

# What is charitable?

*Simrun Garcha reports on the charitable status and disposal of assets of a now defunct religious sect*



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The High Court's recent decision in *Buckley v Barlow* [2016] explored whether the assets of a religious organisation that had ceased to function by the middle of the 20th century should be applied in accordance with a *cy-pres* scheme for general charitable purposes or be treated as *bona vacantia*.

The court considered an application for directions by the trustees of a trust relating to a plot of land in Stamford Hill upon which a church was built for the use of members of a religious sect known as the Church of the Holy Agapemony (the Agapemonites). The trust was declared by a document dated 30 December 1892 (the trust deed). The Agapemonite sect ceased to exist by the middle of the 20th century and the church was leased to the Ancient Catholic Church before being sold to the Georgian Orthodox Church in 2011. This resulted in the trustees holding net proceeds of £982,000 and they sought the court's directions as to how these proceeds should be disposed of. Interestingly, the Charity Commission had previously decided that the trust's purposes were not exclusively charitable.

Sitting as a deputy high court judge in the Chancery Division Andrew Simmons QC said that this case 'raises some challenging issues under charity law' and it is likely to be of interest to charity law practitioners. The case deals with a wide range of issues including whether the trust's purposes were exclusively charitable, the conditions for applying the *cy-pres* doctrine and the application of the Charitable Trusts (Validation) Act 1954.

## Background

The Agapemonite sect was founded in the 1840s by Henry James Prince

(Prince), an Anglican clergyman who had become dissatisfied with mainstream doctrine. He was successful in establishing a community of followers in Spaxton, Somerset, who placed a considerable amount of faith in his teachings.

While it was observed by the court that the description of the beliefs of the Agapemonite sect was a 'little rambling', it is clear by references to worshipping the Lord Jesus Christ and the Apostles Creed that their beliefs were rooted in orthodox Christianity.

In assessing the sect's religious beliefs, the judge made reference to Prince's pronouncements recorded in the judgment of *Nottidge v Prince* [1860], which included Prince's declaration in 1845 that prayer was unnecessary as well as a belief that his spirit was extinct but his body was inhabited by the Holy Spirit. Prince claimed to be God's witness or instrument.

The sect became well known, often attracting considerable attention for reasons other than the religious beliefs of its followers. Prince arranged for three of the men in the community to enter into what was referred to as 'spiritual marriages' with three wealthy sisters, enabling him to acquire control over their assets. The Agapemonite sect was also associated with rumours of sexual impropriety and exploitation, although the court acknowledged it was difficult to differentiate the truth from exaggeration.

Prince was succeeded by the Reverend Smyth-Pigott who was described by Andrew Simmons QC as 'continuing in Prince's fiery, charismatic style'. He attracted a number of new followers to the sect, which resulted in a plot of land being purchased in 1892 in Stamford Hill.

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The purchase was funded by donations from the sect's followers.

It appears that after Smyth-Pigott's death in 1927, the sect in London ceased to operate in the absence of another charismatic successor. The community in Somerset continued until the land and building were eventually sold to a local developer in 1962. The trustees of the 1892 trust deed leased the church to the Ancient Catholic Church which continued to occupy it until 2008.

In 1965, the church was registered as a charity by the Commission as being:

... property held for the purposes of the Religious Body known as the Church of the Son of Man, also known as Agapemonite Church primitives (the Ark of the Covenant).

In 2004, the Charity Commission wrote to the trustees' solicitors stating that the organisation had been wrongly registered and its purposes had never been exclusively charitable. The church ceased to be a registered charity from 1 December 2004.

### The issues before the court

The court noted that the possible ways of dealing with the proceeds of sale of the church had been referred to in the claimants' Part 8 claim form. As well as dealing with the proceeds by way of a *cy-pres* scheme to be determined by the Charity Commission or by distribution to the Crown as *bona vacantia*, the claimants had also included the possibility of distribution to the estates of the following groups:

- the members of the sect in 1862;
- the original trustees of the 1892 trust deed;
- the donors of the funds used to purchase the plot and build the church; and
- the vendors of the plot in 1892.

Having observed that the options above would present considerable practical problems for the trustees in terms of tracing the correct recipients, the court stated that the fundamental issue of importance was whether the trusts declared by the trust deed were

or were not to be treated as exclusively charitable.

The following questions needed to be addressed in order to determine this:

- Were the trusts recognised by the law as charitable as being for the advancement of religion?
- If so, were they held for exclusively charitable purposes?

It is a well-established principle that in order for the benefits attaching to charitable status to apply, the assets held on trust must be applied for objects which are charitable in law.

It is not sufficient that assets are held

which held that two of the essential attributes of religion were faith in a god and worship of that god. It was clear that the Agapemonite sect held those beliefs.

While there was an argument that under Smyth-Pigott's leadership the sect crossed a line between eccentricity and blasphemy and this should influence the court's decision, it was found that the court should not allow the delusions of either of the sect's leaders to undermine the fact that the objects of the trust deed were to promote the religious activities of a body of people who made up a recognisable Christian sect.

The court noted that one of the Charity Commission's reasons for

*It is not sufficient that assets are held on trust to be applied both for objects which are charitable in law as well as other objects which are not.*

on trust to be applied both for objects which are charitable in law as well as other objects which are not.

In the event the trusts were exclusively charitable, the funds should be applied in accordance with the doctrine of *cy-pres*. It was only if it was found that the trusts were not exclusively charitable that the other possible ways of dealing with the proceeds would need to be considered.

### Were the trusts recognised as charitable as being for the advancement of religion?

Turning to the question of whether the trusts were regarded as charitable, the court referred to the overarching principle in charity law as demonstrated in *Thornton v Howe* [1862] that the courts do not pass value judgements on different religions or on different sects within religions.

Drawing parallels to *Thornton*, it was noted that the fact that Prince's claims were 'foolish and delusional' did not disqualify the trust from charitable status, provided it was established with a view to extend the influence of Christianity, which in the judge's view was the case.

Reference was also made to *Re South Place Ethical Society* [1980],

deregistering the organisation as a charity was that it appeared from p56 of *Picarda: The Law and Practice Relating to Charities* that the Agapemonites had been held in *Nottidge v Prince* not to be a religious body. However, the court concluded the statement in the first edition of *Picarda* was too broadly expressed.

It was found that the religious purposes of the organisation were charitable in law as the sect welcomed new members and was outward-looking. Accordingly, the court found that there was no reason to displace the presumption of public benefit in relation to religious charities that existed prior to the Charities Act 2006.

### Were the trust's purposes exclusively charitable?

In determining whether the trusts were exclusively charitable, it was necessary to examine the terms of the trust deed. There were 13 original trustees of the trust deed, which included a direction that if the number of trustees fell to less than ten, new trustees must be appointed to increase the number to thirteen. It is thought that the focus on the number thirteen was a parallel with Christ and his twelve apostles.

The trust deed provided that the plot of land was purchased by the trustees 'for and on behalf of the body of people hereinafter mentioned upon trust'. While there was no mention of the Agapemonites by name, it is clear that the 'body of people' referred to were in fact the Agapemonites.

The trust deed went on to state the body of people and the trustees must allow any church, chapel or building which may be erected on the land to be used by and for all the purposes of the body of people who worship Christ as the Son of Man:

... and believe in the Holy Ghost as having fulfilled the Gospel in 'Brother Prince' and as being the covenant head of the Dispensation of Judgment introduced by Brother Prince whose

as *Re Schoales* [1930] and *Re Barnes* [1930] where the gifts to the 'Church' resulted in the court construing the permissible objects as being limited to religious objects.

The court then turned to consider the effect of the Charitable Trusts (Validation) Act 1954, which had not been taken account of by the Commission, and noted that the effect of ss1 and 2 of the Act is that where a disposition made in an instrument taking effect before 16 December 1952 is not exclusively charitable, it is to be treated as exclusively charitable if it would otherwise be invalid. The Act applies to the present circumstances, given that the trust deed was made in 1862.

On the basis of the question posited in *Ulrich v Treasury Solicitor* [2005]

religious purposes of the Agapemonite sect before turning to consider if the original gift to the organisation was 'perpetual' or for a limited time only. Having considered the authorities on the distinction between perpetual trusts and those for a limited period, the court concluded that the test was 'inherently problematic,' before turning to focus on the trust deed.

It concluded that the trusts were indeed perpetual, pointing to the fact that there was no express limit on the trust's duration and the primary trusts were intended to apply 'at all times hereafter' with a gift over taking effect only if the primary charitable trust became impossible to perform.

Accordingly, the court held that the net proceeds of the church should be applied *cy-pres* in accordance with a scheme to be determined by the Charity Commission.

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teaching is contained in his writings 'The Man Christ Jesus' and 'The Counsel of God in Judgment'.

The deed provided for a gift over that the trust premises be held in trust for the trustees for their own use and benefit. The judge commented that the church was not held for the Agapemonites as individuals but for the use of the purposes or the objects of that body of persons.

It was noted by the court that the actual terms of the trust deed failed to answer the questions regarding whether the trusts were held for exclusively charitable purposes. The court agreed with the Charity Commission's argument that the purposes of the sect were not exclusively charitable, as the trust deed could not be construed as limiting the trusts to those objects of the sect that were charitable in law. As the trust deed referred to 'all the purposes of the sect' and 'the objects of the said body in such manner as the trustees for the time being or a majority in number of such trustees shall think fit', the facts of the case were not analogous to cases such

regarding whether anyone would legitimately object to an exclusively charitable application, the court found that no one could properly object to the church and its proceeds of sale being applied exclusively for the religious purposes of the sect.

Accordingly, it was found that while the disposition in favour of the sect would be void as being a non-charitable purpose trust were it not for the 1954 Act, under the provisions of the Act, the trust must be treated as a retrospectively valid charitable trust in 1892.

### The application of the *cy-pres* doctrine

It is a well-established principle that in circumstances where there is a failure of declared charitable trusts, but a charitable intent is apparent, the doctrine of *cy-pres* applies with the effect that the court will direct the application of the property to some charitable purpose which falls within the general charitable intention of the settlor.

The court accepted it was no longer possible for the proceeds from the sale of the church to be used for the

### Conclusion for practitioners

While this case does not decide new matters of principle, it is likely to be of interest to charity law practitioners given that it provides an insight into some complex issues, including an examination of what is regarded as charitable for the advancement of religion, and it explores the implication of the Charitable Trusts (Validation) Act 1954.

Interestingly, the fact that the claims of the Agapemonite sect were foolish and delusional did not disqualify a trust made for the benefit of the sect from being charitable for the advancement of religion, serving to reinforce the overarching principle in charity law that the courts do not pass value judgements on different religions or on different sects within religions. ■

*Re Barnes*  
[1930] 2 Ch 80  
*Buckley v Barlow*  
[2016] EWHC 3017 (Ch)  
*Nottidge v Prince*  
(1860) 2 Giff 246  
*Re Schoales*  
[1930] 2 Ch. 75  
*Re South Place Ethical Society*  
[1980] 3 All ER 918  
*Thornton v Howe*  
(1862) 54 ER 1042  
*Ulrich v Treasury Solicitor*  
[2005] EWHC 67 (Ch)