

# Consultation on Draft public benefit guidance

## Response of The Christian Institute

### ***Introduction***

The Christian Institute is a non-denominational charity established for the promotion of the Christian faith in the UK and elsewhere. We have twenty thousand supporters throughout the UK, including over 2,500 churches and church ministers from almost all the Christian denominations.

We seek to promote the Christian way of life and Christian teaching on moral and ethical issues. We do this through our publications, lectures, participation in Church services, website, comment in the media, and campaigns.

A major focus of our work over many years has been to protect religious liberty. We frequently provide advice and assistance to Christians who have been discriminated against because of their faith.

Thousands of our supporters are involved in the running of churches and Christian organisations. They will have to have regard to the guidance on public benefit.

### ***One size fits all***

We understand that all charities will now have to demonstrate public benefit. But there are very marked differences between religious charities and all other kinds of charity.

- Religious belief is about the core of someone's being
- Religious faith affects the whole of life (eg ethical conduct, diet, dress, family life, what is deemed to be legitimate work etc)
- Charitable status for religious bodies is inextricably linked to human rights [freedom of religion (article 9), and freedom of expression (article 10) and freedom of assembly (article 11)]
- Religious charities promote beliefs which others (including other religious charities) strongly dispute.
- Religious charities are generally outreaching or proselytising: they want others to adopt their beliefs and way of life.
- Religious ethics can often be out of step with secular culture (eg on such matters as materialism, sexual ethics, family life, transsexualism, and abortion).
- Their source of authority usually includes a claim to divine revelation.

The Chairman's introduction praises the wide variety of charities and says: "There is great value in having that variety." She goes on: "The freedom that charities have to innovate and challenge is also an important part of maintaining a healthy democracy."<sup>1</sup> However, there is a great danger that the draft guidance could inhibit that freedom and variety. If religious charities are assessed by uniform secular measurements, the guidance could lead to the demise of some religious charities.

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<sup>1</sup> *Consultation on Draft Public Benefit Guidance*, Charity Commission, March 2007, page 1

In the twenty first century many religious charities will be challenging the secular and materialistic ‘norms’ of our society today. In a healthy democracy they should be allowed to do so.

The draft guidance (page 38) says that the Commission does not believe there is a ‘one size fits all’ approach when it comes to *reporting public benefit* and the size of various charities. But there is a more fundamental issue related to the nature of a charity rather than its size.

A ‘one size fits all’ approach to *proving public benefit* does not easily accommodate religious charities. Religious charities differ profoundly from the other charitable purposes. Our concerns are raised in greater detail in this response and particularly under Question 16.

We address specific questions of relevance to religious charities.

### ***‘Modern social conditions’, the role of public opinion and ‘disbenefits’***

#### **Q4. Do you have any comments on our understanding of the role of modern social conditions in assessing what is and is not of benefit to the public?**

In the introduction to the consultation, Dame Suzi Leather rightly states that: “For hundreds of years charities have been the heart of civil society, carrying out charitable work for the benefit of successive generations.”<sup>2</sup> Christian charities have been central to this, pioneering much charitable work motivated by their Christian beliefs.

The assurance in the guidance that “it is not within the Charity Commission’s remit to look into traditional, long-held religious beliefs or to seek to modernise them” is very helpful.<sup>3</sup> It goes a little way towards allaying some of the concerns raised in the House of Commons debate during the final stages of the Charities Bill.<sup>4</sup> We are pleased to see such a statement included in the draft guidance, and it is vital that this assurance appears in the final version.

Evaluating lawful and longstanding *ethics and practices* based on religious beliefs is surely also not within the Charity Commission’s remit. **It would be helpful for this also to be said in the guidance.**

It still concerns us that, despite the statement quoted above, the public benefit requirement will “be assessed in the light of modern conditions”.<sup>5</sup> It appears that this is being considered as an overarching criterion.

There are many secular examples where ‘modern conditions’ could make sense in assessing the ‘usefulness’ to society of a particular charity. But when it comes to a religious charity, this is a far more problematic a concept. Religious beliefs are not primarily concerned with what is useful, but with what is true. What is held to be true may well run counter to ‘modern’ thinking. Religious charities will not find it easy to be pushed through a secular sieve.

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<sup>2</sup> *Loc cit*

<sup>3</sup> *Ibid*, page 16

<sup>4</sup> House of Commons, Hansard, 25 October 2006, cols 1582-1612

<sup>5</sup> *Consultation on Draft Public Benefit Guidance*, e.g. pages 14 and 16

There is concern that the charitable status of Christian bodies could be put at risk because their religious beliefs or ethics are now deemed to be ‘old fashioned’. This concern arises partly because the presumption of charitable status has been removed and partly because of statements made in documents from the Commission. **It would be helpful if more examples of religious charities which satisfy public benefit were given in the guidance, with indicators of how they do so.**

Religious bodies would certainly accept the four principles outlined in the draft guidance. But religious beliefs are concerned with what is timeless. We are therefore at a loss to see how ‘modern conditions’ could be used to assess the public benefit of a religious body. How could the concept ever be fairly used to assess a religious charity?

**We do not think there is any scope for the ‘modern conditions’ test to be applied to actual religious beliefs. We think it unlikely that this is what the Commission intends. If so, it would be helpful to have a statement which makes this absolutely clear.**

Applying ‘modern conditions’ to the actual religious beliefs of a charity creates conflicts in major ways with two areas of law:

*(1) Human rights*

Article 9 of the European Convention on Human Rights provides the right to freedom of thought, conscience and religion, including the right to manifest a religion or belief.

Article 10 provides the right for freedom of expression and Article 11 the right of assembly. Article 14 states that these rights should be provided without discrimination on any ground, including religion.

Denying charitable status to a religious organisation holding to ‘old fashioned’ moral views would constitute discrimination on the grounds of religion or belief. This organisation’s viewpoint would become subject to taxation, thereby privileging the contrary, ‘modern’ view.

There may well be reasons of public safety or public order why charitable status is not given to mind-controlling and corrupt cults. But there is no derogation from Articles 9, 10 and 11 on the ground that a body ‘fails to keep up with modern conditions’.

*(2) The Cy-près doctrine*

If the charitable status of a religious charity was ended because of failure to comply with modern conditions, the question then arises: what happens to the funds of the charity?

The cy-près (literally ‘near to’) doctrine has arisen in law to deal with charitable funds which have to be closed down. Under the doctrine the courts and the Commission seek to ensure that the funds are used in the spirit of the original gift, or as close to the original purposes as possible. The Charities Act 2006 provides that regard may also be had to the need to have purposes which are effective in the light of current circumstances.

If ‘modern circumstances’ meant the removal of charitable status from a charity concerned with the promotion of beliefs, then it surely follows that the funds could not be applied ‘in the spirit of the original gift’ or ‘as close to the original purposes as possible’ since that would require the promotion of beliefs which offend against ‘modern circumstances’.

So the funds would be sequestrated for some other purpose.

*The scope for using the ‘modern conditions’ concept*

Both human rights law and the Cy-près doctrine seem to prohibit a modern conditions test being applied to the religious beliefs of charities.

Conceivably there might be a religious charity which propagates its beliefs by antiquated methods (hot metal printing? telegrams?) when there are other means which are cheaper and more efficient. There may be a case for the Commission to ask the charity to use more efficient means. There might also be a religious charity which has a trust deed restricted to a certain category of persons in a narrow geographical area (eg a charity for the relief of sons of the clergy in the Parish of Clayton, West Sussex). Over time the nature of the area might have changed beyond recognition. The Commission would wish to widen the scope of the beneficiaries.

However, we would point out that many charities which seek to advance religion are concerned to reach out and communicate in a way which is relevant or accessible to people living in a modern secular society. They are not deliberately “old fashioned” in style or communication – but this is a matter for charities’ discretion. It would be inappropriate for the Commission to seek to interfere in this area except in extreme circumstances such as the situations described in the previous paragraph.

**It would be helpful if the Commission would state some examples of how it intends to require religious charities to keep up with ‘modern conditions’.**

**Q5. Do you have any comments on our understanding of the role of public opinion?**

The problems about ‘modern conditions’ are compounded because the guidance indicates that public opinion will be used to assess modern social conditions.

We accept that the guidance expressly states that

- public opinion cannot decide what is charitable,<sup>6</sup>
- charitable status is not decided on the basis of popularity,<sup>7</sup>
- public benefit can be found by the Commission, courts or Charity Tribunal even when the public does not agree there is such a benefit.<sup>8</sup>

We strongly support these statements, and would expect nothing less. But the draft guidance also states that public opinion will be used by the Commission to help “understand” modern social conditions and so “shape the legal understanding of what is charitable”.<sup>9</sup> So even if it is not determinative on its own, there is a risk that under these guidelines public opinion could (with other factors) be decisive in assessing public benefit.

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<sup>6</sup> *Ibid*, e.g. pages 17 and 18

<sup>7</sup> *Ibid*, page 17

<sup>8</sup> *Ibid*, page 18

<sup>9</sup> *Ibid*, page 18

Charities such as the NSPCC (registered charity no. 216401) spend considerable sums of money campaigning to ban the right of parents to smack their children. They wish to make it a criminal offence. This is in the teeth of public opinion since 88% of the public (according to a Government opinion poll) believe ‘it is sometimes necessary to smack a child’.<sup>10</sup> Nevertheless the NSPCC believes it is the right thing to do. Whilst it would be perfectly proper for the Commission to consider the scale of the expenditure involved in the campaign, surely the Commission does not want to stop the NSPCC’s actions because their cause is unpopular?

The consultation paper openly accepts that “public opinion can be deeply divided on an issue and public attitudes about particular issues can change over time”.<sup>11</sup> The Charity Commission’s document *Analysis of the law underpinning Charities and Public Benefit* cites a court case in which public opinion was described as “a fragile and volatile concept.”<sup>12</sup>

When it comes to religious belief this is particularly the case. Surely the more unpopular a religious belief the more it is incumbent on the State to protect it. Popular causes benefit from the political process, so unpopular ones should enjoy judicial protection.

The example of Josephine Butler (1828-1906), a Christian social reformer, serves to show how public opinion changes. She set up many refuges for sick prostitutes and became convinced that the law needed to change to stop human trafficking for the sex trade. She conducted an 18 year campaign to change the law. For many years her work provoked much public derision. At times she was treated as a pariah in respectable circles.

There are well attested accounts of Josephine Butler’s public meetings triggering rioting on the streets. The protections she eventually won in 1886 are now considered to be fundamental rights. She is lauded as a heroine by Christians, modern day feminists and human rights activists. We can now see that she was many years ahead of her time. This example illustrates the point that the popular public opinion at any given time is not always on the right side.

Section D3 of the guidance appears to contain a tension between strong statements such as “charitable status is not decided on the basis of popularity”<sup>13</sup> on the one hand, and the idea of public opinion being used as a “useful factor”<sup>14</sup> on the other. The guidance seems to dismiss the importance of public opinion in one paragraph, then introduce it to potential prominence in some cases in the next.

Religious charities could well be in a situation where “the benefit to the public is not obvious”.<sup>15</sup> The guidance states that, in looking for evidence of public benefit, “any general consensus of objective and reasoned opinion” may be taken into account, “although that opinion alone would not

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<sup>10</sup> Reproduced in *Protecting Children, Supporting Parents : A Consultation Document on the Physical Punishment of Children*, Department of Health, January 2000, Annex A, page 20

<sup>11</sup> *Consultation on Draft Public Benefit Guidance*, page 17

<sup>12</sup> *Everywoman’s Health Centre Society (1988) v Minister of National Revenue* [1992] 2 FC 52 at 68-9, cited in *Analysis of the law underpinning Charities and Public Benefit*, Charity Commission, March 2007, page 5

<sup>13</sup> *Consultation on Draft Public Benefit Guidance*, page 17

<sup>14</sup> *Ibid*, page 18

<sup>15</sup> *Loc cit*

necessarily decide the matter.”<sup>16</sup> It is the use of “necessarily” here which is immediately worrying, as it implies that there may be cases when public opinion would decide public benefit.

**Public opinion could perhaps be used as an indicator that further investigation by the Commission was needed. But as with the concept of ‘modern conditions’ we are at a loss to see how public opinion could determine the public benefit of a religious charity.**

**We would like the guidance to make clear that public opinion has no role in assessing the public benefit of a religious belief.**

#### **Q6. Do you have any comments on our interpretation of principle 1?**

The issue for many religious charities may not be so much being allowed to **hold** a religious belief as being allowed to **manifest** that belief in the way they see fit. Religious charities must be free to act in accordance with the beliefs they hold without being deemed to nullify their public benefit by doing so.

Religious charities have perfectly lawful beliefs and practices on a wide range of matters. It would not be right for a charity regulator to pick and choose which beliefs and practices it did and did not like. The more subjective the tests used by the Commission, the greater the concerns will be that they could be applied in a way which is unfair. The more subjective the judgements that Commission staff have to make, the more relevant their personal beliefs would be to the issue of impartiality.

#### *The case of Stephen Wilson*

No organisation has perfect systems or appointment procedures. Things can go wrong even at the Charity Commission. During May 2005, Mr Stephen Wilson, a Charity Commission caseworker and pagan activist, used a website to offer advice on how to complain to the Commission against an evangelical Christian charity. He suggested methods for wasting the particular charity's resources by inundating it with fake requests for help. He also joked about burning down evangelical churches because of their views on homosexuality. Mr Wilson copied information from the Charity Commission's database and disseminated it online. He hinted that he had discussed matters with colleagues at the Commission and that his advice for how to complain about this particular charity was based on their responses. **Mr Wilson specifically stated about one charity that “the best approach is to complain that this activity cannot be in the public benefit”.**

We drew these matters to the attention of the Commission which carried out an investigation. Mr Wilson subsequently resigned from the Commission.

#### *Disbenefits*

Our concerns about the interpretation of principle 1 focus on the idea of ‘disbenefits’, a concept borrowed from Scottish law.

Section E4<sup>17</sup> contains a list of examples of potential ‘disbenefits’. We find it difficult to envisage a general approach to disbenefit which could extend beyond

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<sup>16</sup> *Loc cit*

- preserving a species at a particular time in a particular place which is considered verminous or harmful
- the promotion of illegality
- damage to the environment
- damage to health
- serious public nuisance
- something which intentionally deceives or misrepresents or is a sham.

Beyond these areas there is a danger that some of the suggested disbenefits could be open to a subjective interpretation. Commission staff could easily be influenced by their own personal beliefs in coming to a view of the ‘disbenefit’ of a particular body.

Religious charities probably attract a disproportionate number of complaints. A major reason for this is that complaints to the Commission are used as a campaign tactic by those opposed to a particular religious charity. The concept of ‘disbenefit’ could well lead to a substantial increase in the number of these vexatious complaints. Of the examples of disbenefit given in section E4, we highlight three areas.

*(i) Hatred*

When dealing with “something that encourages or promotes violence or hatred towards others”, it is important to be objective. Just because one person takes something as having such an effect does not mean that this is the case.

Any charity which issues threats of violence against someone else should lose its charitable status. **But hatred means ‘intense dislike’. Though our own Christian faith is absolutely true and very precious to us, we accept that some people or charitable bodies may intensely dislike us. They should be allowed to do so.**

This issue came very much to the fore during the passage of the Racial and Religious Hatred Bill. The proposed law contained what many thought was a low and subjective test of hatred. Yet freedom to offend is an essential part of free speech. In the end Parliament heavily amended the legislation to protect free speech.

In the *Redmond-Bate* case concerning forthright street preaching denouncing immorality, it was noted:

“Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having.” (Lord Justice Sedley)<sup>18</sup>

Many charities express very forthright opinions, so forthright that they might be considered hateful, as the following quotations illustrate:

*“It supports a right wing, racist, sexist and homophobic agenda that is unethical and immoral”*  
[Of the Bank of Scotland when it decided to form business links with a US Christian broadcaster]

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<sup>17</sup> *Ibid*, page 21

<sup>18</sup> *Redmond-Bate v Director of Public Prosecutions* [2000] H.R.L.R. 249 at 260

The Lesbian and Gay Christian Movement (registered charity no. 1048842), Press Release, 5 March 1999<sup>19</sup>

*“On 30 April last year, David Copeland, proved that hatred and bigotry are killers by planting his third bomb in as many weeks, bringing carnage to a Soho gay bar...*

*The political wing of Copeland's terrorism is an unholy alliance of bishops, bigots and bus owners.” [a reference to Brian Souter]*

The George House Trust (registered charity no. 700364) in an article dated 1 May 2000<sup>20</sup>

The even-handed application of a ‘hate’ test, or a subjective test, could lead to many bodies losing their charitable status. We do not wish to see this. We would prefer to have free speech.

**Incitement to hatred crimes are already on the statute book. In addition there are many aggravated offences. If charity staff or trustees have criminal convictions in these areas then the Commission could consider this fact as a more objective basis to take action. The threshold should be set at the promotion of criminal behaviour or violence, not a subjective assessment of ‘hatred’.**

*(ii) Immorality*

The ‘disbenefit’ of “promoting something that is... widely regarded as immoral” immediately provokes the question ‘widely regarded as immoral by whom?’ This raises the prospect of public opinion being involved as a decisive element, and it is hard to reconcile this with the contrasting statements that the Charity Commission will not be evaluating religious beliefs.

The Commission has suggested that a school for pick-pockets or prostitutes would not be charitable. It would be contrary to public policy and widely regarded as immoral. But society has many areas of life where the consensus of what is immoral no longer exists. For example, adultery is very strongly disapproved of in public opinion surveys, but sex before marriage is not.

For over 50 years, charity law has not adjudicated on which religion is true. **Where there are firmly held mainstream religious beliefs underpinning a moral position or teaching we would not want to see the Commission adjudicate on what is immoral.**

It is a mainstream religious belief that all sex outside of marriage, abortion and gambling are morally wrong. Yet there are some secular social commentators and politicians who say that it is religious believers themselves who are immoral for holding to these beliefs. Perhaps these same social commentators or politicians might complain to the Commission about the ‘immorality’ of a Christian charity. Immorality as a disbenefit should not be used to undermine the morality of religious charities.

The role of morality in determining charitable status has been considered in case law. The *Re Watson* test (denying charitable status to a body which is “subversive of all morality”)<sup>21</sup> is a much higher threshold than promoting “something widely regarded as immoral”.

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<sup>19</sup> The Lesbian and Gay Christian Movement, Press Release, *Bank of Scotland Condemned*, 5 March 1999

<sup>20</sup> George House Trust, ‘Section 28 - The nightmare continues’, 1<sup>st</sup> May 2000, see [http://www.ght.org.uk/ght/news\\_and\\_views\\_agenda\\_article.php?ID=228](http://www.ght.org.uk/ght/news_and_views_agenda_article.php?ID=228) as at 23 May 2007

<sup>21</sup> *Re Watson* (deceased) [1973] 1 WLR 1472 at 1483

Several charities are involved in lawful (but controversial) activities which are widely regarded as immoral.

Would something be “widely regarded as immoral” if a third of the population believed it was wrong? *British Social Attitudes* finds that one in three people object to abortion.<sup>22</sup> But a very large provider of abortion services, the British Pregnancy Advisory Service (BPAS), is a registered charity (No. 289145). It actually receives hardly any regular charitable donations (out of a budget of £21 million it received a mere £1,000 in donations in year 05/06).<sup>23</sup>

Drugs charities might be another example. Some of them advocate ‘shooting galleries’ for heroin addicts. This would be controversial and might be widely regarded as immoral.

At the most extreme end of things, gross immorality can constitute a criminal offence. And it is an offence to incite the commission of any crime. So irrespective of charitable status, a body which promoted incest, paedophilia, prostitution, (illegal) substance abuse, forced marriages or the carrying of offensive weapons could well be committing a criminal offence. The “widely regarded as immoral” test would therefore be superfluous.

In today’s climate Christians can find that they are sometimes accused of being ‘immoral’ for holding to Christian ethical beliefs.

In the light of all these factors we see the concept of immorality as highly problematic in public benefit.

*(iii) Restricting a person’s freedom*

This too is an extremely difficult criterion to apply. The promotion of religion (or indeed atheism) necessarily involves debate about ideas. There is one charity which we would argue is plainly attempting to restrict the freedoms of all religious people. The British Humanist Association (registered charity no. 285987) has as its first object:

“THE MENTAL AND MORAL IMPROVEMENT OF THE HUMAN RACE BY MEANS OF THE ADVANCEMENT OF HUMANISM, THAT IS TO SAY, THE MORAL AND SOCIAL DEVELOPMENT OF THE COMMUNITY FREE FROM THEISTIC OR DOGMATIC BELIEFS AND DOCTRINES”

The BHA’s trust deed is committed to the elimination of religious belief. That is certainly restrictive of people’s freedom. In line with what it interprets by its trust deed, the BHA publicly campaigns against Church schools. These are extremely popular with parents, but the BHA would have them all closed down.<sup>24</sup>

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<sup>22</sup> ‘if a woman decides on her own that she wants one’. See Park A, Curtice J, Thomson K et al, *British Social Attitudes: The 23<sup>rd</sup> Report*, Sage, 2007, page 396

<sup>23</sup> British Pregnancy Advisory Service, Report and Financial Statements, 31 March 2006, page 12

<sup>24</sup> See ‘BHA Education Policy in a Nutshell’ at

<http://www.humanism.org.uk/site/cms/contentViewArticle.asp?article=1207> as at 23 May 2007

We would argue that the BHA trust deed embeds a complete contradiction. How does this elimination of religious belief improve the human race mentally and morally? The deed is plainly “adverse to the very foundations of all religions” (*Re Watson*) but not, according to the Commission, “subversive of all morality”.

If ‘restricting someone’s freedom’ is adopted as a disbenefit then this will increase the vexatious complaints to the Commission about religious charities. For one thing there could be religious believers who would want to complain about the BHA.

We wonder if the Commission has thought through the full implications of this type of test. The NSPCC’s campaign to ban parental smacking certainly restricts the freedom of parents. Stonewall (registered charity no. 1101255) are currently backing a legal case against the Bishop of Hereford to force the Church of England to employ a practising homosexual youth worker.<sup>25</sup> That certainly restricts the freedom of Anglicans.

### *Proselytism and evangelism*

For Christian believers, and for those of other faiths or no faith, it is vitally important to be able to communicate what you believe to other people. This issue is particularly important in the context of disbenefits since people can object when a religious group seeks to spread their faith.

The Commission wishes charities to be ‘inclusive’.<sup>26</sup> A religious charity which seeks to be ‘inclusive’ will attempt to share its beliefs and practices with those outside its religious base.

‘Evangelism’ is sharing the Christian Gospel with anyone no matter what their background. Sometimes the word evangelism is used inaccurately to mean the sharing of the Christian faith *by a person within their own culture*.

‘Proselytism’ on the other hand is not tied to the Christian faith or a particular culture. Proselytism is concerned with seeking to convert a person of one faith to another faith. It is often cross-cultural.

Most religions seek to get others to adopt their beliefs and way of life. This is part and parcel of what we understand by religious freedom in a democratic society. So too is the freedom to criticise religious belief.

Some religious groups, such as the Orthodox Jews, are non-proselytising. They do not seek to change other people’s beliefs and may be upset if people attempt to change theirs. In the case of Judaism, the courts have recognised the link between ethnicity and faith. For several years aspects of Judaism have fallen to be protected by the laws against racial hatred.

There is a sense in which a non-proselytising or non-evangelising faith can ensure its continued existence by its members having children. Christian belief, on the other hand, can only continue if people choose to accept it for themselves.

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<sup>25</sup> *The Times*, 5 April 2007

<sup>26</sup> *Consultation on Draft Public Benefit Guidance*, e.g. page 26

The requirement to share your faith is a crucial part of obedience in many religious traditions. **It absolutely essential for religious charities to be able to share their faith and so manifest their religious belief. It should be made clear in the guidance that evangelism, proselytism and the propagation of religious belief are benefits and not disbenefits.**

It is, after all, *advancement* of religion which is charitable, which implies that there must be an element of teaching/proclaiming/explaining the religion (whether to its followers or to people who do not share that faith). Evangelism/proselytism should therefore fall squarely within the category of “advancing religion” and the emphasis should be focused on whether there is public access not on what benefit is provided. Religious charities should not have to also advance any of the other “heads” of charity (e.g. relief of poverty, relief of need, advancing education) in order to prove their public benefit.

Government Ministers have given clear assurances that missionary work, proselytism and evangelism will be protected (Appendix 1). **It would be helpful if such assurances are included in Charity Commission guidance.**

### ***The public or a section of the public***

#### **Q8. Do you have any comments on our interpretation of principle 2?**

The Consultation paper argues that “the more open, outward-focused and inclusive the purpose, the greater the benefit to the public it can provide.”<sup>27</sup> Churches are often very outwardly-focused. They can have a very wide ethnic and social mix. They would want to be genuinely inclusive of people of all backgrounds. However, Churches will also have certain rules which maintain their ethos and beliefs.

All Churches hold public acts of worship. Any member of the public can attend, but most Churches will have rules about who can be a member, take the sacraments or be involved in leadership. In a sense these rules restrict some benefits. **It should not be the Commission’s role to adjudicate on the internal affairs of Churches under the pretext of ensuring restrictions of benefit are not “irrational, unreasonable or unjustified”.**<sup>28</sup> **It would be helpful if this could be made clear in the guidance.**

#### *Undermining UK relations with another State*

It is suggested in the consultation paper that “purposes whose effect would be to damage UK relations with a friendly state...would not be charitable”.<sup>29</sup>

A religious charity (or a human rights charity) could, as part of its work, carry out an activity which is perfectly lawful under UK law, but may be deemed by politicians to undermine relations with another State. In that case pressure could be brought on the Charity.

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<sup>27</sup> *Loc cit*

<sup>28</sup> *Ibid*, page 25

<sup>29</sup> *Ibid*, page 23

For example:

- Christian charities may seek to campaign lawfully against the persecution of Christians in Iraq, China or Saudi Arabia but the Government of the day may not welcome this.
- A future Government might be upset that a religious charity arranged for a Bishop to be smuggled out of Zimbabwe to escape arrest after he was critical of Robert Mugabe's human rights record.
- A religious charity that runs a girls school in Afghanistan may upset local Muslim opinion. The Foreign Office might want to stop the charity.
- For many years UK charities smuggled Bibles into communist countries. Most people thought this laudable. But what would have happened if a country such as Romania, (which, though Communist, was anti-Soviet and therefore a potentially friendly state), had complained to the UK Government?
- A Bible publishing charity may print the Bible in Arabic and seek to disseminate copies to Christians in Muslim countries, such as Morocco.<sup>30</sup> This would be lawful under UK law, but unlawful in Morocco.

### ***Assessing and demonstrating public benefit***

#### **Q14. Do you have any comments on our proposals for assessing the public benefit of existing charities?**

The assessment of public benefit should not be an onerous process for charities. Assurances have been given in Parliament to this effect<sup>31</sup> and the Charity Commission has emphasised a commitment to reduce the administrative burdens on charities.<sup>32</sup>

#### **Q16. Do you have any specific concerns about the ability of certain types of charity to demonstrate public benefit, in the light of the principles of public benefit set out in our draft guidance? If so, what are those concerns and how do you think we might address them?**

There are very marked differences between religious charities and all other kinds of charity. These were set out in page 1 above.

It follows that problems can arise if religious charities are to be considered within an entirely secular framework:

- The primary benefit is an intangible spiritual benefit as far as the courts are concerned.
- What believers may consider as an important public benefit (eg praying for the world) is not so considered in secular terms.
- Religious belief is often concerned with what cannot be proved in this life.

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<sup>30</sup> Foreign Office advice is that "It is against the law to carry bibles in Arabic, to attempt to distribute any non-Muslim/evangelical literature or be involved in any such activity." See <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029390590&a=KCountryAdvice&aid=1013618386829&x=13&y=11> as at 23 May 2007

<sup>31</sup> House of Commons, Hansard, 25 October 2006, col. 1609

<sup>32</sup> *Consultation on Draft Public Benefit Guidance*, pages 15, 37 and 38

- Analysing the outcomes of religious belief in secular terms can involve highly subjective judgments.
- Religious belief necessarily involves the conflict of ideas.
- Religious belief can be unfashionable.
- Forcing religious organisations to articulate their benefits in a secular way places them at an immediate disadvantage, because they are being squeezed into a framework they are not suited to. Effectively, religious charities' claims to public benefit are based on benefits which are ancillary to what a religion's followers would consider its main benefits (which are issues which are not justiciable).

Religion provides a set of values by which people can live and make decisions, as well as giving guidance as to how people should relate to others. Morals and ethics are the basis of civilised behaviour and religions are major contributors in this respect. Religion encourages people to look beyond their selfish selves to the needs of others, and therefore religion as a charitable purpose is a wellspring of many others: the desire to help others stems from religious belief. Good works are in fact an 'article of faith' and test of adherence, certainly in Christianity. Christians have a duty to love their neighbour and this is seen in the quantity of Christian charitable work. The public benefit of religion has been acknowledged in Parliament<sup>33</sup> and this should be reflected in the guidance.

In terms of our own Christian faith we would argue that there is evidence which links Christian belief to lower levels of crime, higher levels of personal happiness and charitable giving.

It is therefore evident that Christian charities provide public benefit. However they sometimes do so in a way which defies secular analysis. **We would question whether religious bodies are facing an additional evidential hurdle that will not have to be jumped by other charities.** For example, will a charity that exists for the advancement of art, such as a theatre, be expected to show that those who view a play are somehow edified and provide additional social benefit to others in the community as a result? If not, the only public benefit supplied by the theatre is access to the play. To say this is to say that there is a good in seeing the play itself (whatever it is) and, because this is available to all who want to go and see it, there is public benefit. **If the same test is applied to religion, then it should be enough for a church to provide public access to a service of worship.**

Whilst we understand that not all religious charities provide a public act of worship, **it would be a very great help if the Commission were able to state in the guidance that the provision of a public act of worship satisfies the public benefit test for a religious denomination.**

**For a religious organisation to satisfy the public benefit test it should be enough to show that they freely propagate their faith.**

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<sup>33</sup> House of Commons, Hansard, 25 Oct 2006, col. 1609, Edward Miliband: "...the Government, the courts and the Charity Commission have recognised that religious activities bring benefits not only to those who take part in them, but to the whole of society. Religion has an important role to play in society through faith and worship, motivating charitable giving and contributing in other ways to stronger communities."

## ***Appendix 1: Ministerial assurances on proselytism***

### **House of Lords, Hansard, 3 February 2005, col. GC20:**

**Lord Bassam of Brighton:** One other point raised by the right reverend Prelate the Bishop of Southwell concerned the public benefit test relating to a charity whose purposes were solely to convert members from one faith to another. It is clearly acceptable for religious charitable bodies to convert members to their religion by evangelising or through missionary work, and that will not change. I hope that that is of help.

### **House of Commons, Hansard, Standing Committee A, 4 July 2006, cols 58-59**

**Angela Watkinson:** I am not absolutely certain about the status of the commission's position paper, "Public Benefit—the Charity Commission's Approach" or about the relationship between that paper and the Bill. Religious organisations believe that the commission will distinguish between acts of worship and services in a public place and other forms of religious practice such as, for example, missionary work and the alpha course. Will the commission distinguish between acts of worship and services and other forms of religious practice? There is a concern that if public worship is not included, religious organisations might encounter difficulties under the Bill.

**Edward Miliband:** Reassurance can be offered on the point about missionary work, which has been raised before.

### **House of Commons, Hansard, 25 October 2006, col. 1617:**

**Andrew Selous:** I would be extremely grateful if the right hon. Lady confirmed that, as her colleague Lord Bassam of Brighton said in the Lords on 3 February 2005, the proselytising activities of religious charities will still be deemed to be a public benefit. In Committee on 4 July, the hon. Member for Doncaster, North (Edward Miliband) said that he could offer reassurance so far as missionary work was concerned. Given that the Charity Commission will interpret these matters, I should like the right hon. Lady to put it on the record that proselytising activity will still be deemed to be a public benefit.

**Hilary Armstrong:** It certainly will; my understanding, based on my discussions with the Charity Commission, is that it has no problem with that at all.

The Christian Institute, 24 May 2007