

Good intentions are not enough – Gifts and Donations

The cases of *In Re Estate of John Duffy, deceased (2013)* and *St Andrew's (Cheam) Lawn Tennis Club Trust v Ian Phillippe & Others (2012)* illustrate how the intentions of a donor (either in their lifetime or under a will) to make a gift for the benefit of a group of individuals may be entirely frustrated, because either the individuals intended to benefit are not sufficiently personally identifiable to make it certain as a private trust, or the ingredients to establish it as a charitable "purpose" trust are simply not there.

It is generally not possible to establish a trust for a particular purpose (as opposed to a trust for the benefit of private individuals) unless it is a charitable trust.

In order to be a charitable trust, the usual charity rules apply, now set out in the Charities Act 2011.

The purpose of the charitable trust must be to fulfil one of a number of objectives set out in the Charities Act, or possibly a new purpose using the mechanism of analogy set out in the Charities Act. The exercise of the trusts must also be exclusively for the public benefit.

This principle was well illustrated in the *St Andrew's (Cheam) Lawn Tennis Club trust case*. In that case, a gift (made via a trust deed) that had been assumed to be charitable since 1948 was held never to have been charitable, because it was essentially a gift to enable members of a club to play tennis, rather than for a charitable purpose. Even having some charitable purposes contained in the trust deed was not enough

Notwithstanding the fact that the arrangements had been put in place for some 65 years, the court ordered the application of the assets on the basis that the gift had been invalid in the first place. The gift reverted to the donor's estate.

In the *Duffy case*, there was considerable doubt whether there was a charitable purpose in a gift to the amenity fund of a residential care fund for the benefit of residents and staff.

The amenity fund was generally spent to fund outings and gifts between residents, the policy decided by the residents themselves in meetings. The court expressed doubt whether this fulfilled the first requirement, that the trust be charitable in intent. As there were only 33 residents in the home the court held that it was not for the public benefit, because that was too small a number to be regarded as a sufficient section or class of the community as to meet the public benefit requirement.

Of course if gifts are expressed as being purely for the private benefit of individuals or a group of individuals they can be valid. And where the intended receiving party (for example a sporting association) is a corporate body such as a cooperative company limited by guarantee, CIC or Community Benefit Society then there is in principle no legal problem in such a gift.

It seems unfortunate that in particular circumstances a thoroughly well-intentioned gift to assist a group of people at work or at play can fail because it falls outside the allowable legal options. The best thing of course is to get the will or the documents relating to the lifetime gift right in the first place. However, where it is too late for that and there are doubts, it is sensible to take advice to ensure that in the case of a will, the executors are doing the right thing, and in the case of a lifetime gift, that those who are to receive the property are fully aware of the legal position and can if possible carry out any necessary action in order to ensure that the gift is valid.

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