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Charity law's transition from 'poverty' to 'financial hardship'

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Introduction

The relief of poverty has always been a cornerstone of charity law.[1] But the suggestion here is that, legally speaking, this category of charity may – unnoticed – have now been made practically redundant when defining the limits of charitable purposes in the law of England and Wales by a relatively obscure provision in the Charities Act 2011. By section 3(1)(j), 'the relief of those in need because of … financial hardship …' is now also a charitable purpose.[2] Arguably, this is *wider* than the relief of poverty and therefore renders superfluous in the modern law any reliance on relieving poverty for charitable status. A charity may have good principled or practical reasons for limiting its objects specifically to the relief of poverty: we shall come to those. But the general point suggested with regard to defining the outer limits of charitable purposes appears valid. This depends, however, on the interpretation given to 'the relief of those in need because of … financial hardship …'; and on the public benefit test to be applied to it.

Legal definition of charity

By Charities Act 2011, s 2, being a charitable purpose involves satisfying a two-stage test: first, the purpose must be on a list of recognised charitable purposes, set out in Charities Act 2011, s 3; and second, it must also be of 'public benefit'. A third requirement for charitable status is being exclusively charitable: by Charities Act 2011, s 1, a charity is an institution established for charitable purposes only.[3]

Prevention or relief of poverty

On the list of recognised charitable purposes in Charities Act 2011, s 3(1), the very first item, in paragraph (a), is 'the prevention or relief of poverty'.

'Prevention'

The word prevention was first introduced into the law in Charities Act 2006, s 2(2)(a). The addition of 'prevention' is now the *only respect* in which this charitable purpose, in paragraph (a), is indisputably wider than the different charitable purpose of relieving need from financial hardship, in paragraph (j), which will be the main focus here. However, it is arguably a difference of relatively minor importance.

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[1] The relief of poverty was mentioned in the first clause of the list of charitable purposes in the Preamble to the Charitable Uses Act 1601 (or 'Statute of Elizabeth'); it was the first of the four principal divisions of charity famously stated by Lord Macnaghten delivering the leading judgment in *Comrs for Special Purposes of the Income Tax v Pemsel* [1891] AC 531 (HL), 583; and it is now first on the list of charitable purposes in the Charities Act 2011 (s 3(1)(a)).

[2] Originally enacted as Charities Act 2006, s 2(2)(j). This 'financial hardship' provision is so little considered that the Charity Commission's guidance *Charitable Purposes* (September 2013) has nothing to say about it.

[3] By Charities Act 2011, s 9(3), an 'institution' may be incorporated or not, and includes a trust or undertaking.

'Relief'

Relief of poverty means alleviating needs arising from the poverty; it is not the same as benefiting the poor – it is possible to benefit the poor without ameliorating their poverty.[4]

'Poverty'

The most widely cited, and helpful, definition of poverty is that in *Re Coulthurst*.[5] Evershed MR, delivering the leading judgment, said:

> 'It is quite clearly established that poverty does not mean destitution; it is a word of wide and somewhat indefinite import; it may not unfairly be paraphrased for present purposes as meaning persons who have to "go short" in the ordinary acceptation of that term, due regard being had to their status in life, and so forth.'

So, widows and orphans of bank workers could be regarded as in 'poverty'.

Public benefit

The public benefit requirement for relieving poverty is minimal. First, the form of relief must be socially beneficial: not antisocial.[6] Secondly, it must be for the relief of poverty amongst a class of poor people and not be for particular beneficiaries;[7] accordingly, the provision can be for a relatively small group and they can all have a personal nexus – for example, they can all be relatives, or employees: *Dingle v Turner*.[8] So, a trust for those 'in special need' among 50 relatives has been held a charitable relief of poverty;[9] and a trust for 'the poor and needy' among a smaller class of 26 relatives, plus issue born during a 21-year period, has been held a charitable relief of poverty.[10] A possible justification for the minimal numbers that need to be helped in order to satisfy the public benefit requirement is that any relief of poverty benefits the general public, by reducing the burden on the state – the taxpayer.[11]

Relief of those in need because of financial hardship

The relief of those in need because of financial hardship is now a listed charitable purpose. It forms part of a wider category stated in Charities Act 2011, s 3(1)(j): 'the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage'.

'Relief'

Relief has essentially the same meaning as in relieving poverty: it means a need arising from their condition ('youth, age, ill-health, disability, financial hardship or other disadvantage') is being remedied.[12]

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[4] *Joseph Rowntree Memorial Trust Housing Association Ltd v A-G* [1983] Ch 159 (Ch), 171.
[5] [1951] Ch 661 (CA), 665-66.
[6] *A-G v Charity Commission for England and Wales* [2012] UKUT 420 (TCC), [2012] WTLR 977.
[7] It is no objection that the property is distributable at once, rather than held as an endowment with only the income distributed – if the provision is not, in substance, for particular individuals: *Re Scarisbrick* [1951] Ch 622 (CA).
[8] [1972] AC 601 (HL). The law has not been changed by the Charities Act: *A-G v Charity Commission for England and Wales* [2012] UKUT 420 (TCC), [2012] WTLR 977, [39] (although that case probably did not correctly state the prior law: see Jonathan Garton, *Public Benefit in Charity Law* (OUP 2013), para 5.280). The case added, [76]-[80], that the same test may apply for the 'prevention' of poverty, where the prevention is very close to relief, because the prevention is of impending poverty; but, where the prevention is staving off distant risks (eg, through general financial advice) then benefit to a wider public may be required.
[9] *Re Cohen* [1973] 1 WLR 415 (Ch).
[10] *Re Segelman* [1996] Ch 171 (Ch).
[11] Alison Dunn 'As "Cold as Charity"?: Poverty, Equity and the Charitable Trust' (2000) 20 LS 222, esp 222 and 233-34. (But for the view that this is an unjustified historical anomaly, see *Moffat's Trusts Law: Text and Materials* (eds Jonathan Garton, Rebecca Probert and Gerry Bean, 7th edn, CUP 2020), 930-31.)
[12] *Joseph Rowntree Memorial Trust Housing Association Ltd v A-G* [1983] Ch 159 (Ch), 171.

'Those in need because of financial hardship'

There appear to be no judicial pronouncements explaining 'those in need because of financial hardship';[13] although Andrew Smith J accepted that those in social housing in the Netherlands were in need of accommodation because of financial hardship within the meaning of the provision, in *Credit Suisse International v Stichting Vestia Groep*.[14] This is possibly a first indication that the judges will see financial hardship as wider, and easier to find, than poverty.[15] By contrast, the leading specialist texts appear doubtful as to whether 'those in need because of financial hardship' form a wider category than those in 'poverty'.[16] But it is plain from authority that that a person can be in 'need' even if they are not poor: *Joseph Rowntree Memorial Trust Housing Association Ltd v A-G*.[17] And there would have been no point in introducing the financial hardship provision unless there was a meaningful distinction from poverty: the law's presumption is that everything in a statute is independently significant.[18]

There must clearly be *some* difference between need from financial hardship and poverty. It is suggested that there is likely to be an *appreciable* difference; because – at least given the context that poverty is itself already a more extensive category in charity law than the ordinary layperson might think – *this is the natural meaning of the words 'in need because of financial hardship', in their statutory context*. To take a topical example, those solidly in the middle class who have lost their income during the current pandemic, have fearfully consumed their life savings to meet day-to-day expenses, and are now shamefacedly borrowing from relatives or friends to afford the mortgage or school fees, etc, could reasonably be described as in need from financial hardship. And it is easy to recall other situations – investment scandals, pension collapses, etc – where those well outside the range of poverty could sensibly have been described as in need from financial hardship. Helping such people would admittedly be a long way from the popular notion of 'charity': but the legal concept of charity *is* a long way from

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[13] Nor do the Parliamentary debates help. The Minister of State, Home Office, Baroness Scotland, said about the list of charitable purposes, originally in Charities Act 2006 (HL Deb 20 January 2005, vol 668, col 885): 'The Government's intention is to clarify and codify the law, rather than to extend it significantly.' But there were extensions, and we are left wondering what 'significantly' meant. According to Lord Browne-Wilkinson, delivering the leading judgment in *Pepper v Hart* [1993] AC 593 (HL), 634 and 640, only 'clear' ministerial statements are admissible as an aid to construction, which this is not. There is no reference to the 'financial hardship' provision specifically. The Minister for the Cabinet Office, Hilary Armstrong, spoke about avoiding statements that might be used in future litigation, saying very *uncharitably* (HC Deb 26 June 2006, vol 448, col 22): 'I have learned already that there are incredible legal issues here, and I do not want to say anything that will lead me into giving lawyers any more money than they are already entitled to.'

[14] [2014] EWHC 3103 (Comm), esp [261].

[15] Compare the agonising in *Re Niyazi's Will Trusts* [1978] 1 WLR 910 (Ch), where Megarry V-C held a modest testamentary trust to construct a working men's hostel in an area of 1960s Cyprus suffering a housing shortage to be *only just* a charitable relief of poverty, saying (915) 'the case is desperately near the borderline'.

[16] Hubert Picarda, *The Law and Practice Relating to Charities* (4th edn, Bloomsbury Professional 2010), 168, sees no extension to the previous law; while William Henderson, Jonathan Fowles and Julian Smith (eds), *Tudor on Charities* (10th edn, Sweet & Maxwell 2015), para 2.209, concedes only that there might be a small extension, saying need from financial hardship 'almost completely overlaps with … poverty'. Although, helpfully to the argument made here, the passage does continue, 'However, the scope of "the relief of financial hardship" may be wider than the relief of poverty because although as a matter of charity law "poverty" is a relative term, persons who might not generally be described as poor might suffer from financial hardship from time to time'.

[17] [1983] Ch 159 (Ch), 174. So, non-profit provision of age-adapted housing was held charitable as a relief of the needs of the elderly: there selling leases to those able to afford them.

[18] Diggory Bailey and Luke Norbury (eds), *Bennion on Statutory Interpretation* (7th edn, LexisNexis 2017), sect 21.2, explains (notes omitted): 'There is a presumption that every word in an enactment is to be given meaning … Given the presumption that Parliament does nothing in vain, the court must endeavour to give significance to every word of an enactment. It is presumed that if a word or phrase appears, it was put there for a purpose and must not be disregarded.'

the popular concept.[19] And why should such financial casualties of the current pandemic be undeserving of charity's concern, given the width of 'charity' in other respects, if helped in a suitably limited and targeted way?[20]

If it is correct that those in need from financial hardship form a wider category that those in poverty, and especially if they form a *significantly* wider category, relying on the relief of poverty for charitable status unnecessarily assumes the burden of proving 'poverty' – unless there is some other difference making the relief of poverty a legally attractive category option to rely on. This raises the question whether the financial hardship category enjoys all the same benefits as the poverty category when it comes to the public benefit test.

Public benefit

We can only claim that the financial hardship purpose has rendered the relief of poverty purpose effectively redundant, when defining the outer limits of charity law, if in the financial hardship category the public benefit test can be satisfied as easily as in the poverty category: that is, even when those who may benefit are numerically small and/or have a personal nexus. The better view of the law appears to be that the poverty category enjoys *no advantage* over the financial hardship category: the two are in the same position. But the matter is debatable.

A sufficiently large section of the public

The most authoritative general statement regarding the sort of numbers that need to benefit for a purpose to be of public benefit is that the benefits must be for the whole public, or a sufficiently large section of it – examples given were the inhabitants of a town or parish – it must not be for a set of private individuals: *Verge v Somerville*.[21] But a sufficiently large section of the public does not have a precise meaning; it markedly varies with the context.[22] In particular, in *Gilmour v Coats*[23] Lord Simonds, delivering the leading judgment, said:

> '[I]t is, I think, conspicuously true of the law of charity that it has been built up not logically but empirically. It would not, therefore, be surprising to find that, while in every category of legal charity some element of public benefit must be present, the court had not adopted the same measure in regard to different categories, but had accepted one standard in regard to those gifts which are alleged to be for the advancement of education and another for those which are alleged to be for the advancement of religion, and it may be yet another in regard to the relief of poverty.'

Looking at cases of what we would today call 'need because of financial hardship', seemingly the most helpful authority regarding minimum numbers treated the dependants of six victims killed in a disaster as a sufficient section of the public: *Cross v Lloyd-Greame*.[24]

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[19] Most notoriously in the charitable status of expensive fee-charging schools: *R (Independent Schools Council) v Charity Commission for England and Wales; A-G v Charity Commission for England and Wales* [2011] UKUT 421 (TCC), [2012] Ch 214. See generally Mary Synge, *The 'New' Public Benefit Requirement: Making Sense of Charity Law?* (Bloomsbury 2015), esp 29-32. Countless examples exist of charities primarily benefiting the middle class and even the well-to-do, such as in the arts.

[20] For some observations on possible practical application of this view, see David Wilde and Imogen Moore, 'Charitable Relief of Financial Hardship: the Public Benefit Requirement' [2021] PCB 36, esp 41-42.

[21] [1924] AC 496 (PC). Providing for soldiers returning from war was held to benefit a sufficient section of the public.

[22] For high judicial recognition of this, see the citations in William Henderson, Jonathan Fowles and Julian Smith (eds), *Tudor on Charities* (10th edn, Sweet & Maxwell 2015), para 1.144.

[23] [1949] AC 426 (HL), 449.

[24] (1909) 102 LT 163 (Ch). When the crew of two fishing boats were lost, an appeal was made for 'relief' of their dependants. There is no mention that they were reduced to immediate or imminent poverty – although that might be speculated upon. The appeal raised more than the trustees believed the dependants should receive and the trustees planned application of the surplus to similar future disasters. Despite a concession by counsel for one widow that the fund would place her (164) 'in a position of affluence', Eve J was not persuaded there was a surplus in the charitable fund to be applied cy-près – although he referred the matter for consideration by a judge in chambers. So, it is not clear that the trust was a response to poverty; and it is tolerably clear that the dependants

And amongst other 'need' cases within Charities Act 2011, s 3(1)(j) – beyond need due to financial hardship – a gift to just 10 blind girls and 10 blind boys has been held charitable, as relieving needs of the disabled: *Re Lewis*.[25] No doubt the gift to the blind children benefited more than just the recipients: the wider public also benefited through their care and education, meaning the children would contribute more to society and perhaps cost the taxpayer less. However, a similar case of indirect benefit to society can also be made for relieving need due to financial hardship: that it reduces the range of social ills associated with hardship – suicide and self-harm, domestic abuse and family break-up, mental health and addiction issues, disrupted education of children and supportive social networks, etc. If we save even only 20 or so individuals – and those around them – from such hardship, why is that not of public benefit (in the legal sense)? If this reading of the case law is correct, we are apparently dealing in numbers entirely comparable to the relief of poverty.

The point is not completely clear. Contrast in particular 33 residents of an old people's home held not a sufficient section of the public for a relief of need due to age.[26] But this case has been criticised at length and appears to be wrong on the point.[27]

Personal nexus

In *Oppenheim v Tobacco Securities Trust Co Ltd*,[28] the House of Lords decided that as a general rule of charity law, there is only private – not public – benefit if those who can benefit are all defined by a 'personal nexus': that is, they are all linked to one person, or to several people – equally to one company or several companies. Links mentioned were being family members or employees. A trust to educate children of employees of a group of companies was held not charitable: those who could benefit (even though they were numerous) were all linked to the companies. The case recognised that the relief of poverty is an exception to the general personal nexus rule. Would relief of need due to financial hardship also be an exception?

It is important to emphasise that the personal nexus proposition is probably less absolute than is generally thought. It was only indicated in *Oppenheim v Tobacco Securities* to be a *general rule*: it was recognised that there might be *other* exceptions beyond relief of poverty.[29] And it is worth noting that whether the personal nexus rule is correct at all was questioned by high authority (although the criticism may have stemmed from a failure to recognise it was

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were not restricted to what was necessary to relieve poverty. In today's terms, this appears to be a relief of need from the financial hardship of losing a breadwinner. Peter Luxton, *The Law of Charities* (OUP 2001), para 5.03, specifically views the case as, 'Outside the relief of poverty'.

[25] [1955] Ch 104 (Ch). It could be said that *all blind children* was the class to benefit, but with particular individuals to be selected. However, it is arguably disingenuous to talk about a large class when it is clear that the benefits will go to only a few individuals within it: Joseph Jaconelli, 'Adjudicating on Charitable Status - a Reconsideration of the Elements' [2013] Conv 96, 105-6.

[26] *Re Duffy* [2013] EWHC 2395 (Ch).

[27] Mary Synge, 'Charitable Status: not a negligible matter' (2016) 132 LQR 303. (Even on its own terms the case seems wrong. The gift was £¼m. It could therefore presumably have benefited numerous future residents as well. But this point was not considered. This was possibly because the home had closed down by the date of the hearing. However, this fact should not have been relevant to consideration of possible cy-près application of the gift to other similar charities. Note also, *Re Gillingham Bus Disaster Fund* [1958] Ch 300 (Ch) (affd [1959] Ch 62 (CA)), 305, where it was believed around 30 disaster victims were not a sufficient section of the public, but without argument or decision on the point. Again the reasoning looks suspect even on its own terms: it appears the families of the victims were not considered, as they probably ought to have been.)

[28] [1951] AC 297 (HL).

[29] ibid, 307-8, Lord Simonds, delivering the leading judgment. An example given was government employees, all linked to the same employer: such a case, it was said, would be dealt with 'on its merits' – recognising that a trust for all the employees in an industry, with various employers, can be of public benefit; so it might be anomalous if, by chance, it was a nationalised industry, all with a single employer.

potentially *subject to reasoned exceptions*).[30] In that context, the House of Lords has expressly indicated since, albeit obiter, in *Dingle v Turner*,[31] that the personal nexus rule is subject to numerous exceptions: indeed, it is a rule that should only apply where there is a justification for it – as in the *Oppenheim v Tobacco Securities* case, where an attempt was being made to finance employee perks at the taxpayer's expense, under the guise of charity, for the benefit of the companies.[32] The best rationalisation we have seems to be that of Chesterman: the personal nexus rule negatives charitable status only where a settlor is self-interested; an exception from the general rule can be made where they are altruistic.[33] (Watkin provides a counter-argument: the terms of an instrument should decide charitable status, not the motives of the settlor.[34] In other words, the altruism test would produce a strange result – exactly the same instrument would be charitable, or not, depending on who declared it. But the law does have to confront such issues: for example, exactly the same instrument might be a valid trust or a sham depending on the intentions behind it – and at least there would be a trigger to investigation here, mention of a personal nexus, whereas a trust of practically any sort could turn out to be a sham.) On this altruism test, it is hard to envisage that relieving need due to financial hardship, even for those with a personal nexus – for example employees – should violate the personal nexus rule any more than relief of poverty does.

Indeed, there may be direct authority that need cases, such as need from financial hardship, *are* an exception to the personal nexus rule. The very foundation of the 'poor employees' line of cases – showing that relieving poverty amongst employees is outside the personal nexus rule – *Re Gosling*[35] seems not to have been a poverty case at all, but a needs case. A trust 'for the purpose of pensioning off the old and worn-out clerks of the firm of Goslings and Sharpe' was held to be for a sufficient section of the public and charitable, despite those able to benefit all sharing a common employer. Byrne J is reported to have said that the trust came within relief of the aged and the impotent;[36] what we would call today the relief of those in need because of age or ill-health.[37] He added[38] that he thought 'poor clerks of the firm and those unable to properly provide for themselves and their families are intended to be benefited'. This appears to envisage the relief of poverty; but also an extension beyond that, to what we would call today the relief of those in need because of financial hardship; arising from their age and ill-health. Overall, it looks like the judge was not treating the trust as restricted to the relief of poverty – and indeed this seems correct, given the terms of the trust. One of our finest jurists, Atiyah, interpreted *Re Gosling* as not being a poverty case.[39] And in *Dingle v*

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[30] In particular, Lord MacDermott, dissenting in the *Oppenheim v Tobacco Securities* case itself, 317-18; Lord Denning MR in *IRC v Educational Grants Association Ltd* [1967] Ch 993 (CA), 1009; and Lord Cross, writing extrajudicially – Geoffrey Cross, 'Some Recent Developments in the Law of Charity' (1956) 72 LQR 187, 190.

[31] [1972] AC 601 (HL), 623-25, Lord Cross – now acting judicially – delivering the leading judgment.

[32] The personal nexus rule had previously been side-stepped on occasion, where it appeared to make no sense. In *Re White's Will Trusts* [1951] 1 All ER 528 (Ch), providing a rest home for working nurses was held charitable as an advancement of the efficiency of their hospital. A potential 'personal nexus' problem, arising from the nurses all having the same employer, was avoided by interpreting the trust as being, not to benefit the nurses, but to benefit the hospital instead.

[33] Michael Chesterman, *Charities, Trusts and Social Welfare* (Weidenfeld and Nicolson 1979), 317-19. (See also AL Goodhart, '*Oppenheim v Tobacco Securities*' (1951) 67 LQR 164 (note).)

[34] Thomas Glyn Watkin, 'Charity: the Purport of "Purpose"' [1978] Conv 277, 281-83.

[35] (1900) 48 WR 300 (Ch).

[36] At the time of *Re Gosling*, courts tended to determine charitable status by reference to the charitable purposes listed in the Preamble to the Charitable Uses Act 1601 (or 'Statute of Elizabeth' – later repealed by Charities Act 1960, s 38(1)). The list began (put into modern English), 'The relief of aged, impotent and poor people…' The words aged, impotent, and poor were treated disjunctively: each was seen as an independent charitable purpose.

[37] (1900) 48 WR 300 (Ch), 301.

[38] ibid.

[39] PS Atiyah, 'Public Benefit in Charities' (1958) 21 MLR 138, 144-45.

Turner,[40] Lord Cross, delivering the leading judgment, said of Byrne J's decision that a personal nexus was no obstacle to the trust in *Re Gosling* being charitable, 'It is to be observed that he does not confine what he says there to trusts for the relief of poverty as opposed to other forms of charitable trust'.

Accordingly, it seems that the Charity Commission is probably wrong to suggest that a personal nexus among those to benefit necessarily means a relief of need (rather than poverty) does not satisfy the public benefit test.[41]

Mutual benefit or self-help funds

The limited situation of mutual benefit or self-help funds may possibly involve a minor distinction between poverty and need from financial hardship when it comes to public benefit. *Re Hobourn Aero Components Ltd's Air Raid Distress Fund*[42] appears to decide that such funds can only be of public benefit, and so charitable, if they relieve poverty. The decision on its facts would certainly appear to exclude from charitable status relieving other forms of need.[43] But, overall, the case law is in fact rather unclear about whether the *Hobourn* case's approach is correct.[44]

A modernisation argument for the same public benefit test to be applied to both 'poverty' and 'financial hardship'

Beyond a strict legal argument based on the authorities, a wider modernising argument can also be made aimed at persuading the Charity Commission – and more importantly the courts, who have the final say – to treat the newly-listed financial hardship category as generously as the traditional poverty category has been treated when applying the public benefit test. Historically, poverty has received special treatment: reflecting the practical wisdom of the judges. In particular, businesses, and those associated with them, have been allowed and in turn encouraged to 'look after their own', with appropriately targeted support for individuals among their workers, through charity; with the fiscal benefits this brings. If encouragement of such virtuous humanity and commendable social responsibility is to be preserved in charity law today, arguably we ought to update. In contemporary times, it is increasingly unattractive for anyone in business to establish a fund for the relief of 'poverty' amongst employees – thereby opening the business up to the accusation that its pay and conditions have left workers in 'poverty'. 'Poverty pay' is a toxic slogan – no matter what explanations are given that a fund is for workers in adverse circumstances due to extraneous factors.[45] This accusation can often be smoothed over by including in the class to benefit ex-employees, relatives, dependants, etc. But, in the age of the start-up, many recent businesses have no immediate prospect of a significant body of long-serving ex-employees they can point to, in order to credibly claim that

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[40] [1972] AC 601 (HL), 618.

[41] Charity Commission, *Public Benefit: analysis of the law relating to public benefit* (September 2013), para 71, citing *Re Hobourn Aero Components Ltd's Air Raid Distress Fund* [1946] Ch 194 (CA). That case was, in fact, decided applying the distinct rule that mutual benefit or self-help funds do not (usually) satisfy the public benefit test: the observations about personal nexus were obiter, and made at a time when the personal nexus rule was less understood.

[42] [1946] Ch 194 (CA).

[43] From 1940 to 1944 employees of a company made regular contributions to a war emergency fund. Its main purpose was to help contributors who were victims of air raids; no means test was imposed on help. This was held not charitable.

[44] It is possible that even relieving poverty is not charitable – or at least not unless there is a discretion involved: see the review of the cases in William Henderson, Jonathan Fowles and Julian Smith (eds), *Tudor on Charities* (10th edn, Sweet & Maxwell 2015), paras 1.058-1.063. And, on the other hand, there is equally authority that charitable status is not restricted to relieving poverty: *Neville Estates Ltd v Madden* [1962] Ch 832 (Ch), esp 853-54 (and see also *London Hospital Medical College v IRC* [1976] 1 WLR 613 (Ch)).

[45] And no matter how prevalent in-work poverty is: the Joseph Rowntree Foundation indicates 13% of workers are in poverty, rising from 10% 20 years ago, with more people in poverty now living in a working household than a non-working household (*UK Poverty 2019/20*, JRF Annual Report).

those who have left and fallen on hard times since are the real concern. While euphemisms can be used in place of 'poverty', this runs the risk that they may be interpreted as going outside the legal meaning of 'poverty'. Furthermore, applicants to such funds may be more likely to apply, and more comfortable applying, if the potentially stigmatising label of 'poverty' is not associated with the funds. The words 'financial hardship' would probably be much more acceptable to all: but given the argument made here, that financial hardship is wider than poverty, these words only confer charitable status in this context if the same special public benefit rules apply to both. If our agenda is to update charity law to match contemporary social circumstances, it is suggested there is a strong case for adopting the same public benefit approach now to financial hardship as has been taken in the past to poverty.

A consequence of the suggested approach would be treating financial hardship in the same way as poverty when it comes to the relief of relatives, as well as employees, but this does not seem materially more anomalous or objectionable than the current position regarding relatives.[46]

Avoiding unnecessary distinctions in the law

An advantage of having the same public benefit test for both poverty and financial hardship would be eliminating any need for the courts to scrutinise the borderline between the two when determining charitable status – doubtless a troublesome borderline to draw. If both are charitable on the basis of the same public benefit test, only the wider outer limits of financial hardship need to be delimited. Unfortunately, the exact borderline of poverty would still need to be drawn for some legal purposes (for example, deciding whether a charity whose objects were limited specifically to the relief of poverty was straying outside it, or how the charity's property should be used when applied under a cy-près scheme[47]) but we would at least be minimising the need.

Consistency with the scheme of the legislation

Is the argument here is for similarity of treatment when it comes to the public benefit requirement consistent with Charities Act placing poverty and financial hardship in distinct paragraphs of the statutory code – especially when it might potentially lead to financial hardship being treated differently in public benefit terms from the other items listed together with it in the same paragraph (need from youth, age, ill-health, disability, or other disadvantage)? There is an obvious connection between poverty and financial hardship suggesting similarity of treatment on public benefit is appropriate, despite their appearing in different paragraphs: they are both points on the same continuum of financial difficulties – they are simply degrees of the same thing. The public benefit test is well known for varying from purpose to purpose,[48] but relieving either poverty or financial hardship can be seen as basically serving the same purpose, despite being placed in different statutory paragraphs; while there would be nothing exceptional about one item in a paragraph being treated differently from another item within the same paragraph.[49] The paragraphs are simply a list of purposes whose structure appears to indicate nothing about the separate public benefit requirement, which is pervasively flexible throughout.

Reasons for the continuing relevance of relief of poverty

A possible objection to the overall argument made here is inconsistency: we have suggested that financial hardship must be different from poverty because everything in a statute should

[46] Likewise for others: in *Re Young* [1955] 1 WLR 1269 (Ch) the relief of poverty among members of a testator's club was held charitable.

[47] Charities Act 2011, s 67(3).

[48] Above, n 22.

[49] Above, n 8, for a suggestion by the judges that 'prevention' may be treated differently from 'relief' of poverty within the same paragraph.

be seen as independently significant – but we are concluding from this that poverty is therefore redundant in the statute because subsumed within the wider category. It is tempting to suggest that relief of poverty was included as a faithful codification of the earlier law; and the fact that financial hardship might subsume it was simply not considered. However, that would be to seriously underestimate the very considerable perspicacity of the Office of the Parliamentary Counsel. Assuming the issue was foreseen, from a drafting perspective the acknowledged doubts about whether the courts would find that relief of poverty *is* completely subsumed within relief of financial hardship – particularly with regard to the applicable public benefit test – would have made separate listing of these two essential. And there are good legal reasons for listing the relief of poverty, even if it is covered by the wider relief of financial hardship. Its inclusion affirms beyond any question the charitable status of existing charities for the relief of poverty; and it provides an explicit framework, for the future, for those charities that wish to do so, to limit their objects to the relief of poverty specifically – those charities that wish to ensure their relief is directed solely to the most deprived; and which are then able to utilise this focus in fundraising, recruitment of volunteers, etc. Including both poverty and financial hardship in the statute as separate categories is therefore meaningful despite the fact that one includes the other. The relationship between the two is perhaps best expressed by saying that relief of poverty is now a subcategory of the wider relief of financial hardship; a subcategory that charities may wish to adopt from choice.

Conclusion

Conservatism is, of course, a powerful force in the law. The traditional focus on the relief of poverty in books, the teaching of law, and in legal practice, can be expected to continue. But, technically, the charitable purpose of relieving poverty now seems to be reduced to a subcategory – although the charitable purpose of *preventing* poverty retains some modest independent territory. The position is not entirely clear, but the suggestion here has been that, on the better view of the law, the *more extensive* charitable purpose of relieving those in need because of financial hardship now encompasses all that relieving poverty covers and more. Relying on this wider category to claim charitable status eliminates the need to engage with the potentially troublesome issue of what amounts to 'poverty'. However, there will clearly be charities that, from choice, wish to limit their objects specifically to the relief of poverty.

Is a move in charity law from 'poverty' to 'hardship' desirable? If such a change were (contrary to the argument made here) merely one of legal vocabulary – exchanging two different names for essentially the same thing – it might nevertheless still be desirable. Questions have been asked pertaining to the legal aptness of the word 'poverty' in the context of the modern welfare state.[50] Ideas of 'relative poverty' can be resorted to; but 'financial hardship' might perhaps be more universally assented to than 'poverty'. But if a move from 'poverty' to 'hardship' is one of real substance – a significant expansion to the scope of charity – whether that is desirable is largely a matter of political sympathies and is liable to be contentious. Some would undoubtedly not welcome yet another extension, beyond helping only the truly deprived, for the public fiscal subsidy of charitable status enjoyed by privately directed philanthropy. However, others will undoubtedly argue that assisting those in temporary need through a difficult period is more in the true spirit of charity than continually promoting welfare dependency. Perhaps we all need a little more charity…

[50] Michael Chesterman, *Charities, Trusts and Social Welfare* (Weidenfeld and Nicolson 1979), 139-44. Although, of course, much charitable work is carried on abroad where that context does not exist in the same way.