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POINTS OF LAW

Benevolent funds pass test

But opinions vary over whether the Upper Tribunal case was strictly necessary

Staff and trustees of employee benevolent funds breathed a sigh of relief last month when the Upper Tribunal ruled that their work was charitable.

The ruling followed a hearing at the tribunal in November, at which two judges, Mr Justice Warren and Alison McKenna, considered whether charities in that category provided the public benefit required for charitable status.

The Attorney-General, Dominic Grieve, had asked the tribunal to rule on the issue after the Charity Commission said it was not clear whether they did so. In most cases, the charities exist to support a group of people defined by their relationship to a company or an individual, and questions had been raised about whether these people represented the public.

However, the judgment itself criticises the Attorney-General's decision to refer the issue for a formal hearing. In their decision document, the tribunal judges say: "By the time of the hearing of the reference, it was common ground between the parties, with the exception of the Charity Commission, that the 2006 act did not in fact cast doubt on the continued charitable status of the type of charity with which the reference is concerned."

"One might wonder, therefore, why the reference was felt to have been necessary."

The document also discusses the difficulties faced by many of the charities that could be affected by the case, which include the Professional Footballers' Association and the Royal Bank of Scotland Benevolent Fund.

It says: "An important point to acknowledge is the evident concern that the making of the reference caused to the 1,500 or so benevolent charities that the Charity Commission estimated were affected by it."



Rolls Building Upper Tribunal, housed here, ruled in favour of benevolent funds

"Charitable status brings with it valuable fiscal and reputational benefits that the charities concerned were evidently worried they might lose as a result of the reference."

Charity lawyers also questioned whether it was necessary to hold the hearing. "The judgment is really saying 'there is no change – and we told you so,'" says Andrew Studd, a partner at the law firm Russell-Cooke, which represented the Association of Charitable Organisations at the hearing. "Can you really justify having a full-blown tribunal hearing to sort that out?"

But the Attorney-General's lawyer, William Henderson, said at the hearing that the reference was necessary in the light of doubts expressed by the commission and in the sector.

"The tribunal's judgment is really saying 'there is no change – and we told you so'"

Some lawyers argue that the case has had useful outcomes. Nicola Evans, a senior associate at the law firm Bircham Dyson Bell, says: "The decision offers welcome clarity about the status of charities that act to prevent poverty, as opposed to relieving it."

"It's clear from the tribunal's judgment that charities that relieve poverty operate under a different interpretation of public benefit than other types of charities. As a result of this hearing, it has become clear that parliament intended that to extend to charities that prevent poverty too."

Evans says the case will also raise the important issue of the status that should be accorded to a decision by the tribunal. "The idea of making a reference to the tribunal was introduced in the Charities Act 2006, and this is the first time it has been used on its own," she says. "The impact that this decision has will help the sector to understand whether there is value in the idea of making references."

Kaye Wiggins

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CHECKLIST



Governance expert Mike Hudson advises on...

Attendance at board meetings

Good attendance at board meetings is a prerequisite for effective governance. Most boards meet between three and six times a year, so missing one leaves a considerable gap.

Members who do not attend a high proportion of meetings disrupt the flow of governance work and the continuity of teamwork on the board.

Research by the Compass Partnership, of which I am director, found that most large charities achieve attendance of more than 80 per cent. But a fifth of large charity boards do not have formal expectations, and those tend to have lower attendance rates than boards that state their requirements.

The chair is responsible for ensuring good attendance. Establishing clear expectations before members are appointed and taking quick action when a member's attendance falls below the agreed threshold help to maintain good attendance.

Some organisations have rule to manage attendance, such as only one absence a year or making trustees explain their absence to the chair.

More recently, some have started to publish individual attendance in their annual report. These actions help to ensure the highest levels of attendance.