



Newsletter

A Message from the Director...



From back left: Jonathan Garton, John Picton, Warren Barr, Debra Morris,
From front left: Ruth Lamont David Dennis

Welcome to the new-style Charity Law & Policy Unit newsletter.

There have been quite a few changes since you last heard from us. The last year saw the retirement of Jean Warburton, now Emeritus Professor, and the departure from the University of Karen Atkinson who had been the Director of the Unit. Thankfully, Warren Barr agreed to hold the reins in the interim. Fortunately, both Jean and Karen maintain their association with the Unit. The further good news is that the University of Liverpool has made a significant investment in the Unit, with the appointment of two new Readers who are working directly within the Unit's remit. I have returned to the Law School and I have been joined by Jonathan Garton, formerly of King's College London. There are features on both of us within this newsletter and we will both be giving seminars during the year (see below under forthcoming events). Together with existing core members of the Unit, who are also featured in this newsletter, we are also joined on an ad hoc basis by other colleagues in the School of Law and Social Justice, where interests coincide with various projects being carried out by members of the Unit.

To reflect both current trends in our research and our future development, the name of the Unit has changed to Charity Law & Policy Unit (CLPU). We see this as a natural progression, as our work to date has tended to be policy oriented and we see this as a definite direction for the future. It also reflects our desire to increase our collaborative efforts with colleagues from other related disciplines.

I have been appointed the new Director of CLPU, so please do feel free to contact me. We continue to lay great emphasis on our links with the sector, its supporting practitioners and other research institutions both here and abroad. If you are interested in our work, we would like to hear from you. On a personal note, I am very much looking forward to renewing links with contacts in the sector and I hope to see many of you at one of our events taking place this year. My contact details are at the end of this newsletter.

All the best

Debra Morris

Debra Morris
Director, Charity Law & Policy Unit

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Restructuring within the University

The Liverpool Law School is now a department within the School of Law and Social Justice, itself a constituent part of a new 'super-faculty' covering Humanities and Social Sciences. Professor Fiona Beveridge has been appointed the new Head of School for Law and Social Justice, and Professor Michael Dougan has taken over from Fiona as Dean of the Liverpool Law School. These changes are especially welcome by the members of the CLPU, as we see new opportunities for furthering excellence in our research, and building new links and collaborations across and beyond the campus. Plans are already afoot for collaborations with colleagues in the School of Sociology and Social Policy.

Public Lecture

To launch its activities for the year, CLPU invites everyone to a Public Lecture to be given by Alison McKenna on 18th November 2010. There will be a reception after the Lecture, sponsored by Rathbone Brothers plc. See full details below under forthcoming events. Alison McKenna took up full-time appointment as the first President of the Charity Tribunal in June 2008. Her title changed to Principal Judge of the First-tier Tribunal (Charity) in September 2009, as a result of tribunal reforms under the Tribunal Courts and Enforcement Act 2007. She was called to the Bar (Middle Temple) in 1988 and her subsequent legal career included practice at the independent Bar, several different roles in the Government Legal Service (including that of an in-house legal adviser to the Charity Commission), and (following her qualification as a solicitor in 2003) as a partner in private practice, specialising in charity law. We can expect a lively talk from Alison in which she will consider the effectiveness of the Tribunal, based on her experience as its Principal Judge since its inception. All are welcome to attend the Lecture and the reception, which will provide a good opportunity to meet members of CLPU.



Alison McKenna

Staff Profiles

Warren Barr



Warren has been a member of the Charity Law Unit (as was) since joining the Law School in 1997, and was the Director of the Unit from 2001 – 2006. His published research has centred on the relationship of charities and their property holdings, and the legal and practical difficulties that arise from managing this relationship.

He has presented papers at numerous national and international conferences on these subjects, and was the Property Law Subject Convenor for the Society of Legal Scholars (SLS) from 2003 – 2006. An ESRC funded research project into the role of charities in housing the mentally vulnerable (conducted with Dr Nicola Glover-Thomas, Reader in Law) led to a series of major publications on issues arising from the project, most recently on the challenges faced by charities, both systematic and practical, in undertaking an ever-increasing role in social housing provision.

Warren was also named the Association of Law Teacher's Law Teacher of the Year in 2006, and has since channelled his teaching experience into the recently completed 5th edition of 'The Law of Trusts and Equitable Obligations', produced in collaboration with Robert Pearce and John Stevens. In addition to updating of case law and legislative provisions, the book now contains additional pedagogic features, including revised and expanded figures and diagrams, a glossary of terms and a new introductory chapter to try and explain and demystify the study of equity and trusts. Additional substantive changes include a new, distinct chapter on 'Trusts of the Family Home', major revisions to the Charities chapters and a comprehensive suite of online support materials for both students and lecturers. Further details are available from:

[http://ukcatalogue.oup.com/
product/9780199570638.dokeyword=equity+and+trusts&sortby=bestMatches](http://ukcatalogue.oup.com/product/9780199570638.dokeyword=equity+and+trusts&sortby=bestMatches)

In the near future, Warren will be looking into issues relating to housing and 'Big Society', and will also be looking to do some empirical work (in conjunction with other members of the Unit and Law School) into the role of charities in dealing with problems in the family home.

David Dennis

David is a lecturer in the Liverpool Law School whose specialist fields are Equity and Trusts, Charity Law, Property Law and the law relating to Fiduciaries. In the past, David has been both Deputy Director (2007-2010) and Director (2006-2007) of the Charity Law Unit. His LL.M thesis was on 'The Judicial Control of the Exercise of Discretionary Powers by Charitable Trustees'. In it, he considered the extent to which the courts will seek to control the exercise of discretionary powers by trustees of charitable trusts, the principles upon which that control will be exercised and the wider policy, if any, which underlies those principles generally. He has written on charity-related issues of property law and trusts and the legal and practical difficulties of governance, particularly in relation to the supervision and governance of charity trustees by the courts and the Charity Commission. His articles have appeared in *Charity Law & Practice Review* and the *Conveyancer*.



Jonathan Garton

Jonathan joined the CLPU in 2010 as a Reader in Law, having previously taught at King's College London. His research is concerned with the law and policy relating to civil society organisations broadly conceived, as well as with traditional charity law. Regarding the former, he has written widely on the economic and social science theories that seek to explain civil society activity and their use as tools for evaluating regulatory rules, and is the author of *The Regulation of Organised Civil Society* (Oxford, Hart, 2009), which considers from first principles when it is appropriate to regulate CSOs and how such regulation should be implemented. In 2008, his work in this area was cited with approval before the Standing Committee on Economics of the Australian Senate as part of its review of disclosure regimes for charities. He was also invited to make oral submissions to the Prime Minister's Strategy Unit and the Cabinet Office Better Regulation Unit during the reforms that led to the English Charities Act 2006. Regarding the latter, Jonathan is the author of the Charities volume of *Halsbury's Laws of England* (London, Lexis, 2010) and is currently writing a monograph on the principles of public benefit in charity law, which will be published in 2011 by Oxford University Press.



Ruth Lamont

Ruth, a PhD graduate of the University of Liverpool, returned to the Law School in the summer of 2010, having previously worked at the University of Sheffield Law School. Her research interests are focussed on the regulation of family life and, as an aspect of her research, she has examined the intervention of the EU in encouraging cross-border cooperation between organisations, including charities, with the aim of eliminating violence against women and children through the Daphne Programmes. She is particularly interested in the management of family housing and plans to undertake research into the triggers causing crisis in the housing of families and the role of charities in managing such crises through the location and provision of alternative housing.

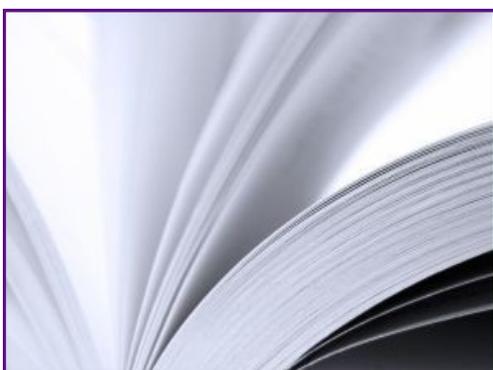
Debra Morris

This summer saw the return of Debra to the Law School, after nine years at the Cayman Islands Law School, an institution affiliated to the University of Liverpool. For the last four years, she has been the Assistant Director of Legal Studies at the Cayman Islands Law School. Whilst she has been away from the University, she has continued to undertake research in English Charity Law, presenting papers at numerous international conferences and publishing her work. Unsurprisingly, she also developed interests in Caribbean philanthropy. As a result she has recently been assisting the Cayman Islands government in the drafting of its new charity legislation and, in May this year, she attended a Symposium of the Caribbean Philanthropy Network in St Thomas, US Virgin Islands. Being located closer to the USA has allowed her to foster pre-existing relationships with colleagues overseas and to develop new ones. For example, she has been a regular presenter at the annual conference of the Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA). She has also been working for some time with Hubert Picarda QC as contributor on a new edition of *Picarda: Law and Practice Relating to Charities*, to be published by Bloomsbury Professional (formerly Tottel). In 2009, Debra and Jonathan Garton both presented papers at the Modernising Charity Law conference at Queensland University of Technology, Brisbane, Australia. Chapters, based on their presentations, are due to appear in a collection of



essays to be published in late 2010. Debra has also been looking at the work of the First-tier Tribunal (Charity) and her recently completed article is due for publication in *Civil Justice Quarterly*. Debra is now working on a new project on charity law and its relationship with schools, building on earlier work of hers. Research in this area is timely, especially in the light of plans that the new government has announced for setting up new state schools and the re-structuring of existing ones. She also has plans to undertake research in a number of other areas including the impact of the new Equality Act 2010 on charities.

Recent Publications



Below is a selection of publications written by members of the CLPU in the last two years:

‘The Law of Trusts and Equitable Obligations’ (London OUP, 2010, 5th edition), Warren Barr with Robert Pearce and John Stevens

‘Halsbury’s Laws of England’, volume 8 on ‘Charities’ (London, Lexis, 2010, 5th edition), Jonathan Garton

‘Ratio discrimination in charity fundraising: the inappropriate use of cost ratios has harmful side-effects’ 1 (2010) *Voluntary Sector Review* 77-95, Richard Steinberg and Debra Morris

‘The Regulation of Organised Civil Society’ (Oxford, Hart, 2009), Jonathan Garton

Review of ‘Charity Law & Social Policy. National And International Perspectives On The Functions Of The Law Relating To Charities’ by Kerry O’Halloran, Myles Mcgregor-Lowndes and Karla W Simon (2009) *International Journal of Civil Society Law* Vol VII, Issue I 22-24, Debra Morris

‘Obstacles to political campaigning by charities: linking the legal and the practical’, *Charity Law and Practice Review*, (2009) 12(1) pp. 36-64, Karen Atkinson

‘Restrictions on Dispositions of Charity Property—Protection or Undue Burden?’ in M. Dixon, *Modern Studies in Property Law: Volume 6* (Hart Publishing) pp126-144, Jean Warburton

'Enabling or Disabling? Increasing Involvement of Charities in Social Housing' 73 (2009) The Conveyancer and Property Lawyer 209-234, Nicola Glover-Thomas and Warren Barr

'Re-examining the benefits of charitable involvement in housing the mentally vulnerable' (2008) 59 NILQ 177-200, Nicola Glover-Thomas and Warren Barr

'Charities and Public Benefit – From Confusion to Light?' (2008) Vol 10 Issue 3 Charity Law and Practice Review, 1-25, Jean Warburton

'Charities' in Cane P. And Conaghan J (eds) The New Oxford Companion to Law (2008), Jean Warburton

'Charities and Political Campaigning, The Impact of Risk-based Regulation' in "Socio-Legal Studies in Liverpool Law Schools", Liverpool Law Review, (2008) Vol 29, 143-163, Karen Atkinson

Recent Conference Papers

Below is a selection of conference papers presented by members of the CLPU in the last two years:

'Third Sector Provision of Microfinance', Opportunity International charity event on Microfinance in Africa, King's College, (Jonathan Garton, November 2009)



'Shades of Virtue: Measuring the Comparative Worthiness of Charities', New York University Law School, National Center on Philanthropy and the Law (Debra Morris, October 2009)

Towards a Theory of Regulation for Organised Civil Society', Modernising Charity Law conference, Queensland University of Technology, (Jonathan Garton, April 2009)

'The Long and Winding Road to Reforming the Public Benefit Test for Charity: A Worthwhile Trip or 'Is Your Journey Really Necessary?', Modernising Charity Law conference, Queensland University of Technology, (Debra Morris, April 2009)

'Without Borders? The Charity Tribunal: An Alternative Means of Development for Charity Law', Annual Conference of ARNOVA, Philadelphia, USA (Debra Morris, November 2008)

'Structures at the Seam: The Architecture of Charities' Commercial Activities', New York University Law School, National Center on Philanthropy and the Law (Debra Morris, October 2008)

'Good Practice for Trustees in the Management of Charity Property', Central Law Training Ltd Conference: 'Charities and the Effective Management of Property Transactions' - 3 Oct, London, (Warren Barr, October 2008)

'Strangers and Breach of Trust – a Plea for Notice', Society of Legal Scholars Annual Conference, London School of Economics and Political Science, (David Dennis, September 2008)

'Restrictions on Dispositions of Charity Property - Protection or Undue Burden?', Cambridge Property Law Conference (Jean Warburton, March 2008)

Future Projects

The charity sector is a rapidly moving one and CLPU is particularly concerned that its research activity should be of maximum relevance and value to the sector. In this context, its work on the 'Big Society' is a case in point. Members of CLPU will commence work in this area with a debate on the impact of the Big Society concept (once they have worked out what it is!) on the voluntary sector, looking at the opportunities that it brings and the potential pitfalls. Details of this event are included under 'Forthcoming Events'.

CLPU is keen to enhance existing research strengths. The completed work on charity mergers, for example, presents an excellent base for further research, as charities continue to feel the pressure to collaborate. There are also plans to develop further research into various aspects of charities and property law, and to develop the work on housing law and charities. Future research projects under consideration include work on charity trustees and powers of investment, the Charity Commission and section 33 of the Charities Act 1993 and the regulation of organised civil society in civil law countries. Work is also planned on the impact of the Equality Act 2010 on charities.

The recent decision in the Catholic Care case shows very clearly that charities are not immune from the application of the law in this area. Empirical work (in conjunction with other members of the Law School) into the role of charities in dealing with problems in the family home caused by domestic violence, on the role of charities in dealing with housing problems caused by the economic crisis, and on the effectiveness of the First-tier Tribunal (Charity) is also planned.

Undergraduate Study

This academic year, Jonathan Garton will be introducing a new module, Voluntary Sector Law and Policy, available to final year undergraduate students. The aim of the course is to introduce students to the principles of law and policy issues relating to the voluntary sector. The course considers the social, political and economic theories of the voluntary sector, the law relating to charities and other voluntary sector organisations, and the rules of the Charity Commission and other regulatory bodies.

Postgraduate Study

We are pleased to welcome John Picton, who is undertaking a PhD on the operation of cy-près.

John says:

“After finishing a masters in London, I’ve come back home to Liverpool to undertake a doctoral research project at the CLPU. I’m investigating the legal ‘cy-près’ doctrine which, in limited circumstances, allows the application of charity property to purposes that the original donor did not intend. My research investigates whether the current law has correctly balanced respect for the terms of the original gift and the need to spend funds effectively. Charity law is a fascinating area of legal study and I hope to continue working in the field after I have completed my research.”



The recent announcement of a fully funded PhD studentship will mean that we are soon to be joined by another postgraduate student working in the area of Charity Law.

Potential students interested in pursuing postgraduate research in the area of charity law are invited to contact the CLPU in order to obtain further information or to discuss any research proposals that they might have. Students may register for the postgraduate degrees of LL.M and PhD, either on a full-time or part-time basis.

Interchange



A Community and University Research
Exchange

Registered Charity No 1038129

Interchange is a registered charity linking higher education with community and voluntary groups on Merseyside with Liverpool Hope University and the University of Liverpool. Interchange acts as a 'broker' to match voluntary groups with research needs with appropriate students who wish to conduct applied research or to volunteer s part of

their studies. The Interchange ethos is that research partnerships between the student and the voluntary organisation should be collaborative, non exploitative and mutually beneficial. The CLPU intends to work closely with Interchange which is administered from within the School of Law and Social Justice. Please contact Claudette Graham for further information on the work of Interchange: Interchange@liverpool.ac.uk, or check out its website at <http://www.liv.ac.uk/ssp/interchange/>.

Forthcoming Events

All events carry non-credit bearing CPD accreditation. These varied events are designed to encourage participation from all those involved with charities, whatever their discipline. As well as its regular visitors, the CLPU hopes to welcome some new faces this year.

Please do send an email to Debra.Morris@liverpool.ac.uk if you plan to attend any of our events.

Public Lecture:

Alison McKenna, Principal Judge, First-tier Tribunal (Charity)

‘Strike Outs, Transfers and Elevations - Is the Charity Tribunal fit for Purpose?’

18 November 2010: 6pm – 7pm

Hearnshaw Lecture Theatre, Eleanor Rathbone Building, University of Liverpool

Followed by a reception sponsored by Rathbone Brothers plc



Current Debate:

Members of the Charity Law & Policy Unit

‘Big Society – The Big Debate’

9 December 2010: 6pm – 7pm

Lecture Theatre 6, Rendall Building, University of Liverpool

Followed by refreshments

Seminar:

Jonathan Garton

Charity Law & Policy Unit

‘Public Benefit and the Limits of Charity’

24 February 2011: 6pm – 7pm

Theatre Workshop, Rendall Building, University of Liverpool

Seminar:

Debra Morris

Charity Law & Policy Unit

‘Charity Begins at School: the Creeping Reach of Charity Law’

26 May 2011: 6pm-7pm

Theatre Workshop, Rendall Building, University of Liverpool



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Contact Details

For More Information

If you would like more information about supporting research by the CLPU or more information about postgraduate study contact:

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For up to date details of the CLPU's activities please see its website at:

<http://www.liv.ac.uk/law/clpu>