

Twenty years ago, some residents of the town of Weatherfield formed an 'action group', Weatherfield Wants a By-Pass (WWABP), to campaign for the building of a by-pass around the town (a non-charitable purpose). During the first few years of its existence, WWABP raised over £100,000, of which half was spent in presenting WWABP's views to a public enquiry. The money was raised by street collections in Weatherfield and elsewhere and by way of profit on various fundraising events organised by WWABP. In addition, WWABP received £10,000 from a local road haulage company. Members of WWABP paid an annual subscription of £5 each.

The by-pass has now been built and it is proposed to wind up WWABP, which still retains funds of some £50,000.

Advise Neville, the group's treasurer, as to whom he should distribute the funds to.

WWABP was set up with a view to campaigning for the building of a by-pass. An unincorporated association is a "group of persons who have come together for a common purpose, and who had not incorporated their combination under any of the special or general statutes conferring legal personality under English law" (Green, 1980). WWABP have, one would assume, not been incorporated under any such statute and as such we are dealing with a case of dissolution of an unincorporated association. In essence, the members have no more than a multilateral contract of association and the body has no separate legal identity beyond personality derived from the individual members; any property owned beneficially by WWABP must, therefore, actually belong to the members. In *Conservative and Unionist Central Office v Burrell* it was held that the rules of unincorporated associations would not always apply to movements or groups; in *Burrell* itself the Conservative Party was held to fall short of an unincorporated association because the members had no mutual rights and obligations, and there were no rules governing the control, and furthermore no event in history

which could be identified as marking the creation of the party as an association. It seems likely that WWABP would be held an unincorporated association if there are rules in place determining who controlled the body and its funds, and I shall proceed on the basis that it is. One final note on that matter is that if WWABP were held not to be an unincorporated association the legal basis for distributing funds would be mandate or agency.

How were the funds held?

Modern case authority, in particular *Re Bucks Constabulary Widows' and Orphans' Fund Friendly Society (No. 2)*, determines that the fate of the club's money on dissolution is determined by the way in which the money was held prior to dissolution. Two major analyses for this exist, the first being that the money is given on a trust for the clubs' purposes and the second that money is paid over absolutely and then governed by the law of contract. Whilst this debate seems largely theoretical, it makes a substantial difference to the outcome in Neville's case when distributing surplus funds. Taking the first analysis, a trust for the club's purposes are now valid under the rule in *Re Denley's Trusts Deed*, despite the fact that in general private trusts for purposes will not be valid, save in certain exceptional circumstances. In *Re Denley*, Goff J. upheld a trust although expressly for a purpose, validating it so long as the benefit is not indirect or intangible to the beneficiaries. The beneficiary principle may cause problems for WWABP, however, as in *Morice v Bishop of Durham* William Grant M.R. stated "every other [non-charitable] trust must have a definite object. There must be somebody in whose favour the court can decree performance." The law of unincorporated associations means that property may be held on trust for its members and there are, therefore, beneficiaries who have a correlative right to the trustees in enforcing the trust. Under the Friendly Societies Act 1974, s 54(1) the property of unincorporated friendly societies shall vest in the trustees for the time being of the society, for the use and benefit of the society and its members (as interpreted in *Re Price*). As such, gifts to such societies may be upheld as

beneficial to the members as beneficiaries of the trust. One assumes a failure of the purpose of the trust by the dissolution of the WWABP and as such a resulting trust to the donors would occur, as it did in *Re Printers' and Transferrers' Society*. It seems today, however, that the resulting trust analysis is no appropriate looking at recent case authority, and so to that solution I now turn.

By the contractual analysis, the money contributed to WWABP's fund was paid over absolutely to Neville, who is bound by contract with club's other members as to how he may spend it. This was the analysis in *Re Recher's WT*, affirmed by Goff J in the *West Sussex* case: "the relationship is one of contract and not of trust." Hence, "members can band themselves together as an association or society, pay subscriptions and validly devote their funds in pursuit of some lawful non-charitable purpose" which are held on bare trust for the members. This bare trust does not detract from the contractual analysis. Having established the basis on which the funds were held for WWABP prior to dissolution, I have a proper standing on which to base my advice to Neville on how to distribute the funds on dissolution.

Distribution to members

Subject to a tenuous proposed exception I shall discuss below, the members shall be entitled to share the property amongst themselves upon dissolution, in whatever proportions are considered appropriate. Prima facie, the court will order distribution in equal shares, save where the society's rules provide for a different method of division. Assuming that no such provision is made in WWABP's constitution, the courts are fairly likely to order division in equal shares: "equality is equity," was the case in *Brown v Dale*, *Feeny and Shannon v MacManus* and more recently, *Re Sick and Funeral Society, Golcar*. Megarry J justified this on fairness grounds, giving full shares to full members and half shares to half members, and so departing just slightly from the equality rule. Case law suggests that this applies only where contributions were equal, or

unquantifiable, as I presume was the case for WWABP. If, however, different members paid different subscription fees or obtained different benefits, then it is possible that the court will order distribution in such proportions as deemed fair.

Contributions from outside sources

Where the funds were obtained from sources other than subscriptions, should they still be distributed to members? On a resulting trust analysis, the answer would inevitably be no, however the contractual analysis prevails, under which the members, through the WWABP, beneficially hold the property. This issue was clarified in the *West Sussex* case, in which Goff J distinguished the three modes by which contributions can come from outside sources thus:

1. proceeds of entertainments etc;
2. collecting boxes
3. identifiable donations.

There was indeed money raised “by way of profit on various fundraising events organised by WWABP” and “by street collections,” relating to the first and second of Goff J’s categories. It was held that in these first two categories they were “out-and-out payments” made absolutely, with no feasible intention of a trust arising. The funds raised by street collections and fund raising events could therefore be added to the divisible funds on dissolution. Goff J held that in the case of identifiable donations, however, a trust was intended, the object failed and thus is resulted back to the donor. In terms of the £10,000 contributed to WWABP by a local road haulage company this may result back to them applying *West Sussex*. Martin in ‘Modern Equity’ doubts the reasoning of this, however, asking why this gift should not be held absolute when other gifts in the form of street collections are? He submits that there is no cause for a resulting trust here. One suspects that the decision of *West Sussex* was for policy reasons in

relation to more substantial gifts given for reasons of, presumably, benevolence, and I cannot foresee a departure from *West Sussex* in relation to identifiable donations. I therefore advise Neville that the £10,000 should result back to the local haulage company, whilst the rest of the funds can be divided between the members.

Bona vacantia

The crown may claim the property as *bona vacantia*, but only in very narrow circumstances, which are most likely not to apply to WWABP. First, this being the exception to the equal distribution between members mentioned above, the assets may be held as *bona vacantia* if the society is deemed defunct or moribund, as Walton J discussed in *Re Bucks*. If, following the completion of the by-pass, the members disbanded and their membership expired, it may be held that the association was moribund and any existing members are precluded from claiming ownership of the society's property for themselves, as noted by Fuller in 'The Law of Friendly Societies.' This is not a well-founded legal principle, however, and it is unlikely that Neville will have any problems on this ground. The very narrow circumstances in which the courts may adopt the *bona vacantia* solution are thus confined to *Cunnack* and *Braithwaite*. The former where externally imposed regulations require a specific course of action and the latter where members have failed to comply with formality requirements. Thus, *bona vacantia* would be an improper conclusion in the case of WWABP.

Members – past and present?

Having established that the members would be entitled to the entirety of the fund, subtracting the £10,000 contributed from the local road haulage company, which members can claim entitlement? Cross J identified three categories of property interest of members of an unincorporated association thus:

1. Gift to members at relevant date as joint tenants, each having a right of severance;
2. Gift subject to contractual rights and liabilities – prevents severance and causes members' death or resignation to result in that property accruing to remaining members; and
3. Gift to present and future members – void unless confined to perpetuity period.

The second has been favoured as a basis for determining shares on dissolution, expanded by Brightman J in *Re Rechters' WT* and accords with the contractual analysis favoured above. As such, only those members who were still members on the date of dissolution shall be held entitled to a share of the funds, for any members who left or died abandoned their entitlement and it accrued to the remaining members. This makes Neville's task of distribution much easier, he need only take into account the remaining members on the date of dissolution.

Date of dissolution

It may there be necessary to determine the exact date of dissolution of WWABP in order for Neville to ascertain who the members were at that date. In *Re GKN Bolts & Nuts Ltd Birmingham Works, Sports & Social Club* it was held that mere inactivity did not suffice and there must be inactivity coupled with positive acts to wind it up (when a special meeting was held in *GKN Bolts & Nuts*). A similar determinative event would need to be established in the case of WWABP in order to ascertain the exact date of dissolution, but this should not cause too many problems.

Advice to Neville

Unless the WWABP's rules provide otherwise, distribution will be on *per capita* basis, *prima facie* in equal shares and ignoring actual contributions (Walton J in *Re Bucks*). Full and ordinary members at the date of dissolution only will be

entitled; they must have voting rights and paid subscription fees (*Re GKN Nuts & Bolts*). The resulting trust analysis will not normally be adopted in cases of unincorporated associations today, and in view of *Re Bucks* it is unlikely that the Crown will establish a case for *bona vacantia*, or that outside contributors will have a claim, subject to subsequent analysis of *Re West Sussex*. Thus Neville should distribute the funds in equal shares to all full members existing at the date of dissolution, but in all likelihood £10,000 should result back to local road haulage company.