisation's charitable status.[22] The League Against Cruel Sports, established in 1924, has only recently become a registered charity.

The question, which inevitably arises with regard to the public benefit test, is whether it is outdated and should be aligned with *Re Foveaux* essentially allowing the public to decide which causes are for their benefit and which are not. After all it is the public who, to a large extent, sponsors charities and animal protection organisations. Without donations many organisations working tirelessly on behalf of animals would not exist today. It is only reasonable that the public would wish to have a say.

[13] 1 Ch 557

[3] *1 DE G&J 72.*

[4] Hills (2005) pp. 16 - 17 *"It became on offence to perform an experiment giving pain to a living animal, unless that experiment would advance physiological knowledge, reduce suffering or prolong life."*