



CH 1995 S No. 5856

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Before: THE HON. MR. JUSTICE CARNWATH

BETWEEN

(1) PETER MARTIN SOUTHWOOD
(2) DAVID RONALD PARSONS

Plaintiffs

- and -

HER MAJESTY'S ATTORNEY GENERAL

Defendant

Dr. Peter Southwood appeared in person

Mr W.H. Henderson instructed by the Treasury Solicitor appeared for the Defendant

Hearing date: 27th July 1998 to 28th July 1998

JUDGMENT

This is the official judgment of the court and I direct that no further note or transcript be made

(signed)

The Hon. Mr Justice Carnwath

DATED: Friday 9th October 1998

Mr. Justice Carnwath:

1. This is an appeal under section 4(3) of the Charities Act 1993 against a decision of the Charity Commissioners given by letter dated 5th September 1995. They refused an application for registration as a charity by an organisation called The Project on Demilitarisation ("Prodem").

Factual background

2. Prodem was initially set up in July 1992 by Dr Peter Southwood and Dr Stephen Schofield, and operated initially from Dr Southwood's house in Oxford. Dr Southwood, who appeared in person before me on behalf of the trustees, describes himself as a researcher and consultant. The organisation was established with the benefit of a grant of £63,500 over two years from the Joseph Rowntree Charitable Trust. From December 1993 the main activities of Prodem were incorporated into the School of Business and Economic Studies at the University of Leeds, and he and Dr Schofield were employed as part-time research fellows there until July 1994. However, as he puts it, "a residual and separate Prodem" continued at his home, its main purpose being to challenge the Charity Commission's view, which had by then been made known informally, that Prodem did not qualify for registration as a charity.
3. A Declaration of Trust was executed by him and Dr Schofield on 9th June 1994 constituting Prodem as a separate trust, Dr Schofield and Dr Southwood being the sole trustees. After further correspondence with the Charity Commissioners, their formal decision of 5th September 1995 was issued, accompanied by a statement of reasons, rejecting the application for registration as a charity.
4. The present appeal was initiated by originating summons dated 26th September. Dr Southwood tells me that the decision to appeal was made by his casting vote as chairman and was not agreed by the other trustee Dr Schofield, whose place has since been taken by another trustee, Mr Parsons. Dr Southwood is continuing the appeal as a matter of principle, and intends to resign as a trustee once the Court's decision is known.
5. The original thinking behind the establishment of Prodem appears from a "background paper" prepared in October 1992, which formed part of the submission to the Charity Commission. The "purpose" and "aims" of Prodem were explained as follows:

"PURPOSE

Prodem is an educational body with a limited research capacity of its own, placing strong emphasis on utilising available findings and networking with existing organisations to achieve the most efficient use of resources in dissemination.

The focus of Prodem is the 'new militarism' which is emerging as an integral part of the new world order. By militarism is meant an undue prevalence of warlike values and ideas. This manifests itself in proposals for excessive military forces, judged against any conceivable threat, and a level of military expenditure beyond the requirements for defence.

The term 'new militarism' is used to emphasise the greater sophistication of the phenomenon than earlier, cruder versions. There are very great dangers for Britain, and the wider world, if the contentions made by this new form of militarism are not tested against the facts. Its very skilfulness, in the management of public opinion and presentation of aggressive military postures as 'defence', may lead eventually to over-confidence; and disastrous miscalculation (as has happened in the past). Over the long term Prodem hopes to advance public education on militarism and disarmament and also to develop transnational links for education on demilitarisation.

AIMS

The specific aims of the Project on Demilitarisation are:

1. To fundamentally question the new forms of militarism arising in the West in relation to:
 - its current record;
 - current official policies;
 - the likely consequences for the future.
2. To propose alternative policies to achieve disarmament and a conversion of resources from military to civilian purposes."
6. The method of achieving the aims would be by briefings supplemented by public seminars. The intended audience would include "organisations and individuals with an interest in national economic priorities" and "peace research and peace organisations, labour groups and politicians with an interest in this area".
7. As to the nature of the briefings, the paper said:

"We believe that the opportunity cost argument is one which needs to be linked to the dangers of a continuing arms race if it is to make a significant impact on our primary audiences. We believe that many are not in possession of reliable facts and figures to prove that extra resources are tied up in maintaining excessive military forces. Consequently the briefings will be concise, readable and in a form useful for our audiences' educational, lobbying or campaigning purposes..."

A programme of intended briefings was described. For example, the first would be -

"The triumph of unilateralism theme: the unilateralist initiatives of former President Gorbachev broke the log-jam in East/West relations and were a decisive fact in ending the Cold War but Western militarism is losing the peace."

Others were entitled: "Militarism or disarmament? Challenging the West's technological arms race", "NATO's Military Supremacy - What is it for?", "Western hypocrisy on arms conversion", and so on. A total of six such briefing papers were issued between the end of 1992 and the end of 1995 after which no further funding was available. After publication of each briefing a public seminar or similar event was held.

8. Although, as I understand it, there has been no significant activity since the end of 1995, the last briefing note, in Appendix E, set out a basis for "a possible future briefing series". That was prepared after the Charity Commissioners' decision. In appendix E an attempt was made to address criticisms of the one-sided nature of the earlier briefings:

"The main text will consist of two contrasting analyses, one person offering a common security perspective and another a realist military security perspective. If the analysts were to be of similar ability, then over time and across regions it may become evident which analytical approach is proving superior in terms of seeing the dangers of military adventurism and proposing a path to peace."

As I understand Dr Southwood's explanations, the term "realist military security" is used to describe current policies relating to military security in the West. The term "common security" is used to describe his alternative, which in an earlier paper he described thus:

"Alternatively the UK can play a leading role, with the other main arms producing countries, of reining in the arms race and focusing on a new international security regime that puts, as its highest priority, the resolution of conflict through assistance in the areas of economic and social development."

9. The 1994 Declaration of Trust purports to establish a "charity" called "Project on Demilitarisation". The purposes of the trust are given as follows:

"3.1 The advancement of the education of the public in the subject of militarism and disarmament and related fields by all charitable means including the promotion improvement and development for the public benefit of research into this subject and the publication of the useful results thereof.

3.2 The general purposes of such charitable bodies or for such other purposes as shall be exclusively charitable as the trustees may from time to time decide."

The Trust Deed was professionally drafted, and the powers of the trustees and the other provisions are appropriate for a charitable trust.

The Commissioners' decision

10. The Commissioners gave a full statement of their reasons for rejecting the application for registration. The Commissioners summarised their understanding of the relevant principles derived from the authorities. They considered that it was appropriate to look at the papers published by Prodem in order to resolve possible ambiguities in the Trust Deed itself. They noted the two specific aims set out in the background paper and discussed them in the light of certain quoted passages from the briefing papers. They concluded as follows:

"Overall, the evidence suggested that Prodem has set out to advocate a certain line of policy. The style of the Briefings was propagandist, assuming that demilitarisation and disarmament were desirable and presenting arguments to support that view. Although there were occasional representations of views contrary to the prevailing message of the researchers, no serious attempt to analyse and discuss the issues had been made.

The Commissioners concluded that the research was not objective but that the evidence suggested the organisation was set up to promote, rather than test, a particular hypothesis. On the evidence, the requirement of equipping the person being educated with neutral information had not been fulfilled and Prodem was not charitable on that ground.

Moreover, given the several references in Prodem's submission to the institution's duty to address demilitarisation from an irenical perspective, it seemed that it was attempting to create a certain climate of opinion through its works. On the evidence of the briefings, it was even arguable that Prodem was actually attempting to promote pacifism. In either case, this would amount to a political purpose and, for the reasons stated above, such a purpose is not charitable.

The Commissioners came to the conclusion that Prodem's research had been undertaken to support a preconceived position and not to advance public education (in the charitable sense) in militarism and disarmament. In their opinion, the Briefings promoted the concept of demilitarisation and disarmament rather than advanced education in those issues as a subject. The requirement of public benefit was not satisfied, therefore".

11. Although Dr Southwood appeared in person, he has clearly become a considerable expert on the relevant principles of law, and was able to assist me with careful and persuasive submissions drawn from the English and American authorities. In addition I am grateful for the full and objective submissions of Mr Henderson on behalf of the Attorney-General.

Education and politics

12. The authorities to which I have been referred illustrate the difficulty which the courts have found in drawing a clear distinction between "educational" purposes, which are accepted as charitable, and "political" purposes which are not. The line is not

clearcut. A trust described as "educational" may be disqualified, if the subject matter is not of sufficiently educational value, or the purpose is predominantly political or propagandist in character (see Tudor Charities 8th Ed p50-51).

13. To determine what is a political purpose, it is helpful to refer to the review of the earlier authorities by Slade J in McGovern -v- Attorney-General [1982] 1 Ch 321. The case concerned a trust set up by Amnesty International to administer those parts of its activities which were considered by its advisers to qualify as charitable. This view was rejected by the Court in relation to two of the stated purposes: the purpose of seeking release of prisoners of conscience, and the purpose of procuring the abolition of torture or inhuman or degrading treatment or punishment. These objects, however laudable, were held to be political in nature, because they involved seeking the alteration of current legislation or Government policy in the countries involved.

14. Slade J referred to statements of high authority that "political" purposes cannot be charitable (for example per Lord Parker in Bowman -v- Secular Society [1917] AC 406, 442). He summarised his conclusions as to the effect of the relevant authorities relating to trusts for political purposes :

"(1) Even if it otherwise appears to fall within the spirit and intendment of the preamble to the Statute of Elizabeth, a trust for political purposes falling within the spirit of Lord Parker's pronouncement in *Bowman's* case can never be regarded as being for the public benefit in the manner which the law regards as charitable. (2) Trusts for political purposes falling within the spirit of this pronouncement include, inter alia, trusts of which a direct and principal purpose is either (i) to further the interests of a particular political party; or (ii) to procure changes in the laws of this country; or (iii) to procure changes in the laws of a foreign country; or (iv) to procure a reversal of government policy or of particular decisions of governmental authorities in this country; or (v) to procure a reversal of government policy or of particular decisions of governmental authorities in a foreign country.

This categorisation is not intended to be an exhaustive one, but I think it will suffice for the purposes of this judgment; I would further emphasise that it is directed to trusts of which the *purposes* are political. As will appear later, the mere fact that trustees may be at liberty to employ political *means* in furthering the non-political purposes of a trust does to necessarily render it non-charitable"

15. Later in the same judgment he considered two other stated purposes: "the undertaking promotion and commission of research into the maintenance and observance of human rights", and the dissemination of the results of such research. He considered that had these stood alone they would have been of a charitable nature:

"The subject matter of the proposed research seems to me manifestly a subject of study which is capable of adding usefully to the store of human knowledge... if these two sub-clauses had stood in isolation I would have felt little difficulty in holding that the trusts thereby declared were for the benefit of the

public. The mere theoretical possibility that the trustees might have implemented them in a political manner would not have rendered them non-charitable; the two sub-clauses would have been entitled to a benignant construction and to the presumption, referred to by Gray J in Jackson -v- Phillips (1867) 96 Mass (14 Allen) 539, that the trustees would only act in a lawful and proper manner appropriate to the trustees of a charity and not, for example, by the propagation of tendentious political opinions."

16. As to the boundary between education and politics, useful guidance is to be found in the judgment of the Court of Appeal in re Koepplers Will Trust [1986] Ch 423. That concerned a project, known as Wilton Park, under which name were promoted conferences for politicians, academics, civil servants and others, relating to political, economic and social issues of common interest, with a view to promoting co-operation in Europe and the West in general. It was held in the Court of Appeal that the project was sufficiently well defined to be the subject of a valid charitable gift, and that the objects were charitable in nature. In particular, the project was held to be educational in nature notwithstanding the "political flavour" of some of the matters discussed. Slade LJ referred to his own decision in McGovern, and commented:

"However, in the present case, as I have already mentioned, the activities of Wilton Park are not of a party political nature, nor, so far as the evidence shows, are they designed to procure changes in the laws or governmental policies of this or any other country; even when they touch on political matters, they constitute, so far as I can see, no more than genuine attempts in an objective manner to ascertain and disseminate the truth. In these circumstances I think that no objections to the trust arise on a political score, similar to those which arose in the McGovern case" (p437 G-H).

17. This conclusion may be contrasted with those cases where an educational purpose has been held non-charitable because of its political bias. For example, in re Hopkinson [1949] 1 AllER 346 a gift for the advancement of adult education, with particular reference to education on the lines of a Labour Party memorandum on education, was held to be political rather than charitable. Similarly in re Bushnell [1975] 1 WLR 1596, a fund established in 1941 for "the advancement and propagation of the teaching of socialised medicine" was held to be political, because the subject was at the time one of political controversy, and the dominant object of the testator was to promote his own theories, rather than to educate the public so that they could decide for themselves on the advantages or otherwise of such a service.

War and Peace

18. Trusts directed to promoting the security of the nation by military means have generally been held to be charitable. The Preamble to the Statute of Elizabeth mentions taxes for the "setting out of soldiers" as a possible subject of charitable payments. More recently Dankwerts J in re Driffill [1950] Ch 92, 95 referred to:

"the well-known authorities in which gifts for promotion of the efficiency of the armed forces of the Crown were held to be valid charitable bequests".

In that case he upheld, as a valid charitable bequest, a gift of property to trustees to be applied "in whatever manner they may consider to be desirable to promote the defence of the United Kingdom against the attack of hostile aircraft". He referred to what was said by Farwell J in one of the earlier cases, re Good [1905] 2Ch 60, 66:

"... it is a direct public benefit to increase the efficiency of the Army, in which the public are interested, not only financially, but also for the safety and protection of the country."

19. Perhaps surprisingly, the promotion of national security by peaceful means has proved a more controversial subject. It appears to be an open question under English law whether the promotion of peace, as such, is a charitable object. In re Harwood [1936] Ch 285, Farwell J accepted, apparently without argument, that gifts to peace societies were charitable gifts. But in re Koeppler Trust, at first instance, [1984] Ch 243, 257, Gibson J doubted that view, considering that it was "at least strongly arguable that the purposes of a peace society are political and not charitable". The Court of Appeal did not deal with that issue.
20. More specifically, trusts for the promotion of international co-operation and understanding have been held not to be charitable. Thus, in Anglo-Swedish Society -v- IRC (1931) 16 TC 34, the promotion of understanding between the English and Swedish peoples was held not to be charitable because "it was a trust to promote an attitude of mind, a view of one nation by another" (p 38, per Rowlatt J). A similar approach was followed by the Court of Appeal in re Strakosch [1949] Ch 529, in relation to a fund for the purposes of strengthening "the bonds of unity between the Union of South Africa and the mother country" and "the appeasement of racial feeling between the Dutch and English speaking sections of the community"; and by Plowman J in Buxton -v- Public Trustee [1962] 41 TC 235, in relation to a trust "to promote and aid the improvement of international relations and intercourse".
21. It is to be noted, however, that in re Strakosch, Lord Greene (at p 538-9) identified one of the problems as being the width of the purposes as defined:

"We find it impossible to construe this trust as one confined to educational purposes.... The problem of appeasing racial feeling within the community is a political problem, perhaps primarily political...The non-charitable purpose... cannot we think be disregarded as merely subsidiary..."

He implied that it might have been possible to achieve the testator's purpose by a similar trust in which the emphasis was more clearly placed on education. Re Koeppler may be seen as exemplifying that approach.

22. In conclusion, therefore, it seems that the promotion of good international relations as such is not a charitable purpose; but education as to the benefits of good international relations, and the means of achieving them, will qualify. By the same token, whether or not the promotion of peace in itself is charitable, there is no reason to exclude, from the scope of charity, education as to the benefits of peace, and as to peaceful methods of resolving international disputes.

United States authorities

23. In Parkhurst -v- Burrill (1917) 117 NE 39 the Supreme Court of Massachusetts upheld as charitable a gift to the World Peace Foundation. That body had as its purpose:

"The purpose of educating the people of all nations to a full knowledge of the wasteful destructiveness of war and of preparation for war....to promote international justice and the brotherhood of man; and generally by every practical means to promote peace and goodwill among all mankind."

Commenting upon those words, Rugg CJ said:

"The declaration of corporate purpose expresses one of the highest moral aspirations of the race. It adopts almost the very words of the angels' song on the night of the nativity. It reveals nothing on a close and technical analysis at all at variance with the lofty idealism of its general sentiments. In a large sense its object is to bring all mankind under fraternal, educational and humanitarian influences. The final establishment of universal peace among all the nations of the earth manifestly is an object of public charity."

He cited the famous case of Jackson -v- Phillips (referred to in McGovern, above) in which it had been held that a fund for the circulation of books to "create a public sentiment that will put an end to Negro slavery in this country" was a charitable trust.

24. It is difficult to reconcile that expansive approach, however attractive the language, with the more prosaic guidance of the English cases. However, Rugg CJ was also careful to emphasise (citing in particular Bowman -v- Secular Society) that the work done by the World Peace Foundation was "all charitable in the accurate legal sense":

"It consisted chiefly in the publication of literature and the employment of speakers and writers of ability, widely respected for their character and attainments, to attempt to propagate an opinion among the peoples of Earth in favour of the settlement of international disputes through some form of international tribunal and to cultivate a belief in the waste of warlike preparation, and in the practical wisdom for reductions of the armaments of nations, and in the education of children as well as of adults in the knowledge of peace and the superior advantages of peaceful solutions of international difficulties It cannot justly be said that the purpose was political, or the means other than educational..."

Mr Picarda QC fairly cites this as a decision that "a legacy to the World Peace Foundation, a body campaigning by educational means against war, was charitable" (Picarda, Law of Charities p154 - his emphasis).

25. Dr Southwood also referred me to another American decision in Tappan -v- Deblois (1858) 45 Me 122, cited in Parkhurst as an "express decision...that a bequest to promote peace is a charity". That case concerned a gift to a body known as the "American Peace Society", whose objects were -

"to illustrate the inconsistency of war with Christianity and to show its baleful influence on all the great interests of mankind, and to devise means for ensuring universal and permanent peace."

On analysis of the reasoning, however, it seems doubtful whether it can be taken as a decision that the purpose was specifically charitable. The Court appears to have accepted the argument that, even if the purpose was not charitable but rather "moral and political only," nonetheless the trust could be maintained under the general jurisdiction of the American Court independently of the Statute of Elizabeth (see p123).

26. The importance of Parkhurst -v- Burrill, for Dr Southwood's purposes, is that it accepts that a purpose may be educational, even though it is based on the premise that people should be educated as to the "evil effects" of war, and has therefore what the Commissioners referred to in the present case as an "irenical perspective". Although it is not direct authority for the purposes of English law, I do not see any reason to take a different view. I see nothing controversial in the proposition that a purpose may be educational, even though it starts from the premise that peace is preferable to war, and puts consequent emphasis on peaceful, rather than military, techniques for resolving international disputes; and even though one purpose of the education is to "create a public sentiment" in favour of peace. The important distinction, from the "political" cases mentioned above, is that the merits or otherwise of the Labour Party's views on education, or (in the early 1940s) of a state health service, were matters of political controversy. The desirability of peace as a general objective is not.

Extrinsic evidence

27. The Commissioners considered, in the light of cases such as McGovern, that if the Deed contained an ambiguity it was proper for them to look at the surrounding facts, including the activities of the promoters, both before and after the execution of the Deed.
28. I think they were correct to adopt that approach. As Sachs LJ said in Council of Law Reporting -v- AG [1972] 1Ch 73, 91:

"Whilst appreciating what has been said as to the courts not being permitted, where plain language is used in a chart or memorandum, to admit extrinsic evidence as to its construction, it is yet plain from the course adopted by the courts in many cases that they are entitled to and do look at the circumstances

in which the institution came into existence and the sphere in which it operates to enable a conclusion to be reached on whether its purposes are charitable."

Similarly, in Attorney-General -v- Ross [1986] 1WLR 252, 263 Scott J said:

"The skill of Chancery draftsmen is well able to produce a constitution of charitable flavour intended to allow the pursuit of aims of a non-charitable or dubiously charitable flavour. In a case where the real purpose for which an organisation was formed is in doubt, it may be legitimate to take into account the nature of the activities which the organisation has since its formation carried on."

He made two qualifications to that proposition: first, that the activities must be *intra vires*, and, secondly, that the activities -

"are of a nature and take place at a time which gives them probative value on the question whether the main purpose for which the organisation was formed was charitable or non-charitable." (p264).

Conclusions

29. Reverting to the terms of the Trust, the stated purpose is the "advancement of the education of the public in the subject of militarism and disarmament and related fields..." As a description of an academic subject, the expression "militarism and disarmament" is obscure. Further definition of an educational purpose may not be needed where the subject is well established and understood as a field of academic study. The evidence confirms that "peace studies", along with "defence studies" and "strategic studies", feature in the courses offered by a number of university courses (including the Department of Peace Studies at the University of Bradford at which Dr Southwood studied). I was shown no example of a course in "militarism and disarmament".
30. To understand what is meant by that expression, one has to turn to the background material. From that it is clear that the purpose is not limited to educating the public in the peaceful means of dispute resolution, or even to creating "a public sentiment" in favour of peace. The term "militarism" is intended to define the current policies of the Western governments, and the purpose of Prodem is specifically to challenge those policies ("to fundamentally question the new forms of militarism arising in the West"). That is the clear and dominant message, which in my view can only be described as political. Dr Southwood has criticised the Commissioners' choice of extracts from the briefings as "selective", but the overall theme is unmistakeable. The limitation (in para 3.1 of the Declaration of Trust) to "charitable means" does not in itself ensure that the purposes are exclusively charitable (see Re Koepler Trusts [1984] Ch 243, 362G per Peter Gibson J).
31. There remains the point that, since the Commissioners' decision, the Trust has produced a framework for a future briefing series, which on its face would be more objective and closer to the concept of education as explained in the cases. As I understand the Court's jurisdiction (although this was not the subject of detailed discussion), the Court is not confined to the material which was before the Commissioners, and may exercise its judgment afresh on the new material (see Order 55

Rule 7 and cf Jones -v- Attorney-General [1974] Ch 148). However, those suggestions do not overcome the problem posed by the wording of the Trust Deed itself. Furthermore, the Trust is in effect in abeyance at the present, and it is not possible to see how the ideas would work in practice.

32. In conclusion, although I have accepted the thrust of Dr Southwood's argument on a number of points, the Commissioners were right to refuse to register the Trust. The appeal must fail.