

ARTICLE

# Charitable purposes and the shaping effects of money

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## Abstract

We address a curious omission from both the literature on the law of charity and socio-legal studies – the effect of apparently extraneous factors, such as politics and ideology, as well as the searching for money on the charitable purposes and identities of the public who are to benefit from the charity. This is a curious omission because even the law accepts that the idea of public benefit in charity law is a sociological concept, albeit one that has developed a technical meaning. We argue that approaching charitable purposes and public benefit as sociological concepts enables us to appreciate the tensions that those external factors produce as they re-shape those purposes and refashion the public who are to benefit. We refer to these factors under the rubric of the shaping effects of money. We use a case-study of the Canal and River Trust (CRT) to develop this argument. The trust was set up by the government as a charity to manage and control 2,000 miles of inland waterways in England and Wales. We draw on interviews with households who live on boats and ‘continuously cruise’ those boats on the canals to illustrate how their interests have been marginalised as the CRT has re-shaped itself as a well-being charity.

**Keywords:** charity; public benefit; purposes; canals; waterways

‘(I)t seems to me that there is a disposition to treat the technical meaning of the term “charity” rather as the idiom of a particular Court than as the language of the law of England. And yet of all words in the English language bearing a popular as well as a legal signification I am not sure that there is one that more unmistakably has a technical meaning in the strictest sense of the term, that is a meaning clear and distinct, peculiar to the law as understood and administered in this country, and not depending upon or coterminous with the popular or vulgar use of the word.’  
(Lord Macnaughten, *IRC v. Pemsel* [1891] A.C. 532, 581–582)

## 1 Introduction

In this paper, we address a curious omission from the extensive literature of the law on charitable trusts – the effect of searching for money on such organisations. Much has been written about one aspect of that search – the eponymous ‘chuggers’ (see, for example, Public Administration Select Committee, 2013, chapter 8) – but the search for large capital grants by charities, one might hypothesise, is likely to require those organisations to reinvent themselves in the discourse of their potential funders. There are, however, limited empirical studies of this effect. This is a curious omission from the literature because, in shaping charitable purposes for these reasons, it provides a rather different context for the operation of charity law – one that broadens legal understandings and law’s selective awareness of context (see Nelken, 1998, p. 414). And the discussion matters because of the considerable public financial benefits that flow from charitable status in terms of taxation advantages and funding, as well as the discursive power in the idea of the ‘third sector’.

In this paper, we offer a local case-study of how charitable purposes and the idea of public benefit are manipulated in this search for money. Our case-study is of a government-created charitable

organisation called the Canal and River Trust (CRT), which is the regulator and promoter of much of the inland waterways in England and Wales. Those inland waterways, made up of canals and rivers, are ‘a leisure, heritage, environment and regeneration asset’ (DEFRA, 2011, p. 11). The trust reinvented itself in around 2017 as a well-being organisation in order to bid for capital grants from various funding bodies – as that label was regarded as being a gateway to funding – and, in so doing, were regarded as acting partially by one part of their constituency and against the interests of that constituency.

Our local case-study develops an issue that will be of more general interest given the internationalisation of charities, the similar structure of charity law across the common law world, and the general themes we develop about the reach of new public management and identities of the public to be benefited. Such a study contributes to our understanding of charity law, in that it requires us to reconsider the doctrinal confines of charity and the concept of ‘public benefit’. In this sense, this paper addresses the growing interest in understanding legal doctrine contextually, or, rather, how legal doctrine makes up the social (for discussion, see Cotterrell, 1998; Nelken, 1998; Banakar, 2000). For this understanding of public benefit has been said by no less an authority than Lord Simonds to be ‘not logical’ but ‘empirical’ (*Gilmour v. Coates* [1949] A.C. 426, 448) – in other words, it might be seen as a sociological idea that is interpreted legally. And, indeed, over the 600 years of its incarnation as a legal concept, this is not a doctrine that bears much relation with the public understanding of charity, as Lord Macnaughten suggested in *Pemsel*. It has become a rarefied artefact of legal knowledge – a concept taken out of context with an epistemological knowledge exhibiting its own logic (cf. Valverde, 2003).

Nevertheless, the idea of *public* benefit implies at least division from some different benefit, which presumably is differentiated by reference to its privateness, and also has a sense in which ‘a section of the public’ takes benefit. Yet, as this case-study illustrates, it is precisely which section of the public is to take benefit and how that is, or becomes, an object of contestation. And it is that translation of legal subject into contested object that provides the basis of this study. The section of the public that benefited from the reinvention of the CRT was other users of the canal – that is, users of the canal other than those who continuously cruise on it. It was the well-being of those others that was said to be the primary concern of the CRT. On the other hand, the well-being of those living on the canal (who are termed ‘continuous cruisers’ in this paper, although that term is contested) was felt to be excluded from consideration.

We develop our ideas, first, by setting out some broad understandings about charity law, developing the significance for a sociological appreciation of charity law and adverting to the few texts that consider the shaping effect of money on charities. We then introduce our case-study, demonstrating how the lash-up between government and charity produced the CRT and the significance of this production in the context of the rationality of the purposes of government. We then set out our research methods before considering the context of the CRT operation and then its rebranding. By context here, we are drawing attention not to matters that offer explanation of the role of this charitable organisation but as part of our appreciation of the significance of the shaping effects of money.

## 2 On charity

That charity law texts fail to deal with the impact of money is, perhaps, understandable. They are generally either practitioner texts or designed for the student market in which the study of trusts is usually mandatory. However, even ‘law in context’ texts follow the law of trusts (see Garton *et al.*, 2020) and the usual critique of such texts as placing law first is particularly apposite (see, for example, Nelken, 1998; Macauslan, 2017). The focus in the more academic texts on charity law is on what distinguishes charities from other organisations, like the state or profit-making organisations. Harding (2020, p. 18), for example, argues that it is altruism as expressed in the purposes of the charity, which provides opportunities for others to align through work or volunteering.

To the extent that these texts consider the afterlife of charities – that is, after the charity has been registered as such – it is in the context of a particular doctrine regarding asset disposal once the charitable object has become incapable of fulfilment (the doctrine of *cy-pres*). However, the ongoing oversight of charities is part and parcel of the administrative process and they can be removed from the

register if, for example, they are no longer considered to be charitable (s. 34, Charities Act 2011). In this section, we focus on three aspects of the literature: the idea of public benefit in law; the recognition of the issues about the increasing commercialisation and politicisation of charities; and the lack of empirical evidence about the shaping nature of commercialisation and politicisation on charities themselves. We begin with the significance of the sociological appreciation of legal ideas.

As Cotterrell (1998, p. 188) observes, a sociological approach (in an extended sense) collapses the binary between internal and external perspectives on law, and illuminates by offering broader, more inclusive perspectives on legal phenomena that reflect the dynamic relationship between law and society. He himself used the law of purpose trusts, a relatively obscure backwater in this law, to illustrate his point. He argues that legal reasoning is empirical and an expression of social relations – purpose trusts provided an aspect of social ideas in development; and a broader inquiry of the particular social contexts and implications of decisions: ‘Viewed in this way, it appears as a necessary means of broadening legal understanding – the systematic and empirical understanding of a certain aspect of social life which is recognized as “legal”’ (Cotterrell, 1998, p. 191).

Whereas purpose trusts are, by their nature, invalid in English law because they have no individuals capable of enforcing them, charities are an example of valid purpose trusts with an administrative and political machinery behind them, culminating with oversight from the Charities Commission (originally devised in 1597) and enforcement through a tribunal. Public benefit has been accepted by the cases and the early authors as an inherent element in the idea of charity – as Jones (1969, pp. 27–30) notes from Francis Moore (an early commentator on the Act), public benefit was what bound together the various assortment of diverse objects in the statute of Elizabeth 1601 (although, even then, it was noted by Moore that the idea of public benefit for the relief of poverty could incidentally benefit the rich – an idea ‘well known to modern lawyers’: Jones, 1969, p. 30).

Nevertheless, as was noted in a Charity Commission review in 1857, the public ‘are seldom in a position to originate measures affecting their [i.e. charities’] government, and the disposition of disinterested persons to undertake such measures with a single view to the benefit of their objects cannot always be relied on’ (Charity Commission, 1857, p. 7). Enforcement, then, is the role of the regulator. Indeed, the law on public benefit offers a particularly contorted example of the way in which the law has become divorced from the ‘popular or vulgar use of the word’, as Lord Macnaughten put it.

That very obscurity produced through this disjuncture offers a particularly potent form of governance, insulating legal ideas from their everyday manipulation and creating the conditions in which the kinds of subtle shaping of charity that is discussed in this paper are made possible. Parachin (2020), for example, argues that there is a distinction between the charitable purpose and the activities that advance that purpose, the law only being engaged with the former; and the law only dealing with those activities that do not further the charitable purpose. This caused problems when, in the US, the Supreme Court had to deal with a claim for charitable status based on the advancement of education, which was to be achieved in racially discriminatory ways. The court refused charitable status to the organisation but did so on the grounds of public policy, not charity law. That distinction between purposes and activities also enabled independent schools in the UK to maintain charitable status. As the Upper Tribunal put it: ‘Nobody complains that the schools are educating fee-paying students; the concern is that they must be seen to be doing enough for those who cannot afford fees’ (*Independent Schools Council v. Charity Commission* [2011] UKUT 421, at [213]). In other words, the carrying-on of educational activities that benefited the rich was fine provided that adequate provision was made for bursaries for the ‘student community at large’ (which includes the fee-paying students).

The effect of money seems first to have been recognised in the Conservative government’s 1982 Consultation Paper (Home Office, 1984), in which it was noted that the charity world had changed dramatically since the last piece of legislation in 1960:

‘There has been an enormous increase in the number of variety of charities and a substantial increase in the funds flowing through them: the annual turnover of the charitable sector is now some £13 billion, ...

‘The character of the sector has also changed. A growing number of charities now rely on fundraising rather than on endowments. Charities are increasingly dependent on the commercial operations of associated business account of payments made directly to voluntary bodies ... Government funding amounts to over £2 billion.’ (Home Office, 1984, paras 1.10–1.11)

That document was more concerned with the consequential regulatory oversight for public money, as opposed to the effect of money on the sector. The only subsequent legislative alteration was that the concept of public benefit was to be applied more consistently across all (expanded) heads of charity, now enshrined in section 4 of the Charities Act 2011; but existing case-law was to remain relevant because ‘Removing all reference to existing case law would create significant uncertainty for existing charities, and would mean that many of the same points would have to be unnecessarily explored again by the courts’ (Cabinet Office, 2002, para. 4.24).

The government’s 1982 recognition of significant overlap and funding between itself and its purposes and those of charitable bodies reflected the long-standing history of the interaction between the state and charitable organisations, running well beyond the state’s promotion of the sector’s regulation. As Dunn suggests, by the end of the twentieth century, ‘the sector had almost turned full circle, entering into a more complex relationship with the state, moving further into service delivery and the carrying out of public function’ (Dunn, 2008, p. 249; cf. Harding (2020), who argues against excessive state interference). In other words, the wider social context of charity law is that the identification of charitable ‘public interest’ takes place within a certain rationality of government, in which charities must bend their objects around the criteria of their potential funding sources (including further government funding). One can see this in the different iterations of government, through the New Labour ‘compact’ between state and voluntary organisations and the subsequent Cameron coalition government’s reliance on the ‘big society’, both of which relied on the voluntary sector (of which the charitable sector is a large part) to take up the slack of a declining public sector (see Morison, 2000; Fyfe, 2005; Levitas, 2012).

The role of charitable organisations in the new welfare paradigm has shifted towards an entrepreneurial, contract, business-related culture, which mirrors the private sector in ways that are the equivalent of the ‘new public management’ (Evans *et al.*, 2005; Clarke and Newman, 2007). Funding models in this sector are contract-based and often short-term, and depend on responding to the agendas of funding organisations (Taylor, 2002; McDermont and Kirwan, 2018). In short, money is both a disciplining device as well as shaping the identification of the public interest – points that have particular pertinence to this case-study.

As Dunn (2008, p. 249) suggests, ‘service delivery and pressure for democratic renewal have their modern genesis in government programmes. These programmes have sought, to a degree, to mould and steer the roles and development of the voluntary and community sector’ (see also Chan, 2016, p. 148). Accordingly, there is a ‘pull–push’ dynamic, in which charities increasingly are pulled in by the state seeking to divest itself of its responsibilities, while simultaneously being pushed into developing civic engagement and renewal (*ibid.*).

Nevertheless, there is a general lack of empirical evidence about the impact of these factors – and the increasing commercialisation of charities as well as their reliance on fundraising – on their operation. Indeed, Dunn’s focus lapses back into traditional legal concerns with charitable bodies about political purposes and regulation. It is argued here that this misses something important about the shaping effects of money on the activities that facilitate public benefit – something that is enabled by the obscurity inherent in the notion of public benefit and the division between activities and purposes.

There are two sector-specific studies that link the increasing commercialisation and politicisation of charities concerning social housing (although this literature does not take account of the significance of charitable status) and sporting charities. First, there is McDermont’s (2010) historical study of social housing organisations. This book remains a classic in the field in demonstrating how money markets and business slogans have changed the face of charitable organisations providing low-cost housing for

households in need; the discussion of charity (chapter 3), however, again relates to the regulation of those organisations, developing an argument about technical legislative change to avoid registration issues. Subsequent studies have drawn attention to the effects of financialisation on the sector (see, for example, Manzi and Morrison, 2018), but not to the effects on charitable status. The second study (Costas Batlle *et al.* (2018)) uses an autoethnographic method to develop an account of how a particular sports charity was affected by the funding environment, influenced by consultants and pro bono assistance from corporations, producing measurable targets and a new programme framed around funders' interests in employability and skills training. It is these effects of money that, in this paper, we term 'shaping' in that the charitable purpose is shaped in different directions, producing new and diverse collaborations. There is no similar socio-legal account, and none that reflects on the identity of charity in this mash-up. It is this gap that the case-study, to which we now turn, seeks to fill.

### 3 A case-study: the CRT

As suggested above, there is limited discussion in the literature on charity law about the effects of money on public benefit and charitable purpose. This is surprising, given the literature makes various assumptions about the commercialisation and politicisation of charities. In this section, we seek to fill that gap by developing a case-study of a particular charitable body, the CRT, which regulates and manages the inland waterways. We begin with a discussion of the formation and purposes of the CRT, before discussing our research methods and the subtle shifts in practices that occurred during our fieldwork.

#### 3.1 The creation of the CRT

In the postwar period, English canals have been the subject of ownership and management by a single organisation, albeit with different legal characterisation: first, the British Transport Commission, in the Transport Act 1947, a public body, following the nationalisation of the railways, which included the inland waterways; then, from implementation of the Transport Act 1962, the British Waterways Board, a body corporate with perpetual succession took over; and, since British Waterways Board (Transfer of Functions) Order 2012, SI 2012/1659, the CRT, a charitable body. What is left out of that technical summary is the politically contingent identity of the body responsible for owning and managing the canals. That responsibility in itself falls within an appreciation of programmes of government, mirroring the governing rationality of the evaluative administrative state. It moved apparently seamlessly through different representations of the object following evaluations, leaving us with the idea that the ownership and management of canals should be the object of charity (Miller and Rose, 1990).

To emphasise this point about political contingency, the CRT was created out of the 'bonfire of the quangos' that was a broadly principled culling programme as a result of which there were 245 fewer non-departmental public bodies in 2013 (Dommett *et al.*, 2014). The previous Labour government had announced in its 2010 spring budget an intention to transfer the functions to a mutual organisation (which might have been a rather different body from a charity). British Waterways had announced in their 2010/11 corporate plan a long-term aim of moving from the public sector 'to what is known as the Civil Society' (British Waterways, 2010). These different representations of the government of the canal system reflected different rationalities of government. As Miller and Rose (1990, p. 6) put it: 'Language here serves as a *translation mechanism* between the general and the particular, establishing a kind of identity or mutuality between political rationalisations and regulatory aspirations' (emphasis in original).

The creation of a charitable organisation was a neat fit with the ideas behind the 'big society' promoted by David Cameron, the then prime minister, which established a discursive frame of charitable altruism for the CRT project. As was said at the time: 'The transfer of the waterways will give those

who are passionate about them increased opportunities to get involved and influence the way in which their waterways are managed' (Lord Taylor, HL Deb. vol. 738, col. 1 (25 June 2012)). The infrastructure was locked in a permanent endowment trust, with the CRT as sole trustee, and the CRT was required to grant free pedestrian access to the towpath (a path running alongside the canal).

While the reform of non-departmental public bodies may have been guided by high principle about the importance of democratic decision-making, the transfer from British Waterways to the CRT was governed by more mundane issues. The transfer took place at a particular moment in British public life in which the government of public finances superseded all else, which impacted on the idea of transition. As the impact assessment of the proposed transfer made clear, grant aid from the government had been in decline and the fees charged for cruising the canals or fishing licences and other payments were insufficient to maintain them (DEFRA, 2011, p. 11).

However, there was potential for commercial exploitation for recreational activities against which government was a barrier:

'Government itself is a barrier to realising some of this un-marketed value because as a public corporation British Waterways is constrained in its activities and is unable to generate sources of income that charities are able to do in order to reflect and harness the use and non-use values that many people place on the waterways.' (DEFRA, 2011, p. 12)

Accordingly, the impact assessment (DEFRA, 2011, p. 12) maintained that:

'The policy objective is therefore to maintain the public benefits the waterways provide and avoid long-term asset deterioration by finding new opportunities for growing income from commercial, charitable and private sources, efficiencies through driving down the cost base, growth in volunteering to help maintain the canals and better local community engagement. A linked consideration is to achieve the best public value from British Waterways assets whilst reducing the Exchequer commitment and relieving taxpayers of a potentially large liability of the physical infrastructure of the waterways.'

The significant distinction between British Waterways and the CRT was that the CRT's income (received from boating and leisure licences) was to be supplemented by charitable giving as well as commercial investment income (such as marinas). In other words, the charitable purposes were to be maintained through commercial activities and charitable donation. The impact assessment assumed that by the tenth year of the new organisation, there was potential for there to be a net charitable donation of £8–10 million. On top of that, there was greater potential for commercial exploitation combined with greater opportunities for business taxation reliefs. It is no surprise that the National Trust – a charity that is responsible for monuments and other buildings and land in the UK, and that has a similar funding model – was the organisation on which the CRT was modelled (Wainwright, 2010).

Accordingly, although the transfer was accompanied by a government grant of £800 million over fifteen years, this was effectively a top-sliced grant that assumed those activities and donation. Reflecting the weave between charity and the state, the role of the government was evident from the outset, because it required the CRT to adopt a transparency policy in the funding agreement between CRT and DEFRA (HC Deb. vol. 537 (20 December 2011), Richard Benyon M.P.); and part of the government grant was dependent on the CRT's performance in maintaining the satisfactory condition of the principal assets, towpaths and flood-risk management (HC Deb. vol. 539 (31 January 2012), Richard Benyon M.P.).

Reinforcing the distinction between charitable purposes and activities, the objects of this new charitable body (the CRT) included the following:

‘To preserve, protect, operate and manage inland waterways for public benefit:

‘For navigation; and

‘For walking on towpaths; and

‘For recreation or other leisure-time pursuits of the public in the interest of their health and social welfare.’

Although more complex than this, it was the tension in balancing these objects, as well as to different users in each object, that was in issue in this case-study. The photographs and pictures that illustrate the CRT’s most recent annual report suggest harmony between these objectives and textual headings such as ‘people love the water’ emphasise the relationship between people, space and place (CRT, 2020). They place stand up paddleboard (SUP) users next to boats; kayaks, fisherfolk, cafés, ducks and swans in this natural environment. It emphasises that ‘our waterways provide unrivalled opportunities for people to develop healthier, active lives where they live’ and that the CRT was working with its partners ‘to realise these opportunities and improve the health of the nation’ (CRT, 2020, p. 20). However, the report also understands that this aim produces a virtuous circle:

‘The more people who appreciate the wellbeing benefits of our waterways, the more support we can secure for their long-term future care, and the more resources we will have available for the maintenance and repair work that such old infrastructure demands.’ (CRT, 2020, p. 34)

We return to this signification below because it represented a significant rebranding being shaped by an appreciation of the funding environment; and because it was the cause of consternation among our research participants.

Of the £215.4 million total income of the CRT during this period, around 10 per cent was made up of boat licences. These are licences paid for private boats’ use of the canals. Boating trade, which includes boat-hire companies, represented 4.5 per cent. Charitable donations (3.6 per cent) and third-party income from charitable activities, such as museums and visitor attractions (12 per cent), are significant items of income. However, by far the largest share of income is attributable to commercial activities around investment and property income, and utilities and water development – 39.4 per cent; followed by a DEFRA grant – 24.4 per cent. As the DEFRA grant reduces over time and is scheduled to end in 2027, new avenues for grant funding are required. As expanded below, that contingency was the cause for the focus on the ‘wellbeing benefits of our waterways’ and produced tensions.

### 3.2 Research methods

The study was originally designed to consider the effects of the regulation of spatial movement of continuous cruisers on the canal. These are people who live on boats and who have the licence code ‘BW-065’, which requires them to move a certain distance per annum and every fortnight. We had been inspired in this project by issues around human rights, which had been raised in the courts as a result of the enforcement of the minimum distance rule, as well as how the idea of home was translated into life on the canal. In the court proceedings, it was assumed that the CRT was exercising public functions, albeit as a private charity (*CRT v. Jones* [2017] EWCA Civ 135). In order to think through those themes, between June and December 2018, we conducted twenty-four semi-structured recorded interviews with thirty continuous cruiser participants, twelve of whom were male and eighteen female. They were all cruising on one particular canal in England. There was a wide age range of participants, some of whom had children or protected characteristics (disability as a result of mental and/or physical illness). Participants have been given pseudonyms in what follows to maintain their anonymity.

The theme of charity and the identity of the public to benefit was an unanticipated issue raised during this research. It arose during our first interview and we were able to expand our semi-structured questionnaire to capture data on this topic by building in prompts for discussion with participants.

Having completed most of the interviews and begun coding our data, developing our themes, we met with four officers of the CRT at the end of November 2018 to seek their perspectives on our emerging findings. We were then able to think through different perspectives on the themes that had emerged from our continuous cruiser participant interviews.

One particular perspective that emerged from our continuous cruiser participants, which is relevant to this paper, is their assessment of relative status. There are a variety of users of the canal (commercial and private) and the towpaths (walkers, anglers and cyclists, for example). Boats can be hired for pleasure, lived on and cruised or kept in marinas (which are usually owned by the CRT). Boats in marinas are not meant to be lived aboard. They may also be moored in certain points on the canal – however, moorings are expensive and, at the time of our fieldwork, they were being auctioned by the CRT due to their popularity particularly during the winter months. Most continuous cruisers on the particular canal we conducted our research could not afford a mooring.

Generally, the pace of life on the canal is slow – boats do not travel faster than four or five miles per hour. Most of our participants operated clear hierarchies of user, which depended on how fast the generic class of canal boat user travelled. Continuous cruisers, as Charlie put it, were ‘the real boaters’; but, more generally, they recognised that they were at the bottom of acceptable users of the canal because they could not afford a mooring or a berth in a marina. There were divisions also between different types of vessel, as a CRT officer put it:

‘When I first started, I always had an image that everyone was looking out for everyone on the canals and they had this really wonderful network, but actually I work in a small percentage on the canal of people, and maybe it isn’t quite as smooth as I thought when I started. Narrowboats sometimes don’t get on with the widebeams and widebeams don’t like the plastic boats and the Dutch barges and actually, that maybe my first thoughts on how it all being connected wasn’t quite so connected. There’s a little bit more friction than I thought.’

Hire boats and boats kept in marinas (which were used at weekends – referred to as ‘mushroom polishers’) were generally at the bottom of the hierarchy because they travelled too fast and were considered not proper users of the canal. The lowest status was ascribed to those people who hired boats for ‘stag weekends’ and, perhaps, dressed up as pirates. The real culprits for the continuous cruisers, however, were the hire boat companies, who did not train hirers properly to use and steer the craft. As Clare put it:

‘I mean they’ve had loads of problems with stag parties and God knows what else, and that’s kicked off. ... You’ve got the anglers that don’t like the boaters. The boaters that don’t like the marina kiddies. The marina kiddies who like no one. The hire boaters who just want to have a good holiday that haven’t been taught properly enough and can’t understand why no one likes them. The stag boats that everyone hates, including the police. The police that won’t come down on to the canal because it’s sort of like no, it’s not their responsibility.’

It is these kinds of tension that came to the fore in our case-study about the objects of charity. Continuous cruisers felt that their interests were being marginalised by the CRT who were more interested in profit-making from the canal than in safeguarding the continuous cruisers’ (and, by extension, the canal’s) interests.

As the regulator, as well as the steward, of the canal, the CRT was regarded as falling short of the ideals of charity. The dissonance between the public understanding of charity and its legal meaning was particularly marked at this point. As Rob put it, ‘they are really not fluffy at all’. The CRT was believed to be seeking to force continuous cruisers off the canal through not prioritising the requirements of navigation. Doug put it vituperatively: ‘That’s the worst, isn’t it? Jesus, what kind of charity is that? What’s their tag line? “Bringing history and the community together”, what by evicting blinking boat livers? Is that bringing the community together?’.

In other work, we have identified the governance of the canal as leading to continuous cruisers feeling that they have been othered by the CRT's processes of policing licences and as a prism through which their precarious home was produced (see Cowan and Hardy, 2021). Our argument was that continuous cruisers understood themselves to be the targets of policing in an apparent attempt by the CRT to gentrify the inland waterways. Accordingly, they understood that their way of life was under threat and that their vessels, which were their homes, were being policed off those waterways. In this paper, we demonstrate how the governance of the canal also impacted on the ways in which our participants viewed the idea of charity as personified (so to speak) by the CRT.

This dissonance between public and legal understandings of charity in the context of the policing of licences is not, however, our focal point for this case-study. In what follows, we focus on two different contextual issues – the status anxiety of our continuous cruiser participants and the adoption by the CRT of new public management techniques and discourse – which highlight the particular tensions at play in the charitable purposes of the CRT. We then discuss a particular focusing event – the CRT's decision to become a well-being charity – as a precursor to grant funding applications to government and other organisations.

### 3.3 Context

Taking inspiration from Science and Technology Studies, we do not understand context here as an explanatory or descriptive tool, but as how the object of charity is enacted in practice (Woolgar and Lezaun, 2013, pp. 323–324). The idea of charity is brought into being in the practical, everyday activities we describe in this section and assists us with the framing of the focusing event we describe in the next section. It is context in action. We engage with two datasets – the first is the status anxiety of continuous cruiser participants in our research and how this feeds into their construction of charity. Second, we draw on the portrayal of the workings of the CRT on its website, which emphasises the new public management and customerisation theses that dominate the everyday life of organisations.

#### 3.3.1 Status

In discussing our research methods, we drew attention to the internal hierarchies held by our continuous cruiser participants in this study – to put it slightly more grandly, how they viewed their own positionality in their world on the canals. The significance about this status identity might also be regarded as being about their own anxieties as to that positionality. These anxieties played out in their interactions with the CRT, which were, in turn, related back to our participants' understandings about charity and the publicness of benefit. That came across in a number of different ways, but we draw attention to two of the most prominent ways in which our participants' self-perception of their status on the canal was subverted by the CRT – an understanding about the authority of the CRT; and, more substantially, as to the differential and better treatment given to the (hated) hire boats on the canal as well as its other users.

The CRT governed our participants' lives through the licence, which they had to obtain to remain on the water, as well as through its policing. That government was itself the site of contestation, particularly as to its authority. The idea about charity was enfolded with this government. As Andi put it:

'I try and avoid them as much as possible. I don't like them. I don't understand where they're coming from. I've done lots of reading actually. I don't understand how a charity has been given that much power by the government and I have issues with that. I'm pretty worn out now.'

This draws attention to a kind of paradox in the role of the CRT. The public identity of a charity is as a giver of alms, or as a voluntary organisation providing assistance to those in need and to which one might volunteer; but, somewhat curiously, the CRT has neither of those roles. People volunteer to assist them in dredging the canals and litter picks, for example. However, the primary role of the CRT, at least as perceived by our participants, was as a middle-class money-making organisation

that had rights of surveillance over their lives. The analogy with the National Trust in this respect was also made by Rich, a participant:

‘[I]t seems to us that the government would like the canals to become like National Trust, which aims at a certain level of society. So people living on them – you know, it’s like people living in the National Trust land, we don’t actually want this little group of leftover poor people living in cottages. We’d rather take over the cottages and rent them to middle class people as National Trust cottages.’

Andi went on to say, invoking the rationale for government accountability, ‘I don’t understand who gave CRT the authority over my lifestyle either’; or, as Nicky rather more viscerally suggested, ‘this is a charity and we are the beneficiaries, and they’re not fucking looking after the beneficiaries’. That expression of that lack of organisational accountability returns to the rationale for the ‘bonfire of the quangos’, but the point made by Thea was that British Waterways, as a public corporation, had a line of accountability through parliament; on the other hand, the CRT is unaccountable other than to the Charity Commission. Thea recounted a detailed complaint made to the Charity Commission in which the commission took no action:

‘The base of the complaint was that CRT was not complying with its charitable objects, because one of the charitable objects is about supporting disadvantaged communities in the vicinity of the waterways. Now, people who live on boats are generally disadvantaged in many ways, partly because of their lack of rights, but also because they’re generally on very low income. ... but ... the Charity Commission just completely refused to admit the complaint and said basically, “We can’t intervene in matters between a charity and its customers”.’

Accordingly, participants felt that their lives were at the mercy of the CRT, which was not subject to oversight and which negatively affected their lives.

However, at a deeper level, their status anxieties were produced as much by their understanding that they were at the lowest end of the CRT hierarchy (which fed into their self-presentation as being at the top of the canal hierarchy). In other words, the needs of all the other users of the canal and towpath came above, and crowded out, their needs because those others offered more money to the CRT than them. This was epitomised to some in a leaked e-mail from a CRT director said to refer to continuous cruisers as ‘scum that needed to be got off the canal’ (Jack). And, as Mo put it:

‘You very much get the impression on this canal, in particular, that CRT exist not for the boaters but for what I call the ‘non-paying’ boating fraternity which are the walkers, the rowers, the cyclists, and I think that on [this canal], they do that because they get money then for things like cycle paths. It gives them access to other pots of money and so their focus isn’t necessarily on the boater. ... It does very much seem as though the CRT in this part of the world don’t really give a stuff about the boaters. In fact, we’re almost an inconvenience to them.’

There was a belief among our participants that CRT services were better for hire boats, even though those boats were said to be responsible for much of the disrepair on the canal due to their travel speed, as opposed to licence-paying continuous cruisers (CCLs). Matters came to a head during our field-work when a canal boat owned by a popular boater was sunk after another boat hired by a group of men on a stag weekend had created a wake of water because it was going too fast on the canal. Tina summed up her and her friends’ reaction to these events:

‘It was the weekend of hell for the canal, but [that] situation was all about the theme park. It was all about the hire companies and CRT viewing this as, “We’ll make it a holiday destination for the

stag dos and the hen dos”, and the people that do call us some quite offensive things. “Errr, look at all the dirty, scruffy boats. They’re horrible. They need a paint”.

The theme park, it was said, was being encouraged by a greater focus of the CRT on sustaining its commercial operations, as opposed to the people who should be the object of its regulatory embrace. Our participants believed that the CRT prioritised hire boat operators over and above them as a result of the money paid by the commercial operators for their use of the canal.

### 3.3.2 *New public management*

The CRT can be regarded as a case-study in itself of the fundamental changes that have occurred in the English notion of ‘charity’ because of the adoption of new public management values, as well as its adherence to the significance of money-raising activities. These values derive from, and focus on, concepts of market and consumerism (Harlow and Rawlings, 2009, p. 59) within an organisational field that has incorporated an existing institutionalised model that is understood to be the proper and natural method (DiMaggio and Powell, 1983). The CRT has focused particularly on the development of the customer relationship. Clarke and Newman (2007) argue that this consumerisation focuses ‘on modes of delivery rather than on decisions about which services should be provided’ (p. 108), assumes choice and exit that are impossible in this setting, and does not shift the balance of power from bureaucracies to users (p. 115). Each of these points is replicated in our data and made our participants uneasy about their relationship with the CRT.

Charitable organisations must demonstrate their efficiencies and business plans, as well as their community impact through various surveys and glossy publications. In part, this fulfils the regulatory requirements of the Charity Commission; but, in part also, these documents form the offer to funders and grant-makers. The CRT’s website is replete with these kinds of publications, particularly their annual report, which can be regarded as their calling card. The documents on the website are testament to the adoption by the CRT of new public management language, with its management ‘vision and strategy’ and performance indicators, which ‘highlight[] the changes the Trust must make between now and 2025 to become more customer and community focused, and more effective, productive, and financially sustainable’ (CRT, 2017).

Continuous cruisers must contact the CRT’s ‘Boat Licence Customer Support Team’ to purchase a licence. They are responsibilised into purchasing their licence, being told that the licence ensures that canals ‘remain open, flowing and fair for all’, and that

‘[a]pplying for a licence doesn’t just mean you can experience our canals and rivers – it also means we can keep our waterways fit for the demands of today and needs of tomorrow. As a charity, we’re always looking to raise money to make that happen, and our boaters’ licence fees play a crucial role – in fact, they cover around a fifth of our running costs.’

This shift in language was accompanied by a sense, among our continuous cruiser participants, that the CRT’s priorities had changed. As Clare put it:

‘[W]hen you go in their site and find out that the branding manager ... was going to earn more than their chief engineer, that’s when you suddenly go, “This is what it’s all about. It’s a branding exercise. It’s about getting money in”; and the engineer’s job, which should be the most important job around here, isn’t. That’s when you go, “I’ve worked for charities like this before. All they’re interested in is the money and the kudos, and they’re not interested about anything else”.’

Our continuous cruiser sample was particularly exercised by the poor state of the canal. The depiction used by Clare of an organisation spending more on its branding for external purposes than on its central operation – the canal – was designed to demonstrate the disconnect between this new language and what was thought to be the purpose of the CRT. It is to this rebranding that we now turn.

### 3.4 Rebranding

McDermont (2010, pp. 158–162) discusses the complex ways in which rebranding an organisation ties in with ideas about government. She argues that the rebranding of a housing federation produced a mentality of government because ‘such an alignment with the dominant political ways of thinking and speaking provided the sector with a self-confidence that its role was governmental’ (p. 160). In this section, we argue that this mentality of government is as evident in the rebranding by the CRT of itself as a ‘well-being’ organisation.

We have already adverted to this rebranding in the discussion of the annual report above and the discussion of the water network’s contribution to ‘well-being’. We noted there that this was a conscious decision of the CRT in order to obtain grants, which were being increasingly skewed to this loose and uncertain set of activities. This is what we mean when we refer to the shaping effect of money – the need to maximise income at a time when they were renegotiating their grant from the government meant that the organisation shaped itself around what it had identified as the best means of obtaining that money. The tension that this produced during our fieldwork became evident in our interviews, as participants felt that it caused the CRT to favour other parts of their roles over the continuous cruisers.

In our discussion, the CRT itself sought to balance their need for external sources of income with the broad purposes of the charity. On the one hand, we were told that the CRT was repositioning itself because the canals ‘aren’t just a narrow thing for boaters, anglers or those who have a direct link to it, but anyone can benefit from the waterways’. The waterways were good for well-being and mental health, which formed a key part of their negotiating position with government:

‘Our approach is to move away from just being seen as a waterway charity to this wellbeing and waterway charity. That isn’t about having less interest in boating or other waterway users. This actually will ultimately help us to sustain that, because boaters alone can’t sustain the waterways. They provide about ten per cent of our income and it would be unreasonable I think to expect them to pay more. If we don’t secure that ongoing funding or more resources from other places, then it either means less money spent to maintain/invest in the waterways to keep them open for navigation or boaters paying more, or both, and that’s not really somewhere we want to go.’

However, the perception among our participants was that the new focus on well-being and mental health led the CRT to deprioritise canal maintenance so that other users’ interests could be highlighted and funded. Accordingly, the understanding among our participants was that their interests were being defunded, leading them to regard this as the CRT effectively forcing them off the canal. As Charlie put it: ‘You don’t invest in facilities for the boaters because you’re concentrating elsewhere and you lose sight of that. I think you lose the heart of it really. I think that’s what upsets most.’

Our participants complained about the lack of maintenance of towpaths, facilities being constantly out of order, delays in dredging the canal, blockages and problems with locks. Continuous cruisers were perceived by the CRT to be ‘an inconvenience and there’s an underlying attitude [within the CRT] to try and get you out’ (Finn). All of these complaints about services made them compare what they received with other users of the canal. A common theme in our interviews was how the CRT appeared to prioritise the hire boat companies over continuous cruisers. As Tina put it, ‘the only time that CRT listen to anything is when the hire boat companies get cross’. It was said by our participants that the CRT would rather they live in home moorings (which were prohibitively expensive). Molly understood that continuous cruisers were in a competition for resources with other users whose interests were being prioritised:

‘You very much get the impression ... that CRT exist not for the boaters but for what I call the “non-paying” boating fraternity which are the walkers, the rowers, the cyclists, and I think that ... they do that because they get money then for things like cycle paths. It gives them access to other pots of money and so their focus isn’t necessarily on the boater .... So, by investing in things like



Figure 1. CRT publicity poster (authors' photograph)

decent cycle paths, et cetera, et cetera, it broadens their scope for clawing back in money. It does very much seem as though the CRT in this part of the world don't really give a stuff about the boaters. In fact, we're almost an inconvenience to them.'

The shaping effect of money was visible in one particular event during our fieldwork, which operated as a kind of microcosm of the issues generated by the identity of the CRT as charity. CRT engaged in a logo rebranding exercise, which was said to have cost £60,000 (assumed by our participants not to include changes to the various other accoutrements, such as life jackets, tents and other branded equipment). This change in logo was designed as part of the broader rebranding well-being exercise. Figure 1 shows a photograph that was taken on one of our trips along the towpath during the research project of a kind of advertising hoarding attached to a gate. The new logo is prominent and the text emphasises the benefits of the canal network.

The new CRT logo – which had been a swan in bulrushes with a bridge in the background – was variously described as a 'stinking washer' (Molly), 'stupid circle design' (Clare), 'a sinking tyre' (Rosie) or just 'corporate bullshit' and 'like something Kwik Fit might come up with' (Shirley). It was not just the aesthetics to which our participants objected, but the waste of money that it entailed. Sylvia sought to provide a balanced view:

'[W]hat they're going through, and that they are having to attract government funding, and the way to attract government funding is to say that you're promoting wellbeing. Not just of the boating community but of the wider community, and blah de blah de blah, but it does seem from what .... It does look rather as if they're side-lining the boating fraternity, and concentrating much more on joggers, cyclists, anglers, whoever. Canoeists. Who also want to enjoy, or they

want to encourage to come and enjoy the waterways. That's all well and good. That's fine, but why were the waterways there in the first place? Excuse me, but if there are no boats, people won't come. Because the people come to the canal and the river, to watch the boats, surprisingly enough.'

Matters like the logo, then, were more than 'towpath telegraph' narratives, but purposive stories emphasising the marginalisation of CCLs and their needs; and the gradual and seemingly inexorable shift towards other uses, meaning that CCLs would be forced off the canal. Molly's act of resistance was to superimpose the old logo on her new boat licence. Rod, who was a wheelchair user, simply said that they could have spent the money on repairing the towpath, the disrepair of which made his wheelchair unusable on most of the network.

#### 4 Conclusions

We have argued that the literature on charity law has largely ignored the significant re-shaping effects of money on the fulfilment of charitable purposes. Using our case-study of the CRT, we have sought to fill that gap, demonstrating how the contingency of its funding situation meant that it had to re-shape the way it thought about its role and activities, such as well-being and contributing to the health of the nation. This was a play for funds, from government and other funding bodies, but, as the CRT reinvented itself, our research participants felt that they were being ignored and their interests as well as their needs deprioritised and defunded. In this conclusion, we reflect on our data and what they mean for charity law, as well as its sociology.

In one sense, the value of this paper lies in it being the first empirical socio-legal analysis of the operation of charity law in context. We have demonstrated how the distinction drawn between activities and purposes causes tensions that play out among the diverse purposes and objects of the charity. These kinds of tensions are occasionally seen in court proceedings but are always static and raise questions of principle in charity law, as Parachin (2020) demonstrated. Our study demonstrates how they work in action, more precisely when the purposes and the public to be benefited are so diffuse. This appears to be an inherent problem with the idea of 'public' benefit because the charity has to negotiate between different identities of that public. And, in that negotiation, at least one set of actors is likely to feel aggrieved. Accordingly, our study has broader implications for our understandings of charity law.

The distinction between activities and purposes is particularly hard to draw in law, as they feed into each other, but this is characteristic of the *differentia specifica* that has taken root in charity law. Certainly, our study demonstrates the disconnect between, on the one hand, the lawyers' understanding of charity law and the everyday understandings, as Lord Macnaughten recognised. As Riles (2005) demonstrates in her study of the conflict of laws, we may well find different legal rationalities underlying the development of the law on, for example, charitable purposes and public benefit. This is precisely the kind of study that Cotterrell (1998) was encouraging and might well prove illuminating, but perhaps fall prey to what Nelken refers to as 'the truth about law's truth' and the pitfalls of policy scientism in law. Lord Simonds's assertion that the idea of public benefit in charity law is empirical, if taken at face value, provides a potentially important avenue for investigation. Our case-study suggests that it is just as important to think about what empirical might mean in this context and whether this kind of insight blinds us to the prejudices inherent in the identities of the public.

What also comes out of the case-study is the limit of the charity regulator's oversight of the sector. There are significant issues affecting continuous cruisers, who feel that they are effectively and constructively being ushered away from their way of life. The absence of the regulator due to their limited role (and we are not drawing any negative inference from that limited role) demonstrates how the public to be benefited is most often the included. If we were to turn our attention to independent schools and ask ourselves how these distinctions play out in the lives of the students and the governing bodies, as well as the communities subject to their charitable munificence, we may well find not dissimilar tensions.

This case-study is also in tune with the broader attitude to nomadic lifestyles among the settled population – or, at least, the perception from legislation, which increases criminal penalties and powers to move nomadic households on. There is no such legislation penalising the continuous cruiser nomads in this case-study. However, our case-study demonstrates that these acts of sovereign power are matched by the more mundane and everyday acts and omissions of the charity. If you have nowhere to empty your rubbish or toilet because the facilities are out of order, that is as much a message to the nomad as punitive sanctions.

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