Re Denley: re-evaluating its significance for non-charitable purpose trusts

Article

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Introduction

Stating the law on non-charitable purpose trusts should be a straightforward matter in anticipation of the Law Commission's review.[1] But a disfiguring shadow is cast over the area by *Re Denley's Trust Deed*.[2] A recent reminder noted that this judgment is now over 50 years old.[3] According to *Lewin on Trusts* the case is 'the leading authority concerning the validity of trusts for apparent non-charitable purposes'[4] – although the text seems ultimately to conclude that it was a beneficiary trust rather than a purpose trust after all.[5] But at the same time, it seems true to say that (on the best view of the case law) '*Re Denley* has … never been specifically relied on to uphold a non-charitable purpose trust.'[6]

The argument here will be that *Re Denley* is indeed best viewed as a beneficiary trust. That interpreting the decision as upholding a non-charitable purpose trust does not, as is commonly suggested, expand the scope of valid trusts: it instead involves taking what would have been a valid beneficiary trust anyway and downgrading it to something less; to something not fully recognisable as a trust at all. Furthermore, it will be argued that wider obiter dicta in the case do not have the potential value they are commonly thought to have for upholding non-charitable purpose trusts more generally. Overall, it will be suggested, *Re Denley* adds nothing of substance to the law on non-charitable purpose trusts. And, accordingly, many have attached too great a significance to the case.

The background law on non-charitable purpose trusts

To briefly summarise the law as it stood before *Re Denley* – and, it is suggested, still stands today.

The general rule: trusts for non-charitable purposes are invalid – 'the beneficiary principle'

In their standard form trusts are, of course, for beneficiaries. *Morice v Bishop of Durham*[7] laid down the general rule that a trust for a purpose – as opposed to a beneficiary – can only exist if the purpose is recognised by the law as charitable: non-charitable purpose trusts are invalid because there would be no one to call for enforcement of the trust.[8] A testatrix left property on trust to dispose of it to such objects of benevolence and liberality as her executor in his discretion should most approve of. It was held the trust was not limited to charitable purposes only: it therefore failed and there was a resulting trust for the testatrix's estate. The need for a private trust to have a beneficiary, providing enforceability, before it can be valid is often referred to as 'the beneficiary principle'. Modern applications of the beneficiary principle start

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[1] Law Commission, *Thirteenth Programme of Law Reform* (Law Com No 377, 2017), paras 2.23-2.26; now to be rolled into the fourteenth programme: Law Commission, *Generating Ideas for the Law Commission's 14th Programme of Law Reform* (March 2021) https://www.lawcom.gov.uk/14th-programme/.

[2] [1969] 1 Ch 373 (Ch).

[3] Alec J Morris, 'Private Purpose Trusts and the *Re Denley* Trust 50 Years On' (2020) 34 TLI 165.

[4] Lynton Tucker, Nicholas le Poidevin, and James Brightwell (eds), *Lewin on Trusts* (20th edn, Sweet & Maxwell 2020), para 5.054.

[5] Para 5.056.

[6] Paul S Davies and Graham Virgo, *Equity and Trusts: Text, Cases and Materials* (3rd edn, OUP 2019), 288.

[7] (1804) 9 Ves 399, 32 ER 656 (affd (1805) 10 Ves 522, 32 ER 947).

[8] By contrast, trusts for charitable purposes were valid because the Attorney-General would enforce them, as they are in the public interest.

with a series of three cases. In *Re Astor's Settlement Trusts*,[9] an inter vivos trust for furthering the following purposes was held invalid: (in outline) good relations between nations and peoples; independence and standards in newspapers; publishing; help of those associated with the press. In *Re Shaw*,[10] George Bernard Shaw's attempt to establish by his will a trust to research the benefits of a revised English alphabet and to produce a demonstration work was held invalid.[11] And in *Re Endacott*,[12] a testator's trust for 'some useful memorial to myself' was held invalid. Lord Evershed MR, delivering the leading judgment in the Court of Appeal, famously said:[13]

> 'No principle perhaps has greater sanction or authority behind it than the general proposition that a trust by English law, not being a charitable trust, in order to be effective, must have ascertained or ascertainable beneficiaries.'[14]

The exception to the general rule: the 'trusts of imperfect obligation'

Re Endacott accepted that, by way of exception, an established line of cases shows trusts can validly be created for a limited range of well-known non-charitable purposes – relating to monuments, animals, and (probably) religious rituals.[15] These exceptional situations are usually called the 'trusts of imperfect obligation': there is recognised to be a trust obligation, but with no one to enforce it.[16] But *Re Endacott* made clear these 'anomalous' cases are the *only* non-charitable purpose trusts the law will tolerate.[17]

The meaning of a 'purpose trust'

Care is needed when identifying 'purpose trusts'. Mention of a purpose in a declaration of trust does not necessarily create what can meaningfully be called a 'purpose trust' – as distinct from a 'beneficiary trust'.[18] *Re Osoba*[19] shows that declaring a trust for a stated purpose designed to benefit a person is presumed to create a trust for that person: a beneficiary trust, not a purpose trust. The purpose was said to be merely the motive for giving an equitable interest outright to the beneficiary.[20] A testator's provision 'for the training of my daughter … up to university grade' was held to be a beneficiary trust for the daughter: she was entitled to all of the property outright even though her education was over. In such a case, the trust property is ultimately available for any use by the beneficiary; its use is not limited to pursuit of the purpose. Although that is the presumed position, *Re Sanderson's Trust*[21] shows that, sometimes instead, while there is still a beneficiary trust, the beneficiary's right is limited to provision for the purpose,

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[9] [1952] Ch 534 (Ch).
[10] [1957] 1 WLR 729 (Ch).
[11] By a compromise of the litigation the project was in fact funded: [1958] 1 All ER 245n.
[12] [1960] Ch 232 (CA).
[13] [1960] Ch 232 (CA), 246.
[14] Also significant at the start of the modern era was *Leahy v A-G for New South Wales* [1959] AC 457 (PC), where the Privy Council reinforced the beneficiary principle, making clear that donations to non-charitable unincorporated associations are not a type of valid non-charitable purpose trust, as some had supposed.
[15] [1960] Ch 232 (CA), 246-47.
[16] For these trusts, see David Wilde, 'Trusts of Imperfect Obligation' (2022) 28 T&T, forthcoming.
[17] For alternative legal mechanisms to pursue non-charitable purposes, including powers of appointment, see Paul Matthews, Charles Mitchell, Jonathan Harris, and Sinéad Agnew (eds), *Underhill and Hayton Law Relating to Trusts and Trustees* (20th edn, LexisNexis 2022), para 10.146; and Lynton Tucker, Nicholas le Poidevin, and James Brightwell (eds), *Lewin on Trusts* (20th edn, Sweet & Maxwell 2020), para 5-061. And on the option to create trusts governed by foreign law, *Underhill* para 10.141, and *Lewin* paras 12.128 and 12.139.
[18] For the meaning of these terms, see David Wilde, 'Trusts and Purposes – Settlors Assigning Purposes to Beneficiary Trusts' (2023) 36 TLI 141.
[19] [1979] 1 WLR 247 (CA).
[20] Although querying this precise formulation, see David Wilde, 'Trusts and Purposes – Settlors Assigning Purposes to Beneficiary Trusts' (2023) 36 TLI 141, 145-47.
[21] (1857) 3 K&J 497, 69 ER 1206.

if that is what the settlor is taken to have intended. That is, the purpose is not just a motive but a limit on the benefits to be received from the trust property**.** A testator provided the whole or part of an income should be used to maintain his mentally disabled brother. At the brother's death, it was held there was a resulting trust of the remaining income for the testator's estate; it did not belong to the brother's estate. The brother had a right only to expenditure on suitable maintenance; not to all the income.

Despite the mention of a purpose, these were clearly beneficiary trusts: all of the characteristics, all of the rights, of a beneficiary are recognisably present. If the expression 'non-charitable purpose trust' is to be meaningful – a distinct category from 'beneficiary trusts' – it must be confined to situations where there is no such beneficiary. It must be restricted to purposes which – while carrying them out may benefit some people in general – do not have any such specific, identifiable 'beneficiary' or 'beneficiaries': purposes exemplified by those in *Morice v Bishop of Durham*, *Re Astor*, *Re Shaw*, and *Re Endacott* above.

Identifying the ratio decidendi of *Re Denley*: did the case decide that directly benefiting enforcers can validate non-charitable purpose trusts?

Despite the clear pronouncement by the Court of Appeal in *Re Endacott*, above, that no new categories of non-charitable purpose trust should be recognised, it has sometimes been suggested that new types have since been accepted in the cases. The most significant – and controversial – instance of this is *Re Denley*. It is a debated question whether this case created a major new exceptional situation where non-charitable purpose trusts are valid. In evaluating this possibility, it is perhaps instructive to separate out the decision in the case from its obiter dicta. The decision will be considered first.

In *Re Denley* land was declared to be held on trust (limited within the common law perpetuity period) 'for the purpose of a recreation or sports ground' for the employees of a company, numbering several hundred. Under the terms of the trust, the employees were (subject to any regulations made by the trustees) said to be entitled to the use and enjoyment of the land. This was held to be a valid trust, which the employees could enforce. But whether the employees were 'beneficiaries' (in the conventional sense) of a beneficiary trust, or were instead what might be called (although this expression was not used in the case) mere 'benefiting enforcers' of a non-charitable purpose trust is the point of contention.[22]

At times, Goff J seemed to regard this as a purpose trust;[23] and he certainly appeared to support the validity of some non-charitable purpose trusts, saying in particular:[24]

> 'I think there may be a purpose or object trust, the carrying out of which would benefit an individual or individuals, where that benefit is so indirect or intangible or which is otherwise so framed as not to give those persons any locus standi to apply to the court to enforce the trust, in which case the beneficiary principle would, as it seems to me, apply to invalidate the trust … Apart from this possible exception, in my judgment the beneficiary principle … is confined to purpose or object trusts which are abstract or impersonal. The objection is not that the trust is for a purpose or object per se, but that there is no beneficiary or cestui que trust … Where, then, the trust, though expressed

[22] "Benefiting enforcers" in contrast to the sort of non-benefiting enforcer some jurisdictions allow by statute to be appointed to validate non-charitable purpose trusts – one who derives no benefit from the performance of the trust obligation; although they might be incentivised in other ways to seek enforcement of it. For whether a trust such as *Re Denley* might be charitable today, see Graham Virgo, *The Principles of Equity and Trusts* (4th edn, OUP 2020), sect 7.2.1.

[23] Esp at [1969] 1 Ch 373 (Ch), 382-86.

[24] [1969] 1 Ch 373 (Ch), 382-84.

> as a purpose, is directly or indirectly for the benefit of an individual or individuals, it seems to me that it is in general outside the mischief of the beneficiary principle.'

But at other times, Goff J seemed to regard it as a beneficiary trust instead; in particular applying the test for certainty of beneficiaries to the employees.[25] One point is specially striking. The declaration of trust for the benefit of the employees added that the recreation or sports ground was 'secondarily for the benefit of such other person or persons (if any) as the trustees may allow to use the same'. This was interpreted as a power in favour of such people, who were called *the 'objects' of the power* when applying the test of certainty of objects.[26] If the trust for the benefit of the employees was a purpose trust, we would therefore have the extraordinary situation that essentially the same provision was for a purpose when a trust, but for persons when a power.

So, there are two possible interpretations of the decision. It must be conceded that *overall* the judgment reads as if it is concerned with 'purpose trusts' – the judge directly using that expression. But, crucially, it is quite clear that, at times, Goff J was not using 'purpose trust' in its true sense. He was including within 'purpose trusts' those *beneficiary trusts* where it is stated that the beneficiary is to be benefited in a particular way.[27] Therefore, it would be entirely legitimate to adopt the beneficiary trust interpretation of the decision, despite the references to 'purpose trust'. Each possible interpretation will be considered in turn.

First possible interpretation: beneficiary trust

There were three reasons the trust in *Re Denley* did not straightforwardly *look like* a beneficiary trust; although ultimately it seems correct to analyse it as one. First, the trust was stated to be for a 'purpose'. But despite mention of a purpose, it was perfectly possible to understand the trust as a beneficiary trust for the employees – applying the proposition mentioned earlier, that a trust for a purpose designed to benefit a person or persons is presumed to create a trust for them: a beneficiary trust, not a purpose trust. Secondly, the trust would be for an unusually large number of beneficiaries, and a fluctuating class. But that is, of course, possible; indeed quite common.[28] Thirdly, the beneficial entitlement under the trust would be a peculiar one: the beneficiaries would be entitled only to a licence to use land. It has been questioned whether a beneficiary trust conferring merely a licence to use trust assets on the beneficiary is possible:[29] it has been suggested that trusts must confer beneficial proprietary interests, that is property rights, on beneficiaries;[30] whereas a licence is a personal right not a property right. However, there seems to be sufficient authority that a trust merely to observe a licence is entirely possible;[31] and it seems that trusts to confer such personal rights are fully compatible with the

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[25] Esp from towards the bottom of [1969] 1 Ch 373 (Ch), 386.

[26] [1969] 1 Ch 373 (Ch), 386-87.

[27] He cited (386) in apparent support of the validity of 'purpose trusts' at least one case that seems indisputably a beneficiary trust, with the beneficiaries taking the property in disregard of the settlor's designated purpose: *Re Bowes* [1896] 1 Ch 507 (Ch).

[28] For example, occupational pension trust funds.

[29] William Swadling, 'Orthodoxy' in William Swadling (ed), *The Quistclose Trust: Critical Essays* (Hart 2004), 29.

[30] Basically, an entitlement to receive a distribution of income or capital from the trust; although this right may be discretionary, postponed, contingent, or defeasible; and the beneficiary will often enjoy their interest by using the trust assets in specie rather than taking receipts – for example, occupying land rather than receiving rents from it.

[31] Apart from *Re Denley* itself – specifically approved as a trust to observe a licence for beneficiaries in *Re Grant's Will Trusts* [1980] 1 WLR 360 (Ch), 370 – there are also the cases on 'right of residence' trusts in wills, analysed as sometimes involving licences (depending on the interpretation of the will) in *Re Gibbons* [1920] 1 Ch 372 (CA). See *Parker v Parker* (1863) 1 New Rep 508; *May v May* (1881) 44 LT 412 (Ch), 413; *Re Anderson* [1920] 1 Ch 175 (Ch), 180 (approved in *Morss v Morss* [1972] Fam 264 (CA), 275 and 278); *Shanks v IRC* [1929] 1 KB 342 (CA), 363-64, per Russell LJ, whose judgment was later approved by the House of Lords in *IRC v Miller* [1930] AC 222 (HL;S), 233 (Lords Buckmaster and Blanesburgh) and 239 (Lord Warrington); *Re Goddard* [2020] EWHC 988 (Ch), esp [56] and [58].

law's general conception of the nature of private trusts and of beneficiaries' rights.[32] So, in the end, there is no substantial obstacle to seeing *Re Denley* as a beneficiary trust.[33]

Recently, a trust materially the same as *Re Denley*, but without a limitation to the perpetuity period, was treated as a beneficiary trust, through viewing it as invalidated under the rule against remoteness of vesting (of beneficial entitlements) rather than the rule against perpetual trusts (applicable to non-charitable purpose trusts).[34]

Second possible interpretation: non-charitable purpose trust

The second possibility is that the trust in *Re Denley* was held a valid non-charitable purpose trust: on the basis that such a purpose trust is valid if, despite the absence of any beneficiary, there is someone to enforce it – what we are calling a 'benefiting enforcer'. Here, the employees were available as benefiting enforcers: making the purpose trust valid. What would qualify anyone to be a benefiting enforcer is not entirely clear. But Goff J emphasised that the trust deed expressly stated the employees were entitled to the use of the land,[35] and he later said the trust was designed to benefit them.[36] It is clear that benefiting enforcers would need to satisfy the test for certainty of beneficiaries[37] – *although they would not be beneficiaries in the conventional sense*.

Identifying possible differences between a conventional beneficiary and a benefiting enforcer

What would be the difference between a conventional beneficiary and what we are calling a 'benefiting enforcer'? Each would obviously have the right to call for enforcement of the trust; and presumably the right to call for orders to indirectly facilitate that, for example replacement of the trustees.[38] And each would have the right to restrain any anticipated misapplication of the property by the trustees. This is in line with all that Goff J said about the employees' enforcement rights in *Re Denley*:[39]

> 'The court can, as it seems to me, execute the trust both negatively by restraining any improper disposition or use of the land, and positively by ordering the trustees to allow the employees and such other persons (if any) as they may admit to use the land for the purpose of a recreation or sports ground.'

(1) Primary rights of enforcement but no secondary rights?

We might distinguish between a conventional beneficiary and a benefiting enforcer by suggesting that a benefiting enforcer has only such rights; not the secondary rights of a beneficiary, deriving from their beneficial entitlement, to claim equitable compensation for breach of the trust, or hold a trustee liable to account for breach of fiduciary duty, or follow and trace misapplied trust property.[40] But if we suppose this would indeed be the general

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[32] For a full justification, see David Wilde, 'The Nature of Beneficiaries' Rights – Can there be a Trust to Observe a Licence Over Property?' (2021) 27 T&T 208.

[33] Support for this as a possible understanding of *Re Denley* is now found in JE Penner, *The Law of Trusts* (12th edn, OUP 2022), paras 7.54-7.55.

[34] *Womble Bond Dickinson (Trust Corp) Ltd v Persons Unnamed* [2022] EWHC 43 (Ch), esp [75].

[35] [1969] 1 Ch 373 (Ch), 383.

[36] [1969] 1 Ch 373 (Ch), 386.

[37] [1969] 1 Ch 373 (Ch), 386-87. This would include, it has been said, the test of administrative workability: *R v District Auditor (No 3), ex p West Yorkshire MCC* (1985) 26 RVR 24 (DC), 27.

[38] Paul Matthews, Charles Mitchell, Jonathan Harris, and Sinéad Agnew (eds), *Underhill and Hayton Law Relating to Trusts and Trustees* (20th edn, LexisNexis 2022), para 10.131.

[39] [1969] 1 Ch 373 (Ch), 388.

[40] It can be questioned where a mere 'enforcer', with no beneficial entitlement, would derive such rights from: Paul Matthews, 'From Obligation to Property, and Back Again? The Future of the Non-Charitable Purpose Trust' in David Hayton (ed), *Extending the Boundaries of Trusts and Similar Ring-Fenced Funds* (Kluwer 2002) esp at 224-28. It would seem to follow that there should also be no actions for dishonestly procuring or assisting a breach, nor for unconscionable receipt from a breach.

difference, there is authority pointing against the possibility of removing all accountability of the trustees for breach. In *Armitage v Nurse*[41] – in the context of trustee exemption clauses – Millett LJ, delivering the judgment of the Court of Appeal, held that trustees must have some remedial liability, saying:[42]

> '[T]here is an irreducible core of obligations owed by the trustees to the beneficiaries and enforceable by them which is fundamental to the concept of a trust. If the beneficiaries have no rights enforceable against the trustees there are no trusts … The duty of the trustees to perform the trusts honestly and in good faith for the benefit of the beneficiaries is the minimum necessary to give substance to the trusts…'

And to suppose it is possible to create a trust where those intended to benefit directly from its performance have removed from them the right to follow and trace trust assets again looks at odds with authority: case law espousing the *numerus clausus* ('closed number') principle limiting the variety of rights against property the law will recognise – most famously *Keppell v Bailey*,[43] where Lord Brougham LC said:

> 'There are certain known incidents to property and its enjoyment; among others, certain burthens wherewith it may be affected, or rights which may be created and enjoyed over it by parties other than the owner; all which incidents are recognised by the law … But it must not therefore be supposed that incidents of a novel kind can be devised and attached to property at the fancy or caprice of any owner. It is clearly inconvenient both to the science of the law and to the public weal that such a latitude should be given.'

We would have an attempt to create a novel 'trust' obligation attached to property: one binding the property in the hands of the trustees and their successors; but with those intended to benefit directly from its performance entitled only to enforce the trust against them – lacking the right to follow and trace misapplied trust assets. And possibly with the trustees or their successors having no right to use equity's tracing rules to recover misapplied assets, in the absence of sufficient fiduciary duties owed to, and enforceable by, anyone.[44]

(2) No *Saunders v Vautier* power to claim the trust assets?

Alternatively, or in addition, we might identify another difference between a conventional beneficiary and benefiting enforcer. Sometimes, beneficiaries have not only the right to enforce a trust, but also an important additional right – to take the trust property and disregard the settlor's declared terms in the trust. That is, trusts where beneficiaries can invoke the rule in *Saunders v Vautier*.[45] That case held that where a beneficiary is *sui juris* – adult and of sound mind – and is entitled to the whole beneficial interest, they can terminate a trust and take the property out, even though this violates the terms of the trust. A trust said the beneficiary should receive property at 25; he was held able to take it out as soon as he was adult. It follows that several beneficiaries can do this: if they are all *sui juris*, between them entitled to the whole beneficial interest, and unanimously agreed. And it follows that beneficiaries can use this power to simply vary the terms of a trust, rather than terminating it. The conditions necessary for this right to arise do not exist in all trusts, of course: they were not present in *Re Denley* itself, given the terms of the trust.[46] But where those conditions do obtain, seeing benefiting enforcers as not having this right is another way they could be distinguished from beneficiaries.

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[41] [1998] Ch 241 (CA).
[42] [1998] Ch 241 (CA), 253-54.
[43] (1834) 2 My & K 517, 39 ER 1042, 535.
[44] *Re Diplock* [1948] Ch 465 (CA), 520-21 and 540.
[45] (1841) 4 Beav 115, 49 ER 282.
[46] The employees were a fluctuating class and had only a time-limited licence under the trust, itself subject to a power in favour of others, and with express provision that if the employees no longer wished to use the land as a recreation or sports ground it was to go to a hospital.

Lawrence Collins J considered this at least a possible understanding of *Re Denley* in *Re Horley Town Football Club*.[47]

As an example, suppose a settlor's will leaves £1m on trust 'to be used solely for the purpose of buying my son and his wife shares in the XYZ Bank'. The couple may not want shares in the bank. They could, of course, accept the shares and sell them. But to avoid the trouble and expense, they would prefer to have the £1m. Viewing this as a beneficiary trust, despite the mention of a purpose, as would be conventional, they can exercise their *Saunders v Vautier* power to demand the money. But if the law recognises a new category of benefiting enforcers – with *only* the right to enforce the trust – it is possible to view them as reduced by the terms of the trust from beneficiaries to mere benefiting enforcers of a purpose trust: which cannot be deviated from. However, again, there is authority that a settlor cannot choose to exclude the *Saunders v Vautier* power: *Stokes v Cheek*.[48] A testatrix directed trustees to use money to buy annuities for beneficiaries; adding the beneficiaries were not to be allowed to take out the money instead of receiving the annuities. Sir John Romilly MR held the beneficiaries could take out the money instead:[49] 'The annuitants are entitled to such a sum as would be required to purchase their annuities.'

Conclusions on possible differences between a conventional beneficiary and a benefiting enforcer

It follows from the discussion above that if *Re Denley* does uphold a purpose trust, its decision – as distinct from wider dicta (considered below) – does not, as usually thought, involve rescuing what would otherwise be an invalid trust, by recognising a new category of valid non-charitable purpose trust. Instead, it involves taking what would have been a perfectly valid beneficiary trust and converting it into a valid purpose trust – merely shifting the borderline between valid trusts. And by converting beneficiaries into 'benefiting enforcers', what it actually involves is the potential for significantly downgrading the rights attached to beneficiary trusts.

The interpretation of the *Re Denley*-type trust is unclear as between beneficiary trust and purpose trust. Seeing it as a purpose trust would often be of no practical significance. And in the situations – identified above – where it could matter to see it as a purpose trust, doing so would appear to be contrary to established authority. Putting things another way, the authorities cited above from various areas of the law, pointing against the possible conversion of beneficiaries into benefiting enforcers, indicate that whether the decision in *Re Denley* could legitimately be seen as upholding a purpose trust raises a range of questions the law *has already asked and answered in the negative* – in different forms, while approaching the core issues involved from rather different perspectives.

Examining the wider obiter dicta in *Re Denley*: did the case suggest that indirectly benefiting enforcers can validate non-charitable purpose trusts?

It remains to examine the even more contentious obiter statements about non-charitable purpose trusts in *Re Denley*. The widest statement by Goff J appearing to support the validity of some non-charitable purpose trusts was that,[50] where the trust is '*indirectly* for the benefit of an individual or individuals' (emphasis added), it is valid because they will be able to enforce it; unless 'that benefit is so indirect or intangible or [the trust] is otherwise so framed as not to

[47] [2006] EWHC 2386 (Ch), [99] and [131].
[48] (1860) 28 Beav 620, 54 ER 504.
[49] (1860) 28 Beav 620, 54 ER 504, 621 (observing that it would be pointless to insist on the purchase of annuities to be given to the beneficiaries, who would then be able to sell them for cash).
[50] [1969] 1 Ch 373 (Ch), 382-84, quoted more fully above.

give those persons any locus standi to apply to the court to enforce the trust'. The employees in *Re Denley* directly benefited from the purpose, so this reference to those who only indirectly benefit was plainly obiter. Its importance, of course, is that *on first impression* it would be difficult to see those only indirectly benefiting as beneficiaries of a trust in the conventional sense; so there would seem to be no ambiguity here between beneficiary trusts and purpose trusts to resolve – this statement would necessarily seem to involve upholding purpose trusts with enforcers rather than beneficiary trusts. However, it will be suggested below that this first impression may well be wrong. Regrettably, it will take a significant number of pages and a somewhat tortuous route, but the conclusion here will be that those Goff J most probably had in mind are, once again, in truth conventional beneficiaries.

The problem is that Goff J's statement is not only obiter, it is very vague. What does 'indirectly' benefiting mean? Let alone 'not *too* indirectly'? Without examples, we can only speculate what the judge may have had in mind.

First possible meaning of 'indirectly' benefiting enforcers: people the settlor did not design the trust to benefit

First, taking the meaning of 'indirectly' benefiting as it has been understood by others: to mean, basically, people the settlor did not design the trust to benefit. On this understanding, this wide obiter dictum has been criticised at length by McKay,[51] who refers in particular to an apparently contrary statement of principle[52] – against those indirectly benefiting from a trust, in this sense, having any right to enforce it – in the House of Lords in the Irish case of *Shaw v Lawless*.[53] Lord Cottenham LC, delivering the judgment, said obiter:

> 'It was asked, among other things, whether, if a testator should say that he desired his son to be educated at a particular school, that would create a trust in favour of the schoolmaster? That would certainly be a matter for the advantage of the schoolmaster, but it could not be contended that he would have a right to enforce the performance of this desire of the testator. It would be an expression of desire made for the benefit not of the master but of the scholar.'[54]

Penner regards it as implicit in case law laying down the beneficiary principle that:[55]

> '[O]nly those who are intended to benefit *qua* beneficiaries have standing to enforce [a trust] … This rule is in essence parallel to the "privity" rule of contract law: … only those who are right holders under the trust may enforce it, not every Tom, Dick, or Mary who might like to see it carried out.'

An example of such an 'indirectly benefiting enforcer' might perhaps be constructed from a testamentary trust for the purpose of enlightening the people of Reading regarding the virtues of a particular political viewpoint. Those directly intended to benefit from this (although they might be dubious about the benefits) seem to be the people of Reading. But let us assume they are ruled out from being directly benefiting enforcers because an 'administratively unworkable' class, as significant geographical areas of population have so far been seen in the context of private trusts[56] – even if we could otherwise see them as motivated, reliable enforcers. However, an election candidate in this marginal town for the party espousing the

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[51] L McKay, 'Trusts for Purposes – Another View' (1973) 37 Conv 420.
[52] L McKay, 'Trusts for Purposes – Another View' (1973) 37 Conv 420, 426-27.
[53] (1838) 5 Cl & F 129, 7 ER 353, 155-56.
[54] Geraint Thomas and Alastair Hudson, *The Law of Trusts* (2nd edn, OUP 2010), para 6.17 comment with reference to this statement (notes omitted), 'The employing company [in *Re Denley*] presumably derived an indirect benefit from the provision of a fringe benefit to its employees, but it is doubtful whether it would have standing to enforce the trust, any more than a schoolteacher has standing to enforce a trust for the education of a schoolchild.'
[55] JE Penner, *The Law of Trusts* (12th edn, OUP 2022), para 7.2.
[56] Above, n 37.

viewpoint might be said to be indirectly benefited by the trust? But there would be obvious enforcement problems. First, how likely is it that the candidate would know about the existence of the trust? Being unaware of a trust is a problem that could affect any beneficiary; but the case of such an indirectly benefiting enforcer seems to take the problem to a new level. A trustee of an express trust must inform an adult beneficiary of the trust's existence.[57] But it would be quite a stretch to extend that duty to such an indirectly benefiting enforcer; and, in any case, what we are seeking is an enforcement mechanism against trustees who may not be attentive to their duties in the first place. Secondly, there are Reading East and Reading West parliamentary constituencies; and, of course, numerous local council seats; and the national party may well feel that the people of Reading are most effectively reached through national campaigning. So, we have a range of indirectly benefiting enforcers, all liable to seek different applications of the fund – different areas, times, mediums. From this innocuous example, the indirectly benefiting enforcer looks like an unreliable and potentially chaotic enforcement mechanism.

And, if it is a principle of our law that the presence of such an indirectly benefiting enforcer validates a non-charitable purpose trust, one is left wondering why in countless past cases purpose trusts found not to be charitable were held to have consequently failed, even though such an indirectly benefiting enforcer was clearly available. For example, continuing with the above illustration, why in *Re Hopkinson*[58] a purportedly educational trust was held invalid *precisely because* it was indirectly for the benefit of the Labour Party and therefore contravened the rule against political charities.

Second possible meaning of 'indirectly' benefiting enforcers: people the settlor did design the trust to benefit – but their benefits are relatively less concrete than usual

It is suggested that Goff J did not mean such indirectly benefiting enforcers at all. He may well have been speaking, instead, about those a trust was directly aimed at benefiting, and who were specifically designated in the declaration of trust to be benefited; but in situations where the benefits provided to them by the trust might be seen to be of a more 'indirect' nature than the more usual tangible trust benefits, such as personal receipt of income or capital or use in specie.

There is evidence within *Re Denley* that Goff J contemplated a right of enforcement only for those a trust was directly aimed at benefiting, and who were specifically designated in the declaration of trust to be benefited. After adverting to 'locus standi to apply to the court to enforce the trust', he emphasised that 'the trust deed *expressly states* that, subject to any rules and regulations made by the trustees, the employees of the company shall be entitled to the use and enjoyment of the land' (emphasis added).[59] And he said that the test of certainty of beneficiaries must be met, introducing this point with, 'As it is a private trust and not a charitable one, it is clear that, however it be regarded, the individuals *for whose benefit* [*the trust*] *is designed* must be ascertained or capable of ascertainment…' (emphasis added).[60] This suggests that those to benefit must be designated (either expressly or by very clear implication) – so there is a class to apply the test of certainty to. Or is the court supposed to look at a purpose, speculate for itself who might be indirectly benefited, and then assess whether they would form a certain or ascertainable class?

Goff J may well have had in mind, in particular, donations to non-charitable unincorporated associations – speaking at a time when such gifts were less well understood than today and their validity less secure. Such an association's property will typically be held on trust by its property-holding officers. At the time of *Re Denley*, a donation would have been

[57] *Hawkesley v May* [1956] 1 QB 304 (QB), 322.
[58] [1949] 1 All ER 346 (Ch).
[59] [1969] 1 Ch 373 (Ch), 383.
[60] [1969] 1 Ch 373 (Ch), 386-87.

considered in some danger, at least, of being a trust for the association's non-charitable purposes and therefore at risk of invalidity under the beneficiary principle; unless rescued by identifying persons to enforce it. However, the benefits enjoyed by members from the activities of such an association could often be described as 'indirect' in nature; frequently amounting to little more than satisfaction at the advancement of a cause they support. Perhaps this explains Goff J's reference to those who 'indirectly' benefit – a wish to ensure the validity of donations to non-charitable unincorporated associations.[61]

Would a *Re Denley* purpose trust be a better approach to gifts to non-charitable unincorporated associations?

Today donations to non-charitable unincorporated associations are generally validated as beneficiary trusts for the members of the association; so there is no longer any need to justify them as purpose trusts. But would there be any advantages to treating them as purpose trusts with the members as directly or indirectly benefiting enforcers? In other words, did the law take a wrong turn in its approach to donations to non-charitable unincorporated associations?

The current approach to property holding by non-charitable unincorporated associations

To briefly outline the current position.[62] The leading cases are *Re Recher's Will Trusts*[63] and *Re Bucks Constabulary Widows' and Orphans' Fund Friendly Society (No 2)*.[64] They show that, unless some other trust has been declared, property-holding officers of a non-charitable unincorporated association hold its property on trust for its current members, as beneficiaries; whether the association exists to benefit its members or for other reasons. And the members' equitable interests are subject to a contract between the members formed by the association's rules, governing how the property is to be used.[65] This applies to the general funds of an association, typically arising from members' subscriptions. And a *donation* to a non-charitable unincorporated is presumed to be intended as an addition to the association's general funds, to be held in the same way; again whether the association exists to benefit its members or for other reasons.[66] Equitable ownership – subject to the contract – is in the *current* members: it is

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[61] Although we again run into the problem of understanding exactly what Goff J meant by indirect, but not too indirect. Continuing with a political theme, Jonathan Garton, Rebecca Probert, and Gerry Bean (eds) *Moffat's Trusts Law: Text and Materials* (7th edn, CUP 2020), 812, comment, 'At best *Re Denley* recognises as valid only those trusts where the benefit for ascertained individuals is not too indirect or intangible. Would, for instance, the benefit accruing to party members … be considered too abstract? Indeed, can *Re Denley* be applied at all to an association whose purposes are "outward-turning"?' Graham Virgo, *The Principles of Equity and Trusts* (4th edn, OUP 2020), sect 7.2.1, answers no to a campaign group: 'Goff J [said] the trust would not have been valid had the purpose been abstract or impersonal. This would be the case, for example, had the purpose been to seek a change in the law, such as the abolition of vivisection, which had no direct or indirect benefit for particular people.' Contrast Simon Gardner, *An Introduction to the Law of Trusts* (3rd edn, OUP 2011), 71, commenting on associations in general, 'Most club members will be benefited by the performance of a trust for their club's purposes, and surely all, even if on the basis of altruism alone, will be interested in the performance of such a trust [so as to have standing under *Re Denley* to enforce the trust].' (Although he does not see a purpose trust as the natural interpretation of donations to non-charitable unincorporated associations – see below, n 100.)

[62] Some categories of unincorporated association are subject to statutory regimes rather than the general legal position stated here.

[63] [1972] Ch 526 (Ch).

[64] [1979] 1 WLR 936 (Ch).

[65] *Re Horley Town* [2006] EWHC 2386 (Ch), [118] and [128], described the trustees as holding on a 'bare trust' with their only a duty being to follow the association's directions (plus fiduciary duties of loyal service). (In rare cases, assets are not held by trustees but are instead owned directly by the members of the association, subject to the contract between them formed by the rules of the association: *Artistic Upholstery Ltd v Art Forma (Furniture) Ltd* [1999] 4 All ER 277 (Ch).)

[66] This appears to be a strong presumption. *Re Lipinski's Will Trusts* [1976] Ch 235 (Ch) – discussed at length below – shows that even a donation containing a direction that it must be used for a specified purpose will not

lost by those who depart and acquired by those who join in the future. The cases said it is open to the current members to depart from their contract and decide to divide the property between themselves for personal use: either by varying the contract within the rules, for example by majority vote; or otherwise unanimously, by agreeing to abandon the contract. And it is irrelevant that a donor might not foresee this.

It is worth emphasising one point, as we shall return to it several times. The cases say that the above analysis applies – including to outside donations – regardless of whether the association is an 'inward-looking' one (basically meaning self-serving) or an 'outward-looking' one (basically meaning altruistic). In *Re Recher*, Brightman J said:[67]

> 'The expressions "inward looking" and "outward looking" are imprecise and it is undesirable and indeed impracticable that the law should depend upon an ill-defined distinction of this sort; some associations, no doubt, look both ways; what then? In any event, the most outward looking association, assuming it to be unhampered by any trusts, can by agreement between its members convert itself into an inward looking association and vice versa, or become a hybrid, so that the distinction is not only imprecise but not even necessarily permanent. No reported case to which my attention has been drawn accepts this distinction and it does not seem to me that it has any logic to commend it.'

And in *Re Bucks*, Walton J endorsed this, saying:[68]

> 'I can see no reason for thinking that this analysis is any different whether the purpose for which the members of the association associate are a social club, a sporting club, to establish a widows' and orphans' fund, to obtain a separate parliament for Cornwall, or to further the advance of alchemy. It matters not.'

The extent of the law's commitment to this view can be seen in a decision that the sole surviving member of a non-charitable unincorporated association campaigning for a ban on performing animals was entitled to land and investments of the association worth over £2m, contributed towards that cause, since she was the sole surviving 'beneficiary' of the trust on which its assets were held when the association ceased to exist.[69]

This is still often called the 'Contract Holding Theory'. Penner has criticised the absence of the trust element from this label.[70] And 'theory' now understates the position, given it is clearly established law, having been applied in numerous cases including at the highest level.[71] Contract/trust holding approach seems preferable.

The alternative vision: a Re Denley purpose trust

If we assume *Re Denley* does validate non-charitable purpose trusts with benefiting enforcers available, it might seem reasonable to suggest that the holding of property by such associations could be understood as this kind of purpose trust instead. For example, Webb and Akkouh propose this for consideration – apparently not only in relation to donations, but also the other funds of the association, such as members' subscriptions in particular:[72]

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necessarily be interpreted as intended to impose a trust purpose, provided the stipulated purpose would benefit the members of the association: they are still liable to become equitable owners subject to the contract formed by their rules; and as owners they are free to decide to ignore the direction and do as they wish with the property.

[67] [1972] Ch 526 (Ch), 542.

[68] [1979] 1 WLR 936 (Ch), 940.

[69] *Hanchett-Stamford v A-G* [2008] EWHC 330 (Ch), [2009] Ch 173. (She had expressed the wish to donate the property to an animal welfare charity.)

[70] JE Penner, *The Law of Trusts* (12th edn, OUP 2022), para 11.76.

[71] *Universe Tankships Inc of Monrovia v International Transport Workers Federation* [1983] 1 AC 366 (HL): equitable ownership by the members subject to a contract formed by the rules was accepted both of general funds and outside donations.

[72] Charlie Webb and Tim Akkouh, *Trusts Law* (5th edn, Palgrave 2017), para 4.14.

> '[T]he obvious way to explain how [non-charitable unincorporated associations] hold property would be to say that they hold it on trust for the purposes of the group. However, the ... beneficiary principle stops us from doing this … *[I]f* we accept that *Re Denley's Trust Deed* … constitutes [an] exception to the rule against purpose trusts … we can use purpose trusts to explain how property is held by the majority of unincorporated associations.
>
> *Denley* suggests that purpose trusts will be upheld provided there is an ascertainable class of people who would benefit directly or indirectly from the property being applied for that purpose. Therefore if the purposes for which an unincorporated association exists and for which it applies its property do benefit an ascertainable class of individuals, *Denley* allows us to say that the association's treasurer holds the property on trust for such purposes; a trust which can then be enforced by those who would benefit from it (presumably whether or not they are members).[73] On this basis, it is only where the unincorporated association has a purpose which is abstract or which would benefit an uncertain class (or nobody at all) that we have to fall back on the contract holding theory. In all other cases, the contract holding theory and a *Denley*-type purpose trust would provide alternative, and mutually exclusive, answers to how the association's property is held.'

For those who prefer the law to be, whenever reasonably possible, *clear and simple* this does not look an attractive proposition. It would mean non-charitable unincorporated associations might hold their property in one of two different ways; and the borderline between them would turn (basically) on the difficult question of whether the members could be said to derive at least an 'indirect' benefit from the purposes of the association – 'indirect' benefit being a very vague concept that we have no explanation of at all.[74]

There are, however, three perceived problems with the current law relating to non-charitable unincorporated associations that it has been suggested a *Re Denley* purpose trust would remedy.

(1) Explaining change of membership

The first is a technical point and the problem seems more apparent than real. The property of a non-charitable unincorporated association is said to be held on trust for its *current members*, subject to the contract between them formed by its rules. Thereafter anyone joining acquires an equitable interest and anyone ceasing to be a member loses their equitable interest. It has been suggested that both joining and ceasing to be a member involve a 'disposition of a subsisting equitable interest', for which signed writing is required under Law of Property Act 1925, s 53(1)(c): yet this will frequently be absent in practice. *Hanbury and Martin* says:[75]

> '[Traditional accounts] fail to explain how the equitable interest of a member passes on his resignation without compliance with Law of Property Act 1925 s. 53(1)(c). [*Footnote*:] … The *Re Denley* [purpose trust] approach … whereby the beneficiary has no proprietary interest, does not encounter these difficulties.'

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[73] Enforcement by non-members would be questionable, for the reason suggested above: that, apparently, according to *Re Denley* any enforcers would have to be a class to be benefited *designated* by the terms of any payment (whether the payment was internal or external), a designated class we can apply the test of certainty of beneficiaries to: and the immediate and obvious benefit of any payment is to the association itself.

[74] There is admittedly *already* a distinction between unincorporated associations in forms of property holding: they might be charitable, involving purpose trusts, or might be non-charitable, involving beneficiary trusts. But the dividing line here, of charitable status, is a more manageable one than that proposed; and it also has to be drawn for a host of other legal reasons anyway.

[75] Jamie Glister and James Lee (eds), *Hanbury and Martin Modern Equity* (22nd edn, Sweet & Maxwell 2021), para 16.018.

But Penner[76] argues it would be interpreting the word 'disposition' too widely to apply it here; basically because the change in membership is the essence of what is happening and the consequent change in equitable interest is merely a side effect. So, when someone joins, the existing members do not make a disposition: Penner says it is analogous to the situation where a trustee has a power to add to (or delete from) a class of beneficiaries – no one would see adding to the class as a disposition. And when someone ceases to be a member they do not make a disposition: this is most obvious where they take no conscious step – for example, they cease to be a member because they die, or are expelled, or membership lapses on non-payment of subscriptions – but even where they deliberately resign from the association, Penner argues it is analogous to someone who holds an equitable interest subject to a condition subsequent, under which, for example, they lose the interest if they cease to be resident somewhere; no one would see termination of the interest on failing to satisfy the condition any longer, and the interest consequently passing elsewhere, as a disposition.

(2) Allowing stipulations for particular use of a donation

The second problem is potentially more practically significant. But it again seems illusory; while if real, it is one a *Re Denley* purpose trust appears incapable of helping with. A regularly expressed view is that the beneficiary principle – unless qualified by recognising *Re Denley* purpose trusts – prevents a donor, when giving a gift to a non-charitable unincorporated, from effectually stipulating a particular use for it within their operations, rather than giving it as a general addition to the association's funds. Any such stipulation, it is believed, is liable to impose a non-charitable purpose trust for the specified use, invalidated by the beneficiary principle. So, the court is apparently faced with a dilemma: whether to see the stipulation as an attempt to create a binding non-charitable purpose trust, invalidating the gift entirely; or to treat the stipulation as merely a non-binding indication of the donor's motives for giving an outright gift, leaving the association free to disregard the stipulation, so only partly carrying out the donor's expressed intentions. It has been suggested a *Re Denley* purpose trust approach would solve this problem: leading to a valid trust carrying out the donor's full, stipulated intentions. According to *Hayton and Mitchell*:[77]

> '[I]t may be that the terms of [a donor's gift to a non-charitable unincorporated association] make it clear that she intended the property to be held on trust for a particular purpose … [A] court may well be keen to find that no trust was intended, in order to ensure that the gift can be validated under the contract-holding approach … [I]f the gift is interpreted as a trust for a *non-charitable* purpose, the beneficiary principle will apply and the attempted gift will fail, unless, following the approach in *Re Denley's Trust Deed*, the gift can be seen as in fact for specific individuals who would benefit from the fulfilment of the purpose, and as conforming to the applicable perpetuities rules.'

The text cited as an example of the difficulty *Re Lipinski's Will Trusts*.[78] A testator left property to the Hull Judeans (Maccabi) Association, a small non-charitable unincorporated association operating a Jewish youth club, 'to be used solely in the work of constructing the new buildings for the association and/or improvements to the said buildings'. Oliver J upheld the gift. But he

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[76] JE Penner, *The Law of Trusts* (11th edn, OUP 2019), para 9.74 (cross-referring to para 6.20) dealt with the issue more fully than the new 12th edn, 2022, para 11.86.

[77] Ben McFarlane and Charles Mitchell (eds), *Hayton and Mitchell: Text, Cases and Materials on the Law of Trusts and Equitable Remedies* (14th edn, Sweet & Maxwell 2015), paras 5.093-5.096 (notes omitted – the passage does not appear in the 15th edn, 2022). The book did not endorse seeing *Re Denley* as upholding purpose trusts; it simply put both points of view: paras 5.030-5.032.

[78] [1976] Ch 235 (Ch).

found the donor's specific direction for the use of the gift to be only a non-binding indication of the donor's wishes: the association was free to use it as they wished.[79]

However, it does not seem to be a correct view of the law to say that it was necessary for Oliver J to find the donor's stipulation non-binding in order to uphold the gift as a beneficiary trust.[80] We saw previously[81] that mention of a purpose does not necessarily create a purpose trust. A trust for a purpose designed to benefit a person or persons is presumed to create a trust for them: a beneficiary trust, not a purpose trust. And the trust's beneficial entitlement can be understood as limited to spending on that purpose. Exactly the same approach can be applied to donations to non-charitable unincorporated associations. If I declare a trust strictly and solely to buy a house for my daughter there is no difficulty seeing that as a beneficiary trust for my daughter; so, if I declare a trust strictly and solely to buy a building for a youth club, why should it be problematic to see that as beneficiary trust for the members of the association?

Authority supporting the validity of donations to non-charitable unincorporated associations, as beneficiary trusts, despite *binding* stipulations for specific use within their operations is *Re Price*.[82] A testatrix left property to the Anthroposophical Society in Great Britain 'to be used at the discretion of the chairman and executive council of the society for carrying on the teachings of the founder, Dr. Rudolf Steiner'. Cohen J held this was a valid gift. He said the association was bound by the restriction on how the property could be expended: it could not be used for any wider activities of the association.[83] And he followed *Re Drummond*,[84] treating that case as a beneficiary trust.[85]

Such a donation, with a binding stipulation for specific use, would not be owned in equity by the association members, subject to the contract between them in its rules, as its general fund are, because the gift has not been given to the association outright. It must be held separately by the property-holding officers of the association, on trust to spend it in the prescribed manner: for the benefit of the members – as beneficiaries. Some will object that, definitionally, there cannot be a beneficiary trust where the trust does not confer equitable ownership of the trust property on the beneficiaries. But, as argued previously – in the context of a trust to observe a licence – this is perfectly possible. Likewise there can be trusts where all the beneficiaries are entitled to is expenditure for their benefit.[86]

And some will also doubtless object that, even if it is accepted that there can be beneficiary trusts where the beneficiaries are only entitled to expenditure for their benefit, then

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[79] [1976] Ch 235 (Ch), 243-50. (Contrast *Re Topham* [1938] 1 All ER 181 (Ch) where a stipulation for spending on an association building was found binding and the gift was held to fail. But the ground for failure was a violation of the rule against perpetual trusts. Clauson J inferred a requirement the building be retained as a continuous endowment. This seems an unjustified inference: if the association was free to sell the building and spend the proceeds there was no violation of the rule – in line with Oliver J's reasoning in *Re Lipinski*; see the following note.)

[80] Given he found there was no stipulation for a continuous endowment to create a problem under the rule against perpetual trusts: [1976] Ch 235 (Ch), 244-46. The facts that the fund could be spent immediately and any purchased proceeds disposed of at will were sufficient to negative a continuous endowment.

[81] Above, '*Meaning of a "Purpose Trust"*'.

[82] [1943] Ch 422 (Ch).

[83] [1943] Ch 422 (Ch), 427.

[84] [1914] 2 Ch 90 (Ch).

[85] [1943] Ch 422 (Ch), 427-28: 'The legacy [in *Re Drummond*] was not subject to any trust which would prevent the committee of the club from spending it in any manner they might decide for the benefit of the class intended.' Cohen J said there was no problem in *Re Price* under the rule against perpetual trusts, given there was no stipulation for a continuous endowment, with the association instead free to expend the property, albeit within the limit imposed (427-28). He added, obiter, that he would have upheld the gift as charitable anyway (432-35).

[86] David Wilde, 'The Nature of Beneficiaries' Rights – Can there be a Trust to Observe a Licence Over Property?' (2021) 27 T&T 208, 212-13.

'carrying on the teachings of … Dr. Rudolf Steiner' cannot be characterised as spending for the benefit of the association members, so as to make them the beneficiaries of this trust: this spending was intended for the benefit of the public instead. The authority of *Re Price* has been judicially questioned on this basis: Oliver J suggested in *Re Lipinski* that it appeared to involve a purpose trust with no ascertainable beneficiaries.[87] But there are two difficulties with this view. First, it would be quite extraordinary, and reflect no credit on the law, if an outright gift to an association whose core purpose was carrying on the teachings of Rudolf Steiner was valid; but a gift to the association with words added that it was to be used for 'carrying on the teachings of … Dr. Rudolf Steiner' was invalid. Secondly, it would seem to involve doing what the courts have refused to: drawing a distinction between outward-looking and inward-looking associations. Because it would be indisputable that the members of an inward-looking association would be the beneficiaries of a donation with a binding stipulation for expenditure directly for their benefit, for example on services for their personal gratification. Is it possible then to construct a justification for seeing the association members in *Re Price* as the beneficiaries of the trust for the stipulated expenditure? One obvious point is that the gift was *to* the association. Further, the members benefited from the advancement of their favoured cause, the prospect of increasing their fellowship, and from (presumably at least some of) the trust spending saving them expenditure they would otherwise have incurred themselves from association funds. And (at the risk of assuming what we are seeking to prove) if we characterise *Re Price* as a trust where the members of the association were entitled as beneficiaries to expenditure from the donated trust fund only on the stipulated purpose, the law says that if the association incurred expenditure on that purpose itself, it would be entitled to reimbursement from the trust fund for such expenditure[88] – received beneficially as an accretion to their general funds, held on trust for the members subject to the contract between them in the rules, a trust of which the members were clearly the beneficiaries – or, further, the members could potentially take the whole fund in disregard of the stipulated purpose by using their power under the rule in *Saunders v Vautier*.[89] All of these factors – being named recipients, materially benefiting, and being entitled to obtain property beneficially from the trust fund – added together, seem sufficient, in the overall context, to constitute the members the 'beneficiaries' of the trust fund created by the donation. At least, the situation does not look materially distinguishable from an *unrestricted* gift to an outward-looking association, which clearly creates a beneficiary trust for the members. Understood as a beneficiary trust for the members of the association, to be benefited by expenditure on their cause, *Re Price* may well be correct.

But even if all of this is unacceptable, and the view is taken that a scenario like *Re Price must* involve a problematic non-charitable purpose trust, how would recognising *Re Denley* purpose trusts help? Our difficulty in finding a valid beneficiary trust for the association members would have arisen because the trust's stated purpose was to service the public instead of the members. And such authority as we have indicates – albeit obiter – that there would be no benefiting enforcer of a *Re Denley* purpose trust available in such a situation.[90] In *Re Lipinski* (above), immediately after quoting the key passage from *Re Denley* on the scope for valid non-charitable purpose trusts, and 'adopting' its reasoning, Oliver J considered what the position would have been on a different interpretation of the testator's will: if he had intended to fund, not a building just for the association, but instead a different building project for the

[87] [1976] Ch 235 (Ch), 245-47. See also *Re Astor* [1952] Ch 534 (Ch), 546; and *Re Grant* [1980] 1 WLR 360 (Ch), 369.
[88] *Re Sanderson* (1857) 3 K&J 497, 69 ER 1206.
[89] (1841) 4 Beav 115; 49 ER 282.
[90] Although it also suggests the members could not be beneficiaries of a beneficiary trust, contrary to the argument made above.

benefit of 'the whole Jewish community in Hull'.[91] He concluded, 'If this is right, then the trust must, I think, fail, for … it would be difficult to argue that there was any ascertainable [benefiting enforcer].'[92] This seems to – correctly – rule out the public as benefiting enforcers. The public serviced by such trusts will invariably not be sufficiently ascertainable to satisfy the test of certainty of beneficiaries, as required for benefiting enforcers by *Re Denley*; nor is it likely they will have been *designated* as a class to benefit by the terms of the donation, which it was argued above *Re Denley* seems to also require; and nor is it probable the law could see them as sufficiently motivated to function as reliable benefiting enforcers anyway. And Oliver J's statement also rules out – again correctly – the association members from being seen as indirectly benefiting enforcers. This seems justified because, as argued above, *Re Denley* appears to limit benefiting enforcers to those a trust was *designed to benefit* – and we started from the premise of a trust to service the public.[93] (Or, arguably, it could be justified on the alternative ground that the satisfaction of servicing the public would be seen as too 'indirect' a benefit on its own to the association's members to constitute them benefiting enforcers.)

If correct, this rules out *Re Denley* purpose trusts in the *one situation* where it seems even conceivable they might serve to validate donations to non-charitable unincorporated associations that are otherwise, perhaps, invalid because they contain binding stipulations for specific use within their operations – those containing stipulations for servicing the public. It also reinforces the point that *Re Denley* purpose trusts could not be a *general* explanation of property holding by non-charitable unincorporated associations and that their adoption would pose difficult borderline issues. Gravells commented on *Re Lipinski*:[94]

> '[It] would appear to draw a distinction between two different types of unincorporated association: on the one hand, those which exist for the mutual benefit of the members themselves, and on the other hand those which exist to promote a particular purpose where the members are not the intended beneficiaries of the execution of that purpose … Yet surely this is the very distinction between "inward looking associations" and "outward looking associations" which was most emphatically and unequivocally rejected by Brightman J. in *Re Recher's Will Trusts* … Thus, Oliver J. has sought to draw a line at a point which has judicially been stated to be incapable of definition, and on the basis of a distinction which has been condemned as illogical.'

(3) Preventing association members abandoning its mission and dividing its assets

The third issue it has been suggested a *Re Denley* purpose trust might help with is one of real substance. The current approach, whereby the property of non-charitable unincorporated associations is seen as held on beneficiary trusts for the members of the association, subject to the contract between them formed by the association's rules, means that following a donation to an association, its members can then divert the donated property to a use quite different from the association's purposes at the time of the donation, which the donor presumably wished to support, and indeed the members could simply divide the property between themselves –

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[91] [1976] Ch 235 (Ch), 248.

[92] [1976] Ch 235 (Ch), 248. Oliver J said 'beneficiary' rather than 'benefiting enforcer', of course – underlining once again the ambiguity pervading the *Re Denley* case law: as to whether it is talking about conventional beneficiary trusts or purpose trusts with benefiting enforcers.

[93] This would mean that indirectly benefiting enforcers could not be resorted to where those directly intended to benefit from a trust failed to qualify as directly benefiting enforcers, in particular through not being an ascertainable class. The law would not give two bites at the cherry, examining the credentials of a directly benefiting enforcer, and if that did not work out, then looking for an indirectly benefiting enforcer. In other words, the law would only recognise indirectly benefiting enforcers as validating non-charitable purpose trusts where the trust was one that *no one* directly benefited from.

[94] Nigel P Gravells, 'Gifts to Unincorporated Associations: Where there's a Will there's a Way' (1977) 40 MLR 231, 235-36.

provided they act within the association's rules, or unanimously agree to abandon the existing contract between them.[95] As Warburton says:[96]

> 'The one difficulty resulting from property being held on trust for the members for the time being is that there is no guarantee that the property will always be applied for the original purposes of the association; the members can always agree together to apply the property in another way. Thus the future existence of the association is dependent upon moral not legal obligations.'

If non-charitable unincorporated associations were understood to receive donations subject to a *Re Denley* trust for the association's purposes – rather than for its members – it can be argued that would prevent the members from diverting the property to other uses or even dividing it between themselves. Warburton says:[97]

> 'Whilst there are considerable difficulties from a conveyancing point of view in using a [*Re Denley*] purpose trust it has one advantage … which no other method possesses; the property must always be used for the purposes of the association.'

But would a *Re Denley* purpose trust approach really improve the situation? There is an ambiguity about what on trust 'for the purposes of the association' would mean. Would that mean its *static* purposes: the purposes being pursued at the time of the gift *only*? Or would it mean its *dynamic* purposes: the purposes being pursued at the time of the gift *plus any other future purposes within the scope of the association's rules, which will often contain an express or implied power to alter the course of the association, including by terminating the association and dividing its assets*?[98]

It is hard to justify the static purposes meaning as the usual intention of a donor; and if the association's activities changed at all significantly it would necessitate holding the gift as a separate fund, acting as a restriction on flexibility. Gardner, although enthusiastic to understand *Re Denley* as a purpose trust,[99] is more sceptical about applying such an approach to non-charitable unincorporated associations, saying:[100]

> 'One might see the [static] purpose trust approach's firmer adherence to the original club purposes as an argument in its favour, as making it more faithful to the donor's intentions. But this is a questionable view. The donor, remember, sought to make a gift to the club. It is strongly arguable that in doing so he meant the members to settle the use of the money thereafter. (Just as if I give you some money as a present, I acknowledge that it is yours to spend, and that you are ultimately entitled to disregard whatever ideas I may have about its use.) And the closer approximation to that is not the [static] purpose trust approach, but the contractual analysis.'[101]

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[95] On this being a practical issue, see Peter Luxton, 'Gifts to Clubs: Contract-holding is Trumps' [2007] Conv 274, 281. (The focus here is on outside donations, but members might feel equally aggrieved at seeing the fruits of their own subscriptions or other contributions being appropriated to different uses from those intended: Jeffrey Hackney, *Understanding Equity and Trusts* (Fontana 1987), 157-59.)

[96] Jean Warburton, 'The Holding of Property by Unincorporated Associations' [1985] Conv 318, 322.

[97] Jean Warburton, 'The Holding of Property by Unincorporated Associations' [1985] Conv 318, 320. (Similarly Jean Warburton, *Unincorporated Associations: Law and Practice* (Sweet & Maxwell 1992), 48.)

[98] A dynamic purposes approach would not raise any issue of uncertainty of trusts, any more than the contract/trust holding approach does: on which see JE Penner, *The Law of Trusts* (11th edn, OUP 2019), para 9.72 (a passage omitted from the new 12th edn, 2022).

[99] Simon Gardner, *An Introduction to the Law of Trusts* (3rd edn, OUP 2011), 221-22.

[100] Simon Gardner, *An Introduction to the Law of Trusts* (3rd edn, OUP 2011), 73. (See further Simon Gardner, 'A Detail in the Construction of Gifts to Unincorporated Associations' [1998] Conv 8, esp 9.)

[101] It would be even more difficult to view members' subscriptions as paid on a *Re Denley* purpose trust – as Webb and Akkouh apparently envisage (above, n 72) – for the *static* purposes of the association at the date of payment. That would seem to ignore the contractual dimension to the payment: members would be surprised to discover that they could not change the association's activities through its constitution *and apply the association's assets in that new direction*, because those assets are tied up in a trust for past purposes.

The static purposes interpretation might look justifiable in some circumstances: where evidence indicates a donor was interested in the purpose served by the association and had little interest in the association itself, which was seen as merely a vehicle for furthering the purpose. An example might be an association promoting a political cause.[102] *Hayton and Mitchell* commented:[103]

> '[A trust for the members of the association, subject to the contract between them formed by the association's rules] may not always represent the true intention of … the party making the transfer. Certainly, in some cases, [they] might be surprised to learn … that the apparent purpose is regarded merely as a motive for an absolute gift, or that the current or future members of a club are free to decide to dissolve the club and divide [the] gift amongst themselves rather than spending it on the purposes of the club.'

However, the dynamic purposes interpretation does seem the natural starting point, as suggested by Gardner. And it is doubtful the courts would be inclined to deviate from this starting point: because they have refused to interpret a donor's intentions regarding a gift by reference to whether it was to an 'inward-looking' or an 'outward-looking' association, given the practical difficulty of distinguishing between the two. Accordingly, under the current law, the contract/trust holding approach is even said to be prima facie applicable to a donation to a political party, with the member beneficiaries, free to use the property as they choose.[104] And this can perhaps be defended by saying that, although the current law leaves 'outward-looking' associations in danger of being asset-stripped by their members in theory, in practice these are the very sorts of association where the membership would be most unlikely ever to contemplate this.

But even if we could distinguish between 'inward-looking' and 'outward-looking' associations, or we could find some illusive middle way for all non-charitable unincorporated associations – an understanding of a *Re Denley* trust for their 'purposes' allowing some flexibility but preventing egregious departures from what the donor probably contemplated – there is a more fundamental problem awaiting.

Crucially, if an association did want to depart from a *Re Denley* trust for its purposes, viewed in some way or degree as its static purposes, who is there now to enforce the trust? The very association that *Re Denley* relies on as its benefiting enforcer, to enforce the trust against the trustees, *no longer wishes the trust to be carried out; and it has itself become the trustee with effective control of the property, desirous of spending it on other purposes*. Or at least, the association's property-holding officers will have become the trustees of the gift when the association received it. Those officers would need to be both well versed in the law and courageously upstanding before they could be expected to defy the wishes of the association's membership and honour their obligations as trustees of the donor's purpose binding the gift. In any case, under the constitution of a typical non-charitable unincorporated association the membership will be able to remove obstructive property-holding officer trustees.[105] Similarly,

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[102] But see below, n 104 on donations to political parties.

[103] Ben McFarlane and Charles Mitchell (eds), *Hayton and Mitchell: Text, Cases and Materials on the Law of Trusts and Equitable Remedies* (14th edn, Sweet & Maxwell 2015), para 5.100 (a passage omitted from the 15th edn, 2022).

[104] *Re Grant* [1980] 1 WLR 360 (Ch), 367; *Conservative and Unionist Central Office v Burrell* [1982] 1 WLR 522, 529 (Brightman LJ, delivering the leading judgment on the point).

[105] Lynton Tucker, Nicholas le Poidevin, and James Brightwell (eds), *Lewin on Trusts* (20th edn, Sweet & Maxwell 2020), para 14.069 (note omitted): 'On occasion, the trust instrument provides that the trustees are to be or are to include the holder or holders of one or more offices. Provisions to that effect [include] the president of an unincorporated association, such as a club. There seems no doubt that in such a case the trusteeship will automatically terminate if the holder of the office ceases to hold it: express provisions automatically terminating a trusteeship in particular circumstances are not uncommon and their validity undoubted.' Again, it would take a legally knowledgeable and brave officer to challenge this.

a member of any minority faction opposing the majority would need a knowledge of the donation's history, an acute understanding of the legal position, and considerable tenacity, to secure enforcement of the purpose trust. In other words, *Re Denley's* supposedly reliable enforcement mechanism of benefiting enforcers has now broken down.[106]

Furthermore, we shall now see that a dynamic purposes approach seems to be indicated by case law on the possibility of a *Re Denley* purpose trust in the context of non-charitable unincorporated associations; and that case law ultimately seems to lead us back to where we started – with a beneficiary trust.

An 'association's purposes' would seem bound to have a dynamic, rather than static, meaning

Such limited case law as we have suggests that, under a *Re Denley* purpose trust in the context of a non-charitable unincorporated association, any trust for the association's purposes would indeed be seen, not as a trust for its *static* purposes at the date of a donation, but instead as a trust for its *dynamic* purposes as they might be agreed from time to time.

Re Lipinski[107] was the first case purporting to uphold a *Re Denley*-type trust in the context of a non-charitable unincorporated association. However, like *Re Denley* itself, *Re Lipinski* is ambiguous as to *what exactly was meant* by a *Re Denley*-type trust: a beneficiary trust, or a purpose trust for mere benefiting enforcers. For all the reasons given in relation to *Re Denley* above, *Re Lipinski* is better understood as a conventional beneficiary trust, even if that is not the most natural reading at times – although in the context of a non-charitable unincorporated association, they would be beneficiaries subject to the contract between them. But in what follows, it will be *assumed* for the purposes of analysis that in *Re Lipinski*, a *Re Denley*-type trust was intended to mean a purpose trust for mere benefiting enforcers (although, of course, the expression 'benefiting enforcers' was once again not used by the court).

In *Re Lipinski*, it will be recalled, a testator left property to a Jewish youth club, to be used solely in constructing or improving new buildings. Oliver J upheld the gift. His judgment is not wholly clear. But he appeared to say – on the assumed interpretation being given to the case for current purposes – that it was valid *either* as a beneficiary trust for the members of the association subject to the contract between them *or* as a *Re Denley* purpose trust, with the members of the association as benefiting enforcers.[108] And that it was unnecessary to decide between these two options because, *in either category* the members could agree to do anything with the property – they would not be bound by the testator's direction to spend it solely on buildings.[109]

Rickett[110] interprets the judgment in *Re Lipinski* this way and is critical of it. In particular, Rickett questions Oliver J's suggestion that he did not need to choose between the two possibilities identified because, *in either category* the members could agree to do anything with the property: this, Rickett says, would not be the case under a purpose trust. But, assuming we are dealing with a purpose trust, we have to accept that the donor's specific direction for the use of the property was found by the judge to be only a non-binding indication of the donor's wishes.[111] And any purpose trust was therefore instead *for the general purposes of the*

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[106] Admittedly, similar problems could arise in a *beneficiary* trust for members of an association, limited to spending on a purpose stipulated by the donor, of the sort postulated above – if the members did not wish to be benefited in that way. But the claim we are testing is that a *Re Denley* purpose trust could improve the law by *preventing associations diverting donations to new unintended uses*; and the claim seems doubtful.

[107] [1976] Ch 235 (Ch).

[108] [1976] Ch 235 (Ch), 243-50.

[109] [1976] Ch 235 (Ch), 243-50, saying (250) 'all roads lead to the same conclusion'.

[110] CEF Rickett, 'Unincorporated Associations and their Dissolution' (1980) 39 CLJ 88, 106-8.

[111] This is the clear outcome on any reading of the judgment – however hard to justify on the wording of the gift: above, n 79.

association. If so, Rickett's criticism is only valid if, under this purpose trust, we give 'the purposes of the association' a static meaning – that is, the purposes at the date of the gift cannot be departed from. But if instead we give 'the purposes of the association' a dynamic meaning – whatever the members may agree to in the future – Oliver J is right to say the members could agree to do anything with the property. His judgment correspondingly becomes much more intelligible; and for this reason, we should take that as being what Oliver J was saying – that 'the purposes of the association' *would have a dynamic meaning*.

A trust for the dynamic purposes of an association would seem bound to include conferring beneficial interests in the association's assets on the current members in any standard association

So far, based on *Re Lipinski*, a trust for an unincorporated association's non-charitable purposes has been taken to have the dynamic meaning of 'whatever the association's purposes are under the contract formed by its rules from time to time – including dividing it between the members if that is agreed to'. However, the only other case we have purporting to uphold a *Re Denley*-type trust in the context of a non-charitable unincorporated association, *Gibbons v Smith*,[112] goes even further. It would support division between the members on dissolution *even in the absence of an agreement to do so*. Roth J found that land had been held by trustees of a non-charitable unincorporated association, founded for railway workers, on declared trusts to provide (primarily) recreational facilities for club members. He expressly followed *Re Denley*,[113] but then very clearly described the trust as a beneficiary trust for the members subject to the contract formed by the rules of the association.[114] And, given the association had dissolved with no provision in its rules for what should happened to its assets, he held they should be divided equally between the members, as beneficiaries of the trust, at the date of dissolution.[115] There was no evidence that the assets had been acquired with anything other than members' subscriptions; but, with the history unclear, the judge indicated that equal division between the members was appropriate regardless of whether their purchase may have been funded by other donations.[116] Once again, *Gibbons v Smith* is therefore somewhat ambiguous, and for all the reasons given in relation to both *Re Denley* and *Re Lipinski* is better understood as a conventional beneficiary trust. But it will be *assumed* that a *Re Denley*-type trust was intended to mean there a purpose trust for mere benefiting enforcers (with, of course, the expression 'benefiting enforcers' once again not used by the court). Given that assumption, it seems the purpose trust found there has to be stated as 'to implement the contract formed by the association's rules from time to time, one term implied into such contract, in the absence of contrary provision, being the conferral of a beneficial interest in the assets held on trust by the association's property-holding officers'; with the members accordingly having the right to agree to divide the association's assets between themselves *and being entitled to such a division as beneficial owners, without any such agreement, if the association is found to have dissolved*. If we accept that, we have reached the point that a *Re Denley* purpose trust, in the context of a non-charitable unincorporated association, would be, in the absence of provision to the contrary, for purposes *that include* conferring a beneficial interest on the members.

The unreliability of non-charitable unincorporated associations as benefiting enforcers

If any enthusiasm remains for seeing donations to non-charitable unincorporated associations as *Re Denley* purpose trusts, it should finally be noted that relying on the association as

[112] [2020] EWHC 1727 (Ch), [2020] WTLR 947.
[113] [2020] EWHC 1727 (Ch), [2020] WTLR 947, [53]-[55].
[114] [2020] EWHC 1727 (Ch), [2020] WTLR 947, [56]-[57].
[115] [2020] EWHC 1727 (Ch), [2020] WTLR 947, [63]-[67].
[116] [2020] EWHC 1727 (Ch), [2020] WTLR 947, [66]-[67].

benefiting enforcers would be committing to a fallible enforcement mechanism. This mechanism could only work so long as the association was willing, and available, to enforce the trust.

Willingness to enforce the trust

Of course, beneficiaries may choose not to enforce a beneficiary trust: but that is their right – the trust is *for them*.[117] Whereas we are talking about trusts *for purposes*. And as we saw above, if an association no longer wishes to pursue those purposes – either purposes specified by the donor, or the association's past purposes, if a donation for an association's general purposes were to be understood as for only its *static* purposes at the date of the gift (contrary to the suggestions above) – there is now in practical reality no one to enforce the purpose trust. The association has become effectively both trustee and supposed enforcer, so the property can easily be misapplied.[118]

Availability to enforce the trust

An association might also not be available to act as benefiting enforcers through termination. *Gibbons v Smith* (above) is one of countless cases in the law reports where a non-charitable unincorporated association dissolved – there it simply melted away. If such an association does dissolve, what would be the consequences if it was holding property donated on a *Re Denley* purpose trust, understood otherwise than as for its dynamic purposes conferring a beneficial interest on the members? There appears to be a common assumption that this would lead to a resulting trust for the donor or their estate.[119] But arguably the *Re Denley* purpose trust would remain binding on those holding the assets of the association, if the purposes were still possible and the gift was not conditional on the association acting as trustee. The very essence of this *Re Denley* purpose trust is that it would not be *for the association*, but *for abstract purposes*. It would be perfectly feasible to declare property should be held within such a purpose trust for a century or more.[120] But once again, *Re Denley's* supposed enforcement mechanism of benefiting enforcers breaks down once the association dissolves, if there is still an ongoing trust.

Conclusion on Re Denley in the context of non-charitable unincorporated associations

Our conclusion was anticipated some pages earlier. If in *Re Denley* Goff J was really talking about members of non-charitable unincorporated associations when he mentioned enforcement by those who might 'indirectly' benefit from performance of a trust – because the most obvious benefits they receive might be of an intangible nature, from furtherance of the association's general purpose – then on the authorities the members of any ordinary association seem to end up as conventional beneficiaries, with an equitable proprietary interest in the trust assets, even starting from a *Re Denley* purpose trust approach. This could only be disputed by saying *Re Lipinski* and *Gibbons v Smith*, above, are wrong in their apparent cumulative interpretation of *Re Denley*. And that non-charitable unincorporated associations should instead be, in some cases but not all (only where there is a sufficiently direct benefit), benefiting enforcers of purpose trusts; for static purposes it is difficult to specify (if we are to allow any flexibility for changes to the association's purposes thereafter); stripped of beneficiary rights. But on

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[117] Kelvin FK Low, 'Non-Charitable Purpose Trusts: the Missing Right to Forgo Enforcement' in Richard C Nolan, Kelvin FK Low, and Tang Hang Wu (eds), *Trusts and Modern Wealth Management* (CUP 2018).

[118] Again, admittedly this could happen with some beneficiary trusts – see above, n 106.

[119] For example, Paul S Davies and Graham Virgo, *Equity and Trusts: Text, Cases and Materials* (3rd edn, OUP 2019), 314; Graham Virgo, *The Principles of Equity and Trusts* (4th edn, OUP 2020), 217; Charlie Webb and Tim Akkouh, *Trusts Law* (5th edn, Palgrave 2017), 92.

[120] See David Wilde, 'The Rule Against Perpetual Trusts: Part 1 –Trusts for Non-Charitable Purposes' (2021) 35 TLI 149.

examination there appear to be no advantages to taking this approach – all of the proposed benefits turn out to be illusory.

Conclusion

The law on non-charitable purpose trusts is relatively straightforward – provided care is taken in identifying what a purpose trust is. A trust for a stated purpose directly benefiting a person or class of persons creates a beneficiary trust, not a purpose trust: if the expression 'non-charitable purpose trust' is to be meaningful, it must be confined to situations where there is no beneficiary. The general rule is that a trust for a non-charitable purpose is invalid because there would be no one to call for enforcement of the trust. By way of exception, trusts can validly be created for a limited range of non-charitable purposes – for monuments, animals, and (probably) religious ceremonies – the 'trusts of imperfect obligation'.

The case of *Re Denley* does not, as often claimed, validate a further category of non-charitable purpose trusts. It was itself a conventional beneficiary trust; albeit with an unusual – although long-established – type of beneficial entitlement: a trust to observe a licence for beneficiaries to enjoy property. Statements in the case about 'purpose trusts' used that expression incorrectly. If the decision is interpreted as upholding a non-charitable purpose trust, this does not, as is commonly suggested, expand the scope of valid trusts: it instead downgrades what would have been a valid beneficiary trust anyway to something less, contrary to established precepts of trust law and wider property law. And if obiter dicta in the case, widely believed to support upholding non-charitable purpose trusts, are examined, they too lead nowhere but a series of dead ends.

So it appears the Court of Appeal was correct when it recently took for granted – seemingly – that the only recognised non-charitable purpose trusts are the trusts of imperfect obligation: *R (Day) v Shropshire Council*.[121]

[121] [2020] EWCA Civ 1751, [2021] QB 1127, [21], where the judgment of the court (David Richards, Hickinbottom, and Andrews LJJ) said (obiter) that there is only a 'small band of non-charitable purpose trusts (such as for the upkeep of a grave) which equity recognises'.