

religions manifestation at work to be dealt with by considering justification. Such an approach is compatible with the current drafting of the Regulations, and compatible with the protection of Articles 9 and 14 of the Convention.

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Religion and Public Benefit

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The Charity Commission's final guidance on *The Advancement of Religion for the Public Benefit*¹ met with cautious approval, not least because it is considerably more user-friendly than the rather tortuous exposure draft that preceded it. Several aspects of that draft were arguable:² the final version resolves many of the uncertainties.

The guidance makes it clear that although, to be charitable, an organisation advancing religion must demonstrate belief in a supreme being or entity, it does not have to use that terminology in its objects: for Buddhists, for example, 'supreme being or entity' is inappropriate because Buddhism is a 'realised' religion rather than a 'revealed' one. Nor is it obligatory to talk of 'worship' if that expression is inappropriate for that religion. In short, the guidance has moved much closer to the definition in the Charities Act 2006.³ There has also been a welcome move away from reference to moral or ethical codes: instead, the document tends to refer, much less prescriptively, to moral or ethical *frameworks*.

The guidance also makes it clear that is not necessary for a faith community to proselytise in order to 'advance' religion; advancement may include the 'personal and social effects' of religious practice. The guidance accepts, however, that seeking converts can be a valid means of advancing belief – and can therefore be for the public benefit – always providing that proselytising does not cause harm. It is also acceptable for a charity to promote particular tenets of a

1 Available at <<http://www.charitycommission.gov.uk/Library/publicbenefit/pdfs/pbreligiontext.pdf>>, accessed 20 January 2009.

2 And at one point simply wrong: the assertion in the draft that it was impossible to become a Sikh by conversion.

3 Charities Act 2006, s 2(3): 'religion' includes: (i) a religion that involves a belief in more than one god, and (ii) a religion that does not involve a belief in a god.

religion rather than every known tenet of that religion, so long as ‘the purpose is not so narrow as to produce either insufficient public benefit or have little consideration for the broader teachings of the religion’.⁴

The exposure draft was unclear about religious trusts carrying out charitable activities that were ostensibly non-religious (such as advancing education or relieving poverty) as a practical expression of belief, appearing to draw an unhappy distinction between ‘religious’ activity and ‘secular’ relief of suffering. However, the final guidance accepts that ‘for many, the separation of religious and secular work is not easy, or even possible, as secular and/or social work in these similar fields is in fact an outworking of the religion’. It goes on to state that ‘[i]t is important in public benefit terms to be able to distinguish why the activity is being carried out’⁵ – but it should not be difficult for adherents of the Abrahamic faiths to demonstrate that loving one’s neighbour is essential to one’s religious obligations. The final version also concedes that religious purposes might overlap with other charitable aims and that where such aims are ‘a genuine expression of that religion there is no need to include these activities as separate aims’.⁶

One particularly problematical area of the draft⁷ was ‘advancing a political purpose’. Pacifism was cited; and the draft concluded that, although a religion might include pacifism as part of its beliefs, an organisation set up solely to promote, for instance, a boycott on paying tax for weapons would not be ‘advancing religion’. Though the final guidance reiterates the entirely uncontroversial point that ‘a charity cannot exist for a political aim’, it acknowledges that, in some situations, ‘carrying out political activity is the best way for trustees to support the charity’s advancement of religion aims’.⁸

Harm to the public is clearly contrary to any notion of public benefit: for example, if religious leaders encouraged adherents to use violence against non-adherents. However, the final guidance states that ‘general disagreement with the beliefs, activities or practices of a particular religion does not constitute evidence of the existence of detriment or harm’. Moreover, ‘charitable status is not decided on the basis of public opinion’; and while the Commission would have regard to ‘objective and informed public concerns about, or evidence that, the beliefs or practices of an organisation advancing religion causes detriment or harm’, mere disagreement is not adequate evidence and ‘all claims of detriment or harm would have to be fully substantiated’.⁹

4 In section C3.

5 In Annex B.

6 In section G3.

7 In section C3.

8 In section C6.

9 In section G3.

Public benefit cannot be demonstrated where the benefits are essentially private – the position at common law at least since *Gilmour v Coats*.¹⁰ However, it would be acceptable for a charity advancing, for example, Judaism to restrict its activities to Jews because of the benefits to the wider public from religious practice by members of the Jewish community. Moreover, the actual beneficiaries might be few, always provided that the opportunity to benefit was available to a sufficient section of the public: for instance, a remote rural chapel that was open to all comers.¹¹ A place of worship could reasonably restrict access to adherents, provided that the definition of ‘adherent’ was sufficiently open. For services such as namings, marriages and funerals it would be reasonable to restrict access to those participating in the ceremonies; on the other hand, a place of worship that only ever conducted private ceremonies would not meet the public benefit requirement.¹²

Three particularly controversial points in the exposure draft have disappeared. The draft referred with disapproval to ‘promoting the particular views of the founder or founders of the charity’; in response, it was pointed out that this statement could cause problems if it meant that a trust to promote the teachings of a particular religious leader would not be for the public benefit.¹³ The Church of Christ, Scientist, which lays great stress on Mary Baker Eddy’s teachings in *Science and Health with a Key to the Scriptures*, is an obvious example; and the final guidance specifically mentions Christian Science healing as not being ‘dangerous or damaging’. Further, the suggestion that charities operating internationally should consider whether their activities might affect the diplomatic and economic interests of the United Kingdom has gone, after critics pointed out that fostering economic and diplomatic relations was not normally among the objectives of the charities concerned. Finally, the bizarre assertion that trustees admit adherents to membership has been dropped. For many churches, ‘membership’ is imprecise, usually acquired by baptism, by confirmation or merely by regular attendance. But only in a very few faith communities is membership conferred by resolution of the trustees.

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10 *Gilmour v Coats* [1949] AC 426 [1949] 1 All ER 848 HL, in which it was held that a gift to an enclosed religious order could not be charitable because it conferred no benefit on the public.

11 In section E3.

12 Ibid.

13 In my own response on behalf of the Churches’ Legislation Advisory Service, I suggested that, ultimately, all Christian churches were established to promote the teachings of an individual: the Lord Jesus.