

Submission to the Charity Commission



**The Lawyers'
Christian
Fellowship**

Submission to the Charity Commission on:

**The Draft Supplementary Guidance on
Public Benefit and the Advancement of
Religion**

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Seek justice | Love Mercy | Walk humbly with God

Name: Andrea Minichiello Williams

Organisation: The Lawyers' Christian Fellowship

Registered Charity No.: 1017695

Position in organisation: Public Policy Director

**Address: 8 Marshalsea Road,
London, SE1 1HL**

E-mail: andrea@ccfon.org

Telephone: 07712 591164

Introduction

Founded in 1852 as the Lawyers' Prayer Union, the subsequently renamed Lawyers' Christian Fellowship (LCF) has a long history of contributing to legal consultations and reviews based on our uncompromising commitment to the Bible's teaching to 'Seek justice, love mercy and walk humbly with God' (Micah 6:8).

From its inception as a prayer union the scope of LCF's work has grown with the support of such renowned patrons as Lord Denning and Lord Mackay of Clashfern. Today LCF has an expanding membership of over 2000 Christian lawyers, with a network of regional groups spanning Britain, and international links which are particularly strong in East Africa. We also provide information to over 30,000 religious groups and individuals through our email bulletins. Many hundreds of those receiving our bulletins run, or are involved in, Christian charities.

We believe that laws based on Christian truth benefit society and there is a Biblical mandate to share the Bible's teaching on such matters: 'I will speak of your statutes before kings' (Psalm 119: 46).



Andrea Minichiello-Williams

EXECUTIVE SUMMARY AND OVERVIEW

1. The Charities Act 2006 ('CA 2006') removed the legal (rebuttable) presumption that charities established for the prevention or relief of poverty, the advancement of education and the advancement of religion, have purposes that are for the public benefit. LCF's interest in this matter is in relation to the advancement of religion.
2. The removal of the rebuttable presumption has caused much confusion as to what is or is not of public benefit. The third of Lord Macnaghten's four-fold classification of charities, 'trusts for the advancement of religion' was based on the understanding that 'religion' was Christian. This was presumed to be of public benefit because it

was known that Christianity was of benefit to wider society, due to its basic beliefs of 'loving' or giving 'charity' to one's neighbour.

3. Following the general consultation, the Commission published general guidance in January 2008 applicable to all charities entitled *Charities and Public Benefit ('General Guidance')*. We are grateful for the changes and improvements made from the original draft and the Commission's willingness to listen to respondents' concerns.
4. However, in order to follow the CA 2006, the assumption should be against making any changes to the common law definition of religion and only making absolutely necessary clarification changes. For example, just adding 'or entity' to supreme being may be sufficient to cover a broader range of religions.
5. For this reason, it would be inappropriate to redefine religion unnecessarily by adding a definition of a 'belief system'.
6. We agree with the statement in the *General Guidance on Charities and Public Benefit*, that **'There is no "one-size-fits-all" benchmark, against which we judge the public benefit of the aims of an individual organisation. We consider each case on its merits'. In our opinion, the whole approach of the Guidance on Public Benefit for religious charities should not be a universal 'one size fits all' approach.**
7. There are approximately 23,000 religious charities on the Charities Register that have rich and varied ways in which to provide public benefit. To straight-jacket the assessment of charitable status in a uniform way may impede rather than facilitate the social capital provided by religious charities. Each case should be judged on its own merits.
8. 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 *Draft Guidance* is seriously 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 will result in an uneven playing field, disadvantaging religious charities.
9. We welcome the Commission's statement in the *General 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. We consider that this statement should also extend to all traditional religious beliefs on sexual ethics and that those religions that teach and practice traditional sexual ethics should not be disqualified from holding charitable status.
10. We are of the view that at present, the principles that govern the public benefit criteria are difficult to understand and to answer them would cause an onerous, costly and often unreasonable regulatory burden upon small 'grass roots' charities. There are no simple public benefit statements that link activities to charity objects. The advice on matching activities with charity objects *and thereby changing governing documents* is unclear and confusing.
11. Overall, there are several areas of concern, such as the use of terminology, the role of public opinion, the vital importance of proselytism and the need to adopt a reasonable benefits/fees approach.
12. Whilst worship services can be open to the public for members, adherents and visitors, 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. To do otherwise may mean that the Commission may be making an appraisal of the worth or value of the

beliefs in question, or assessing the truth of that religion, which is contrary to common law.² Support can also be found for the freedom to restrict religious benefits in section 58(1) of the Equality Act 2006. This provides that in implementing a charitable instrument (the governing document such as a trust deed) it is not unlawful to provide benefits only to those of a particular religion.

Consultation on Draft Supplementary guidance on Public Benefit and the Advancement of Religion

Response to Questions for this consultation

Q1. What would be the most appropriate terminology for us to use to describe the object or focus of a religion?

The most appropriate terminology in charity law to describe the object or focus of a religion in current common case law has been a 'supreme being'. However, the Charities Act has made some changes to what religion means.

The Charities Act 2006 in section 2(3) (a) states that 'religion' includes—

- (i) a religion which involves belief in more than one god, and
- (ii) a religion which does not involve belief in a god.

It is presumably taken as read that religion already involves a belief in one God only.

The position of the concept of religion prior to the Act was discussed in the Charities Bill. The criteria that the Commission used to decide whether an organisation is advancing religion can be seen in the *Church of Scientology* decision.³

The Commissioners in that decision, having considered the characteristics of a religion, concluded that the definition of 'religion' in English charity law was characterised by 3 aspects. Firstly, a belief in a Supreme Being; secondly, the expression of that belief thorough worship and thirdly, there must be an advancement of the religion.⁴

The *Draft Sub-Sector Guidance* asks many questions on this issue of the definition of religion as a result of these changes, including this question of a 'supreme being'. It also provides an analysis of the law in this area which is said to underpin the *Guidance*.

The question that needs to be considered is whether or not it is necessary to change the definition of religion as a result of these changes? What does the Charities Act 2006 indicate? What help can be found in the Commission's analysis of the law?

The Commission's analysis of the law states that the Charities Act 2006⁵ has the 'specific effect of preserving the common law meaning of religion subject to the clarification in section 2(3)(a)'. This is the section that refers to 'religion' as including both those that involve belief in more than one god, and those that do not involve a belief in a god.

Bearing this in mind in order to follow the Charities Act, the presumption should be against making any changes to the common law definition of religion and in favour of making only those clarification changes that are absolutely necessary (the 'absolutely necessary clarification' principle). For example, just adding 'or entity' to 'supreme being'

may be sufficient to cover a broader range of religions. An 'entity' can be seen as a separate distinct something or being.⁶

It is worth considering whether or not a 'supreme being or entity' is capable of applying to religions not just with one God but also with no god. In very simplistic terms, how might the term 'supreme being or entity' apply to different religions?

Christianity, Judaism, Islam and Baha'ism are monotheistic faiths. They can be seen as having a supreme being. On one level, Hinduism can also be seen as monotheistic with Brahman being the all-pervading power in the universe. In Jainism, believers do not place a great deal of emphasis upon the concept of god but perhaps more on souls that have escaped the cycle of birth and death by the elimination of Karma. In Parsis, god is known as Ahura Mazda and is seen as possessing all the noble and virtuous characteristics of existence. In Sikhism, the ultimate spiritual reality is 'god as Guru' who is at least partially revealed through the scriptures of the Guru Granth Sahib.⁷ 'Shinto' means 'way of the gods' and teaches the existence of a spiritual force that pervades the universe. These descriptions would seem to be compatible with the broad term of 'supreme being or entity'. This would appear to comply with the Commissioners' view in the *Scientology* decision that a religion's concept of 'god' is not required to be analogous to the deity or supreme being of a particular religion.

In relation to the consideration of other religions, Taoism is fundamentally related to the nature of Tao. It can be used to describe the spiritual force which pervades the universe and also the spiritual discipline or way by which an individual may understand the nature of Tao and become absorbed by it. In Buddhism, the Buddha advocated a Middle Way as the route to spiritual enlightenment, which provided a balance between the two extremes of asceticism and materialism. The essence of the Buddha's teaching can be found in the 'four noble truths' and the 'noble eightfold plan'.⁸ The draft guidance states that the terms 'supreme being or entity' are inappropriate for Buddhism and argues that early attempts to deify the Buddha did not take root.

In our opinion, Buddhism cannot be seen as a mere principle or rule as the meaning of this religion is more profound to its followers and has a supreme meaning to them. The term 'supreme entity' could thus be seen as being appropriate both to Taoism and to Buddhism. The 'Tao' in Taoism and 'enlightenment' in Buddhism could both be seen as a separate supreme distinct something, that is, a 'supreme entity'. Enlightenment can be seen in Buddhism as a blessed state in which the individual transcends desire and suffering and attains Nirvana.⁹ That blessed state of 'Nirvana' can be seen as the supreme distinct something. It would not be appropriate to describe this as a mere principle; it is recognised as something distinct from the believer and superior to them.

An examination of different religions leads to the conclusion that the term 'supreme being or entity' rather than just 'supreme being' as the focus or object of religion, is the most appropriate term and one that would adopt the appropriate 'absolutely necessary and for clarification only' principle to any alteration of the common law (in line with section 2(5) of the Charities Act 2006 as clarified by section 2(3)(a)). Any changes to the term should be in the form of additions rather than alterations, as it would be very difficult for any Christian group to accept that its members worshipped an 'entity'. We also believe that should the term 'supreme being' be removed from the *Guidance*, there would be inconsistency and confusion in the law in this area.

The term 'supreme being or entity' will be used in the remainder of this consultation response to refer to the focus or object of a religion as it does in the *Draft Guidance*.

Q2. Do you have any comments on the suggestion that one way of describing a coherent belief system is “a collective belief that attains a sufficient level of cogency, seriousness, cohesion and importance and that relates the nature of life and the world to morality, values and/or the way its believers should live”? Do you wish to suggest alternative wording?

On the basis of the Charities Act there is no need to change the common law definition of religion as outlined in the 3 characteristics in the *Scientology* decision, apart from the previously-mentioned clarification point. It is not agreed that there is any need to include within the definition of religion a definition of a 'belief' system; to do so would redefine religion as understood in the common law when it is unnecessary to do so. This appears to be the assumption behind the question. To do so would be to assume that the charitable purpose in the Charities Act 2006 for the advancement of religion had been amended to include the advancement of religion *or belief*.

When the Charities Act was passing through Parliament, the secularist and humanist organisations failed to secure an amendment in Parliament to add 'belief' to the charitable purpose. The criteria for the promotion of spiritual and moral welfare for non-religious organisations came under the old fourth head of charities (now the 13th head) because the charities concerned were not for the advancement of religion.

The *Analysis of Law* underpinning the *Draft Guidance* makes it clear that the Government consistently resisted attempts to include the phrase 'or belief' after the word 'religion' and it was not intended that secular belief systems should be included.¹⁰ The charitable purpose in the Charities Act 2006 is the advancement of religion not the advancement of religion *or belief*.

The association of 'belief' with 'religion' is not appropriate and may be considered a Humanist aim to try to eliminate the distinction between religion and belief.¹¹ It is of concern that this question in the *Draft Sub-Sector Guidance* seems to try to add further unnecessary criteria to the definition of religion beyond that within the common law. 'Belief' in this context refers to belief within the meaning of religion, which is simply belief in the supreme being.

We welcome the decision of the Commission not to include non-religious beliefs within the *Guidance for the Advancement of Religion*. It is of concern that organisations with non-religious beliefs have been invited to respond to a consultation specifically on charities for advancing religion. This appears to run contrary to the very policy of 'advancing religion' enshrined in the Charities Act 2006. It was the religious nature of religious charities that led to them being offered charitable status in the first place, because of the understanding that the Christian religion was itself of public benefit to our Christian society. To allow an anti-religious organisation such as a humanist one to be regarded as charitable under the same head as a religious one is contrary to the logic of the Act. It was always assumed that Christianity was for the public benefit in the common law because it was recognised that the message of Christianity was love of God and neighbour, which was self-evidently for the public good. It is hoped that the Commission can give an assurance that any such responses from non-religious

organisations will be publicly available on the Commission's website, in order to assess their impact on any subsequent changes to the *Guidance*.

The description of belief systems as having a certain 'level of cogency, seriousness, cohesion and importance' is derived from the case of *Cambell and Cosaus v. UK*, which was decided by the European Court of Human Rights.¹² It is therefore inappropriate for the Commission to adopt this form of words for religious charities, because the case in question considered the definition of 'belief' in Article 9, not the definition of 'religion'. Article 9 of the European Convention on Human Rights ('ECHR') covers both religion and belief,¹³ whereas the Charities Act 2006 is there to advance religion, not to advance 'religion or belief'. A definition of belief is not relevant and is not a definition of religion. The irrelevance of the case quoted is underlined by the fact that it was an education-related rather than a charity-related case, and concentrates on the meaning of the phrase 'religious and philosophical convictions' in the context of Article 2 of protocol 1 to the ECHR.

In the *Scientology* decision the Commissioners, in discussing the legal framework for the charitable purpose of advancing religion, stated that: 'Trusts for the advancement of religion take effect as charities **without assessment by the court of the worth or value of the beliefs in question**, unless the tenets of a particular sect inculcate doctrines adverse to the very foundations of all religion and/or subversive of all morality'. They stated that 'given these judicial principles, the **Commissioners found it understandable that the English courts have resisted closely defining what it is that makes some belief systems religious and others not.**'¹⁴

It would therefore be of assistance if the Commission were to provide a clear statement of principle within the *Guidance* to the effect that established world religions meet the European test requiring them to encompass a 'coherent belief system'.

'Belief system' should not be added to the definition of 'religion', as to do so would not comply with the Charities Act 2006, which preserves the particular meaning of religion within common law.¹⁵ It would also fail to adopt the 'absolutely necessary and for clarification only' principle referred to in the first part of our answer to question 1.

Q3 what would be the most appropriate terminology for us to use to describe 'worship' or other forms of relationship with a supreme being or entity?

Worship is, in our view, the most appropriate term and should be retained. In Christianity, worship is veneration of God and reverence for Him, expressed in private or in public gatherings, using song, prayer, forms of words, the study of the Bible and in some denominations the arts. Worship also encompasses the whole of life, which must be lived in accordance with belief in God and in His revealed Word. Many forms of Christianity also state that believers enjoy a 'relationship' with God, but it is a relationship based on worship, so the word 'relationship' should only be additional to the term 'worship'.

In terms of the most appropriate terminology to describe 'worship' or other forms of relationship with a supreme being, it is useful to examine the key *Scientology* decision.

The 'absolutely necessary' principle was the one adopted by the Commissioners when looking at worship as the second element of religion. The Commissioners examined the definition of 'worship' in the context of the definition of 'religion' and concluded that the 'English legal authorities indicated that the criterion of worship would be met where belief in a supreme being found its expression in conduct indicative of reverence or veneration for that supreme being.'¹⁶ They considered that the concept as so understood provided 'objective criteria by which worship can be identified for the purposes of recognising an organisation to be charitable as advancing religion and so falling within a distinct third head of English charity, at the same time as being **sufficiently broad to allow recognition of a range of belief systems commonly recognised as religions.**'

The text immediately prior to this question refers to Jainism as not worshipping the supreme being or entity, but as being an inspiration to followers or adherents to live better lives. Thus Jains do show reverence (in the sense of 'awe and great respect') or veneration (deep respect) for the supreme being or entity as an inspiration to live better lives, which still comes within the Commissions' view in the *Scientology* decision of the existing concept of 'worship'.

Q4 If you are a follower or an adherent of a religion, do you have a different expression to describe your relationship with your 'supreme being or entity'?

Please refer to our answer for question 3.

Referring to the *South Place Ethical Society* case, it would not seem possible for adherents to worship a simple ethical or philosophical ideal with 'reverence' or 'veneration'. It is not intended that secular beliefs should be included.

In summary, there is no necessity for an alternative expression to describe a believer's relationship with the supreme being apart from the 'absolutely necessary clarification' point of including 'or entity' as discussed in our answer to question 1.

Q5 Do you agree with our examples of when a religion can be said to be advanced? If not, please say what you do not agree with, and why?

It is important that the *Guidance* makes it clear that any list for the advancement of religion is a non-exhaustive list for illustrative purposes only. The foreword states that there are approximately 23,000 charities on the Charity Commission Register that were set up for the purposes of religion. It would be impossible to list the many and varied ways in which religious charities may advance religion. The *Guidance* needs to state here that the common law concerning charities will be fully taken into account in considering how religion can be said to be 'advanced'.

The list gives some examples of the way in which religion can be advanced (all of which are legitimate); however it omits the important activity of proselytism, which is referenced in a later section (C4) as accepted in principle only. Proselytism is vitally important to the common-law concept of advancing religion and proselytising should be included as a main section, within this list of examples.

Advancing religion and proselytising

In terms of the advancement of religion, Donovan J. in *United Grand Lodge of Freemasons in England and Wales* (1957) stated that:

To advance religion means to promote it, to spread its message ever wider among mankind; to take some positive steps to sustain and increase religious belief; and these things are done in a variety of ways which may be comprehensively described as pastoral and missionary. It should include religious instruction, a programme for the persuasion of unbelievers, religious supervision to see its members remain active and constant in the various religions they may profess.

'A programme for the persuasion of unbelievers' is included within this definition of the advancement of religion. The *Analysis of Law* ends the above quotation at 'pastoral and missionary' and states that: 'To advance or promote religion does not necessarily mean that an organisation should proselytise,' but goes on to say that 'Proselytising is one way of advancing religious purposes'.

Proselytism is a vitally important part of 'advancing religion' within the common law. Christianity is rooted in the concept of going and making disciples of everyone in the world. Christianity is about advancing the gospel of Jesus Christ by telling your neighbour about it. Without being able to advance religion by conversion, a religion may cease to exist and die out.

Ministerial assurances were given that missionary work and proselytising activity will still be deemed to be of public benefit.¹⁷ It is of concern that the *Draft Guidance* and the *Analysis of Law* focus unduly upon the negative side of proselytising and argue in section C4 of the *Draft Guidance* that proselytising is only accepted in principle. In our opinion, section C4 should be deleted from the draft guidance and both C3 and E4 radically altered.

The concentration upon the negative aspects of proselytising in the *Draft Guidance* is distorting and unhelpful. The *Draft Guidance* needs to stress that religions are free to proselytise, including proselytising members of other faiths. The emphasis in the guidance upon 'exerting improper pressure on people in distress or need, or activities that entail the use of violence or brainwashing' would seem to be more applicable to the minority or novel, new or existing cults or sects. We acknowledge the importance of preventing the registration of cults or sects that practise improper proselytism, however the Commission should continue to recognise that proselytism remains an essential part of 'advancing religion'. Free choice is an essential element of Christian conversion.

It is also interesting to note that the quotation on brainwashing in relation to proselytising in section C4 comes from the case of *Kokkinakis v Greece* ECHR 143077/88 1993. That case involved a Jehovah's Witness trying to convert the cantor's wife from a local Orthodox Church in Greece, where proselytising was a criminal offence. Yet the conclusion of the case was that for the Jehovah's Witness, there was a violation of Article 9. This case could be seen as *supporting and allowing*, rather than *restricting* religious freedom in the form of proselytising.

Section C4 also states that 'lawful proselytising by charities advancing religion does not present public benefit difficulties' However, as shown from the case above, whether or not proselytising is illegal in another country, the determination that it is not of public

benefit either in this country or abroad raises Article 9 issues. To reiterate, proselytism is a vitally important part of 'advancing religion' and should be recognised as such.

Q6 Do you wish to suggest any other examples of ways in which religion can be advanced?

The concept of religion includes a belief in a supreme being, worship and the advancement of religion. Advancement of religion should not be seen as the only element of religion. Within the 'advancement of religion', the importance of proselytising and all the activities associated with doing so should be emphasised rather than omitted.

The additions to this list under the heading 'Places of Worship' could include 'worship' and 'the fellowship of believers'. Under the heading 'Raising Awareness...' 'encouraging religious vocations or religious training' and 'theological training colleges' could be included. 'Religious Devotional Acts' needs to be extended, as this currently covers only acts in relation to the sick and the dead. It should include the central elements of public praise, prayer, and study of sacred texts e.g. the *Bible*, as well as healing ministries, including healing through prayer. Missionary work seems to be locally based and should include a local, national and international perspective, so that overseas work is included.

Gifts having for their object the maintenance and promotion of public worship are charitable and there needs to be much more emphasis on the religious devotional side.¹⁸

Q7 How can the advancement of a religion by pastoral work be more clearly distinguished from social work of a similar kind but which has no connection with a religion?

Religious pastoral work can be distinguished from secular social work by the following elements:

- the motivation that inspires it
- the identity of the body or person carrying it out and
- the ethos or body of principles by which it is carried out and to which the persons performing it must adhere.

The motivation and purpose behind pastoral work for the Christian religion is that of showing the love of God and showing love to our neighbour and is a way of manifesting our religion through such altruistic activities as housing the homeless or visiting the sick. It may be seen as a Christian duty in the sense that faith without works is dead.¹⁹ Such work may be unpaid. This compares with social work, which is more likely to be paid and may be performed out of a sense of civic duty as opposed to a sense of devotion to God or the love of God.

The body of principles or ethics by which a Christian charity would operate would need to be followed by all members of the organisation, as they undergird both pastoral practice and the work of the team. Integrity requires that pastoral workers adhere to such an ethos in their personal lives and work, so that it can be applied in a pastoral setting without any accusation of double standards. ***Christian charities do not make a***

distinction between pastoral work and religious practice: both are worship as they are love of neighbour, which is also love of God.

Q8 Would it be helpful to offer more guidance on the limitations imposed on the advancement of religion by human rights and discrimination legislation? If so, in what areas in particular?

Manifesting religion within Article 9(2) includes practising it. The limitations that are allowed by the ECHR to restrict the manifestation or practice of religion are only those 'necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others'. In our opinion, it is therefore very important for the *Guidance* to state that traditional Biblical views on sexual ethics are viewed as 'traditional' Biblical beliefs that are protected by Article 9 of the European Convention on Human Rights.

In our opinion, question 8 is inappropriate because it focuses on limitations. Article 9(2) focuses on the freedom of religion and the limits that it includes take a 'no more than necessary' or 'least intrusive' approach to that freedom known as 'proportionality'. This point was made in a recent case in Northern Ireland (which is discussed further in our answer to question 9).²⁰ In other words, it would be helpful if the *Guidance* simply stated that limitations are governed by the 'minimalist interference' approach to freedom of religion. The presumption is in favour of freedom of religion. It is important to note that discrimination includes discrimination on the grounds of religion, not just on the grounds of sex within Article 14 of the ECHR.

It is not the role of the Charity Commission to issue guidance in the very sensitive and controversial area of human rights and discrimination. The Commission's own interpretation of discrimination law would usurp the function of the courts, whose remit it is to resolve conflicts between competing human rights and freedoms. Compliance with the law in this area, as in any other, is a matter for each individual charity. Any guidance issued may have a chilling effect on freedom of speech and on freedom of religion, quite apart from adding a layer of unnecessary censure. If the Commission must issue guidance, it must specify its definition of 'detriment' as this is a nebulous concept at present. Please see also question 9 for our submissions on the proportionality principle.

It is important to bear in mind that the Charity Commission is a public authority within the meaning of section 6 of the Human Rights Act 1998 ('HRA') and must not do anything that is incompatible with the rights and freedoms enshrined in that Act. The new Charity Tribunal will also be subject to section 13 HRA, which requires a court to have special regard to the rights under Article 9. The Commission (as a public authority) also needs to comply with section 52 of the Equality Act 2006, which states that it is unlawful for a public authority to do any act which discriminates on the grounds of religion or belief.

Q9 In the light of assurances given in this section, is it clear enough how our assessments in the light of current social and economic conditions will affect our assessment of organisations established to advance religion? If not, in what ways might it be clarified further?

No, as more assurance and clarification would be helpful for the reasons discussed below:

Charities' Assessment on Public Benefit in the Light of Modern Social Conditions and Traditional Religious Beliefs

One area of particular concern to Christian Charities in the passing of this legislation has been the consideration of public benefit in the light of modern social conditions for charities with traditional, long-standing religious beliefs which this question addresses. It is not at all clear how such an assessment could be conducted objectively and without passing judgement on the contents of the beliefs of each charity. 'Current social and economic conditions' is a very subjective phrase and smacks of allowing modern attitudes to reshape the long-standing beliefs of all the main religions.

The Charity Commission has said in its *General Guidance* that it is not within the Charity Commission's remit to enquire into traditional, long-held religious beliefs or to seek to modernise them.²¹

'Traditional' Sexual Morality

Ministerial assurances were given during the passage of the Charities Act, that a traditional view of sexual ethics would never disqualify that religion from charitable status. It is vitally important that the *Sub-Sector Guidance* should confirm this specific point.²²

In section F2 of the *Draft Subsector Guidance*, charities are encouraged to be open about views which in a secular context could be viewed as discriminatory. This contrasts with section E2, where the *Subsector Guidance* explains that the narratives or doctrines of a religion for salvation may refer to refraining from contraception or gay or lesbian relationships. It is concerning that although the *Draft Subsector Guidance* says in E2 that such doctrines may not necessarily mean that the public benefit test is not satisfied, if a religious organisation confines itself to promoting only one or two such tenets then there may be difficulties.

It is our view that the Commission should not be considering the 'tenets' of a religion in this way in order to assess its public benefit. This is tantamount to regulating the beliefs and manifestation of a religion according to the views of the Charity Commission. This is contrary to the 'least intrusive' approach of the European Court of Human Rights and is therefore in breach of our international Human Rights obligations. The Commission has not been delegated this sort of authority.

Concerns regarding the Use of Terminology and Traditional Religious Beliefs on Sexual Ethics

The adoption of the term 'tenets' within the *Guidance* is of particular concern as it does not appear to have been a concept used in previous guidance on public benefit.²³ 'Tenets' within sections E2 and F4 and charity case law has been used in ways which have negative rather than neutral connotations.

In view of these connotations in E2, it is not appropriate to use this term for beliefs, as 'tenets' and practices in relation to a religious organisation as a general term tends to refer to orthodox religion.²⁴ Orthodox Christianity may legitimately include a religious belief in Christian marriage between a man and a woman and may maintain that the practice of homosexuality is a sin, yet this should not be seen as a religious organisation confining itself to one or two tenets. It is part of traditional religious beliefs and the court should not normally assess the worth or value of the beliefs in question. In our opinion, this should also be a guiding principle for the Commission. To do otherwise may be seen as challenging a core part of traditional religious beliefs on the importance of Christian Marriage and the traditional family.

It is useful to consider the *Northern Ireland* judicial review case²⁵ brought by the Christian Institute and others including the Northern Ireland Christian Churches on the Sexual Orientation Regulations, the 'SORs'. This case arose due to concerns that the SORs, which outlawed discrimination on the grounds of sexual orientation in the provision of goods and services, would conflict with religious beliefs in such provision. In that case it was recognised that Article 9 of the ECHR as regards the freedom of thought, conscience and religion was engaged by the combination of the orthodox Christian belief that the practice of homosexuality is sinful and the consequent manifestation of religion in this context, which is by teaching, practice and observance in maintaining the choice not to accept, endorse or encourage homosexuality. Regarding the orthodox Christian belief that the practice of homosexuality is a sin, it was recognised that:

The belief is a long established part of the belief system of the world's major religions.

The *Northern Ireland* case supported the findings of a Canadian case where a printer called Mr. Brockie, whilst printing other material, would not assist in the dissemination of information intended to spread the acceptance of a gay or lesbian lifestyle. The judgment of the Court found that there had been an interference with Mr. Brockie's freedom of religion in that he was being forced to act in a manner contrary to his religious beliefs.

The draft guidance in section E2 states that 'it is not relevant, when deciding, if an organisation is a religion for the purposes of charity law, whether or not the substance of religious narratives and doctrines can be proven to be "true"'. In this statement the Charity Commission is saying that the law is neutral between religions.

It is of particular concern in section C3 that the following illustration is given:

An organisation, set up with objects for the advancement of the Christian religion carries out those aims by putting forward the trustees' views on how 'traditional' male/female roles should be followed within society using selected passages from the Bible to support their views. This includes calling for the abolition of the Sex Discrimination Act and the Equal Opportunities Commission. The organisation does not meet the criteria for a charity advancing religion; putting forward a particular personal viewpoint and seeking changes in the law based on quotes [sic] from religious texts does not amount to advancing religion in a way that is charitable.

This illustration does not take account of general traditional religious beliefs in the importance of marriage and may indirectly challenge traditional religious beliefs on sexual morality and religious beliefs in traditional male/female roles.

In our opinion, this illustration should be deleted from the guidance. The illustration is very unhelpful both because it does not reflect a position that would be advanced by mainstream Christian organisations—although it may be by other religions—and because it is not clear to what extent religious charities can engage in political activity. The guidance should affirm the extent to which religious groups can engage in political activity linked to and consistent with Commission guidance on this issue (CC9).

In view of these concerns, the second part of the question asks if the Commission's approach could be further clarified. In terms of clarification, it would be helpful if a statement could be provided in bold type. For example, an improved statement combining the reassurance in the *General Public Benefit Guidance* and the statement in section D1 of the Draft Subsector Guidance would be as follows:

The Commission does not have the remit (or the desire) to look into or to try to change traditional, long-held religious beliefs or to seek to change or to try to modernise them, including all traditional religious beliefs on sexual ethics.

This would further clarify the Commission's remit and would provide the reassurance needed on traditional religious beliefs.

Role of Public Opinion in Section D2

In our opinion, this section should be deleted and reference simply made to section D8 of the *General Guidance*. Section D8 is far more appropriate in stressing that public opinion cannot decide what is or is not of public benefit. The *General Guidance* makes clear the very restrictive use that can be made of public opinion. For example, regard will be had to public opinion where public benefit is not obvious to the Commission, the Charity Tribunal and the Courts and then only in so far as appropriate.

This compares with D2 which states that:

The fact that some members of society do not agree with particular religious beliefs, or do not support certain religious practices, does not in itself mean that the aims of the organisation advancing religion concerned will not be for the public benefit. However, where there are public concerns based on evidence of detriment or harm then, as with detriment or harm generally, this would be taken into consideration in any public benefit assessment.

Q10 Are there other examples of ways in which it can be shown that the advancement of religion is for the public benefit? If so, what are they?

The removal of the rebuttable presumption that charities of the first three heads achieved charitable purposes has caused much confusion as to what is or is not of

public benefit. The third of Lord Macnaghten's four-fold classification of charities, 'trusts for the advancement of religion', was based on the understanding that 'religion' was Christian. This was presumed to be of public benefit because it was known that the Christian religion was of benefit to wider society, due to its basic beliefs of 'loving' or giving 'charity' to one's neighbour.

It is important that the *Guidance* makes it clear that any list for the advancement of religion for public benefit is a non-exhaustive list for illustrative purposes only. If a list of examples is introduced, it should be specific and detailed, showing how organisations advancing religion can be shown to be for the public benefit.

It is of concern that in the text box that gives examples of ways in which it can be shown that the advancement of religion is for public benefit, a universal broad brush 'one size fits all' approach appears to be taken. The *Draft Guidance* explains that the benefits may not be unique to religion and may appear for other charitable purposes such as animal welfare, protection of the environment or of historic buildings, education, elevation of public taste in art or music, mental and moral improvement and promoting patriotism. This may be viewed as moving away from the 3-main-concept definition of religion in the *Scientology* Decision. This is contrary to the principle that benefits must be related to the aims (or as we would prefer 'purposes').

In *Gilmour v Coats* [1949] AC 449, Lord Simonds stated that the law of charity:

..has been built up not logically but empirically. It would not, therefore be surprising to find that, while in every category of legal category some element of public benefit must be present, the court had not adopted the same measure in regard to different categories, but had accepted one standard in regard to those gifts which are alleged to be for the advancement of education and another alleged to be for the advancement of religion, and yet another in regard to the relief of poverty. To argue by a method of syllogism or analogy from the category of education to that of religion ignores the historical process of the law....

In one of their briefing papers on the public benefit issue,²⁶ the Commission referred to Picarda, author of *The Law and Practice Relating to Charities*, Butterworth's, 3rd Edition. Picarda's views on this matter can be seen by reading his submission to the Joint Committee on the Draft Charities Bill where he stated that:

4. There are variations in the standard of public benefit within each of the heads of charity reflecting the differing aims of for example religion and education and the courts have not sought to harmonise or make logically consistent the degree of public benefit in each case. You cannot "logically" harmonise unlikes.

6. Charities are not "equal" animals. And a new definition of overriding criterion of benefit to the community, social value or the like goes counter to the common law and was not needed. The evidence of such a need, significantly undiscovered in any other jurisdiction, is slim unparticularised and implausible.

9. Mere reversal of the "presumption" of public benefit cannot change the declared law on this point. Public benefit has a consistent meaning throughout the Commonwealth and is not synonymous with the malleable word "public interest"

"social value" or a benefit having the necessary "social and economic impact" fulfilling "social justice".²⁷

This would support the view that the public benefit measure adopted differs for different charities as charities are different 'animals'. Whilst it has been argued that the removal of the presumption of public benefit creates a level playing field so that all charities have to pass the public benefit test, this does not mean that the charities should be assessed for public benefit with the same measure, as to do so would be to try to 'harmonise unlikes'.

Lord Wright in the *National Anti-Vivisection Society* case²⁸ (an old fourth head case) stated that:

I think that the whole tendency of the concept of charity in a legal sense under the fourth head is towards tangible and objective benefits and at least that approval by the common understanding of enlightened opinion for the time being is necessary before an intangible benefit can be taken to constitute a sufficient benefit to the community to justify admission of the object into the fourth class.

Implicit in Lord Wright's comment is that within the first three heads, intangible (and therefore hard-to-identify) benefits will suffice. This illustrates how a public benefit measure for the advancement of religion needs to relate to the nature of religion and include intangible benefits.

Universal Approach to Public Benefit is Inappropriate

In section E2 the draft subsector guidance states that:

To be recognised as charitable, all organisations advancing religion must have a moral and ethical code which is capable of impacting on society in a beneficial way.

Any requirement to explain a public benefit further needs to take account of the religious nature of the charity concerned. For example, it is not the provision of ethical or moral codes in society, but the provision of religious ethical or moral codes for a religion's followers—who then adhere and contribute to these values in wider society—that will benefit the public. However, whatever public benefit explanation is given, it is important that it does not detract in any way from the concept of 'religion' within the common law. It is also important that the type of public benefit which may or may not be applicable to any of the 23,000 religious charities is dependent on the unique nature of the objects of the charity itself. In some cases a religious, ethical or moral code may be appropriate, but in others cases it will not. There needs to be flexibility even within the separate charitable heading of the 'advancement of religion' on the type of public benefit provided. As already explained in our answer to question 2 the charitable head for the advancement of religion is not the same as the advancement of religion *or belief*.

In the *Scientology* decision, the question of promoting the moral or spiritual welfare or improvement of the community was examined as a separate question under the old fourth head of charity not that of the advancement of religion. To argue that this category should universally be imposed upon public benefit for all religious charities is

contrary to the common law. The removal of the presumption of public benefit for religion has not changed the remainder of the common law for religion.

It is of concern that a preference for imposing this inappropriate universal public benefit criterion on religious charities (the criterion of being of public benefit by having a moral and ethical code when religious charities can show public benefit in numerous ways) is then reinforced in relation to political campaigning by stating in E2 that:

If the benefits of religious aims are centred on the promotion of a moral code and responsible behaviour, then charities advancing religion may, in principle, be able to campaign on a potentially wide range of moral and social issues.

The Whole Approach to the Guidance on Public Benefit for Religious Charities should not be a Universal On-Size-Fits-All Approach

In our opinion the most appropriate approach to this whole issue of public benefit for religious charities in the *Guidance* can be found in the *General Guidance* in section D3 where it states that:

There is no “one-size-fits-all” benchmark, against which we judge the public benefit of the aims of an individual organisation. We consider each case on its merits

Q11 Is the often inherently intangible nature of religion dealt with clearly enough?

No: please see below.

Intangible Benefits and Evidence

Section D2 of the *General Guidance*, 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.

However, there are mixed messages on intangible benefits found in the *General Guidance*, published in January. Even less reassurance is provided on intangible benefits in the *Draft Subsector Guidance*, which states that:

...if it is not possible to show evidence of a benefit, then the law cannot take account of it in assessing public benefit... With religion though some of the benefits are not tangible and could potentially be difficult to identify. However, this is not to say that a public benefit assessment would only take account of tangible practical benefits.²⁹

This means that there is no categorical assurance that intangible benefits are sufficient and without this reassurance there is a departure from existing common law. The analysis of the law underpinning both the *General Guidance* and *Draft Sub-Sector Guidance* also places more emphasis on evidence being provided to demonstrate public benefit.³⁰ In order to comply with the Charities Act 2006, which preserves the existing

common law, it would be helpful if the *Guidance* could provide this categorical assurance.

It is not clear how fully intangible benefits will be taken into account, nor how evidence can be provided for them, given that they are inherently incapable of proof. The ultimate benefit of Christianity is peace with God, yet this cannot be proved. The courts have consistently declined to enquire into such matters and it is inappropriate for the Charity Commission to rewrite the approach of the common law here.

Q12 Is it common for a charity for the advancement of religion to have more than one aim? Is it clear enough what the aim of an organisation established to advance a particular religion is and what activities fall under another charitable purpose? Are organisations for the advancement of religion likely to have any difficulty in demonstrating that the benefits they provide are related to their aims?

The *General Guidance*³¹ suggests that the Commission will consider the activities of existing charities and consider whether they match up to the stated charitable objects and may seek agreement to alter their objects or the way they carry out their aims. The further advice in the *Draft Subsector Guidance* in the text prior to this question suggests that there may be benefits that arise from what a religious organisation does, which are not related to its aims. The example given is of the maintenance and upkeep of church records, which may be a secondary object because the upkeep of such records may not be a religious *obligation*. Since much of Christianity is based on free choice, many of its activities may not be religious *obligations*. In a church, activities such as mother-toddler groups, meals for the elderly and numerous other activities are of a voluntary nature and do not strictly involve an obligation. In practice a charity's activities may entail a non-exhaustive list that varies from time to time and so changing a governing document may be practically impossible or may detrimentally curtail activities of public benefit that are not listed due to the trustees' fear of not matching activities to the objects in the governing document.

Both sets of *Guidance* are confusing on this whole issue. It should be made clear that charities who have one charitable object of the advancement of religion will be able to have a wide variety of activities under that heading without needing to alter the governing document to add secondary objects or activities to the Governing document. It would be preferable if such activities could be more flexibly reported in the Trustees' Annual Report without any necessity to change the Governing document. Charities could then report how the activities are of public benefit as a furthering of that charitable purpose of the advancement of religion.

For religious charities who have the advancement of religion as only one of other objects, they should be allowed to link the other objects to the main object of advancing religion (whether or not this is through a statement of faith) should they choose to do so. However, they should also be free to describe the public benefit of other charitable objects in religious and/or secular terms should they choose to do so without having to alter the Governing document. Again the Trustees' Annual Report would seem a suitable vehicle to do this.

The *Guidance* may have left Charities with a great deal of uncertainty or confusion that requires clarification as to whether or not they should alter their Governing documents and it has left them with confusing advice and principles with which to do so.

For the above reasons, organisations for the advancement of religion are likely to have difficulty in demonstrating that the benefits they provide are related to their aims.

It is doubtful in the first place whether the Charity Commission has the legal authority to introduce the activities tests proposed for religious charities.

Q13 Do you have any comments on our suggested approach towards charities undertaking activities in a foreign country which might be subject to local legal challenge?

It is important for the trustees, staff and volunteers to be aware of the risks involved. The *Draft Guidance* stresses the need for trustees to assess such matters fully. However, charity workers or volunteers should be allowed to accept such risks provided they do so freely, giving their informed consent to taking the risks. Many international aid agencies also face risks but without such charity workers being willing to take some risks in foreign countries, important international charitable and humanitarian aid would not be provided.

Similarly, there may be risks in spreading the Gospel of Jesus Christ where proselytism is illegal, but if a Christian charity worker or volunteer personally decides to do so knowing the risks, then this is a matter for their own personal discretion, if the trustees have given approval.

It is noteworthy that laws preventing proselytism and conversion in other countries are contrary to international Human Rights laws and for the Charity Commission to subject English and Welsh charities to such unjust national laws rather than allowing them to exercise their internationally-recognised Human Rights and Freedoms cannot be right. This would effectively limit the activities of UK charities to the 'lowest common denominator', rather than allowing the benefit of the freedoms that we have in this country to be exported for the benefit of other societies. The Commission's approach to this issue shackles religious charities unnecessarily and contravenes International Law including International Human Rights Law. According to this approach, a UK charity delivering humanitarian aid in the name of Christ to those in a closed state would be subject to the censure of the Charity Commission. They could face the revocation of their charitable status. This cannot be right.

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. The UK has seldom shrunk from attempting to export its values and beliefs as part of an 'ethical foreign policy' and freedom of religion is an especially important part of those values. The importance of promoting human rights and freedoms in other countries should never be subjugated to the expediency of national interests.

Q14 Is there anything that you would have expected us to cover in this draft supplementary guidance that we have not included?

It would be helpful if the Commission's *Guidance* had provided examples of how a charity's object could be demonstrated to be of public benefit. Whilst Scottish charity law is based on entirely different legislation, their guidance on meeting the charity test states more clearly that there needs to be a link between a body's charitable purposes, its activities that arise as a result of those purposes and the consequent public benefit. This means that if the charity was set up to advance the Christian faith then the activities should relate to that. Models of answers to the G8 questions in relation to charitable objects and example statements showing how public benefit can be demonstrated would be helpful. This would be useful both for proposed charities who wish to register and for existing charities who will need to report on these questions in the Trustees' Annual Report (TAR). This is to avoid the burden on small charities becoming unduly onerous.

It would have been expected that the examples of advancing religion in question 5 would have been tied into the concept of public benefit of advancing religion in question 10 and that the public benefit discussed would have related specifically to religion rather than to secular charities within the concept of the common law definition of religion.

The *Draft Sub-Sector Guidance* should also include statements to the effect that the Commission will not discriminate on the grounds of religion or belief, or lack thereof, in accordance with the Equality Act 2006, Part II and to the effect that the Commission will uphold the rights of charities to freedom of association, freedom of religion and freedom of speech in accordance with the Human Rights Act 1998 and the ECHR.

Q15 What do you think of the clarity, style, format and language overall used in this draft supplementary guidance?

The use of language in relation to terminology is of concern; reference has already been made to this in relation to the use of the term 'tenets'. Further terminology and general concerns are explained below.

Use of Terminology and 'aims' being 'illegal'

In section E4, the *Draft Guidance* states that 'no organisation that has aims that are illegal or that intentionally deceives or misrepresents its aims and so is a sham, can be a charity'. It goes on to say that 'recognised charities in England and Wales are subject to the jurisdiction of the High Court, this means that their aims cannot be illegal under the law of England and Wales.' The term 'illegal' seems to relate to 'aims'. It is of concern that the blurring of the meaning and the colloquial usage of the terms of 'aims', 'purposes' and 'objects' within this and the main *Guidance on Public Benefit* may eventually lead to arbitrary decision making which is contrary to existing common law.

There is no specific case law reference to the use of the term 'illegal' in the *Analysis of Law*, but this follows on from a reference to the *National Anti-Vivisection Society v Inland Revenue Commissioners* case.³² That case found that the society was not considered to be charitable because the main object of the society was political in seeking to abolish

and change the law on cruelty to animals and the public benefit was outweighed by the detriment to medical science and research by preventing research on animals.

In this case the main emphasis was upon determining the main charity object or the purpose of the charity, not upon the assessment of the charity's aims so as to determine charitable status. Lord Simonds argued that the Commissioners were satisfied that the 'main object of the society is the total abolition of vivisection...and (for that purpose) the repeal of the Cruelty to Animals Act 1876, and the substitution of a new enactment prohibiting vivisection altogether'.³³ The conclusion was that the main object was political and for that reason it was not seen as charitable not because the policy advanced was illegal.³⁴ Lord Simonds then made a later reference in this case to how the *purpose* of an established charity may become *illegal* by reference to changing charitable purpose by saying that:³⁵

A purpose regarded in one age as charitable may in another be regarded differently.... A bequest in the will of a testator dying in 1700 might be held valid upon the evidence then before the court, but, upon different evidence, held invalid if he died in 1900.... But this is not to say that a charitable trust, when it has once been established, can ever fail. If, by a change in social habits and needs, or, it may be, by a change in the law, the purpose of an established charity becomes superfluous or even illegal, or if, with increasing knowledge, it appears that a purpose once thought beneficial is truly detrimental to the community, it is the duty of trustees of an established charity to apply...and ask that a cyprès scheme may be established.... A charity once established does not die, though its nature may be changed. But it is wholly consistent with this that in a later age the court should decline to regard as charitable a purpose, to which in an earlier age that quality would have been ascribed, with the result that (unless a general charitable intention could be found) a gift for that purpose would fail.

In this case charitable purposes were discussed within the context of the old four heads of charity,³⁶ which would be akin now to looking at the charitable purposes in the Charities Act 2006 and as a result its main charity object in the governing document. This is where the focus should lie when determining whether a charity is illegal.

Throughout the guidance there is a blurring of legal terms. 'Aims' is used as shorthand for the *purposes* of an individual organisation and 'objects' are seen as an organisation's *aims* or *purposes* as expressed in the objects clause. Whilst the document explains that aims are used as shorthand for the purposes of an individual organisation, its usage may lead to confusion. This confusion of terms may lead to loose usage of the term 'aims' in a colloquial way for any aim (for example, which may be interpreted from a secular viewpoint), as if this was the same as the charity's main purposes or main charity object as set out in the governing document. At common law to be charitable involves an examination of the main charity objects or the charitable purposes. Charitable purposes are different from the colloquial usage of the term 'aims', which may even apply to minor aims of little consequence to the main charitable purposes. To continually blur the terms may ultimately lead to a misinterpretation of charity law. For example, continual usage of this term in the common understanding of the word 'aims' may eventually lead to arguments that a charity's aims are political when they are instead a political activity which furthers or supports its charitable purpose. In our opinion, the principle that benefits must be 'related to aims' or 'appropriate to aims' should be replaced instead by 'related to or appropriate to charitable purposes'.

This distinction in charity law is much more clearly made in the recent *Guidance on Political Campaigning by Charities*.³⁷ Charitable purposes refer to those set out in the Charities Act 2006 and a charity's purposes are set out in the governing document. The important distinction then is that 'any charity can become involved in campaigning and in political activity which furthers or supports its charitable purposes'.³⁸ And a charity can campaign to change the law but it cannot exist for a political purpose.³⁹

Charity law will need to be compatible with the ECHR. Relevant religious charity law in the European context includes Article 9 on freedom of thought, conscience or religion. In addition under Article 14 individuals and organisations such as religious charities are guaranteed non-discrimination on the grounds of religion. The Charity Commission is a public authority within the meaning of section 6 of the Human Rights Act of 1998 and must not act in ways incompatible with that Act. The new Charity Tribunal will also be subject to section 13 of the Act, which requires a court to have special regard to the rights under article 9.

In any event, European law is directly relevant to charity law in England and Wales as statutory law has to be interpreted in a way compatible with European law. Under section 19(1) of the Human Rights Act 1998, Bills have to provide a statement of compatibility with Convention rights.⁴⁰

General Concerns

There are general concerns about the *Subsector Guidance* as listed below:

Reasonable Charges/Fees or Reasonable Benefits

The *General Guidance* refers to charges/fees being reasonable in relation to the provision of services or facilities, on condition that the charges are reasonable and necessary in order to carry out the charity's aims, for example in maintaining or developing the services being provided.⁴¹ This compares with the *Draft Sub-Sector Guidance* which states that:⁴²

If the tenets of the religion are only available as a course of study and that course is only available on payment, we will need to consider to what extent the spiritual development of the follower or adherent is dependent upon their ability to pay.

There is no reference here to 'reasonable charges' and seems unrealistically to assume that a religious course of study can be provided free of charge.

The *General Guidance* refers to 'reasonable benefits to people or organisations that further the charity's aims'⁴³. The *Draft Guidance* instead refers to the care of aging members by religious charitable orders in terms of meeting 'reasonable and modest personal needs' as opposed to just referring to meeting 'reasonable personal needs'.

Religious charities may have volunteers, but they also need to employ staff and may provide training courses for them which incur costs. Not all religious charities have taken a vow of poverty or should be considered in the same way as an enclosed order of

nuns. Realistically, staff still have their own living costs to meet. The old RR8 *Guidance on the Public Character of Charity*, clarified this in section C5 by stating that:

In general there is little difficulty about payments (or other benefits) to individuals received for providing goods and services to the charity.

Membership of religious organisations and sacred rites

It is of concern that section F2 indicates that the Commission may be examining religious rites only available to certain followers or adherents and that the private nature of such rites may affect public benefit. A reference in section F3 states that it is 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.

Firstly, it seems to be beyond the remit of the Charity Commission to enquire into the membership rules and decisions of an organisation. That is tantamount to assessing the truth of the beliefs on which such rules and decisions are based. Secondly, anyone who opposes a religion, just as much as a person who adheres to a religion can be said to be 'interested' in its aims. It cannot be right for religious groups to have to admit to membership those who oppose their aims. This is equivalent to requiring the Labour Party to admit Conservatives to membership, or vice versa.

As stated in our response to the initial consultation on the *General Guidance on Public Benefit*, in relation to the issue of the benefit being 'public', we think that it is of great importance for the Commission to clarify that religious charities can restrict their membership and benefits to those who believe in the doctrines, statements of faith and/or the religious convictions of their particular faith without fearing Charity Commission interference. This is because an essential part of freedom of association is the freedom not to associate. Freedom of religion must of necessity include the freedom to associate with fellow believers and the freedom not to associate with unbelievers in religious contexts. It is illogical to suppose that a Mosque would admit a Hindu to membership, although the Hindu might well be welcome to attend meetings in order to consider joining Islam. Religious bodies must be free to regulate their own gatherings and membership.

Advancing religion and proselytising

Proselytism is a vitally important part of advancing religion and should be recognised as such in the guidance. Please see our answer to question 5, above.

Role of Public Opinion in Section D2

In our opinion, this section should be deleted and reference simply made to the D8 of the *General Guidance*. Please see our answer to question 9, above.

¹ Note that the word 'Guidance' in this paper means both the *General Guidance* and the *Summary Guidance for Trustees*, both published in January 2008 see:

<http://www.charitycommission.gov.uk/publicbenefit/default.asp>.

² See the *Analysis of Law* point 2.12 (i) and (iii) at: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pblawrr.pdf>.

³ See <http://66.102.9.104/search?q=cache:tDNxiid7E0sJ:www.charity-commission.gov.uk/Library/registration/pdfs/cosfulldoc.pdf+charity+commission+and+religion&hl=en&ct=clnk&cd=1&gl=uk>—Charity Commission decision on The Church of Scientology. See also Hansard of 9th Feb 2005 at column GC62:

<http://www.publications.parliament.uk/pa/ld200405/ldhansrd/pdvn/lds05/text/50209-26.htm>.

⁴ See page 14 at: <http://66.102.9.104/search?q=cache:tDNxiid7E0sJ:www.charity-commission.gov.uk/Library/registration/pdfs/cosfulldoc.pdf+charity+commission+and+religion&hl=en&ct=clnk&cd=1&gl=uk>.

⁵ See section 2(5) of the Charities Act 2006, *ibid*.

⁶ See for example: <http://www.thefreedictionary.com/entity>.

⁷ Very simplistic, brief descriptions given in *Teach Yourself World Faiths* by Paul Oliver.

⁸ See <http://www.thefreedictionary.com/Buddhism>. The teaching of Buddha that life is permeated with suffering caused by desire; that suffering ceases when desire ceases; and that enlightenment is obtained through right conduct, wisdom, and meditation, releases one from desire, suffering, and rebirth. Note that enlightenment, as the ultimate goal of all Buddhists, could be viewed as the supreme entity or something set apart within Buddhism:

<http://www.bbc.co.uk/religion/religions/buddhism/subdivisions/>. The best way to regard the different types of Buddhism is as alternative paths to enlightenment:

<http://www.exclusive-designs.co.uk/buddah.html>. In Buddhism, a Buddha is any being who has become fully awakened or enlightened and has therefore overcome greed, hate & ignorance, and has achieved complete liberation from suffering.

⁹ See <http://www.thefreedictionary.com/enlightenment>:

3. Buddhism & Hinduism: A blessed state in which the individual transcends desire and suffering and attains Nirvana.

¹⁰ See point 2.2 of the analysis of law at: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pblawrr.pdf>

¹¹ See <http://www.humanism.org.uk/site/cms/contentviewarticle.asp?article=1853>, which argues in points 19 and 20 in favour of the pairing of religion and belief. Moreover, the linking of religion and belief helps to define 'belief' in a more religious sense in any case, by implying that in order to qualify, beliefs must be in some sense analogous to religions.

¹² See *Cambell and Cosaus v. UK* (1982) 4 EHRR 293 at 304 at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=campbell%20%7C%20%22THE%20UNITED%20KINGDOM%22&sessionid=9045224&skin=hudoc-en>.

¹³ See Article 9 of the ECHR in Schedule 1 of the HRA 1998 at: http://www.opsi.gov.uk/ACTS/acts1998/ukpga_19980042_en_3#sch1.

¹⁴ See pages 13 and 14 of the *Church of Scientology* decision, *supra*.

¹⁵ See point 2.16 of the *Analysis of Law* and section 2(5) of the Charities Act 2006.

¹⁶ See page 24 of the *Church of Scientology* decision, *supra*.

¹⁷ See Standing Committee A of 25th October 2006, at Column 1617:

<http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo061025/debtext/61025-0019.htm#0610258000175>.

¹⁸ See *Attn-Gen. v Pearson* (1817) 3 Mer., 353, 409.

¹⁹ See the *Bible*, New Testament, letter from James, chapter 2, verses 14 to 26.

²⁰ See paragraph 83(5) on proportionality at: <http://www.baillii.org/cgi-bin/markup.cgi?doc=/nie/cases/NIHC/QB/2007/66.html>.

²¹ See section D6 of the *General Guidance* at:

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

²² See Hansard of 25th October 2006, at Col 1608:

<http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm061025/debtext/61025-0018.htm>.

²³ See RR8 printed version of *The Public Character of Charity*, (February 2001 version), which has been removed from the web site: <http://www.charity-commission.gov.uk/publications/rr8.asp>.

²⁴ Note that section E2 refers to 'tenets' but C3 expands this usage in relation to miracles to refer to 'beliefs and practices' as well:

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

²⁵ See the *Re the Christian Institute & Ors* [2007] NIQB 66 case at: <http://www.bailii.org/cgi-bin/markup.cgi?doc=/nie/cases/NIHC/QB/2007/66.html>.

The relevant quotation from the Northern Irish *Christian Institute* case can be found at para. 50:

The belief in question is the orthodox Christian belief that the practice of homosexuality is sinful. The manifestation in question is by teaching, practice and observance to maintain the choice not to accept, endorse or encourage homosexuality. Whether the belief is to be accepted or rejected is not the issue. The belief is a long established part of the belief system of the world's major religions. This is not a belief that is unworthy of recognition. I am satisfied that Article 9 is engaged in the present case. The extent to which the manifestation of the belief may be limited is a different issue.

²⁶ See: <http://www.charitycommission.gov.uk/spr/submccall.asp>.

²⁷ See: <http://www.publications.parliament.uk/pa/jt200304/jtselect/jtchar/167/167we200.htm>.

²⁸ *National Anti-Vivisection Society v Inland Revenue Commissioners* [1947] UKHL 4.

²⁹ See section E2 of the *Draft Subsector Guidance*.

³⁰ See: <http://www.charitycommission.gov.uk/publicbenefit/default.asp>.

³¹ See section D4 at: <http://www.charity-commission.gov.uk/publicbenefit/publicbenefit.asp#d>.

³² See 3.15 to 3.17 on page 18 at: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pblawrr.pdf>.

³³ See *National Anti-Vivisection Society v Inland Revenue Commissioners* HL, 1947, at page 61.

³⁴ *Ibid.* at pages 32, 61 and 63.

³⁵ *Ibid.* at page 74.

³⁶ *Ibid.* at pages 43 and 49.

³⁷ See section CC9 for the meaning of other words and expressions used:

<http://www.charitycommission.gov.uk/publications/cc9.asp#14>.

³⁸ See section CC9, D1 at: <http://www.charitycommission.gov.uk/publications/cc9.asp#14>.

³⁹ See section CC9; the key points are in B1at:

<http://www.charitycommission.gov.uk/publications/cc9.asp#14>.

⁴⁰ See section 19(1) at: http://www.opsi.gov.uk/ACTS/acts1998/ukpga_19980042_en_2#pb8-l1g19.

⁴¹ See section F10 at: <http://www.charity-commission.gov.uk/publicbenefit/publicbenefit.asp#d>.

⁴² See section F4 at: <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbarsum.pdf>.

⁴³ See section F12 at: <http://www.charity-commission.gov.uk/publicbenefit/publicbenefit.asp#d>.