

THE LYTHAM INSTITUTE

OPINION

- 1 I am asked to advise as to the charitable status or otherwise of The Lytham Institute. The Institute was originally established in 1872 as an unincorporated association governed by a constitution and rules. The leasehold premises acquired from the Clifton Estate on 15 October 1877 were subject to a Deed Poll also dated 15 October 1877 which settled them on trust, until disposed of under the power conferred by the deed, *'to permit them to be used for the purpose of [the said] Institution in accordance with the rules thereof for the time being in force'*. The rules stated that the institution was *'established to provide instruction and mental improvement for all classes, without sectarianism or party politics; a place where they can meet for reading, conversation, amusement, and general social intercourse.'*

- 2 Pausing there, whilst the Institute had a membership and was occasionally referred to as a 'club', it was not the kind of exclusive members' club with a high subscription which would be incompatible with charitable status: on the contrary, the intention was that it should be open to 'all classes' so the existence of a membership is not problematic. The provision of a place for *'amusement'* or *'general social intercourse'* would not normally be regarded as a charitable purpose today, but in the context of premises containing a reading room, library and facilities for meetings and lectures, it should in my view be interpreted as more or less equivalent to 'leisure-time occupation' and thus for charitable, recreational purposes. In any case, given the date of the deed poll the retrospective Charitable Trusts (Validation) Act 1954 could if necessary have applied to render the trust wholly charitable had the deed poll remained effective at that date.

- 3 In fact the premises were disposed of, by means of an assignment of the leasehold interest to the Lytham Urban District Council on 29 September 1917. By that stage the 1877 lease had been replaced by a 999 year lease, granted on 27 September 1898 for the enlargement and improvement of the Institute premises, without affecting

the purpose declared in the deed poll. The deed of assignment declared that the Council took the premises, not for the purposes of the Institute and not for the local authority's corporate purposes, but '*upon trust to maintain the said premises and the buildings now or hereafter erected thereon for public use under the provisions of the Public Libraries Acts 1892-1901 and the Museums and Gymnasiums Act 1891 or any Acts re-enacting or amending the said Acts or any of them*'. I have no hesitation in advising that those words created an exclusively charitable trust for the benefit of the public. The fact that they refer to statutes relating to local authority powers and duties does not prevent them from constituting a charitable trust, and the intention to benefit the public is abundantly clear. It is common to find similar charitable trusts referring (for example) to the Education Act 1870. The essence of the creation of a charitable trust is found in the words 'upon trust' coupled with a public-oriented purpose of a type which has long been regarded as charitable.

- 4 In other words, the 1917 deed of assignment constituted the Urban District Council the charity trustee of the residue of the term of 999 years for the public uses specified. The freehold reversion was subsequently purchased by the Council from the Clifton Estate and it appears that the Council's successor, Fylde District Council (now Fylde Borough Council), which took its place on 1 April 1974, may have been wrongly advised that the leasehold merged in the freehold free from the 1917 charitable trust. In fact that could not have happened: either the leasehold remained subject to those trusts for the remainder of the 999 year term because it was held by the Council in a different capacity from the (corporate) capacity in which it acquired the freehold or, possibly, the freehold reversion also became subject to the 1917 trusts. In either case, Fylde District Council ought to have applied for registration with the Charity Commission of the charity constituted by the deed of assignment, and now remains under a duty to apply for such registration.
- 5 If Fylde District Council now or at any time considers that one of the circumstances set out in s 62 of the Charities Act 2011 applies, e.g. that there is no longer any need for a public library, museum or gymnasium or similar facility in Lytham, it will also be under a duty to apply to the Charity Commission for a *cy pres* scheme to alter the purposes as far as necessary to enable effective charitable use to be made of the property of the charity: see s 61.

- 6 I am asked whether there could possibly be a resulting trust in favour of the original Institute. I do not consider this to be arguable since the 1877 trusts came to an end when they were effectively replaced by the 1917 trusts, which can themselves only be altered by a *cy pres* scheme, which would normally be made on the application of the Council as trustee.
- 7 Concerned members of the public may wish to draw this opinion to the attention of the Council and/or of the Charity Commission, which would doubtless wish to hear from the Council with an application for registration and to be informed of the plans for the charity's future. If the income received by the Council from the Institute premises does not exceed £500 per year – a matter which may be apparent from the Council's accounts – there is the further possibility that, assuming the Council does not take constructive action, a person 'interested in the charity' or any two or more inhabitants of the area of benefit may make an application for a scheme: see s 70 (3) of the 2011 Act. A 'person interested in a charity' should normally be a person with obligations compatible with those of the trustee: see Re Hampton Fuel Allotment [1989] Ch 484.
- 8 I will be happy to advise or assist further if required at any stage.



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Radcliffe Chambers
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