

**CHRISTIAN CONCERN FOR OUR NATION REPORT
ON THE
CHARITY COMMISSION'S GUIDANCE FOR
RELIGIOUS CHARITIES
JANUARY 2009**



***Changing Society to put the
Hope of Christ at its Centre***

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CCFON Report on the Charity Commission's Guidance for Religious Charities

The Charity Commission has recently published its final supplementary guidance on the advancement of religion for the public benefit,¹ together with a summary of consultation responses to the draft guidance.² The original draft guidance consulted upon has been replaced by the final guidance and is no longer applicable.³ We drafted a consultation response to the draft guidance in June.⁴ The draft guidance was entitled 'Public Benefit and the Advancement of Religion'.

The largest response to the various consultations on public benefit was from religious groups or individuals with 263 responses (compared to 58 for poverty, 165 for education and 189 for public benefit and fee charging)⁵ showing the depth of concern amongst religious charities. There are some welcome developments in this guidance, but still some areas of concern. We would recommend that religious charities read the full guidance in any event, but also place this commentary on the changes within the context of the final guidance itself.

Brief Summary

The new guidance adopts a more favourable approach in the following areas:

- evangelism and proselytising;
- the restriction of membership (provided the criteria defining who can be a follower is sufficiently open);
- charities promoting one or two tenets (provided they are not too narrow);
- the role of public opinion (so that public opinion regarding the balance between public benefit and detriment or harm produced by an organisation advancing religion now need to be fully informed, objective and fully substantiated);
- benefits have now been clarified so that they are related to the charity's aims; and
- proselytism abroad has been clarified so that the Commission's approach is based on the general position that provided it is charitable here, it will also be charitable abroad.

However, the following areas of concern remain:

- whilst adding some helpful statements, there is still no explicit or categorical statement that intangible benefits are sufficient to meet the public benefit test for religious charities on their own;
- the area of campaigning and political activity has one or two restrictive statements not found in the education or poverty guidance on public benefit; and
- in our opinion, there is a misinterpretation of the definition of 'religion' in charity law as it is regarded as akin to a 'belief system', which may ultimately result in the loss of the distinct nature of religion and the potential merger of religious and non-religious belief charities.

Evangelism and Proselytising

In terms of welcome developments, the guidance does give a more positive approach to evangelism and seeking converts through proselytism. Previously, the Commission only recognised proselytising as something that was an activity capable of advancing religion *in principle*. The guidance now in Annex B states that in some religions proselytising is seen as an essential outworking of the religion and recognises that Christians regard evangelising as a central part of their religion.

Restriction of Membership

Previously, the guidance stated that it expected that membership would be open to all those aged over 18 who are 'interested in the aims of the organisation', but that trustees can refuse an application for membership if acting reasonably and properly. We argued that there was a need to restrict membership and it is vitally important that religious charities are free to restrict membership and activities for holy religious rites and sacraments to those who are willing to adhere to the doctrines, statements of faith and/or religious convictions of the faith in question without this affecting their public benefit assessment. We are pleased to note that this part has now been omitted in the final guidance on the definition of who can be a follower. The guidance now states that: '*it is reasonable for a charity which advances religion that provides a place of worship to restrict access to the followers or adherents of that religion, provided that the definition of who can be a follower is **sufficiently open***'.⁶ However it adds that, if this restriction is beyond what is reasonable then the private benefit might outweigh the public benefit, for example, if there was no public worship.

Examples of Ways of Advancing Religion

We welcome the modification of the guidance, which now includes promoting prayer, praise and study as an example of advancing religion as suggested in our response. We also argued that there should be no universal 'one size fits all' bench mark to measure public benefit. We are pleased to note that the Commission recognise this point by stating that: '*It is not possible to produce a definitive list of the different sorts of benefits that a charity advancing religion might be able to demonstrate.*'⁷

However, it is of concern that there is a universal benchmark being imposed, as all organisations advancing religion must be able to show that there is a moral or ethical framework which is promoted by the religion. The guidance goes on to state that in charity law, it is the existence of an identifiable, positive, beneficial moral or ethical framework that is promoted by a religion that demonstrates that the religion is capable of impacting society in a beneficial way. To argue that this benchmark should be universally imposed upon public benefit for all religious charities is contrary to the common law with its emphasis on the advancement of religion. The removal of the

presumption of public benefit by religion has not changed the remainder of the existing common law for religion.

Aims

The Commission has retained its definition of 'aims' as opposed to replacing this with 'purpose(s)'. Aims are seen as the purposes of an individual organisation. The Commission has clarified this by stating that an organisation's aims are usually expressed in the 'objects clause' of the governing document. This is a welcome change in view of our concerns that 'aims' could become a loosely worded colloquial term as opposed to being related to the actual charitable objects. These nuances are important. For example, the final guidance states that charities can campaign for a change in the law, policy or decisions, where such a change would support the charity's 'aims' (remembering that aims are usually expressed in the objects clause of the governing document). However, an organisation cannot be established with the 'aim' of calling for changes in the law as this would be a political aim.

Tenets of a Religion

It is also encouraging to note that the comments in the guidance which warned about charities promoting one or two tenets of a religion such as religious beliefs about the practice of homosexuality or contraception have been modified. The guidance⁸ now states:

Provided the purpose is not so narrow as to produce either insufficient public benefit or have little consideration for the broader teachings of the religion, this should not affect the organisation's charitable status.

The guidance goes onto say:

Charities whose aims include advancing religion can require their followers or adherents to comply with religiously-derived norms of behaviour promoted by that religion. However where doing so involves breaking the law, or there is evidence of harm being caused, this will affect public benefit.⁹

The Commission adds that charities whose aims include advancing religion are encouraged to be open and transparent about views that could be viewed as discriminatory in a secular context. Not that such views cannot be held, but so that the public can make an informed choice about whether they attend events organised by, or support organisations holding such views.

Public Opinion

We were concerned that this section did not reflect the principle in the general guidance on public benefit that public opinion cannot decide what is or is not ‘of public benefit’. This has now been modified to state that the Commission will have regard to public opinion where there are objective and informed public concerns about, or evidence that, the beliefs or practices of an organisation advancing religion causes detriment or harm. However, it adds that all claims of harm would have to be fully substantiated.

Current Social and Economic Circumstances

Whilst the change concerning the tenets of a religion is welcome, it is disappointing that the Commission was not able to add openly to the end of its statement in section G3 that it does not have the remit or desire to change or try to modernise traditional long-held beliefs *including all traditional religious beliefs on sexual ethics*. We would still like the Charity Commission to provide that response specifically, in view of the Ministerial assurance given during the passage of the Charities Bill.¹⁰

This part of the guidance on current social and economic circumstances ends with the comment that what matters is that an organisation’s aims, and the way in which it carries out those aims, are demonstrably for public benefit.

Religious Texts, Campaigning and Political Activity by Charities

On religious texts, it was previously stated that: *‘Advancing religion does not mean advancing a political purpose in the name of religion, nor does it mean advancing a particular viewpoint which is held by a religious person or which perhaps refers to extracts from religious texts which serve to promote that viewpoint’*. The guidance has helpfully removed the illustration of selected passages from the Bible being used to promote a trustee’s personal view on traditional male/female roles.

However it is of concern that in the new guidance similar views are expressed elsewhere. For example, the guidance states that: *‘Religion cannot be used as a way of advancing a political viewpoint which happens to be held by a religious person’*¹¹ and in another part of the guidance¹² that: *‘Religion cannot be used as a “cover” to express opinions which would not be for the public benefit if expressed by a non-religious organisation. There must be a link to a religion and the opinions must emanate from that belief system and observe the law of England and Wales’*. The summary of the consultation responses indicated that a number of respondents were keen to ensure that charities were treated equitably as compared to non-religious secular charities and not given greater freedoms to campaign. The action taken resulted in the aforementioned statements in C4 and C6.¹³

Whilst the guidance refers to *‘Speaking out: Campaigning and Political Activity by Charities (CC9)’*¹⁴ for further information, the statements made are unhelpful as they appear to contradict the more positive advice given in CC9, which aims to give all charities

confidence when deciding what they can legitimately do. It is reasonable to presume that the consultation responses referred to in the Commission summary were from non-religious organisations, (albeit that the summary of the consultation fails to provide a breakdown of responses from religious and non-religious organisations). In those circumstances, it appears to be unreasonable for the Commission to have made changes to the guidance for religion that seek to restrict the freedom of political campaigning for religious charities as a result of responses from individuals or organisations with non-religious beliefs.

The original background to the Charities Act was a Strategy Unit Review report welcomed by the Commission called '*Public Benefit: Private Action*', which recognised that there were a number of reasons why it was desirable to encourage, rather than restrict, charities' advocacy and campaigning role.¹⁵ What matters for charities as stated in the Foreword to CC9, is that '*charities may undertake campaigning and political activity as a positive way of furthering or supporting their purposes*'. '**Charities have considerable freedom to do so, subject to the law and the terms of their governing documents.**'¹⁶ By contrast, the education and poverty guidance on public benefit did not appear to contain negative restrictive statements on the question of campaigning and political activity by Charities.¹⁷ It is hoped that in practice and by further statement, the Commission will reassure religious charities on this point, in view of the concern on this issue.

Change to make the Definition of 'Religion' akin to a 'Belief System'

It is important to note that the final guidance states that it '**represents the Commission's interpretation of the law; it is not the law itself**'.¹⁸ The Christian Institute in their excellent commentary on the new guidance have stated that according to some leading experts in charity law, the 'activities test' for public benefit is a misinterpretation of charity law.¹⁹

In our opinion, there is also a misinterpretation of the definition of the term 'religion' in charity law. In English charity law, the definition of 'religion' is characterised by 3 aspects. Firstly, a belief in a supreme being; secondly, the expression of that belief thorough worship and thirdly, there must be advancement of the religion. The guidance refers to religion as a 'system of belief'²⁰ that has certain characteristics that have been identified in case law and clarified in the Charities Act.

This is summarised to include firstly, a belief system with a belief in a supreme being or entity; secondly, a belief system showing worship; thirdly, a belief system that involves a degree of cogency, cohesion and seriousness, and fourthly, a belief system that promotes an identifiable, positive, beneficial, moral or ethical framework. The pigeon-holing of religion so as to characterise it by 4 aspects of a 'system of belief' fails to include the third aspect of the definition of the characteristics of a religion—that there must be an *advancement* of religion. The charitable purpose in the Charities Act 2006 is the advancement of *religion* not the advancement of religion **or belief**. When the Charities Bill was passing through Parliament the Government refused attempts to add

onto the charitable purpose of the advancement of religion the words ‘or belief’. It is an advancement of *religion* even if the religion being advanced does not involve a belief in a god. Annex A describes the characteristics of a religion, which appears to contradict Annex B of the guidance, as Annex B does provide examples of how charities can advance religion. It is not the advancement of a type of belief system; it is the advancement of *religion itself* that should be included, not only as part of its overall purpose according to the Charities Act, but also incorporating the need for the advancement of religion within the meaning and definition of ‘religion’.

In our opinion, this is a change and misinterpretation of one distinct aspect of the nature of the characteristics of religion in charity law. The practical effect of this may ultimately be the merger of religious and non-religious beliefs in law, so that the distinct nature of religion becomes lost and may be perceived as just another type of belief system. This may have been an underlying aim of trying to add on ‘or belief’ to the charitable head of ‘advancement of religion’ in the Charities Bill and appears to be in the process of being achieved by other means. To reinforce this view of merger, it is of interest to note that the characteristic of ‘religion’ is seen as including and akin to a belief system with a moral or ethical framework²¹ and the closed consultation for non-religious beliefs is termed the ‘advancement of moral or ethical belief systems’.²²

Intangible Benefits

Our concern is that the distinct nature of religious charities means that their public benefits are likely to be more indirect, intangible and less capable of an objective evidence-based approach to assessment. The guidance²³ has added to statements in this area and has stated that benefits that can be quantified and measured may be easier to identify, but that non-quantifiable benefits will be taken into consideration provided it is clear what the benefits are. However, the guidance still sits on the fence and fails to state that intangible benefits are solely sufficient as it states that: ‘*We realise that often in the case of charities whose aims include advancing religion some of the benefits are not tangible and could be potentially difficult to identify. However, this is not to say that a public benefit assessment would only take account of tangible, practical benefits*’. Section D2 of the *General Guidance*²⁴ on public benefit, states that the Act does not create new public benefit law, nor does it create a new legal definition of public benefit. Case law has clearly indicated that the necessary element of public benefit can be found in intangible and/or indirect benefits. In our view, the *Guidance* is deficient in its failure adequately to take account of this. The danger is that the application of one approach to such different types of charity may result in an uneven playing field, disadvantaging religious charities.

Benefits Related to Aims

In our response to the consultation, we had expressed concern that the advice on matching activities with charitable objects and on how to express this in governing

documents was unclear and confusing. The guidance has provided some helpful clarification by stating that:

*It is recognised that charities whose aims include advancing religion can have very broad aims and that there might be an overlap with other charitable aims such as the advancement of education or the prevention or relief of poverty. Where charities whose aims include advancing religion carry out other such aims as a genuine expression of that religion there is no need to include these activities as separate aims.*²⁵

It would have been helpful to have had the implied effect of this upon governing documents clarified explicitly.

Proselytism abroad

We argued that Charities that proselytise in countries where such activities are illegal should be permitted to retain their charitable status, because such activities are legal here and form part of our values as a nation. We note that the new guidance gives the example of proselytism being illegal in some countries and we welcome the statement that: *'The general position is that if it is charitable to carry out something in England and Wales, it will also be charitable if carried out on other countries by a charity registered in England and Wales.'*²⁶

Conclusion

In summary, there are many welcome changes and we are grateful to the Commission for these improvements, but there are still some old and new areas of concern.

End Notes

¹ See: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbreligiontext.pdf>.

² See: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/resrel1208.pdf>.

³ See: <http://www.charitycommission.gov.uk/publicbenefit/pbar.asp>.

⁴ See:

http://www.ccfon.org/docs/LCF_FINAL_Response_to_Consultation_on_Public_Benefit_and_Religion_June_2008.pdf.

⁵ See the Charity Commission website at: <http://www.charity-commission.gov.uk/news/pblatest.asp>, which details summaries of all responses.

⁶ See E3 at: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbreligiontext.pdf>.

⁷ See D2 at: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbreligiontext.pdf>.

⁸ See C3 at: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbreligiontext.pdf>.

⁹ See E3 at: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbreligiontext.pdf>.

¹⁰ See: <http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo061025/debtext/61025-0018.htm#06102582000573> at 25 October 2006, Col 1608. Anne Widdecombe asked: '...will the Minister say briefly whether it is his understanding that the fact that a particular religion teaches a

traditional and certainly non-modern sexual morality could never be held by the Charity Commission to disqualify that religion from charitable status? It is as simple as that.'

Edward Miliband replied: 'I can certainly give the right hon. Lady that assurance.'

¹¹ See C6 at: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbreligiontext.pdf>.

¹² See C4 at: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbreligiontext.pdf>.

¹³ See: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/resrel1208.pdf>.

¹⁴ See: <http://www.charity-commission.gov.uk/publications/CC9.asp>.

¹⁵ See: <http://www.charity-commission.gov.uk/spr/cor2.asp> and

<http://www.cabinetoffice.gov.uk/media/cabinetoffice/strategy/assets/strat%20data.pdf> at pages 35, 45 and 46.

¹⁶ See: <http://www.charity-commission.gov.uk/publications/CC9.asp>.

¹⁷ See page 12 at: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbeductext.pdf>.

¹⁸ See B4 at: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbreligiontext.pdf>.

¹⁹ See: <http://www.christian.org.uk/news/20081217/rules-for-religious-charities-published>.

²⁰ See C1, C2 and Annex A: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbreligiontext.pdf>.

²¹ See foreword to guidance which say 'Where religion helps to provide a moral and ethical framework for people to live by it can play an important part in building a better society.' See also Annex A which refers to a 'moral or ethical framework' in relation to the characteristics of religion: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbreligiontext.pdf>.

²² See the consultation on Public Benefit and the Advancement of Moral or Ethical Belief Systems at: <http://www.charity-commission.gov.uk/publicbenefit/default.asp>.

²³ See D2 at: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbreligiontext.pdf>.

²⁴ See: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/publicbenefittext.pdf>.

²⁵ See G3 at: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbreligiontext.pdf>.

²⁶ See Annex C at: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbreligiontext.pdf>.