

**IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

**CIV 2010-485-000831**

UNDER the Charities Act 2005 ("the Act")

IN THE MATTER OF an appeal pursuant to s 59 of the Act

BETWEEN LIBERTY TRUST  
Appellant

AND CHARITIES COMMISSION  
Respondent

Hearing: 28 March 2011

Counsel: Mr I Millard QC for the Applicant  
Ms T Warburton and Mr R Berkeley for the Respondent

Judgment: 2 June 2011 at 4:45pm

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**JUDGMENT OF MALLON J**

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## **Introduction**

[1] Liberty Trust was registered as a charitable entity under the Charities Act 2005 on 8 October 2007. Its main activity is a mortgage lending scheme, funded largely by donations, which makes interest free loans to its donors and others. Its lending scheme prompted a review of its charitable status and in turn a decision by the Charities Commission to remove it from the Charities Register. Liberty Trust appeals from that decision.

[2] Liberty Trust submits that its lending scheme advances religion, which is a charitable purpose. It submits that its lending scheme does this by teaching, through action, financial principles derived from the Bible. That is, the Trust seeks to practice what is preached.<sup>1</sup> The Charities Commission's view was that teaching financial principles derived from the Bible was at best conducive to religion but did not advance religion. It considered that the main purpose of Liberty Trust, through its lending scheme, was to provide private benefits for its members. As such the Charities Commission considered that Liberty Trust was not exclusively for charitable purposes.

[3] The issues on this appeal are whether Liberty Trust "advances" religion and whether it meets the "public" benefit test. Liberty Trust says that the Charities Commission erred by concluding that its activities did not advance religion and by not considering the public benefit that charities law assumes to arise from advancing religion. It also says that it was taken by surprise by the Commission's decision because the notice of intention to deregister had accepted that teaching biblical financial principles was a charitable purpose as advancing religion. It is because of this surprise that it makes an application for leave to adduce further evidence (discussed below).

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<sup>1</sup> Expressed as "be doers of the word, not hearers" (Epistle of St James 1.22) and faith without works is no faith at all (Epistle of St James 2.17).

## The Charities Act

[4] The Charities Act provides for the registration of charitable entities. Where the entity is a trust, to qualify for registration the trust must be “of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes.”<sup>2</sup> A “charitable purpose includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.”<sup>3</sup>

[5] If the trust has a purpose which is ancillary to a charitable purpose, this does not disqualify the entity from eligibility for registration.<sup>4</sup> An ancillary purpose is defined as being one which is “ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust”<sup>5</sup> and “not an independent purpose of the trust.”<sup>6</sup>

[6] An entity which has been registered as a charitable entity may be removed from the register if “the entity is not, or is no longer, qualified for registration as a charitable entity.”<sup>7</sup> Decisions on registration and deregistration are made by the Charities Commission.

[7] Before removing an entity from the register the Charities Commission must give a notice to the entity specifying “the grounds on which, it is intended to remove the entity from the register.”<sup>8</sup> The entity can submit an objection to the removal with a specified time.<sup>9</sup> In that event the Charities Commission cannot proceed with the removal unless it is satisfied that it is in the public interest to proceed with the removal and that the grounds for removal have been satisfied.<sup>10</sup> In considering whether to remove the entity the Charities Commission is required to “observe the rules of natural justice”<sup>11</sup> and to “give the entity a reasonable opportunity to make

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<sup>2</sup> Section 13(1)(a).

<sup>3</sup> Section 5(1).

<sup>4</sup> Section 5(3).

<sup>5</sup> Section 5(4)(a).

<sup>6</sup> Section 5(4)(b).

<sup>7</sup> Section 32(1)(a).

<sup>8</sup> Section 33(1) and (2).

<sup>9</sup> Sections 33 (2)(d) and 34.

<sup>10</sup> Section 35(1).

<sup>11</sup> Section 36(1)(a).

submissions to the Commission on the matter.”<sup>12</sup> If the Charities Commission decides to proceed with the removal it must give the entity notice of its decision and the reasons for its decision.<sup>13</sup>

[8] A person aggrieved by a decision of the Charities Commission may appeal to the High Court.<sup>14</sup> This is a general appeal in respect of which this Court must form its own view on the merits.

### **Liberty Trust**

[9] Liberty Trust describes itself as a “Christian charitable community enabling New Zealanders to own their own homes, churches and ministries without long term debt, so that they can be free to fulfil God’s call upon their lives.”<sup>15</sup>

[10] It was formally established by a trust deed executed on 18 April 1989. The objects of Liberty Trust as set out in the trust deed are:

1. TO use and employ the Trust Property and the income therefrom for any of the following objects within New Zealand:
  - (a) For the undertaking of social welfare and outreach Christian ministries of the Whakatane Baptist Church and Whakatane Christian Fellowship church or any other churches as may be determined from time to time (hereinafter called “The participating churches”).
  - (b) For the demonstration of Christian care for the social, physical, emotional and spiritual needs of the community.
  - (c) To assist those in financial need and to bring relief from financial pressures.
  - (d) For the presentation of the Gospel of the Kingdom of God to the community through demonstrations of Christian compassion and care.
  - (e) For the establishment of whatever centres, programmes and facilities that may be necessary to achieve the aforesaid objects.
  - (f) For such other charitable purposes as the Board shall determine.

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<sup>12</sup> Section 36(1)(b).

<sup>13</sup> Section 35(2).

<sup>14</sup> Sections 59 and 61.

<sup>15</sup> Liberty Trust website <http://www.libertytrust.org.nz> under “Frequently Asked Questions”.

[11] Liberty Trust's powers, as set out in the trust deed, include:

2. FOR the objects as aforesaid:

...

- (c) TO organise and conduct religious services, public meetings, missionary meetings, exhibitions and lectures.
- (d) TO publish or contribute to the publication of any periodical, journal or magazine and to print and circulate books, papers, pamphlets and information in the interest of the Board generally and to provide and circulate any annual or other report of the Board and its proceedings and work.
- (e) TO accept or refuse donations, subscriptions, legacies, conveyances and endowments either of money or of property of whatever kind or nature whatsoever and either absolutely or conditionally or in trust to apply the same or the income therefore for any of the objects of the Board or for any special object connected therewith.
- (f) TO assist people to alleviate financial difficulties or pressure by the provision of budgeting advice or such other assistances as the Board shall from time to time determine.

...

[12] By clause 4 of the trust deed "profits and other income" are required to be applied solely in promoting the objects of the Trust (as set out in clause 1) and none of the assets, income or profits may be distributed to the Trustees or associated persons (although they may be paid reasonable out of pocket expenses). By clause 16 of the trust deed on a winding up or dissolution, property or assets are to be applied to Christian or charitable objects.

[13] The background to the establishment of Liberty Trust is described on its website.<sup>16</sup> A person by the name of Bruce McDonald, a pastor, was praying about the plight of mortgaged families in the church. He was convinced that debt and interest were not in accordance with "God's Word." He shared this with the elders of his church, the Whakatane Christian Fellowship. Work began on establishing fund to which contributions would be made. The pooled resources from the contributions

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<sup>16</sup> "Beginnings" [www.libertytrust.org.nz](http://www.libertytrust.org.nz). There is an application for leave to adduce further evidence which relates to this and other evidence. It is known that the Commission accessed the website when considering whether to deregister the trust. The information on the website can therefore be assumed to be material that was before the Commission.

would be available for interest-free loans for the purchase or refinancing of homes when sufficient funds were available. Once repaid the funds remained in the pool and available for interest-free mortgages to others.

[14] Liberty Trust, as established, is funded almost entirely from donations from “contributors.” Those who contribute to Liberty Trust for 5 to 10 years are eligible for an interest free loan. Once there are sufficient funds, loans are offered in the order of joining Liberty Trust. The standard contribution rate is 20% of the loan application for 10 years. For this, the contributor can expect to be offered a 7 year interest free loan of 5 times their contribution balance. To receive a longer repayment period the contributor can choose to wait longer or contribute more. Similarly, to receive a loan sooner the contributor can contribute more than 20%. Loans are offered for up to 100% of the valuation of a property and are secured by a mortgage over the property.

[15] Once a loan has been “earned” (through contributions of a sufficient amount over a sufficient period), and providing there are sufficient funds to offer a loan to the contributor, a contributor can take up the loan, postpone taking up the loan or transfer it to another person either in part or in full. According to statistics submitted by Liberty Trust to the Charities Commission, 30% of the loans are transferred to another person. Of the transferred loans, 68% were used to refinance an existing bank mortgage or purchase a new home; 17% were for church buildings or ministers and 15% concerned other housing debts. The repayments on the loan go back into the pooled funds and are available to other contributors who wish to take up a loan or others who seek financial assistance from Liberty Trust. A contributor who takes up the loan has no say on who can benefit from the subsequent use of the funds when their loan has been repaid.

[16] The contributions made to Liberty Trust are lent to Ark Resources Ltd (a company controlled by Liberty Trust). Ark Resources Ltd lends the money to the borrower and takes the security over the property. There are contracts in place between Liberty Trust and Ark Resources Ltd (a Deed of Debenture, a Loan Agreement, a General Security Agreement and a Deed of confidentiality) which formalise the arrangements.

[17] There is a \$400 administration fee payable when the loan is provided. The loan is said to be “subject to normal bank lending conditions” (these do not appear to be further specified). The website material compares how quickly a loan is repaid as against a bank loan on which interest is charged. It uses this comparison as demonstrating the financial savings that are made. This is described as the “Bible’s ‘Sowing and reaping’ blessing in practice.”

[18] Anyone can join the scheme operated by Liberty Trust. Liberty Trust says about this that:

We do not know if any of our donors follow the Christian Religion because Liberty Trust exists to serve all people regardless of their beliefs (or lack of beliefs for that matter). We seek to assist all people socially, physically, spiritually and emotionally as a demonstration of Christian care, and for the advancement of the Gospel of the Kingdom of God.

[19] Making contributions is entirely voluntary. A person who wants to join the scheme can do so by completing an application form. The application form is available on Liberty Trust’s website. The application form requires the person to fill in their name and contact details and to sign the form which states that they “desire to join the community of Liberty Trust” and that:

I have read with interest ‘*God’s Financial Principles in Action*’ (colour brochure) and ‘*A Better Way to Own a Home*’ and would be pleased to join with other contributors in forming a community to pool resources and assist one another.

I covenant to contribute \$\_\_\_\_\_ per week/fortnight/month, to be applied by the Trustees in furtherance of the Trust’s charitable objectives;

- To research and teach principles relating to finance from God’s Word; and
- To outwork these principles by practical ministries.

I desire that my contribution to Liberty Trust be regarded as a non-refundable charitable donation for the benefit of God’s Kingdom.

[20] Liberty Trust sees its scheme as teaching the Bible’s financial principles through action. The brochure, “God’s financial principles in action,”<sup>17</sup> referred to in the application form sets out references to the Bible to the effect that debt is a curse

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<sup>17</sup> This was also part of the application for leave to adduce further evidence. It is referred to on the website and I refer to it for the same reason as the application form.

and a borrower is a servant to the lender. It describes the Liberty Trust interest free lending, saying that it is biblically-based and that it operates a “storehouse into which people can donate for the promotion of God’s purpose.” It says that the Trust is:

under the covering of the Whakatane Baptist and Christian Fellowship churches, to whom we report. It is a gift of God for the whole body of Christ.

We seek to teach & demonstrate the Bible’s financial principles in order to assist those in financial difficulty, relieve financial burdens and advance the Kingdom of God.

[21] Along similar lines, the website has information under the heading “A Better Way to Own a Home” which states:

Liberty Trust is a Bible-based storehouse releasing God’s community into greater financial liberty. More than 225 households and churches have received interest free mortgages and most are already debt free and able to give more freely of themselves and their finances to God’s Kingdom. Think of the extra time and money you would have to fulfil the Great Commission with a debt free home or church!

[22] Alongside the lending scheme, Liberty Trust has other teaching activities. It teaches “Biblical financial principles” at public meetings and seminars, through newsletters and books, through material on its website, through DVDs and videos and through personal assistance provided via an 0800 number or email.

[23] The newsletters are sent out every two to three months. They are sent to past and present contributors, to churches and the general public. An example of one newsletter which was provided to the Charities Commission starts by welcoming new members to Liberty Trust. It sets out “seven major financial Bible principles” with references to the Bible. These include “Interest-free Lending among God’s People” (referenced to “Do not charge your brother interest ... so that the Lord God may bless you in everything you put your hand to Deut 23 v 19-20”) and “Freedom from Debt” (referenced to “The borrower is servant [slave] to the lender Prov 22 v 7b”). One of the seven principles – Sowing and Reaping – is discussed in more detail. That discussion includes the following:

Every dollar that is “sown” into Liberty Trust is seed – very good seed. That dollar circulates in and out, to release one family after another from the

bondage of interest and the debt that attracts it. After 100 years it's still happily doing the same job, releasing God's people time and time again.

[24] Another example starts the same way with welcoming new members. It has a passage from the Bible. The newsletter reprints a letter of thanks from someone and also seeks donations to support advertising the trust on Radio Rhema. The main part of the newsletter is about how the scheme works. It provides a comparison with bank loans, setting out the financial savings to be made. It says:

So tell your friends and neighbours to sign up their children for the best investment around. They won't need a home for at least 15 years but through Liberty Trust they are likely to save over a million dollars when they do. By joining our community they will follow God's financial principles, help many others, and save a huge amount of time and money when they are ready to buy a home.

[25] The website has Bible teachings and over 140 testimonials from participants. Some of the testimonials have been included in the material before me.<sup>18</sup> A brief review of these indicates the religious flavour of these. The recipients of the loans give praise and thanks to God.

[26] Most of Liberty Trust's funds come from contributors. However some funds come from other sources. Excluding interest earned on funds received, the two other sources of funds are other donations (that is donations that are not made as contributions to the scheme) and book sales. This is seen in the Trust's audited accounts for the year ended 31 March 2009, which record that it received \$768,036.50 in income for that year of which \$730,099.06 came from contributions. The balance was made up of "other donations received" (\$20,535.85), interest (\$15,865.14) and book sales (\$1,535.73).

[27] Most of the Trust's funds are available for lending under the scheme. The Trust's website refers to this, noting that its trustees are unpaid and its overheads are minor. For the year ended 31 March 2009, total expenses were \$62,730.60. The largest expense items were for "administration wages" (\$18,462.66), "marketing and advertising" (\$12,581.53), "donations" (to other Christian organisations) (\$8,688.89) and "travel and accommodation" (\$6,449.33). Other expenses were for such items

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<sup>18</sup> The testimonials are also the subject of the application for leave for further evidence.

as postage and stationery, account and legal fees and other disbursements. The net surplus (income less expenses) of \$705,305.90 was added to members' equity as at 1 April 2008 of \$4,693,088.17 so that Liberty Trust's total members' equity as at 31 March 2009 was \$5,398,394.07.

[28] Most of the lending is made to contributors who are eligible for a loan based on the amount and period of their contributions. Over the 20 year period of its operation \$18 million of lending has been transacted of which (at least) \$2,752,572<sup>19</sup> of loans have been "sponsored" (that is, have been made as a result of others choosing not to take up a loan). However some funds also go to other interest free loans to people "who are struggling with credit card debt and other high-interest debt". The information provided to the Charities Commission was that the Trust "normally has a maximum of 2-4 of these loans at a time as these are high-risk unsecured loans and take a lot of time and assistance." It is unclear on the evidence before me how much in dollar terms goes to this type of unsecured lending but it is accepted that it is not the main use of the funds.

### **The Charities Commission's investigation**

[29] Liberty Trust was registered as a charitable entity by the Charities Commission on 8 October 2007.<sup>20</sup>

[30] In October 2008 a complaint was made about Liberty Trust to the Securities Commission. The complaint was referred to the Charities Commission which in turn passed the complaint on to Crown Law. Crown Law's concern, as conveyed in a discussion with the Charities Commission on 28 August 2009, was whether making loans to donors was a charitable activity. The Charities Commission reviewed the matter and, on 2 September 2009, sent a letter to Liberty Trust asking for information. As the investigator's notes record, at this time the Charities Commission were concerned that the scheme was an illegal pyramid scheme. The investigator raised this with a manager at the Commerce Commission but that

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<sup>19</sup> The amount is higher because that was based on 57 sponsored loans when Liberty Trust later identified that there were at least 75 sponsored loans.

<sup>20</sup> The Charities Act 2005 introduced the requirement that charities be registered.

manager was non-committal about whether the Commerce Commission would investigate it.

[31] The Charities Commission's letter to Liberty Trust of 2 September 2009 advised that a complaint had been received from a member of the public on 28 August 2009. (This appears to relate to the discussion between Crown Law and the Charities Commission on that date.) The letter did not advise Liberty Trust what the nature of the complaint was except that it concerned "the current activities of the trust." The letter requested information under five heads. These included:

1. A copy of any contract signed with Ark Resources relating to all major business links currently in force; and

...

3. Please confirm whether the lending activity of the Trust is its major activity, and if yes what proportion does it bear to all other activities of the trust; and

...

[32] In response to the first question, the Trust provided details of the contracts and went on to say:

Liberty's lending to Ark Resources Limited assists Ark to offer interest-free loans (based on the principles of the Christian religion) and promotes the objectives set out in Liberty's Trust Deed. In particular it enhances the social welfare and outreach ministries of our participating churches, it demonstrates Christian care for the social, physical, emotional & spiritual needs of the community, it assists those in financial need and brings relief from financial pressures, and it presents the Gospel of the Kingdom of God to the community through demonstrations of Christian compassion and care.

[33] In response to question 3, the Trust said that its lending activity is "simply one of many activities of the Trust". It described the other activities (referred to above at [22]) and concluded that "[a]ccordingly, the arrangements between Liberty Trust and Ark Resources Ltd are simply one aspect of the Trust's activities and by no means the major activity of Liberty Trust". (It is not clear whether that answer relates back to the lending as between Liberty Trust and Ark Resources Limited rather than the lending scheme activity as a whole conducted by Liberty Trust through Ark Resources Limited or whether it is saying that its lending scheme is only part of its overall main activity of teaching the Bible's financial principles.)

[34] On 6 October 2009 the Charities Commission sent a “Notice of Intention to remove” the Trust from the Charities Register. It advised that this was because “one of the main activities of the entity is considered to be non-charitable, and not in line with the stated purpose” of Liberty Trust under the trust deed.

[35] The notice went on to discuss the loan scheme under the “relief of poverty” limb of the “charitable purposes” definition in the Charities Act. It concluded that it was not within that limb. The notice did not discuss the loan scheme under the “advancement of religion” limb of the definition. It discussed only Liberty Trust’s other activities (ie the public meetings, seminars, newsletters, books, videos, DVDs, budget advice and support for other organisations) under that limb. It said:

The current activities of the entity provide adequate proof of its belief in the Christian faith, and promotion of the biblical financial principles [through these activities].

The benefit of the biblical teachings of finance is available to all members of the society, as a demonstration of the Christian care, and for the advancement of the Gospel in the Kingdom of God.

The current activity of the entity aligns well with the above requirements for an entity to be charitable under the advancement of religion. The Trust can thus be said to have charitable purposes under the head ‘advancement of religion’.

[36] The notice concluded that one activity of Liberty Trust (the teaching of Biblical financial principles) had a charitable purpose and the other (the loan scheme) did not. It said that Liberty Trust did not have an exclusively charitable purpose because:

The activity of providing interest free loans to people and the promotion of the teachings of Biblical financial principle are two independent activities, and not ancillary to each other.

[37] Liberty Trust exercised its right to object to its removal from the register. It set out its response in a letter dated 3 December 2009 and a memorandum enclosed with that letter. The letter stated that “the ultimate goal of the Trust is to further the message of Christianity through care and support shown to those in need.” It said:

The Trust is a charitable trust which informs members of the public and teaches personal and domestic financial management concepts, all of which are based on Judeo-Christian principles and a Biblical tradition. The

fundamental aim of the Trust is, and always has been, to teach principles of Christian living and to promote the Christian gospel amongst believers and other members of the community.

[38] The accompanying memorandum included the following comments:

The Trust's investment in Ark is ancillary to the purposes and activities of the Trust's purposes – the work of Ark demonstrates, in a practical way, the Bible's financial principles taught by the Trust.

The interest free lending activities of Ark supports the Trust's primary activity of teaching Biblical financial principles in order to advance religion.

The activities of Ark are based on Biblical financial principles and provide a practical demonstration of how these financial principles can be successfully applied. In this way the activities of Ark support the message which the Trust seeks to communicate and propagate in relation to Christian financial literacy.

...

Ark has advanced mortgages to many churches that required financial support. It is difficult for churches to borrow through conventional means as their income is not certain, and a number of churches have wound up as a result of financial difficulty. The churches that Ark has assisted now carry out a range of ministries which provide social, emotional and spiritual support to members of their respective communities.

However those who are financially comfortable are likely to obtain little or no benefit from the Trust. Indeed it would be more financially prudent for these people to purchase a property through a bank immediately rather than contribute to a charity and wait ten or more years. ... Therefore, those who are of middle or upper income receive little or no benefit by donating. Those who do donate to Liberty Trust do so primarily to advance the Trust's charitable activities and to benefit others ... In this way the activities of the Trust and Ark assist to close the gap between the rich and the poor.

...

We believe that the Trust carries out activities in line with its fundamental purpose to advance the principles of the Christian faith. The work of the Trust, directly and via Ark, is directed at all members of the public, not just at those who subscribe to the Christian faith. In addition, the Trust demonstrates the Biblical principles of personal and domestic financial management through the activities of Ark, which assists in providing interest free loans to enable the underprivileged to purchase residential accommodation in order to live free of the shackles of debt and unreasonable interest charges which adversely affects the lives of so many New Zealanders.

We believe that the Trust carries out significant good works throughout New Zealand, improving lives of ordinary citizens and helping many to better understand the Christian faith.

[39] The Charities Commission requested some further financial information, which was supplied. A meeting between representatives of the Trust and the Charities Commission took place on 20 January 2010. This was followed up with a letter from Liberty Trust's lawyers dated 3 February 2010 together with a further memorandum. The letter said that Liberty Trust existed for the "advancement of the Christian faith." It said that there was an identifiable benefit to members of the public through Liberty Trust's work and activities and it referred to testimonials from individuals who had benefitted.

[40] The accompanying memorandum said:

Our lending is charitable firstly because the lending is strictly in accordance with the Bible's instructions regarding finances and it demonstrates to the public the validity of the Bible – thereby advancing religion.

Secondly it is also charitable because it enables people to own a home who would never be able to own a home without charitable assistance – thereby relieving poverty. Let us address these two points individually:

1. Advancement of Religion

The Holy Bible has much to say about personal management of money including lending. For example approximately a third of the teachings of Jesus were in regard to finances, such as sowing and reaping, stewardship, giving and lending. Martin Luther saw three conversions necessary for the believer, conversion of the heart, of the mind, and of the wallet.

...

The principal purpose of Liberty Trust is to teach and demonstrate the Bible's financial principles in order to bring liberty. Ark Resources Ltd supports this teaching by providing loans according to the commands of Scripture thereby demonstrating the Bible's validity today.

[41] The memorandum commented that their surveys showed that once a mortgage was repaid, charitable giving is "almost always increased." The memorandum referred to "the farming co-operative trust and the Catholic newspaper trust" that had been "mentioned" during the meeting. It said that it understood the trusts in those cases did not qualify as charitable because they did not advance religion or education, relieve poverty or provide a direct public benefit, but were primarily commercial activities. It said that the "lending activities" of Liberty Trust advanced religion and relieved poverty and that the "lending is strictly according to

the commands of the Holy Bible, providing a demonstration of the validity of the Bible, and providing liberty to the poor.”

[42] The memorandum also advanced reasons as to why the scheme also fell within the “relief of poverty” category. (It is not necessary to set out these reasons because this is not pursued in this appeal.)

[43] Subsequent to this, Liberty Trust provided further information to the Charities Commission about those who received “sponsored” loans (that is loans to people who had not made contributions at all or to the required level). This information included the comment that the number was not 57 as previously advised, but 75 and that there were possibly more.

### **The Charities Commission’s decision**

[44] The Charities Commission’s decision was given on 15 April 2010. It decided that Liberty Trust was not qualified for registration and was to be removed from the register.

[45] The Charities Commission considered that the loan scheme was not for the relief of poverty. It reached this conclusion because a person did not need to be poor to be eligible for the interest free loan. It also considered that Liberty Trust was not for the charitable purpose of advancing education on the basis that advancing education was not a stated purpose of Liberty Trust.

[46] Under the advancement of religion head the decision said this:

43. In order for a purpose to be charitable under advancement of religion, it must have the following elements:
  - i. There must be a belief in a supernatural being, thing or principle; and
  - ii. An acceptance of conduct in order to give effect to that belief; and
  - iii. The promotion of religion, the spreading of its message ever wider, and taking of some positive steps to sustain and increase religious belief; and

iv. Benefit the community or a section of the community. The Courts will generally assume this unless it is proved to the contrary.

41. Clauses 1(a), (b), (d) and clause 2(c) of the Trust's rules provide that one of the purposes of the entity is to promote the Christian faith, through means such as religious services, public meetings, missionary meetings, exhibitions and lectures.
42. The Trust has stated that its activities involve promotion of the biblical financial principles through a range of activities including organising public meetings and seminars, publishing newsletters, and distributing videos and DVDs. The Trust has also advised that "one of our priorities is to assist those in financial need and bringing relief from financial pressures and also to demonstrate Christian care for the social, physical, emotional & spiritual needs of the New Zealand Community."<sup>21</sup>
43. However, the Trust has also advised that "The assistance is provided to people of all religious beliefs, without partiality." The teachings take place largely in public places, where the emphasis is not on propagating the Christian doctrine but on educating people on the biblical financial principles relating to saving, wise spending and charitable giving.
44. In *Re Lawlor*,<sup>22</sup> a gift to establish a Catholic daily newspaper was not considered charitable. In that case, the Court made a distinction between "advancement of religion" and "conducive to religion". Accordingly, Dixon J stated:

The Character of the Journal contemplated by the testator is indicated only by the phrase 'a Catholic daily newspaper'. There are no expressions referring to the purposes of religion. It is only such expressions that should be presumptively construed as charitable. The reference to religious objects must be contained, if at all, in the word 'catholic'. But that word embraces much more than the 'purposes of religion' even in the ordinary unrestricted sense of those words ... The conduct of a newspaper may be considered conducive to religion or a form of religion, but no more. Indeed it is an activity which cannot be confined even within the wide description of conducive to religion.<sup>23</sup>

45. On that basis, the Commission considers that teaching financial principles derived from the Bible are, at best, conducive to religion, as opposed to advancing religion.

[47] Under the heading "Is there a public benefit?" the Commission said:

48. The public benefit criterion necessarily requires that any private benefits arising from the Trust's activities must only be a means of

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<sup>21</sup> Letter from the trust to the Commission dated 17 September 2009.

<sup>22</sup> *Roman Catholic Archbishop of Melbourne v Lawlor* (1934) 51 CLR 1.

<sup>23</sup> *Roman Catholic Archbishop of Melbourne v Lawlor* at 36.

achieving an ultimate public benefit and therefore be ancillary or incidental to it. It will not be a public benefit if the private benefits are an end in themselves. [*Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218; *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294.]

49. Courts have held that mutual benefit arrangements are not charitable. In *Re Hobourn Aero Components Limited's Air Raid Distress Fund*, [[1946] 1 Ch 194; see also *Re Harris Scarfe Ltd [1935] SASR 433*.] the Court held that a scheme whereby members put money into a fund from which they could get payments when in need was not charitable. This is because the mutual benefit arrangements “stamp the whole transaction as one having a personal character, money put up by a number of people, not for the general benefit, but for their own individual benefit”. [*Re Hobourn Aero Components Limited's Air Raid Distress Fund*]
50. Information provided by the Trust and information on the Trust’s website indicate that most beneficiaries of the Trust are the persons who donate to the trust. The benefits arise from the right to an interest free loan in proportion to the amounts donated. Hence, people who donate more can receive a larger benefit (that is, a bigger loan amount). The benefit is therefore connected to trust membership.
51. The Commission considers that the scheme promoted by the Trust is similar to a mutual fund or cooperative scheme for the benefit of members. As such organisations have been held to be not charitable, the Commission concludes that there is insufficient public benefit for the Trust’s purposes to be charitable.

### **Application for further evidence**

[48] The appeal proceeds on the basis of the evidence before the Charities Commission. Special reasons are needed for leave to be granted to adduce further evidence.<sup>24</sup> Liberty Trust sought leave to adduce further evidence for the appeal in the form of affidavit evidence and material from its website. The affidavit evidence is directed to the theological issues on which Liberty Trust is based and is relevant to why it contends that it advances religion. The website material provides further information as to Liberty Trust’s operations and is also sought to be adduced in support of its contention that its purpose is to advance religion.

[49] The special reason for granting leave is said to be that the Commission breached natural justice. That is because in its notice of intention to deregister it had

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<sup>24</sup> Rule 20.16 of the High Court Rules.

said that it accepted that teaching biblical financial principles advanced religion. Having accepted that, it did not foreshadow that it had changed its view. The respondent opposes the application on the basis that the further evidence does not meet the test of being cogent, likely to be material, and unable to have been reasonably produced at an earlier stage.

[50] I consider that there are special reasons to adduce the evidence. It is apparent that the website was available to and accessed by the Charities Commission in its investigation. All of the material on the website should be regarded as evidence before the Charities Commission, not just those parts of the website which the Charities Commission regarded as relevant. I also accept the point that Liberty Trust were not on notice that the Charities Commission did not regard teaching Biblical financial principles as advancing religion. Having been told that this was accepted, their submissions focussed on why the lending scheme was part of the teaching. Liberty Trust was therefore not on notice that evidence directed to the issue of why teaching Biblical financial principles has the purpose of advancing religion would be helpful in the decision to be made by the Charities Commission. To the extent that the affidavits address this point they are admitted and I have referred to them in this Judgment where relevant.

### **Advancement of religion?**

#### *Context*

[51] Advancement of religion is one of the charitable purposes expressly referred to in the Charities Act. What is meant by “advancement of religion” is not defined further in the Act, except that it is something that is considered to be of benefit to the community. That follows from the last category of charitable purpose which is described as being “or any other matter beneficial to the community.” This reflects the point that it is “the element of public benefit that justifies the legal and fiscal concessions granted to charities.”<sup>25</sup>

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<sup>25</sup> Gino Dal Pont *Charity Law in Australia and New Zealand* (Oxford University Press, Oxford, 2000) at 13.

[52] Beyond that, it is necessary to look to case law for further elaboration. The starting point is to note that the meaning of charitable purpose is not its natural and ordinary meaning, but its legal or technical meaning. That point was made in *Special Commissioners of Income Tax v Pemsel*,<sup>26</sup> a 19<sup>th</sup> Century decision of the House of Lords in which Lord Mcnaghten set out the four categories of charitable purposes from which the charitable purposes described in our Charities Act derives.

[53] Trusts which have the purpose of advancing religion are viewed as having a charitable purpose in law (with the consequence that they qualify for the legal and fiscal concessions granted to charities). As to why “advancement of religion” is one of the four categories of charitable purposes, in *Roman Catholic Archbishop of Melbourne v Lawlor*<sup>27</sup> this was said to be because the “law has found a public benefit in the promotion of religion as an influence upon human conduct.”

[54] The charitable status for trusts which advance religion is not without its critics. In a case commentary on *Centrepont Community Growth Trust v Commissioner of Inland Revenue*<sup>28</sup> the point is made that whether there is social utility in the advancement of religion is “a very much more doubtful proposition.” This is because the effect of religion is difficult to define and measure and any effect “is usually of a very personal nature.” The question is asked “why should some members of the community bear a heavier burden of taxation merely because the beliefs of others entitle their organisations to exemption from taxation?” A little more recently, in *Hester v Commissioner of Inland Revenue*,<sup>29</sup> it was said “given the very considerable concessions made to charities, and given contemporary agnosticism and even seeming indifference in many quarters to religion, what is it that today supports the concession in favour of religious charities, and more particularly, where are the edges of this head of charity to be drawn?”

[55] That said, our charities law has always accepted “advancement of religion” as a charitable purpose and in so doing has accepted that this is of public benefit such

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<sup>26</sup> *Special Commissioners of Income Tax v Pemsel* [1891] AC 531 at 583.

<sup>27</sup> *Roman Catholic Archbishop of Melbourne v Lawlor* (1934) 51 CLR 1 (HCA) at 33.

<sup>28</sup> *Centrepont Community Growth Trust v Commissioner of Inland Revenue* [1985] 1 NZLR 673; A.W. Lockhart “*Centrepont Community Growth Trust v Commissioner of Inland Revenue*” (1984-1987) 5 AULR 244.

<sup>29</sup> *Hester v Commissioner of Inland Revenue* [2005] 2 NZLR 172 at [6].

as to be entitled to the special status that entails. Some limit is placed on how far this category will extend by the organisation needing to satisfy the Charities Commission and the courts that they ascribe to a “religion” (as that may be defined by the courts) and that the activity they engage in is part of that religion and done for the purpose of advancing that religion. As discussed further below, the category is also limited by the requirement that the advancement of religion have a public, rather than a private, benefit and that it not be contrary to public policy. However, beyond those general points, where the bounds of this head of charity properly are drawn is not necessarily clear. *Hester* cautions against any extension of the bounds by saying that to do so “raises very real issues both of doctrine, and public policy.”<sup>30</sup>

[56] It has also been suggested that what might constitute “religion” should vary depending on whether the case involves a gift (where it is suggested that more latitude might be given to giving effect to the donor’s intention) and cases involving claims for rating or other relief from public revenue gathering (which affects the public at large).<sup>31</sup> Such a distinction is not advanced here and does not seem to have featured in the cases to which I have been referred. I therefore proceed on the basis that the cases discussing “advancement of religion” as a charitable purpose in the context of gifts are equally applicable to cases discussing that charitable purpose in the context of tax and other public revenue gathering exemptions.

### *Religion*

[57] The meaning of “religion” has been discussed in a number of cases. For present purposes it is sufficient to refer to the discussion of that topic in *Tudor*<sup>32</sup> and *Dalpont*.<sup>33</sup> Belief or faith in a supreme being and worship of that being is accepted as being religion in the context of charity law and the issues have been around non Judeo-Christian religions.<sup>34</sup> Liberty Trust claims to advance the Christian faith.

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<sup>30</sup> *Hester v Commissioner of Inland Revenue* at [8].

<sup>31</sup> *Dal Pont* at 152 referring W Sadowski “On Legal Definition of Religion” (1989) 63 *Australian Law Journal* 834 at 842-843.

<sup>32</sup> Jean Warburton, Debra Morris and N F Riddle *Tudor on Charities* (9<sup>th</sup> ed, Sweet & Maxwell, London, 2003) at [2-049].

<sup>33</sup> At 148 to 149.

<sup>34</sup> In New Zealand, *Centrepont Community Growth Trust v Commissioner of Inland Revenue* applied the meaning of religion as determined in *Church of the New Faith v Commissioner for Pay-roll Tax (Vict)* (1983) 154 CLR 120 which held that Scientology was a “religion”.

There is no issue that the Christian faith is “religion” for the purposes of the Charities Act.

### *Advancement*

[58] I have not been referred to any New Zealand decision which discusses what is meant by the “advancement” of religion as a charitable purpose.<sup>35</sup> Both parties referred to *United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council*<sup>36</sup> which defined “advancing” religion as meaning “to promote it, to spread its message ever wider among mankind; to take some positive steps to sustain and increase religious belief.” This was said to be able to be done “in a variety of ways which may be comprehensively described as pastoral and missionary.”<sup>37</sup>

[59] That definition was provided in the context of whether Freemasons were entitled to rating relief as having the purpose of advancing religion. To belong to the Freemasons a person did not need to practise any religion providing he believed in a Supreme Being and lived a moral life. This was viewed as laudable but not the same as advancing religion. It was noted that it might be argued that religion can be advanced by “example as well as precept” but there was no evidence before the Court that the main object of Masons was to go out in the world and, by their example, lead persons to one religion or another. There was “no religious instruction, no programme for the persuasion of unbelievers, no religious supervision to see that its members remain active and constant in the various religions they profess, no holding of religious services, no pastoral or missionary work of any kind.”<sup>38</sup>

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<sup>35</sup> *Centrepoint Community Growth Trust v Commissioner of Inland Revenue* was concerned with whether the Centrepoint community was a “religion” such that the purchase of property on which the community lived and practised their beliefs was entitled to a tax exemption. It was held that it was a religion and it followed that the trust was for a charitable purpose as advancing religion (without any discussion of the issue of “advancement”).

<sup>36</sup> *United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council* [1957] 1 WLR 1080 at 1090.

<sup>37</sup> At 1090.

<sup>38</sup> In New Zealand freemasonry was held not to have an exclusively charitable purpose because it was an organisation which sought to achieve its aims by making its members better people and any public benefit from this was too remote: *Re The Grand Lodge of Ancient Free and Accepted Masons in New Zealand* [2011] 1 NZLR 277 (HC).

[60] The respondent submits that Liberty Trust cannot be described as either “missionary” or “pastoral.” Liberty Trust submits that it is not necessary to fit within the category of either “pastoral” or “missionary” as these terms should be considered as a whole. Liberty Trust submits that it advances religion by example because it teaches, through action, the biblical financial principles.

[61] That teaching biblical financial principles advances religion seems to have been accepted by the Charities Commission in relation to Liberty Trust’s seminars and publications when it gave its Notice of Intention to remove the Trust from the register. At that stage the Charities Commission viewed the lending scheme as a separate activity to Liberty Trust’s teachings, and whereas the latter had a charitable purpose, the lending scheme did not.

[62] It took a different view in its decision. By this stage it was clear that Liberty Trust was contending that the lending scheme was part of its teachings (refer [38] above). Yet the Charities Commission appears to have confined its consideration under “advancement of religion” to Liberty Trust’s activities other than the lending scheme (refer paras 42 and 43 of its decision) and taken the view that the Christian doctrine was not being propagated by educating people in public on “biblical financial principles” (refer para 43 of its decision). From there it seems to have concluded that principles which were about “saving, wise spending and charitable giving” were at best conducive to religion.

[63] As to this, the respondent’s written submissions said:

The Commission queried whether the teachings which are not based on propagating the Christian doctrine but rather are advocating financial principles derived from the bible were at best conducive to religion as opposed to advancing religion. An example of this is that the booklets produced by the Trust for children and teenagers are published in two versions. One version includes bible references and the other version excludes any biblical reference. Accordingly, in *Roman Catholic Archbishop of Melbourne v Lawlor* (1934) 51 CLR 1 (HCA), the publications are at most teaching financial principles from a Christian perspective. In any event, the Commission considered that this aspect of the Trust’s activities could be considered as charitable in that it amounted to advancing education.

[64] There are several points to make about this submission. First, the Commission did not “query” this point but made a decision that the teachings did not

advance religion. Secondly, the respondent's explanation that some of the books did not include bible references was not something identified as relevant by the Charities Commission in its decision. Thirdly, it is not relevant to understanding the Charities Commission's rationale on the advancement of religion ground to know that the Charities Commission considered that Liberty Trust's teachings could fall within the advancement of education category of charitable purposes. That did not assist Liberty Trust because the Charities Commission also decided that advancement of education could not be relied on by Liberty Trust (because it was not one of its stated purposes.)

[65] The Charities Commission seems to have had three reasons in its decision for rejecting Liberty Trust's teachings of biblical financial principles as advancing religion. They were that the teachings were provided to people of all religious beliefs without partiality; that the teachings were largely in public places; and that the emphasis was not on propagating Christian doctrine but on educating people on the biblical financial principles relating to saving, wise spending and charitable giving. None of these reasons, as stated in its decision, are convincing.

[66] As to the first reason, Liberty Trust submits that to "have an organisation which is overtly Christian offering assistance to all people would appear to be quintessential advancing religion." Liberty Trust draws a comparison with the actions of the Salvation Army in providing assistance in the aftermath of the Christchurch earthquake and says that those actions could hardly be described as conducive to religion rather than advancing it because the Salvation Army assists anyone in need regardless of religious creed. I agree with this point.

[67] As to the second reason, it is not the case that religion can be advanced only through activities conducted inside churches. Christian doctrine which is propagated in public places does not alter the nature of what is propagated: it remains Christian doctrine. For example, bequests for the distribution of bibles and other religious books are recognised as charitable<sup>39</sup> and such distribution will occur outside churches in public places as well as inside churches.

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<sup>39</sup> *Tudor* at [2-055].

[68] As to the third reason, I do not understand the distinction the Charities Commission has drawn: educating people on the biblical financial principles is to propagate Christian doctrine. The affidavit of Bruce McDonald, one of the founders of Liberty Trust, says:

In the totality of the Scriptures there are more than 1,000 references to matters concerning finance, a person's relationship with resources, giving and the care of the poor. This is more than references dedicated to topics such as faith, salvation, even forgiveness. It is clearly a key Biblical theme.

The Gospel records for us more than 40 Parables (stories) that Jesus told to illustrate His teaching points and to tell people about what the Kingdom of God was like. Over half of these have to do with attitudes to resources, stewardship of money and the care of others.

[69] The evidence before me shows that biblical financial principles, as taught by Liberty Trust, are an aspect of Christian faith as expounded by Liberty Trust. As Liberty Trust's submissions put it, Liberty Trust's literature "proceeds on an underlying premise that the God of the Bible is real, that His Word is true and that if His Word is obeyed liberty and blessings come."

[70] In finding that teaching biblical financial principles was merely conducive to religion, the Charities Commission relied on what Dixon J said in *Roman Catholic Archbishop of Melbourne v Lawlor*. As Liberty Trust submits, the Charities Commission simply cited Dixon J's comment as though it was the governing principle and that Liberty Trust's activities were obviously within it. However in that case the High Court of Australia (whose decisions, although entitled to considerable respect, are not binding in New Zealand) divided 3:3 on the issue of whether the gift was for a charitable purpose.

[71] The case was concerned with the will of a testator who died in 1932. The testator's bequests included a bequest to "establish a Catholic daily newspaper." Evidence was given that daily newspapers were used for the advancement of Catholic religion "by defining its attitude towards moral problems of the day, defining its teachings on matters of faith and morals and correcting and counteracting misrepresentation as to the history of the Church and its attitude towards problems both past and present." This was "regarded by the Church as tending directly to the instruction and edification of the public in matters relating to

the Roman Catholic religion.” There was also evidence before the Court of the Pope’s declaration in 1927 to the Archbishops and Bishops of Austria as to “the enormous influence for good and evil which daily newspapers” have and that it was their duty to make use of newspapers to promote the salvation of their people. The Pope declared that “by means of good newspapers...false views are gradually dissipated, and Catholics are strengthened to make open profession of Faith and of an upright life.”<sup>40</sup>

[72] Two of the Judges in the High Court (Gavan Duffy CJ and Evatt J) said this:<sup>41</sup>

We are quite unable to see the difference between the Catholic Church’s propagating its religious tenets and regulating the performance of religious duties (1) through a medium reaching into the homes of the multitude, including Catholics and non-Catholics, and (2) through the ordinary medium of sermons and tracts. The former may be as much a method of preaching the gospel as the more direct and obvious method of strengthening or extending faith through missions and sermons.

[73] They noted that the testator’s intent was not for a newspaper directed at profit but considered that, even if it was self-supporting, that should not prevent it from being regarded as a means of disseminating Catholic faith and teachings. They said that it “has to be recognised that methods of preaching and extending a gospel or a faith alter and develop with the changing years.”<sup>42</sup> They considered the “real crux” of the case to be whether a newspaper was “incapable of performing for church and religious purposes the very function it discharges for many other purposes.”<sup>43</sup>

[74] McTiernan J agreed with this view. He considered<sup>44</sup> that the testator meant “a newspaper of the Catholic Church”. He referred to authorities which supported the view that a gift made for uses and purposes of the Church are necessarily public and religious. He considered that there was no suggestion that a daily newspaper “could not form part of the equipment and means which the Church may maintain and use for the instruction and edification of the public” and that here there was

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<sup>40</sup> To put this in some brief context: In 1927 there was significant conflict (in which protestors were killed) between opposing political factions in Austria and the Roman Catholic Church was embroiled in this (<[www.wikipedia.org](http://www.wikipedia.org)>: “July Revolt 1927”).

<sup>41</sup> *Roman Catholic Archbishop of Melbourne v Lawlor* at 16 and 17.

<sup>42</sup> At 17.

<sup>43</sup> At 17 and 18.

<sup>44</sup> At 50 and 51.

evidence that newspapers were viewed as having that purpose. He considered that conveying secular news in the newspaper would be subordinate and ancillary to the purposes and activities of the newspaper.

[75] The conclusion of Dixon J (one of the three judges that concluded that the gift to a Catholic newspaper was not charitable) is referred to in the Charities Commission's decision (refer [46] above.) In reaching that conclusion Dixon J<sup>45</sup> drew a distinction between pursuits, in themselves secular, which were inspired by religious motive and pursuits which involved "the spread or strengthening or spiritual teaching within a wide sense, the maintenance of doctrine on which it rests, the observances that promote and manifest it." The former would not be sufficient to be charitable whereas the latter would. He considered that mere connection with religion was not enough and he gave the example of political objects which may be of deep concern to a religion but which are not charitable religious purposes.

[76] Rich J considered that a Catholic newspaper would have mixed purposes not all of which could be viewed as being for charitable purposes.<sup>46</sup> This view seems to have been because the newspaper could cover topics not all of which would be topics which could be said to advance religion. Starke J was of a similar view. He said that the conduct of the paper was open to such latitude "in the advancement and propagation of the religious, education, social, political, economic and other views or policies of the Catholic Church, that no Court could control or execute the trust."<sup>47</sup>

[77] In summary, three judges relied on the evidence that the purpose of a Catholic newspaper was to provide religious instruction. They accepted the evidence that a Catholic newspaper, by defining attitudes towards moral problems of the day and accurately presenting the Church's attitudes towards problems past and present, would advance religion. The other three judges considered that the Catholic Church could become involved in matters such as politics (which was regarded as being separate from religious purposes) and therefore a Catholic newspaper could have purposes which would be outside the legal definition of charitable purposes. One

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<sup>45</sup> At 32 and 33.

<sup>46</sup> At 23.

<sup>47</sup> At 25-26.

side takes a wide view of the means by which religion may be advanced. The other takes a narrow view.

[78] Turning to whether the analysis in *Lawlor* supports the Charities Commission's decision, the issue in *Lawlor* was that the newspaper presented secular news. Budgeting and financial advice is a secular activity and so, on the narrow view in *Lawlor* that activity might be said to be conducive to religion rather than advancing religion. However Liberty Trust's teachings about financial matters are presented as part of "the Word of God." Unlike the Catholic newspaper where news on the events of the day is secular news even if presented in a way conducive to good morals, here Liberty Trust's teachings are biblical teachings (as its promoters believe them to be). *Lawlor* therefore does not seem to me to provide support for the Charities Commission's view that educating people of all religious beliefs, in public, as to "biblical financial principles" does not advance religion.

[79] I therefore do not agree with any of the grounds on which the Charities Commission decided that teaching biblical financial principles did not advance religion. If the publications advance religion, then what of the loan scheme? This is said by Liberty Trust to be a practical outworking of the Christian faith. As to this there is affidavit evidence before me from Laurence Guy, who is a Baptist pastor, missionary and lecturer. His evidence explains the importance in the Christian faith of practising beliefs generally and in relation to money as follows:

... Fundamental to the Christian gospel is the notion of the kingdom of God (Mark 1.15; Matthew 6.33). This concept is explained as the outworking of God's will on earth (Matthew 6.10). This outworking includes attitudes of sharing, mutuality etc. The earliest church embodied this in radical sharing of possessions (Acts 2.44). While such radical living did not continue (or did not continue universally) later on, the principle of mutuality was a core value of the Christian church, expressed by St Paul in 2 Corinthians 8.12-15.

The biblical witness (Old and New Testaments) does not have a western distinction between secular and sacred. The Christian religion is concerned with the whole of life. Christians should not only believe but put into practice their beliefs. St James exhorts Christians to be doers of the word, not hearers only (James 1.22).

To divorce teaching from practice is artificial and directly contrary to the fundamentals of Christianity and the teachings of Christ.

The Old Testament teaches that lending within the community of faith should be interest free, see (Deut 23.20, Nehemiah 5.7).

A major teaching emphasis in the New Testament is that Christianity is vitally concerned with the proper use of money, with giving, with generosity etc.

This concern for generosity carried over into the early church or post-New-Testament times. Justin Martyr (c.150AD) wrote: ‘We who above all else loved the ways of acquiring riches and possessions now hand over to a community fund what we possess and share it with every needy person’ (Apology 1.14). Tertullian (c.200AD) wrote: ‘Family possessions, which generally destroy brotherhood among you, create fraternal bonds among us. One in mind and soul, we do not hesitate to share our earthly goods with one another. All things are common among us except our wives’ (Apology 39). This led to the early-third-century document, *The Apostolic Tradition*, indicating that the church criterion for bestowing Christian baptism was the involvement of the candidate in a life of humanity and compassion (chapter 20). All this points to the Christian message being focused as much on the concerns of humanity as much as ‘other-worldly’ concerns.

...

In my opinion the operation of the Liberty Trust is fundamentally religious and in conformity with the teachings I have referred to above. It is facilitating the sharing of financial burdens that are increasingly difficult to carry outside the community and the promotion of *shalom*. A guiding principle is Galatians 6.10: *Let us work for the good of all, and especially those of the family of faith.*

The concept that those who support the Trust may in the fairly distant future also be eligible to receive a loan if they then qualify for such a loan is in no way inconsistent with the Christian principle of a community providing mutual support to those in need. As I understand it, no person who donates to the Trust has any right or entitlement to receive a loan and many who donate have no expectation of or requirement to receive such a loan. They also never receive back their donation.

Liberty Trust practices advance the cause of the Christian religion by being an attractive example to others, and this helps to attract people to the Christian faith.

Further, by providing them with interest free loans, this frees up Christians and their resources for God’s service.

[80] A difficulty with accepting practical outworkings as advancing religion is that they may embrace activities that are carried out by non-religious organisations which do not enjoy the legal and fiscal benefits that apply to charities. An Australian decision which considered the meaning of “advancing religion” in this context is

*Presbyterian Church (New South Wales) Property Trust v Ryde Municipal Council*.<sup>48</sup>

That case was concerned with whether land owned by a trust was entitled to a rating exemption. The rating exemption depended on whether the land, on which a retirement home was operated, belonged to a “public charity” and was being used for the purposes of the public charity.

[81] The trust was a Presbyterian Church property trust set up under private legislation. The trust purchased land which adjoined the church and established the retirement village on the land. The retirement village was made up of 26 self-contained units. The residents paid a weekly service fee and in return had the benefit of companionship, proximity to the church, nursing attention and transmission to a nursing home when that became necessary. Neither creed nor poverty were a requirement to take up residence though many of the residents belonged to the church and the minister from the church acted as chaplain to the home.

[82] At first instance the Court held that the trust was a public charity. It held that the land was being used for the purposes of the public charity because its use as a retirement village advanced religion, and in particular it advanced the Presbyterian faith. The Judge referred to the evidence on behalf of the trust that “it is, in our opinion in the Presbyterian Church, a living testimony of the words of our Lord Jesus Christ that we go out into the community and relieve those who are deprived. Without that source of inspiration we may look at our mission’s work in a different way. But that is the wellspring for the advancement of religion as the Church sees it.”<sup>49</sup> The Judge said that the “advancement of religion, as I see it, connotes not only proselytizing, but also the preservation, confirmation and advancement of faith of the converted and other believers.”

[83] On appeal by way of case stated, the majority judgment, given by Glass JA,<sup>50</sup> was principally directed to whether, as a matter of construction of the legislation under which it was set up, the trust was a public charity. It was held that it was. On

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<sup>48</sup> *Presbyterian Church (New South Wales) Property Trust v Ryde Municipal Council* [1977] 1 NSWLR 620 (Land and Valuation Court); *Presbyterian Church (New South Wales) Property Trust v Ryde Municipal Council* [1978] 2 NSWLR 387 (NSWCA).

<sup>49</sup> At 630.

<sup>50</sup> Moffit P agreed with this judgment.

the question of whether the land was being “used for the purposes of the public charity,” the Judge concluded the trial judge had made a finding on the evidence that “the maintenance of the home was conducive to the advancement of religion.” That finding meant that the Judge had not made an error of law “in reaching the ultimate conclusion of fact that the home was being used for the purposes of the public charity.”<sup>51</sup>

[84] Mahoney JA upheld the result of the trial Judge but set out his own reasons. In doing so, the Judge grappled with the issue of activities which may have some connection with religion but which might not constitute advancement of religion. The Judge noted that the activities of a church included “the formulation of doctrine and its propagation and the winning of adherents to it... [and] the means by which the religion is practised, e.g., the building of churches, the employment of ministers, and the holding of public services or ceremonies as prescribed by the religion.”<sup>52</sup> He said that, subject to the issue of whether these activities have “the necessary public character,” they are activities which are recognised as advancing religion.

[85] Mahoney JA said that the activities of a church can extend beyond those activities and referred to it being “now part of the activities of the church, not merely to define what are good or appropriate works and exhort its adherents to the performance of them, but also to undertake itself the performance of them.”<sup>53</sup> That raised the question as to why those works are charitable purposes if carried out by a church but which may not have that status if carried out by a secular organisation.

[86] Mahoney JA concluded that a church has “necessarily a direct connection with, or influence on, the advancement of religion...that it should be recognised as charitable, even though its property may be applied to some purposes which, were they purposes of bodies of a different kind, would not be seen as charitable purposes.” He considered that “where a church or analogous body has as one of the purposes to which its property may be applied a purpose which is not a mere ulterior secular purpose, but one directed at and able to be seen as assisting in the advancement of its religious purpose, then the purpose of that religion will be held to

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<sup>51</sup> At 394.

<sup>52</sup> At 403.

<sup>53</sup> At 403.

be religious for present purposes.”<sup>54</sup> He considered that the trust was intimately connected with the Presbyterian Church and so within this principle.

[87] Liberty Trust submits that this case shows that religion is advanced by practical out workings of Christian concern. The respondent submits that the case is distinguishable. The respondent says that Liberty Trust is not a church, it does not have a congregation, the loan scheme is not itself charitable whereas rest homes for the elderly and infirm are, eligibility to join the scheme is not based on religious belief or need and there is no religious instruction to contributors or supervision to ensure that contributors remain active and constant in their religious belief.

[88] In my view the points made by the respondent do not provide a convincing basis for distinguishing *Ryde* because:

- (a) *Ryde* was not decided on the basis that the home for the elderly was charitable because it looked after the elderly or the infirm. *Ryde* is about whether activities which are carried out by a religious organisation, as part of the faith ascribed to, are charitable purposes even though they are activities which secular bodies may also carry out.
- (b) It was important in *Ryde* that the activities were carried out by a church “or analogous body.” Liberty Trust is not a church, but it is a trust set up for “the undertaking of social welfare and outreach Christian ministries of the Whakatane Baptist Church and Whakatane Christian Fellowship church.” Liberty Trust’s website also says that it is under the ‘covering’ of those churches. Its association with those churches and the beliefs expounded by them is evidenced by the reference to the “God’s Financial Principles in Action” brochure on the application form, and the references to God and passages from the Bible in that brochure, on the website and in the newsletters.

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<sup>54</sup> At 408.

- (c) In *Ryde* eligibility for the home was not based on religious belief or need and while religious instruction was available, it was not imposed and there was no requirement for the residents to remain active or constant in their belief. The same can be said in relation to Liberty Trust. Christian principles are espoused by Liberty Trust but belief in them is not a requirement to obtain the benefits of the scheme. The testimonials show that a number of contributors to the lending scheme have seen the scheme as connected with their faith.

[89] Focussing on the analysis (rather than factual points of distinction), the view of the Judge at first instance, and accepted by the majority judgment as not being in error, was that because the trust believed that it was God's will that the Church do good works, and doing the good works inspired them in their faith, then the trust was advancing their religion. (That is my understanding of the evidence given on behalf of the Church as set out above at [82].) This view accepts that advancing religion can include activities in the community rather than being confined to praying, preaching and building churches or looking after priests, ministers, nuns and the like. Mahoney JA agreed with this but emphasised the need for the activity be carried out by a church or analogous body in pursuit of its religious purposes.

[90] There is something to be said for this approach. Preachers who say one thing but who are not seen to put their words into actions or who conduct their lives contrary to the principles they preach may do less to advance their religion than those who lead by example. If charitable status is appropriate for churches and their public ceremonies or rituals it seems logical that this status should also apply to their other activities which are carried out as part of the faith to which the church subscribes. For example if a religious order believes that worship is best done through deeds rather than silent prayer,<sup>55</sup> and if those deeds reaffirm and sustain that order's faith and lead to others ascribing to that religion, then their religion is advanced. The mere fact that others may carry out the same activities without

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<sup>55</sup> As was said in *Church of the New Faith v Commissioner of Pay-Roll Tax (Vict)* [1982-1983] 154 CLR 120 at 136, the tenets of a religion may give primacy to one particular belief or to one particular canon of conduct but variations in emphasis between religions "are irrelevant to the determination of an individual's or a group's freedom to profess and exercise the religion of his, or their, choice."

ascribing to the religion, does not mean that those that are doing the activities for religious purposes are not advancing religion by carrying out that activity.

[91] Liberty Trust referred to *Re Hood*<sup>56</sup> as an example of where the taking of active steps can advance religion. In that case the Court accepted that a bequest for active steps to be taken to minimise and extinguish the alcohol trade, which the testator saw as a force preventing the application of Christian principles to human relationships, was upheld as a gift for the advancement of Christian principles. A further example of advancing religion by deeds is the case of *Re Banfield*.<sup>57</sup> In that case a gift was made to the Pilsdon Community House which was a religious community where people could go to lead a simple pious life together. It existed “to do the will of God in practical Christianity.” It was open to persons of all creeds and to those who had none. It looked after members of the public who needed help for a variety of reasons. The gift was upheld as having the charitable purpose of advancing religion.

[92] Liberty Trust referred to other cases as examples of religion being advanced indirectly (by activities which in and of themselves are secular). These involved a bequest to officers of a society of clergymen to pay the expenses of an annual dinner which was upheld as likely to encourage attendances at meetings;<sup>58</sup> a bequest to provide prizes at a Baptist Sunday School;<sup>59</sup> and the purchase of land as a sports ground by a trust which endeavoured to “promote the spirit and mental and social condition of young men and the general extension of Christ’s Kingdom.”<sup>60</sup>

[93] Applying the principles from these cases, a mortgage scheme in and of itself is not an obvious candidate for the “advancement of religion” category of charitable purposes. It would not become a scheme which advances religion merely because it is operated by those who subscribe to the Christian faith (or other faith that would qualify as a religion). That might at best give it a connection with religion but it would not advance religion. Nor would it be enough that it was set up because its

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<sup>56</sup> *Re Hood* [1931] 1 Ch 240 (CA).

<sup>57</sup> *Re Banfield* [1968] 2 All ER 276.

<sup>58</sup> *Re Charlesworth* (1910) 26 TLR 214 (Ch Div).

<sup>59</sup> *Re Strickland’s Will Trusts* [1936] 3 All ER 1027 (Ch Div).

<sup>60</sup> *Belfast City YMCA v Commissioner of Valuation for Northern Ireland* [1968] NI 3 (CA).

founder believed it was what the Bible teaches or that it was the will of God. That would mean that it was inspired by religion but it would not be advancing religion. Nor would it be enough to show that people who participate in the scheme do not have money concerns and so are free to spend more time praying or going to church. That might be conducive to religion but would not necessarily advance religion (since people may use their free time for activities that have nothing to do with religion).

[94] To advance religion the scheme must do more than have a connection with religion, be motivated by it or be conducive to it. Here it is said that the scheme advances religion because it “teaches” the Bible’s financial principles (such teachings include that money should not be a god or end in itself and that Christians should not burden themselves with heavy debt)<sup>61</sup> and that by joining the scheme contributors help many others. Teaching religion through a lending scheme intended to be operated in accordance with Scripture, and which is promoted as being such, is to spread the message of the religion or is to take positive steps to sustain and increase religious beliefs.<sup>62</sup>

[95] Aspects of the scheme’s promotion have a commercial flavour to them. For example, the saving of a huge amount of money is referred to. The website refers to the scheme as “the best investment possible.” The tax advantage through its charitable status is referred to on its website. That commercial ways of promoting a religion are used is not, however, disqualifying. Importantly, the commercial nature of the scheme is limited. The scheme does not generate profits for its founders. As set up under the trust deed this is prohibited. All funds are to be applied in promoting Liberty Trust’s objectives. Those who donate money and then become eligible for a loan repay the whole of the loan (no deductions in the repayment amounts are made by the amount of the donations made) and cannot specify who will have the future use of those funds.

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<sup>61</sup> Discussed in the affidavit of Kelvin Clifford Deal.

<sup>62</sup> The affidavit of Kelvin Clifford Deal states: “It is also hoped and expected that once the borrower has repaid the principal of their loan they, as God’s stewards of their money, will increase their Christian giving and/or the giving of their time to Christian services. A limited survey of 22 who had repaid their loans showed that 19 did, indeed, do that.”

[96] The Charities Commission did not address whether the lending scheme was intended to teach by example. As accepted in *Ryde*, churches may not merely define what are good works and exhort its adherents to perform them, they may undertake the performance of them. To put it another way, Christianity is about being doers of the word not just hearers. Like the Pilsdon Community in *Re Banfield Liberty Trust* exists “to do the will of God in practical Christianity.”<sup>63</sup> While the activities will overlap with secular activities, it is the overt connection with the Christian faith and with the two churches under which Liberty Trust operates that in this case give Liberty Trust’s activities their religious purpose. The overwhelming message promoted by Liberty Trust is a religious one. Throughout its website there are references to the Bible and to God. This religious message is reinforced with the newsletters that go out to those who have signed up to the scheme. Participants in the scheme would struggle not to notice the constant religious message Liberty Trust promotes.

[97] There is no evidence that in practice the promoters of the scheme are using this message to promote an activity for personal advantage or some other ulterior and secular purpose. If that were the case, or if the literature used to promote the scheme was misleading as to the financial benefits or the way in which it operated, or if the funds were not being applied in a manner consistent with the literature then there are other avenues for investigation and redress. In terms of the Charities Act jurisdiction, the Charities Commission accepted that there was adequate proof of Liberty Trust’s belief in the Christian faith (refer [35] above). Counsel for the respondent confirmed that the genuineness of the beliefs on which Liberty Trust operated was not in issue. If religious beliefs are genuinely held, the “truth or falsity of religions is not the business of courts.”<sup>64</sup>

[98] While mindful of the caution expressed in *Hester* as to extending the bounds of this charitable category, I consider that Liberty Trust’s activities are within the existing bounds of this category. To find otherwise would be to confine advancement of religion back to church services, the building of churches and the

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<sup>63</sup> *Re Banfield* at 279.

<sup>64</sup> *Dal Pont* at 150 citing *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515 at 613, 644-645; *Re Caus* [1934] 1 Ch 162 at 168; *Gilmore v Coats* [1949] AC 426 at 459; *Church of the New Faith v Commissioner of Pay-roll Tax* (1983) 154 CLR 120 at 150, 174.

like which is not in keeping with the point made in *Lawlor* that “methods of preaching and extending a gospel or a faith alter and develop with the changing years (refer [73] above) and the cases that have accepted practical outworkings as advancing religion. I conclude that Liberty Trust has the purpose of advancing religion.

### **Public Benefit**

[99] It is accepted that in order to have a charitable purpose the entity must be carrying out its purposes for the benefit of the public. This means that the entity must confer a “benefit” and that it does so in respect of the public or a sufficient section of it.<sup>65</sup> The position at common law is that, in the context of advancement of religion, public benefit is assumed.<sup>66</sup> *Tudor*<sup>67</sup> says that it is “well settled” that “a gift for religious purposes is prima facie charitable, the necessary element of public benefit being presumed unless and until the contrary is shown.” Similarly, *Dal Pont*<sup>68</sup> says that where purposes are found to be religious in nature the court “will generally assume a public benefit unless the contrary is shown.” As *Dal Pont*<sup>69</sup> puts it, this “assumption reflects the court’s reluctance to enter into questions concerning the comparative worth of different religions, and also the view that religion itself commonly generates benefit to the public.”

[100] Although the starting point is this presumption/assumption, it remains for the court to be satisfied that the gift satisfies the public benefit requirement. *Tudor* says that it “is considered that the presumption will be rebutted, and the public benefit will have to be shown positively, if there is evidence that the purpose is subversive of all morality, or it is a new belief system, or if there has been public concern expressed about the organisation carrying out the particular purpose, or if it is

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<sup>65</sup> *Re New Zealand Computer Society Inc* HC Wellington CIV 2010-485-924, 28 February 2011 at [14].

<sup>66</sup> In the United Kingdom in 2006, legislation was passed requiring charities to be demonstrably for the public benefit. (Refer s3 Charities Act 2006 (UK), and also see UK Charity Commission *Analysis of the Law Underpinning the Advancement of Religion for the Public Benefit* (UK, 2008)).

<sup>67</sup> *Tudor* at [2-048].

<sup>68</sup> At 166.

<sup>69</sup> At 166.

focussed too narrowly on its adherents.<sup>70</sup> *Dal Pont*<sup>71</sup> says that where a religious practice promotes conduct inconsistent with the prevailing public policy then there are grounds for denying charitable status. Religions which encourage dangerous risk-taking behaviour are given as an example.

[101] In the present case, if the scheme is for the purpose of advancing religion (as I have found), then the starting assumption is that it confers a public benefit.<sup>72</sup> This assumption is not displaced merely because the Court may have a different view as to the social utility of the Liberty Trust scheme and whether it is an activity deserving of the fiscal advantages that charitable status brings. Here it was not contended that the scheme was contrary to public policy in the sense discussed above such that the benefit would have to be proven by evidence. Nor was it suggested that the scheme was contrary to the Bible or Christian principles<sup>73</sup> or that its aim of “teach[ing] and demonstrat[ing] the Bible’s financial principles in order to assist those in financial difficulty, reliev[ing] financial burdens and advance[ing] the Kingdom of God” was in some way a sham.

[102] Given the assumption of public benefit, and that the Court does not intrude into matters of faith except where they are contrary to public policy, it is not for the Court to say that teaching biblical financial principles is not a public “benefit.” In issue is whether the scheme conferred a “public” (rather than private) benefit. It is not obvious that the Charities Commission considered the question of public benefit from the starting point of an assumed public benefit, although at the outset it had accepted that this was assumed unless the contrary was proven.

[103] The Charities Commission started its discussion of this topic by saying that if there are private benefits from Liberty Trust’s activities which are an end in themselves then they will not be a public benefit. The two cases it cited in support of this point were not cases where the activity was claimed to be for the advancement

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<sup>70</sup> *Tudor* at [2-052].

<sup>71</sup> At 167.

<sup>72</sup> The affidavit of Dr Vivian Grigg filed on behalf of Liberty Trust seeks to explain why the Liberty Trust religious-based co-operative economics is a public benefit but it is not necessary to consider the detail of this.

<sup>73</sup> The affidavit evidence filed by Liberty Trust supports the position that it is consistent with the Bible and the Christian faith.

of religion. One of the cases was concerned with an entity directed at tourism development projects.<sup>74</sup> The other<sup>75</sup> was concerned with an entity with the object of promoting individuals engaged in trade and commerce which was found to confer “freedom to provide private benefits, regardless of the motive of the likely beneficial consequences for employment.”

[104] Having divorced its consideration of the scheme from its purpose of advancing religion, and focusing on private benefits received by contributors to the lending scheme, the Commission considered Liberty Trust’s scheme to be similar to a mutual fund or cooperative scheme for the benefit of its members. It considered this to be a transaction for individual rather than general benefit. The two cases it relied on in support of this point were not cases where the activity was undertaken for the advancement of religion.

[105] The principal case relied on by the Charities Commission was *Hobourn Aero Components Ltd’s Air Raid Distress Fund*.<sup>76</sup> That case concerned a war emergency fund set up by employees of a company. Payments were made to employees who, “due to enemy activity,” were “awkwardly situated.” There was no means test or requirement that the recipient be in a state of poverty or comparative poverty. The fund did not come within any of the first three categories of charitable purpose. It was viewed by the Court as a self-help fund for the individual benefit of those who contributed to it and therefore lacking the requisite public benefit to have charitable status. However, Lord Greene MR also stated that the mere fact that the benefits of a fund are confined to member or subscribers would not be sufficient to always exclude a fund from the category of charity. He considered it would depend on the facts. He gave the example of members of a parish putting together funds to provide for a parish nurse who would be available to look after inhabitants in the area unable to pay for nursing. The Judge considered that the fund would still be a charitable fund if a person could only obtain the services of the nurse if they joined the association and paid a small yearly amount to it.

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<sup>74</sup> *Travel Just v Canada (Revenue Agency)* [2007] 1 CTC 294.

<sup>75</sup> *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218.

<sup>76</sup> *Hobourn Aero Components Ltd’s Air Raid Distress Fund* [1946] 1 All ER 501 (CA).

[106] The other case relied on by the Charities Commission was *Re Harris Scarfe Ltd*.<sup>77</sup> In that case a company set up a scheme into which employees could contribute. Benefits to the employees were paid from the fund. The voting power of the members of the fund depended on their respective salaries. The Court considered the fund was not for the benefit of the community or an appreciably important class of the community and so was not for a charitable purpose. That was because the fund was “for the benefit and to promote the prosperity of the Company.”<sup>78</sup> This was indicated by the rights and interests in the fund being measured by the importance of the services rendered by the donees to the company, and not by the needs of the recipient. Further, the fund was not charitable as being for the relief of aged, impotent or poor people because the trust did not restrict gifts to objects of that kind. In reading this conclusion, like *Hobourn*, the Court was not saying that a fund for a restricted class could never be charitable. The Court said “I think that a gift to a comparatively restricted class may be upheld, when it is apparent that the purpose is eleemosynary.”<sup>79</sup>

[107] These cases are therefore quite different from a private benefit conferred as part and parcel of an activity directed at advancing religion. As Dr Vivian Grigg says, “all Christian teaching should be beneficial in the long term for members of the faith so that personal benefit is a necessary element but ... that is not the end of it”.

[108] Liberty Trust says that a more relevant case is *Re Forster Gellatly v Palmer*.<sup>80</sup> In that case a bequest was made to a society whose object was the relief of infirm, sick or aged Roman Catholic priests in a particular diocese. The benefits administered by the society were only available to priests who subscribed. The society was held to be a charity under the advancement of religion limb. As discussed in *Hobourn* Lord Greene suggested that the decision could be justified on the principle that “if you find a number of charitable persons setting up a fund for the benefit of a particular class, the fact that members of that class are required to join the fund and pay small subscriptions does not prevent it from being charitable.”<sup>81</sup>

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<sup>77</sup> *Re Harris Scarfe Ltd* [1935] SASR 433.

<sup>78</sup> At 436.

<sup>79</sup> At 435.

<sup>80</sup> *Re Forster Gellatly v Palmer* [1938] 3 All ER 767.

<sup>81</sup> *Hobourn* at 509.

[109] Liberty Trust also refers to *Baptist Union of Ireland (Northern) Corporation v Commissioner of Inland Revenue*<sup>82</sup> which concerned a superannuation fund for ministers of the Baptist Church in Northern Ireland. To benefit from the fund the ministers needed to subscribe to the fund. It was contended that the fund was commercial in nature and “all a matter of mutual benefit which savoured of bargain rather than bounty.” This submission emphasised that the rules were indicative of a business-like contract binding the members and that payments were as of right so far as the moneys available permitted. MacDermott J referred to mutual funds which were charities and asked “[w]hat, then, is the element in these cases of mutual or contractual benefit which will serve to distinguish the real from the pseudo charity?”<sup>83</sup> He answered this by doubting that there was any single factor which determined it. He said:<sup>84</sup>

... I think what one has to do in these cases is to regard all the relevant facts, relationships and characteristics which the trust exhibits or implies and then to see whether or not, when duly marshalled and weighed, they reveal the presence of whatever is the mark of the truly charitable purpose. Thus, in cases such as this, it will be material to consider such matters as, for example, the terms of the contract binding the beneficiaries; the composition of the fund from which benefits are payable; whether the benefits are “as of right” or discretionary, and whether the beneficiaries control the fund or are merely attached contractually to a management in which they play no effective part. ... What one wants to find is how far the promotion of the personal interests of contributors to the trust fund can go without destroying the apparently charitable nature of its objects. The authorities present no yard-stick or formula for the purpose, and in the nature of things such could not be expected. ... one of its essential attributes is that “it shall be *unselfish* – ie, for the benefit of other persons “than the donor”. I do not think this means that those who want to found or support a charity must exclude themselves from all benefit under it. ... I am of opinion that the mark or test of what is truly charitable, in the limited field I have described, is that it should be substantially, not necessarily absolutely, altruistic in character. ...

[110] In holding that the fund in that case was charitable it was said:<sup>85</sup>

...that the purposes of this Fund – managed, as it is, by the Baptist Union of Ireland to the exclusion of its membership, supported, as it is, in substantial measure by voluntary donations and aimed, as it is, at the advancement of religion through the benefits it confers on the Baptist ministry – are

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<sup>82</sup> *Baptist Union of Ireland (Northern) Corporation v Commissioner of Inland Revenue* (1945) 26 TC 335.

<sup>83</sup> At 356.

<sup>84</sup> At 356-357.

<sup>85</sup> At 357.

sufficiently altruistic in character to retain their *prima facie* nature and so remain charitable and only charitable, in point of law.

[111] *Baptist Union of Ireland (Northern) Corporation* was considered in some detail by the Court of Appeal in *Hester*. In that case the Court was concerned with a superannuation plan for employees of the Church of Latter-day Saints. The Court of Appeal said it was inclined to see the holding in *Baptist Union of Ireland (Northern) Corporation* as defensible primarily on the basis that the fund overwhelmingly came from donations. It noted that if the donations had been made directly to the Church (rather than to the fund) it would be exempt from tax.

[112] Liberty Trust submits that, in relying on cases which were not concerned with the advancement of religion, the Charities Commission failed to consider the purpose of the trust and instead focussed on the benefits received by members. Liberty Trust refers to a number of other cases which have held that a charitable purpose is not necessarily destroyed because a beneficiary must make a payment to receive the benefit.<sup>86</sup>

[113] I agree that the Charities Commission was in error to focus only on the fact that contributors benefitted from the lending scheme. As per *Baptist Union of Ireland (Northern) Corporation*, it is necessary to look at all the facts to determine whether the fund has altruistic features. Liberty Trust is not merely a lending scheme set up to provide private benefits to its members. Membership is not restricted – it is open to all regardless of faith. For those who join, it is in part intended to provide private benefits, namely to assist with house ownership free of the shackles of interest incurring debt (refer [9] above) but those private benefits are seen as part of living as a Christian. An integral part of the scheme is that its benefits are to be shared with others.

[114] There is no element of profit for anyone involved in the scheme. The contributions take the form of “donations.” The donors do not receive their money back. Even if Liberty Trust is wound up the funds do not go back to those who contribute them. The application form refers to the contribution as “a non-

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<sup>86</sup> For example, *Re Resch's Will Trusts* [1969] 1 AC 514 (PC); *Re Cotlam's Will Trusts* [1955] 3 All ER 704; and *Joseph Rowntree v Attorney-General* [1983] 1 Ch 159.

refundable donation.” The brochure referred to in the application form refers to the contributions being for the promotion of God’s purpose. The newsletters support this view.

[115] There is a right to apply for a loan and an expectation that a loan will be received but this depends on the availability of funds. The contributors do not determine whether they will receive a loan and if so for how much. If a loan is received it must be repaid in full (without deductions for the contributions made). The money repaid is “recirculated” for the use of others. Sponsored loans are available and presently make up 27% of all loans. Two to four high risk loans are made to people in need.<sup>87</sup> Donations are received from other sources.<sup>88</sup> An annual donation is made.

[116] The respondent says that Liberty Trust’s scheme is simply “edification by example” which does not meet the public benefit test. The respondent submits that this is because the scheme principally confers private benefits whereas, to be a charitable purpose, any private benefit must be ancillary to the wider charitable purpose. The respondent submits that any wider community benefit from a mortgage scheme, not based on need, but based on religious financial principles is too remote.

[117] In support of this submission the respondent refers to *Re the Grand Lodge of Ancient Free and Accepted Masons in New Zealand*.<sup>89</sup> In that case Freemasonry was described as being an organisation existing primarily for its members and as seeking to achieve its aims by making its members better people. The Court held that while “ultimately there may be a public benefit in this, it is too remote... It exists for self improvement of its members and whilst praiseworthy, it cannot qualify as a

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<sup>87</sup> As to this the affidavit of Kelvin Clifford says: “In order to have a feel for where the Trust is heading we ask, at the time of joining, whether the new member wishes to have a loan. In the 12 months prior to deregistration there were 73 new regular donors. 42% of those did not nominate that they wanted a loan. 24% indicated that they wished the loan to be used by somebody else when and if offered. 4% indicated they wished the loan to be used for church purposes. 2% said that they wanted it for other purposes without specifying, leaving only 28% needing it for their own purposes”.

<sup>88</sup> For example, \$20,535.85 in 2009.

<sup>89</sup> *Re the Grand Lodge of Ancient Free and Accepted Masons in New Zealand* [2011] 1 NZLR 277.

charity.”<sup>90</sup> However, a difference between that case and the position here is that Liberty Trust’s edifying example is directly linked to the Christian faith. It is promoted as being an example of Christian faith and the testimonials show that many contributors ascribe to that view.

[118] A case which was concerned with an edifying example which was directly linked to religion is *Gilmour v Coates*.<sup>91</sup> The case concerned a gift to an enclosed order of Carmelite nuns. The Court rejected the gift as charitable because (as per the earlier decision of *Cocks v Manners*<sup>92</sup>) the nun’s work towards their own salvation was a private benefit, the benefits of private prayer on the public was not susceptible of legal proof and the edifying effect on the public of the nuns’ example of self-denial was too intangible to satisfy the public benefit test. As *Tudor* puts it, a public benefit will have to be shown positively if the charitable purpose is focussed too narrowly on its adherents. *Tudor* says that it “is on this basis that it has been decided that gifts to enclosed religious communities and for private masses for the dead are not charitable.”<sup>93</sup>

[119] As to the distinction between private religious purposes and activities which are accessible to the public, the respondent refers to a gift for a monument of spiritual significance in a private house;<sup>94</sup> a trust for the upkeep of a retreat house;<sup>95</sup> and a gift for the holding of Catholic masses for the repose of the souls of the testatrix and her immediate family.<sup>96</sup> In each of these cases the gift was found not to be for a charitable purpose in the legal sense.

[120] Liberty Trust says that *Gilmour v Coates*, and the other cases concerning private religious purposes, are quite different to the present situation. As accepted in *Re Hetherington*,<sup>97</sup> a gift for the celebration of public masses is charitable because of the “edifying and improving effect of such celebration on the members of the public who attend.” Liberty Trust submits that its edifying example is visible, it is a scheme

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<sup>90</sup> At [60].

<sup>91</sup> *Gilmour v Coates* [1949] AC 426.

<sup>92</sup> *Cocks v Manners* (1871) LR 12 Eq 574.

<sup>93</sup> At [2-052].

<sup>94</sup> *Yeap v Cheah Neo v Ong Cheng Neo* (1875) LR 6 PC 381.

<sup>95</sup> *Re Warre’s Will Trusts* [1953] 1 WLR 725.

<sup>96</sup> *Re Hetherington* [1989] 2 All ER 129.

<sup>97</sup> *Re Hetherington* at 135.

open to all and as part of the scheme there is on-going communication encouraging and advancing religion.

[121] I consider that the scheme is set up and operated for religious purposes. It is a scheme which in conception and operation is closely linked to the faith its promoters subscribe to. The Christian faith is promoted in all the literature associated with the scheme. Unlike cases where the edifying example is not sufficiently connected with a religion (eg *Freemasonry*), here the contributors could not fail to make the connection between the scheme being promoted and the Christian beliefs that it is said to relate to. I consider that, although individual contributors may contribute to the scheme to receive a private benefit (ie a loan), that private benefit is part and parcel of Christian living (as propagated by Liberty Trust). Overall the scheme is a religious one.

[122] I accept Liberty Trust's submission that the case differs from the examples of private religious benefit relied on by the respondent because in those cases the public could not gain access to the benefit (in *Gilmour v Coates* because the nuns were a closed order and any public benefits of their prayer could not be shown; in the other cases because they had purely private salvation purposes). Here the scheme is open to everyone. In terms of the private/public benefits it is difficult to distinguish it from a mass in a Church which is open to the public. A mass in a church may have more ready acceptance as being of a religious nature and for religious purposes than a mortgage scheme that is set up as an example of the Bible's message but that is not the point. On the evidence before me this mortgage scheme is a public example of what is intended to be a Christian approach to money and part of propagating the Christian faith.

[123] I therefore consider that the assumption of public benefit has not been displaced.

## **Result**

[124] I consider that the Charities Commission erred in finding that Liberty Trust does not have, as its main purpose, a charitable purpose. Liberty Trust was set up to

advance religion. It seeks to do that through teaching financial principles that Liberty Trust proclaims are the Bible's financial principles. It seeks to teach those principles through providing a scheme which allows its followers (and anyone else who wishes to join up) to pool financial resources for the benefit of themselves and others. It reinforces the religious beliefs on which the scheme is based through its literature promoting the scheme and its other publications and teaching activities. It is not merely inspired by or conducive to religion. Its purpose, through this scheme, is to spread what is viewed as being the Bible's message. In my view the purpose of Liberty Trust falls within the term "advancement of religion" as it has been interpreted in the cases.

[125] I also consider that the Charities Commission erred in finding that Liberty Trust's activities do not exist for the public benefit. As a trust which has as its purpose the advancement of religion, the starting assumption is that it has a public benefit. The activities are not contended to be subversive to morality or a sham. It is not for the Court to impose its own views as to the religious beliefs that are advanced through the scheme. The benefits of the scheme are not focussed too narrowly on its adherents. It is open to anyone and the money donated is "recycled" for the benefit of others. Overall it is a scheme about "giving" in order to lead a Christian life free of the burdens of debt.

[126] I therefore allow Liberty Trust's appeal. The Commission's decision is set aside. Liberty Trust is to be reinstated to the Charities Register.

Mallon J