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Fault Lines in Charity Law

JOHN PICTON AND JENNIFER SIGAFOOS

I. Debates in Charity Law

The last decade has seen a period of rapid change in charity (or non-profit) law and policy, both in the UK and across common law jurisdictions. Economic turmoil and austerity have changed the policy landscape. New regulators have been created; others have been significantly empowered; while still others have had their wings clipped. Throughout the common law world, charities are embedded in the daily lives of citizens – through schools, hospitals, parks, museums, etc – both as service users themselves or through volunteering or employment to support others. The public feels ownership of charities, and reform to the field inevitably carries policy controversy with it.

A great many ‘debates in charity law’ have emerged during this period of rapid transformation and public critique. This volume will explore emergent, policy-driven questions in the context of the changed contemporary landscape. We are very pleased to be able to present to you this collection of chapters, each of which considers a contemporary debate in charity law. A major debate that can be seen throughout all of our contributors’ chapters relates to power: what is the right level of state control and regulation of charities? This is explored, from theoretical justifications for legal and regulatory interventions, through implementation, to specific policy contexts. Within this over-arching theme, two secondary themes are mapped through the volume. In the first sub-theme, contributors will explore a fundamental policy tension in charity law between its – largely conservative – history and the necessity for charity law to keep track with fast-moving social change. They will consider some of the theoretical underpinnings for why charities are afforded special treatment under some circumstances, and whether this can be justified or, perhaps, extended. In the second sub-theme, our contributors will delve still more deeply into the regulatory environment affecting charities. A new regulator and expanded regulatory powers over charities will be explored. Other contributors will tackle different issues that might previously have been considered beyond the scope of charity law and will show how this new legal landscape affects charities.

II. Old Law, New Shoes

In the first half of the book, our contributors consider some of the fundamental doctrines underpinning charity law, while venturing far from its equitable roots. The distance travelled from the past is sometimes thrown into high relief when the traditional common law of charity encounters modern legal concepts. The chapters from Matthew Harding and Mark Sidel begin with a key debate that must be resolved in every jurisdiction with a voluntary sector – where should the balance be between preserving the independence of the sector and ensuring adequate state regulatory control over the ordinarily considerable advantages that the sector receives from the state?

In Chapter 2, Matthew Harding offers an elegant argument from the liberal perspective for the independence of the charitable sector from state regulatory control. He first considers the elements of the charity sector that might justify independence from the state. The sector produces a multiplicity of goods, driven by the diversity of purposes that are held to be charitable. The charity sector thus has a hand in a number of different enterprises, from hospitals to schools to the arts, which are publicly beneficial to society. This, on its own, is not enough to sustain an argument for the independence of the sector without two further elements: voluntarism and altruism. Harding notes that there is a special value in liberal thought for voluntary action to produce diverse goods. This value in voluntarism distinguishes the goods produced by the sector from those produced by the state. The last element, altruism, then distinguishes the charitable sector from the for-profit sector, another voluntary producer of plural goods. Although altruism may be expressed elsewhere, in the state or the for-profit sector, or those in the charity sector may not have purely altruistic motives, the demands of charity law uniquely structure the sector towards altruism. In Harding's argument, this positioning of the charity sector as a site for the altruistic and voluntary production of plural goods justifies considerable independence of the sector from the state. Too much state interference might disrupt this altruism, and without the charity sector this altruism may well not be expressed elsewhere.

Harding then considers whether the types of accountability that the state can offer to regulate the charity sector are well-suited to maximise the voluntary and altruistic production of plural goods. He discusses three types of accountability: constitutive accountability, stakeholder accountability, and governance accountability. On constitutive accountability, the accountability required by the state in terms of determining which organisations may be charities, he discusses a range across various jurisdictions. He considers that the legislative reforms in England and Wales in 2006, and their interpretation in the *Independent Schools* case, may diminish diversity in the charity sector in England and Wales and could be considered to be excessive government interference with charitable independence. Harding then looks at stakeholder accountability and the rise in new public management or contract culture. The rise in government contracting to charities for the provision of services may also lead to reductions in the voluntarism and

altruism of the sector, and direct government provision may be preferred in some situations. Finally, he discusses governance accountability, the various restrictions imposed by the state on how trustees must manage and use charitable assets. Restrictions on how trustees may manage charitable assets could restrict voluntarism in an unacceptable way as the goals of the restrictions become increasingly remote from the overall goal of ensuring that charitable assets are reserved for charitable purposes. The chapter thus unpicks and considers critically many of the assumptions underlying discussions of appropriate charitable regulation.

In contrast, Mark Sidel's valuable contribution in Chapter 3 illustrates how this debate plays out in a state with a very different political philosophy. He offers insight into how the fault-lines in charity law and regulation look different when viewed through the lens of an authoritarian state, with China as a case study. Sidel begins with a tension that exists in authoritarian countries: they both value civil society and fear it. As a result, the Chinese charitable regulatory system is very tightly controlled, even though China has one of the fastest growing voluntary sectors in the world. Sidel illustrates this by considering the framework that regulates overseas nongovernmental organisations, foundations, think tanks and other non-profits in China. This sector is the most worrisome for the Chinese Government.

China historically engaged with foreign missionary, non-profit and foundation for development and other projects. This was abruptly terminated with the Cultural Revolution. Sidel shows that limited re-engagement began in the 1950s, well before the end of the Cultural Revolution in 1976. The result of this was that China was more open to overseas non-governmental organisation (NGO) engagement in 1977 and 1978 than is generally believed. The subsequent relationship of the Chinese Government to the overseas NGO sector is presented as one of cyclical relaxation and then heightened scrutiny. Through the 1990s there was a period of more relaxed regulation and growth of this sector. The Tiananmen events of 1989 led to some scapegoating of overseas NGOs, and consequent tightening of regulatory oversight.

From 2012, things have changed considerably, with tighter regulatory scrutiny and oversight, a harder position, and an increased role for the state in everyday life. The passage of the Overseas NGO Law set out a new regulatory framework for overseas NGOs, foundations and other nonprofits in China. They must register in China with an approved Chinese partner and report through the Ministry of Public Security. Both of these have proved to be difficult for overseas NGOs to accomplish. Despite all these restrictions, some hundreds of overseas NGOs, nonprofit and foundations have managed to register or to report their activities. Thus, Sidel points out that the system is more nuanced than a mere closing down of this particular policy space. He also identifies some grey areas where there may be limited potential for expansion, especially around academic exchange and cooperation. After describing the new policy space for the non-profit sector in China, Sidel offers a typology of the remaining NGO sector, providing insight into how organisations have adapted and what encompasses their 'new world' in China.

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John Picton and John Tribe's chapters both touch on the historic equitable doctrine of *cy-près* – the power of courts to amend a charitable trust where the original purpose cannot be carried out to apply those funds in a manner as near as possible to the original intent of the settlor. Picton and Tribe have taken this traditional doctrine and used it in distinctly modern ways. Picton prises open and examines the perpetual character of charitable trusts, using donative economics theory as a lever. Tribe advocates for a modified form of *cy-près* to ensure that charitable assets are preserved in the event of charitable insolvency.

In Chapter 4, John Picton argues that the drive to create a perpetual foundation is *per se* egoistic. Donors who are motivated to create an entity which will last forever are often in the vain pursuit of personal legacy. Rather than being driven by a desire to do good in the world, or to increase social utility, they wish to establish a perpetual memorial to themselves, and to project their character and values into the future.

Picton thinks that legal perpetuity, in the form of the ever-lasting charitable trust, can be justified at law because it encourages donors to part with capital. This is true even though the primary motivation might be an egoistic desire to achieve a type of legal immortality. This is an extremely powerful drive and the legal system would do well to attempt to harness it for the public good.

Yet the perpetual trust is certainly a double-edged sword. The problem is that donors who are motivated by the projection of their own character and values into the future are unlikely to create trusts with high social utility. Their vanity crowds out more useful applications of the capital. So, it can be said that, although the law is right to try and capture the egoistic drive to perpetuity, there is also an opposing policy imperative to permit the legal reform of perpetual organisations so that their usefulness can be increased.

This leads the analysis to a dilemma. On the one hand, a legal system that allows perpetuity increases donation, but on the other hand, it proactively encourages the establishment of vain and wasteful organisations. Picton suggests a method to reform the law of perpetuity in a way that might balance these conflicting concerns. He argues that trusts might enjoy a period of immunity in which they cannot be reformed, but after that period has passed, funds should be directed towards social utility by the state. This would represent a compromise between the donor's drive to egoistically project her image into the future, and the state's interest in ensuring that charitable funds are spent effectively.

John Tribe's Chapter 5 looks at the incorporated charitable form through a lens of heated debate in the for-profit world – ie, the extent to which organisations should be 'rescued' upon insolvency. There has been a real dearth of research into charitable insolvency, and Tribe's chapter goes a long way towards correcting that omission. He argues that communitarian rescue culture, which is now very well-entrenched in company law thinking within the Academy and which strives to maintain insolvent businesses as going concerns, might be applied to the charitable context.

Similarly fitting old doctrine into a new frame, Tribe shows that communitarian rescue is the correct approach in the profit-making context, disposing of free-market arguments to the contrary. It flows from this that communitarianism must be of at least equal value in the non-profit sector, which has as its sole purpose the pursuit of public benefit. In turn, it can be said that the law should strive, in circumstances of charitable insolvency, to ensure that the charitable purposes inherent to the insolvent organisation can continue to be carried out. It is also necessary to think carefully on questions of priority, so that upon insolvency, the charitable purposes are carefully protected against claimants. For Tribe, the tool to make sure that purposes do continue is the venerable charitable *cy-près* doctrine, adapted to a new insolvency context.

The growth of the incorporated charitable form is only rarely commented upon. However, it marks, from the perspective of a lawyer interested in legal mechanisms and the interplay of different case-law and statutory principles, one of the most profound shifts in the way that charity is regulated. In this intriguing and under-researched context, Tribe's analysis seeks to make the two sets of legal thinking 'speak' to each other – so in this instance, company law, might learn from the older *cy-près* rules developed in relation to charitable trusts.

Adam Parachin and Jennifer Sigafoos offer differing takes on to what extent a charitable purpose should reign supreme when it is contrary to public policy or discriminatory. This is a debate that we see played out repeatedly in the contemporary scene. Charities and controversy are no strangers.

In Chapter 6, Jennifer Sigafoos explores a topical social debate: can a charity exclude transgender women from its women-only services? There is a complex interaction between equality law and charity law in the UK. Equality law is a relative latecomer to the scene, and sometimes is an uneasy fit with the centuries of common law development of charity. Charities have been discriminating for a long time. Many charities define whom they help by reference to a specific protected characteristic under the Equality Act 2010, such as sex or race. Sometimes this discrimination is lawful under the Equality Act, while at other times it is not, requiring interpretation of a complicated framework of exceptions. Conflict thus arises between charity and equality law, and it is difficult for charities and their beneficiaries to navigate this legally complex area.

In the chapter, Sigafoos uses a case study of a hypothetical charity that wishes to restrict its services to exclude transgender women. She evaluates the charity's position under the various exceptions to the prohibitions against discrimination in the provision of services under the Equality Act. This case study also raises issues about the broader justifications for charitable discrimination more generally. When does the discrimination that is widespread in charities (some might call it specialisation) become 'real' discrimination?

Using different perspectives on the theoretical justifications that underlie equality law, Sigafoos expands from the case study to consider this broader debate in charity law. When should it be acceptable for charities to exclude potential

beneficiaries based upon a protected characteristic, and when should this be unlawful discrimination? She argues that we should expect more from charities – charitable discrimination should be lawful only when it is advancing equality in a substantive way, by redressing disadvantage, challenging stigma and stereotype, enhancing voice and participation, or achieving social change.

In Chapter 7, making a refined conceptual argument, Adam Parachin delves deep into the DNA of charity law. It is a peculiarity of the common law that each charitable organisation is said to pursue a *purpose*. This is no more clearly seen than in *The Commissioners for the Special Purposes of Income Tax v Pemsel*.¹ There, the court famously divided the law of charity into four distinct ‘divisions’, with the conceptual effect that judges do not question the particular ways in which organisations carry out their mission – ie, the law does not, as a matter of structure, investigate charitable activities, so long as the charity falls within a *Pemsel* head.

Taking the famous case of *Bob Jones University v United States*² as a case-study, Parachin shows that a purpose-focused conceptual legal structure has real-world effects. In the case, where a university carried out religious purposes in a racially discriminatory way, the court reached to public policy in order to find against charitable status. Yet Parachin argues that the judicial use of public policy arguments is a blunt tool for dealing with such complex issues. That the court had to resort to policy is a consequence of the purpose-driven DNA of charity law which, as a general rule, permits organisations to carry out their charitable objects in any way that they wish, reining them in only in extreme circumstances.

The traditional purpose-focused legal structure has worked satisfactorily for a long period, but it is now under pressure, as the nature of charity has changed in the modern world. Such pressure emerges from the hybridisation of charities with businesses, issues surrounding charities and political campaigning, the charging of fees, and heightened political consciousness with regard to racial discrimination. Parachin argues that there might be a legislative solution. Surgical and precise statutory interventions could isolate the circumstances where the traditional purpose-focused approach is under pressure, while at the same time maintaining the common law’s traditionally relaxed and enabling posture in relation to the greater bulk of organisations.

III. Specific Regulatory Contexts for Charities

This second half of the book explores regulation and specific regulatory contexts for charities. Where once research in nonprofit law turned upon the decisions of Equity judges, in more recent times, some authors have focused on the growth of the regulatory state and its consequences for the charity sector. Here our contributors

¹ *The Commissioners for the Special Purposes of Income Tax v Pemsel* AC 531 [1891].

² *Bob Jones University v United States* 461 US 574 (1983).

consider closely the regulatory mechanisms that affect charities, beginning with the regulators themselves and then moving on to specific areas where the wider regulatory state has impacted on charities. This type of work brings policy and regulatory guidance to the fore. It requires close attention to how the rules work in practice. This is true for the chapters contributed by Oonagh Breen, Patrick Ford and Eddy Hogg.

In her Chapter 8, Oonagh Breen expertly details the regulatory impact of the new Irish Charities Regulatory Authority. She makes the perceptive point that regulators do not arrive into a legal vacuum, but instead must fit themselves into a complex and interlocking pre-existing regulatory system. Her case study, which focuses on Ireland, is timely, as much of the common law world has recently shifted towards the creation of specialist regulators for charities. This global sweep includes New Zealand in 2005, Scotland in 2006, Northern Ireland in 2009, Australia in 2012 and Ireland in 2014.

In the Republic of Ireland, a truly complex regulatory picture has emerged. That jurisdiction has gone from a fractured situation where no single body had exclusive responsibility over charities, to one in which the Charities Regulatory Authority is now making its presence felt upon the scene. The first task for this new kid on the block was inevitably the ‘nuts and bolts’ task of managing the new register, created from existing data, by sweeping it of dormant charities. Failure to register while operating a charity is now an offence in Ireland. There have even been prosecutions, so for example in 2017, the Charities Regulatory Authority took action against the ‘Twist Charity’ for advertising, requesting and accepting donations for an unregistered charitable organisation. This is a brave new world.

While this change seems broadly positive, Breen shares insightful criticisms of the process. She notes that the Charities Regulatory Authority was slow to produce guidance, something which is absolutely essential in a new legal environment. She also charts the potentially uneasy relationship – a ‘clash of the titans’ – between the Revenue and the new Charities Regulatory Authority. However, Breen notes that the two bodies might be able to work together in future through the development of memoranda of understanding, a model that is followed throughout the common law world.

Much more difficult is the complex interface between charity law and company law. There, taking a comparative approach, Breen looks to the Charitable Incorporated Organisation in the UK. That new type of legal form is an especially tailored, incorporated charitable form, which might be of interest in Ireland’s quest to develop a new regulatory landscape. As charities regulation shifts away from its historic base in Equity and Trusts, the diverging jurisdictions still have much to learn from each other.

Patrick Ford’s Chapter 9 focuses on the specific challenges faced by the new Office of the Scottish Charity Regulator as, in common with the Republic of Ireland, Scotland has also become a global regulatory leader with a specialist regulatory body of its own. In that context, Ford tackles one of the most pressing non-profit issues of our times – the status of independent schools and their

regulation. In the light of post-Barclay Review³ moves in Scotland to remove non-domestic rate relief, Ford presents a balanced assessment of the regulatory scene. Ultimately, he suggests a shift to a more tailored regulatory approach, combined with the intelligent use of tax benefits to encourage schools to fall into line. Weighing the policy options with clarity and precision, he concludes that a local-level and discretionary tax approach, if it were adopted, has the potential to empower local authorities to pro-actively manage schools at the community level.

In relation to independent schools, the Office of the Scottish Charity Regulator has real regulatory teeth. Notably, it can assess the fees that independent schools charge on the basis of reasonableness. It is also free from the obligation to take account of the complex and contested law on public benefit in England and Wales, which has hampered attempts at reform in that jurisdiction. Through clear guidance, the Office of the Scottish Charity Regulator straightforwardly states that in meeting the reasonableness assessment, facilitated access – help for those who cannot pay, such as bursaries and discounts – is likely to have the greatest impact. Even so, the regulator operates a holistic test that allows it to take account of the full scope of the benefits provided by the school.

Favouring sensitive regulation of the independent school sector in Scotland over a more dramatic policy alternative that would involve the full removal of their charitable status, Ford ultimately shifts his focus of attention to the position in England and Wales. He notes that there, the Charity Commission does not have the same powers as the Scottish regulator, and so its regulatory position is undoubtedly weaker. Thus, if reforms are to be attempted, England and Wales should be understood as facing a choice between the legislative clarification of the public benefit requirement, or the removal of charitable status from independent schools altogether. If England and Wales were to choose the latter option, it is unlikely that Scotland, which is now on its own regulatory path, would follow suit.

England and Wales have long had their own specialist regulator. In that more established legal context, Eddy Hogg takes a novel approach to research in charity regulation in Chapter 10, opening the way to a fruitful line of future analysis, which could be repeated in any common law jurisdiction. He asks what the charities themselves and the general public actually think the law should do. Using interview data to support his writing, he argues that donors do not always clearly understand the ‘nitty gritty’ of how charitable organisations are regulated. He also shows that organisations in the sector want regulation to be supportive and not overly burdensome.

Hogg uses public interest theory to frame his analysis, noting that regulation is best conceived as being for the benefit of society as a whole. This includes a broad range of stakeholders: donors, the recipients of charity, wider society and the charitable organisations that must comply with the law. It is intuitive that those

³ Kenneth Barclay, *Barclay Review of Non-Domestic Rates in Scotland* (Scottish Government, 2017).

most closely involved in regulation – charitable organisations and donors – are a very important starting point in any attempt to research the appropriate function of the law. Hogg shows that what is already known misses important nuances. So, for example, large charities might have very different attitudes than smaller organisations within the sector.

Hogg's chapter can be understood as a call to arms. His research shows up a fault-line. On the one side are those who think that the regulatory burden on charities should be as light as possible. On the other are those who think a system of hands-off regulation might lead to a situation where charities can do whatever they please, without true oversight, and without meeting the normative requirements of public interest theory. Or, put another way, some people are concerned that charitable organisations ought not to be left to 'lick their own lollipops'.

A major theme in this volume is the assessment of the extent to which non-profits are impacted by challenges that are not within the scope of the body of 'textbook' rules traditionally known as charity law. There are a series of bespoke regulatory challenges currently impacting the sector which stretch the limits of conventional charity concepts. Debra Morris, Warren Barr and Matthew Shillito all productively assess this charity hinterland.

In Chapter 11, Debra Morris expertly analyses the payment by results (PbR) contract as it is applied to non-profits. Over the past three decades in the UK, we have seen considerable growth in the outsourcing of core state services to the voluntary sector. The growing influence of market incentives in the provision of social welfare services, as well as unprecedented cuts in public expenditure under austerity measures in place since 2010, have made these contractual relationships increasingly pressured. The PbR contract has been growing in popularity as a model for funding public services. In a PbR contract, the service provider is only paid if certain agreed results are obtained. These results may well be outside of the service provider's ultimate control. A contract for the provision of job search coaching to the unemployed might be assessed by the number of persons who re-enter employment, for example, rather than by the number of users to whom a coaching service is provided. These contracts are attractive to government funders because they carry little risk to the funder, but they may well be too risky for the service provider. Morris analyses studies of the results of PbR contracts and determines that they carry significant risks for the charity sector.

She then considers various mechanisms that might make PbR contracts safe for charitable use, including subcontracting and the use of Social Impact Bonds (SIBs). In a SIB, private social investors front-up capital to fund the PbR contract, and they are paid back if the contract is successful in its outcomes. Investors, not charities, thus bear the financial risk of contract failure. Morris considers the evidence about how well SIBs work in practice and concludes that they are not yet fit for purpose to enable charities to take part in PbR contracts with confidence. She concludes that the PbR funding environment may well prevent charitable participation in the provision of public services participation. This is a loss for both charities and their potential beneficiaries, as well as for the mixed economy of service provision.

Her chapter is a landmark exploration of an issue that affects many charities today and promises to continue to confront the sector for many years.

Taking a bold step into a new regulatory landscape, Matthew Shillito tackles an innovative concept in Chapter 12 – digital currencies – and considers how and whether they might be able to be used by charities. Digital currencies are the most recent form in which value can be stored. They offer great potential that charities may be able to harness. Shillito begins by discussing some of the advantages of digital currencies. They may well draw new potential donors to charities, as individuals with profits in digital currencies might look to donate some of that value to charitable causes. There are also technological advantages with transferring money, and if digital currencies become more widely adopted, they could offer ways for charities to conduct their international financial affairs without fear of triggering de-risking by banks. Most excitingly to us, in light of desires for the sector to be more transparent in how donated funds are spent, the payment medium offers unparalleled transparency. A truly transparent charity could offer donors the ability to follow their funds through the blockchain and see how the funds are ultimately spent. This transparency could well spur further donation as people could see their donation's end goal.

Having set the scene for why charities should be excited to consider the advantages of digital technologies, Shillito then goes on to assess the challenges that the regulatory regime presents to this at present. After considering the wider academic literature on regulation of new technologies, he analyses the regulatory challenges for digital currencies in light of the learning from struggles to regulate other new technologies. He points to the limited competence of potential regulators, as well as a lack of appetite for regulation. This is alleviated in Europe by the competence of the European Union, which has implemented the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (FATF Recommendations) via directives. Nevertheless, appetite for regulation lags even in Europe, and Shillito points out that international efforts to curb financial crime through digital currencies will only be as strong as the weakest state. Even where regulation is attempted, its effectiveness is problematic when applied to digital currencies. Although Bitcoin is transparent, it is difficult to link it to a particular owner, where that owner does not wish to be identified. If the owner is identified, it can be impossible to confiscate the proceeds of crime.

Shillito discusses the difficulty of balancing the proportionality of regulation. The regulation of new technologies needs to be weighted appropriately to not stifle innovation, while also precluding illegal or illegitimate activity, and protecting the public. This has proved to be a challenge with past attempts to regulate new technologies, and digital currencies have not proved to be any different. He illustrates the difficulty of this process by reference to the specific case of whether Gift Aid – a form of tax relief where charities can reclaim the basic rate of tax on donations – should be able to be claimed for donations made in digital currencies.

This leads Shillito to point to the big disincentive for charities to be early adopters of digital currencies: as digital currencies are often viewed as synonymous with financial crime, banks are likely to take a cautious view of their use. Any charity that uses digital currencies at the moment runs the risk of raising their perceived regulatory risk, and therefore the chance that a bank may choose to 'de-risk' by dropping that charity's accounts. We thus have a Catch-22: the means by which charities may eventually be able to protect themselves from the risk of being de-risked by a bank is also very likely to lead to that de-risking. Charities may be enticed by the many advantages of digital currencies, but at present the challenges to their use are likely to prevent their adoption by all but those charities with the highest appetite for risk.

Finally, while charity law and the social housing sector are no strangers, over a decade of austerity in that sector has thrown up new and acute challenges that stretch old ways of charity law thinking to their limits, forcing a reconceptualisation of what the law can positively contribute to that sector. In his Chapter 13, Warren Barr charts the problems faced by the social housing sector and the role that charities play in the delivery of that essential service to vulnerable people, particularly those who are mentally vulnerable. A bleak picture is painted. Social rented housing is increasingly reserved for people in extreme need, and although a secure home is of very great importance, this security frequently cannot be provided.

Charities can do a great deal in this sector. They can act as advocates for mentally vulnerable people, they can raise funds, and in modern times they can access social investment capital. However, there is no doubt that they are being held back. Land values are very high, and this stops more social housing from being developed. Unfortunately, homes for a lifetime are no longer permissible, and tenants might be put on an 'introductory tenancy' for their first year, leaving them insecure. Access to specialist support funding is patchy, varying across regions.

Vulnerable people also struggle to access legal assistance, even in circumstances where they have been treated unfairly in relation to their tenancy. Charities have responded to this as best they can, perhaps providing specialist legal advice to their own clients, but such an informal system will inevitably be imperfect.

Caught in a complex and underfunded regulatory landscape, it might seem as if charities often have their hands tied in relation to social housing service delivery. Yet there is a silver lining to this otherwise dark cloud. Charities can, and very often do, advocate for their clients. They can explain to government the problems that mentally vulnerable people suffer and can lobby for proactive legal change. In this regard, the Shelter Commission has pointed to an optimistic way forward. It calls for £12.8 billion in new funds for the sector. Barr notes that this type of positive advocacy has transformative potential – if there is the policy will to take charities seriously.

IV. Conclusion

Our aim with this volume is to bring together some of the most cutting-edge charity law scholarship in one place. The breadth of topics considered signals the deep penetration of charities into modern society, and also how modern society is penetrating charities and charity law. We are proud to present a book in which our contributors have successfully illuminated a number of debates in charity law.