

Impact case study (REF3b)

Institution: University of Liverpool
Unit of Assessment: 20 - Law
Title of case study: Shaping The Legal and Policy Landscape for Charities
<p>1. Summary of the impact</p> <p>The Charity Law and Policy Unit (part of Liverpool University Law School) has a Steering Committee which advises on research strategy. Under its guidance, research outputs produced by Barr, Morris and Warburton have had two key impacts during the assessment period. First, they directly led to an improved legislative framework for the charity sector. Second, they significantly enhanced the policy and practice underpinning the effective operation of the charity sector.</p> <p>Specific impacts are:</p> <ul style="list-style-type: none"> • A new legal framework to regulate the way that charity mergers take place. • The development of a new legal structure that meets the needs of charities. • Directly influencing policy debate and the on-going legal reform that will improve access, increase participation and lower costs of using the Charity Tribunal. • The adoption of recommendations that both highlight the benefits of Alternative Dispute Resolution and recommend its use.
<p>2. Underpinning research</p> <p>1. Research that has directly led to an improved legislative framework for the charity sector</p> <p>a. Mergers (see references 1 and 2 below)</p> <p>Charities have been under increasing pressure to merge to more effectively pursue their objectives, but the legal process to support merger was not conducive to them doing so. Our research conducted between 1999-2002 into charity mergers uncovered a number of major problems, including:</p> <ul style="list-style-type: none"> • Employment rights for employees of a merged charity can be compromised. • Processes required for legal merger were complex and lengthy. • Transfer of assets to the merged charities was difficult and may not have been possible. • Mergers failed because of lack of due diligence. <p>It was concluded that these challenges could best be met by the introduction of new legal mechanisms for merger. These recommendations were adopted in legislation, evident in the Charities Act 2011, Part 16 (ss.305–311).</p> <p>b. Creation of a Bespoke Legal Structure for Charities (see reference 3 below)</p> <p>Charities in the past have had to adopt one of three legal structures. A major publication, building on ideas that had been presented by members of the Unit since 1999, found that none of the legal structures effectively recognised the non-profit status of charities. Particular problems of the existing structures were:</p> <ul style="list-style-type: none"> • Managing trustees might be exposed to personal liability for the organisation’s legal dealings. • Potential conflicts between the varied needs and reporting demands of dual regulators and an increased burden of bureaucracy. For example, a charitable company would be subject to registration and regulation by both Companies House and the Charity Commission and would have to file financial returns in substantially different forms to both regulators. • Confusion over the powers and obligations of managing trustees and members. <p>Our work proposed a new legal form for charities, which has been implemented as the Charitable Incorporated Organisation in the Charities Act 2011, Part 11 (ss.204–250). The specific</p>

Impact case study (REF3b)

advantages of the new structure include:

- The provision of limited liability for managing trustees.
- Single registration and regulation through the Charity Commission.
- The legislation now clarifies the powers and duties of trustees and members of the Charitable Incorporated Organisation.

2. Research that has significantly enhanced the policy and practice underpinning the effective operation of the charity sector

a. Tribunals (see reference 4 below)

Research conducted in 2010 and subsequently published in a journal article identified deficiencies with the operation of the Charity Tribunal. These include:

- The service is not available for all types of dispute.
- Formality in the conduct of proceedings discourages charities from using the Tribunal.
- High costs of suit are a barrier to participation in the Tribunal.

These observations directly influenced the production of the Hodgson Report (2012), which contains recommendations on reforming the workings of the Tribunal.

b. Alternate Dispute Resolution (see references 5 and 6 below)

Research conducted between 2000-2006 on charity disputes demonstrated that there were significant benefits to charities of engaging in Alternative Dispute Resolution. Benefits include:

- Speedier resolution of disputes so that trustees are free to pursue their charities' objects.
- Cost savings, through speed and informality, so that public money is not perceived as having been wasted on a full hearing in court.
- The potential for lack of negative publicity through non-public proceedings, protecting the importance of the charity brand.

The research directed that these services need to be made more readily available and must be more clearly publicised.

All of the research outputs identified in section 3 were completed by Warren Barr (now Senior Lecturer), Debra Morris (now Reader) or Jean Warburton (now Emeritus-Professor) when employed at the University of Liverpool. All of the work is either single or co-authored by members of the Unit and conducted at Liverpool.

3. References to the research

Improved legislative framework:

1. Debra Morris, *Legal Issues in Charity Mergers*, 2001, Liverpool: Charity Law Unit (iii + 74 pages) – Output from ESRC-funded project – rated 'outstanding' by ESRC (Morris was Principal Investigator of ESRC research grant of £41,390, 'Legal Issues in Charity Mergers in England and Wales' Oct 1999 – Oct 2000).
2. Jean Warburton and Warren Barr, 'Charity mergers - property problems' [2002] Conv 531-549 - The most authoritative peer reviewed journal specialising in property law and charity.
3. Jean Warburton, 'Charitable trusts - unique?' [1999] Conv 20-31 - The most authoritative peer reviewed journal specialising in property law and charity.

Enhancing The Effective Operation of the Charity Sector:

4. Debra Morris, 'The First-tier Tribunal (Charity): Enhanced Access to Justice for Charities or a Case of David Versus Goliath?' [2010] Civil Justice Quarterly 89-108 – A leading journal which serves as a topical and practical forum for information about new developments and reforms worldwide in civil procedural law.
5. Debra Morris, *Disputes in the Charitable Sector*, 2003, Liverpool: Charity Law Unit (iii + 42 pages) – Output from ESRC-funded project – graded 'good' by ESRC (Morris and Barr were

Principal Investigators of ESRC research grant of £41,326, 'Disputes in the Charitable Sector in England and Wales' Aug 2001 – Aug 2002).

6. Debra Morris and Jean Warburton, 'Mediation and Charities: Frustrated Desires' [2006] Charity Law and Practice Review 1-21 – The only UK journal specialising in charity law.

4. Details of the impact

The Charity Law and Policy Unit's Steering Committee, chaired by Sir John Mummery, ex-Lord Justice of Appeal in Ordinary (retired September 2013) and populated by senior charity practitioners, guides the work of the Unit. Through regular meetings, the Committee considers the potential impact and quality of research proposals. It only selects those that are likely to have the most impact on the sector and are aligned with the clear goal of increasing the effectiveness of the charity sector through the research findings.

The impact has manifested itself in two direct ways:

First, the work has directly led to an **improved legislative framework for the charity sector** through the introduction of new legislation governing charity mergers and the establishment of a new legal structure for charities. The findings and recommendations of our report on charity mergers are embedded in the Charities Act 2011, Part 16. It creates for the first time a register of charity mergers to enhance and manage assets on merger and provides a statutory definition of 'relevant mergers' to help manage the process. Our recommendations to conduct due diligence before engaging with the new statutory framework have been adopted in sector guidance publications, which are referred to frequently. Mergers of organisations have increased as part of a wider drive to provide an effective charity sector, facilitated by the reformed process. [Consequently, over 1,200 registered mergers of charities have now been completed.](#)

Our work on legal structures has directly fed into the development of a new structure that meets the needs of charities. This is implemented in the new Charitable Incorporated Organisation (by virtue of the Charities Act 2011, Part 11). Creating the first legal structure designed specifically for charities has been a complex and lengthy process. It was only in January 2013 that the structure was made available on a limited basis to charities in England and Wales. It has already attracted substantial interest. By September 5th 2013, [over 1,000 charities had adopted this structure nationwide.](#)

Secondly, the work has **significantly enhanced the policy and practice underpinning the effective operation of the charity sector**. Principal Judge McKenna commended our work on the operation of the nascent Charity Tribunal in a lecture and she chose to post the relevant work on the [Charity Tribunal's website](#) following publication. This publication was also a key resource considered by the National Council for Voluntary Organisations Charity Law Review Advisory Group, Sub-committee on Means of Redress. They agreed in their final report with our recommendations that current deficiencies must be remedied, otherwise the value of the Tribunal system as a cost effective and informal alternative means of settling disputes will be lost. These recommendations fed directly into the Hodgson Report. The government response to the Hodgson Report suggests that further research is needed into these live issues of reform and the Law Commission is now taking this forward. The Law Commission in England and Wales has approached Barr and Morris to work towards shaping their current programme of charity law reform (which also includes further work on charity mergers).

The disputes work, that highlighted the importance and need for increased uptake of Alternative Dispute Resolution, has been specifically adopted by the sector regulator, the Charity Commission, in its guidance documents. Our report has also directly informed another recommendation in the Hodgson report that charities should adopt and publish procedures for handling complaints and that umbrella bodies should play a key role in supporting their implementation. The government has now accepted the recommendation and the Charity Commission is now working more closely with umbrella bodies within the charitable sector.

Alongside the key impacts identified, research outputs have impacted in other ways to benefit the

charitable sector. For example, the Charity Commission adopted the recommendations from our mergers research as a vital element in its mergers toolkit. Similarly, the analysis of employment disputes in the charity disputes project is shaping other research agendas. For example, the legal status of volunteers within the charity sector (recognised by us as a source of dispute) is a live issue, having recently been adjudicated upon in the Supreme Court in the case of *X v Mid Sussex Citizens Advice Bureau* [2012] UKSC 59.

The high profile of the Unit's work has attracted the attention of policy makers, regulators and lawyers undertaking reform outside the UK. In addition to the reform work with the Law Commission in England and Wales, Morris was invited to advise on proposed reform to public benefit rules in Australia (2009), and on the reform of local charity legislation in Israel (2011).

5. Sources to corroborate the impact

1. [Charity Commission, *Making mergers work: Helping you succeed*, September 2009.](#) This publication refers to the obligation identified in Morris' Charity Mergers report to undertake due diligence as part of charity merger (see para.2.7, pp.8-10) and its checklist includes all of the report's recommendations as part of the toolkit to assist merging charities (see Annex 3, pp.33-37).

2. [Charity Commission, *Collaborative Working and Mergers*, November 2009.](#) This publication adopts the recommendations on due diligence in Morris' Charity Mergers report (see Section E, pp.28-30) and refers specifically to the report as an important resource for the sector (p.34).

3. **The Law Commissioner with responsibility for Property, Family and Trust Law** can be contacted to corroborate claims made in ss.2.1 and 4 that research has directly led to an improved legislative framework for the charity sector (mergers and legal structure). This source can also confirm the Unit's impact in s.4 in attracting the attention of law reformers.

4. [Charity Law & Policy Unit Annual Lecture, 18 November 2010.](#) In this published, public lecture, Principal Judge McKenna states 'I must commend to you [Morris'] recent article about the Charity Tribunal...which despite feeling like a very public appraisal...I have...posted it onto the Charity Tribunal's website'.

5. [NCVO Charity Law Review Advisory Group, *Final report and recommendations of NCVO's independent review of the Charities Act*, May 2012.](#) This significant report reflects the recommendations from Morris' Tribunal article on reforming the working of the Tribunal (pp.35-41, and specifically, pp.38-39).

6. [Hodgson Report, *Trusted and Independent: Giving charity back to charities*, July 2012.](#) The conclusions and recommendations in this report mirror the recommendations in Morris' Tribunal article (see Chapter 7, pp.78-86, but particularly, pp.85-86).

7. [Minister for the Cabinet Office, *Government Response to Lord Hodgson's Statutory Review: Trusted and Independent, Giving charity back to charities*, Cm 8700, September 2013.](#) The recommendations from Morris' Dispute report on the publication processes for resolving disputes and the role of umbrella bodies in assisting dispute resolution have been supported by the government and the Charity Commission (see p.34).

8. **Lord Justice of Appeal (retired) and Chair, Charity Law & Policy Unit Steering Committee** can be contacted to corroborate claims made in ss.2.2b and 4 that research has significantly enhanced dispute resolution for charities. This source can also confirm the Unit's impact in s.4 in providing a useful resource for sector-based activity

9. **Director of the Australian Centre for Philanthropy and Nonprofit Studies**, School of Business, Queensland University of Technology, can be contacted to corroborate claims made in s.4 about the adoption of the Unit's work in Australia.