



**Why should a religious body be registered
as a charity?**

Or, Charity moves in mysterious ways

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The law of unintended consequences in charities:

- Status
- Submission to civil Court's jurisdiction
- Cy pres

- Wished to be a charity but failed
- Thornton v Howe (1862) 31 Beav 14

- Wished to be a charity, succeeded but then changed their mind and “threw the game” on appeal
- Inland Revenue Commissions v Oldham Training and Enterprise Council [1996]
STC 1218

- Did not wish to be a charity but turned out to be one: Attorney-General v Ross [1986] 1 WLR 252

- Did not originally wish to be a charity but then decided they wanted to be one
- Helena Housing Ltd v Revenue and Customs Commissioners [2012] EWCA Civ 569

- Wished to be a charity, failed but deemed to be charitable anyway
- Section 37 of the Charities Act 2011:
“An institution is, for all purposes other than rectification of the register, conclusively presumed to be or to have been a charity at any time when it is or was on the register.”

Why do people change their mind?

- Not realise restrictions of charity law: Oldham TEC
- Unforeseen tax liabilities: Helena Housing

Why say no to would-be charities?

- To limit fiscal benefits
- To protect the charity “brand”

Why say yes to would-be charities?

- So that gifts failed in the mortmain era
- So that the cy pres jurisdiction was engaged: Da Costa v De Pas (1754) 2 Swanst 487 note (a)
- To prevent unjustified private benefit: Neville Estates Ltd v Madden [1962] Ch 832

What can the civil Courts decide in connection with a religious charity?

- General Assembly of Free Church of Scotland and Others v Lord Overtoun and Others [1904] AC 515
- Khaira v Shergill [2014] UKSC 33

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- Division of assets on schism
- Varsani v Jesani [1999] Ch 219

- Re-application of assets cy pres once body no longer thought charitable
- Implications of original Commission decision in Preston Down Trust?

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