

Legal Charity and Public Services

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Project Description:

Legal charity provides a structure for the pursuit of recognised purposes. In many respects, the technical definition of charity coincides with its ordinary meaning – doing good, volunteering, and relieving poverty. But legal charity is also much broader, accounting for universities, hospitals, and cultural centres, etc, which may employ well-paid and highly skilled professionals.

Due to its flexibility, legal charity has been a useful vehicle for outsourcing essential and public services. This use has grown, especially since the 1970s (Kendall and Knapp, 1996; Ware, 1989). In the early twenty-first century, the reliance on charities (part of the third sector) was re-emphasised and re-branded as the ‘big society’ (Hilton and McKay, 2011). Charity also has a role in the increasing privatisation of services once provided by the state. As early as 1997 the situation was evocatively described as a shift from “a convoy of (...) oil tankers into (...) a flotilla of tiny dinghies and yachts” (6 and Kendall, 1997, pp. 1–2). While there exists an important literature on the ‘contract culture’, there remains space for further investigation into the relationship between legal charity and public services (Morris, 1999; Morris and Atkinson, 2003).

It has long been possible to organise public services under legal charity. Some of the most well-known charity law cases involve hospitals and schools, for example, showing how private actors have used or tried to use charity to benefit the public.¹ Today the state, and public institutions, frequently outsource services to charities. The effects of this relationship on the millions of people who rely on the state and those institutions is little understood. A PhD in this area could be highly influential for revealing the nature of the relationship between

¹ *Re Resch's Will Trusts* [1969] 1 AC 514 (PC); *IRC v Baddeley and others* [1955] AC 572; *Oppenheim v Tobacco Securities Trust Co Ltd and others* [1951] AC 297; *R (ooo Independent Schools Council) v Charity Commission for England and Wales*, *AG v Charity Commission for England and Wales* [2011] UKUT 421 (TCC), [2012] Ch. 214; *Liverpool and District Hospital for Diseases of the Heart v AG* [1981] Ch 193 (Ch); *In Re Dupree's Deed Trusts* [1945] 1 Ch 16 (Ch).

charity and public services and the effects of that relationship on service-users and the wider public.

Similarly, there is scope for further exploration of the role and responsibilities of contracts and 'contract' culture within charitable and public services. Conceptualisations of contract (and the law relating to it) is often positioned as either "a closed system of self-sufficient doctrine based on moral rights and duties" or "an instrument for various goals of social policy" (Morgan, 2020, pp. xxvii). These two perspectives seem to position contract as either commercially driven or welfarist driven. Despite this, societal changes mean that charity is increasingly a vehicle for the outsourcing of services, especially public ones. Such utilisation of contract suggests debates around contract, its culture, and its role are particularly timely.

The fruits of the research may involve law or policy reform suggestions or a contribution to public legal education. This call invites applications looking at this relationship (or aspects of it). This is a broad topic, so the application will need to focus on an issue or issues that could reasonably be studied within the timeframe of a PhD. Applicants may wish to consider one or a combination of the following (this is not an exhaustive or prescriptive list):

- The legal framework for charitable service provision within the NHS, local authorities, or educational institutions;
- An analysis of the tensions within charities and other forms of organisation, for example between the duties of charity trustees, contractual requirements, and governance codes;
- An analysis of the relationship between charity and public services from a critical perspective (Marxist, feminist, etc);
- A comparison of this issue in two or more jurisdictions (if the project intends to be comparative, please explain in the application how you propose to find (and potentially translate) foreign sources);
- The role of 'contract culture' in the organisation and delivery of charitable and / or public services;
- The implications of 'contract culture' and the 'contracting out' of services for charities;
- The reinvention of the governance culture embedded through contractual relationships;
- The marketisation of charity through contractual governance structures;
- The role of contract culture in the privatisation of charitable and / or public services.

A strong application will succinctly demonstrate a knowledge of law relating to charities. The applicant's knowledge may concern charity law in England and Wales or a related jurisdiction, such as Hong Kong, New Zealand, Canada, Australia, or Ireland. Applicants are welcome to propose theoretical or policy-centred projects so long as the thesis is law-based. Applicants should ensure that their proposal addresses the research question(s) at the heart of the proposal, and a methodological description appropriate to the proposed research. Qualitative

and / or quantitative methodologies will be considered, as will comparative, doctrinal, and socio-legal methods, and other suitable approaches.

About the Supervisors:

Brett Crumley is a Lecturer in Law. He wrote his PhD on the Charity Tribunal for England and Wales. His thesis proposes reforms to improve access to the Tribunal and facilitate legal development. Brett has co-authored on the ability of service-users to challenge alterations to charities and has submitted written evidence to the House of Lords' consultation on charity legislation in 2021 (now enacted as the Charities Act 2022).

Kim Barker is a Senior Lecturer in Law, with a supervisory experience across a range of commercial and contract law topics. Her research interests fall across contemporary aspects of contract law, including questions of contractual 'fairness'. Her research explores the challenges of digital contracting, along with regulation & control of online multi-user platforms including online environments (particularly online games and social media sites); and the intersection between user responsibility, platform provider responsibility and legal regulations. Kim has published and presented widely on issues associated with contractual and online regulation.

References:

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