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From: Christopher [redacted]
Sent: 19 October 2020 12:08
To: IRAL
Subject: Judicial review

Dear Sir,
I am a QC of over 30 years standing in silk, practising at the Chancery Bar, where I commenced my practice in 1967. My main areas of practice were for a long time the fields of trusts and tax and for many years I acted as one of those arguing cases for CIR or HMRC. As a result of that I had some slight albeit oblique experience of jr. In recent years however my practice has encompassed an increasing amount of work relating to charity law. Charities are of course a species of entity formed for public purposes; and, though under the Charities Act 2011 have their own statutory construct of duties constraints and review ,those who practice in this field can lay claim to some understanding of the duties of those entrusted with public office.

There are two underlying principles of trust law, which are equally relevant to charity law, namely (i) that fiduciaries who abuse or threaten to abuse their powers can and should be restrained or otherwise held to account, and (ii) that equity will not want for a remedy. I would submit that those entrusted with any form of public office are fiduciaries and as such should be subject to the same principles. My experience of charity law emboldens me to say that public duties of trust are amongst the highest duties in the law; and the need for abuse to be open to counteraction is even greater when the duty is to the public than when it is to private individuals (who have a choice whether or not to complain).

For these reasons, respecting as one must the age-old principle that equity will not want for a remedy, I regard the availability of the remedy of judicial review as being of the highest importance. It is a regrettable fact that it is possible to find that a charitable fiduciary (even one acting with the best of intentions) may misdirect himself; and if that threatens the integrity of his trust then steps must be taken accordingly. The process of Charity Commission inquiries ensures that the most assertive powers are not lightly used against charity trustees; and in my view the hurdle of an obligation to seek permission for the commencement of an application for judicial review ought to ensure that only proceedings in jr which have genuine substance will be allowed to come before the Courts. But just as it would be an abnegation of the principles of public trust that the actions of a charity trustee should not be subject to scrutiny, given the public nature of his office, so I submit that it would be not so much a denial of justice as a denial of the obligations of those in public office to grant them immunity from challenge where cause exists. For these reasons I believe that it would be contrary to the principles of good administration in public office, principles for which in the charity field I have fought hard over the years, that the availability of jr should be constrained. The Courts have their own duties not to encroach upon the proper exercise of the powers of those holding public office; to limit the availability of jr would thus be to limit the ability to challenge improper use of such powers. There is no room for such limits in a democratic society answerable to the rule of law.

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