

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

Response from The Christian Institute

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

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

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

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

- Organisation/Charity name: **The Christian Institute**
- Charity number: **100 4774**
- Contact number: **0191 281 5664**
- Contact address: **Wilberforce House
4 Park Road
Gosforth Business Park
Newcastle upon Tyne
NE12 8DG**

INTRODUCTION

At the very outset we should like to stress that we are frankly somewhat disturbed (as we believe are others in the charity sector) by the sweep and detail of the Draft Supplementary Guidance on Public Benefit and the Advancement of Religion and the lengths to which it goes.

Since our last submission on the General Guidance we have read or become acquainted with legally informed analyses as to the effect of the statutory language contained in sections 2(2) and 2(1)(b) and 3(2) of the Charities Act 2006. In consequence we now wonder whether the Commission is entitled in pursuit of its prescribed statutory duty to issue any guidance that goes beyond what is appropriate to its explanatory duties and functions. Accordingly, we would regard it as our duty to register our concerns about guidance which

- (1) goes beyond promoting awareness and understanding of the operation of the public benefit requirement or
- (2) disregards or misrepresents the effect of case law or
- (3) conflicts with the Commission's statutory duty to assist charities to carry out their charitable purposes effectively free from unnecessary interference.

We are so concerned with this issue that we are taking counsel's opinion. Therefore the observations made below on the questions you ask, and the interpretations you offer of the law and of your powers, have this overriding reservation to the fore.

RESPONSE

We preface our comments by observing that we consider it to be misguided to draw up of examples of permissible activities for several reasons. First, any list runs the risk of appearing to be, or leading to the understanding that it is, exhaustive. Secondly, once a religion has been accepted as being bona fide and falling within the description of a religion, its normal ancillary activities in pursuance of the religion are the exclusive concern of the religion, unless there is some question going to the public nature of the activity (for example, on the footing of its privacy or lack of outreach which negatives the public element). A non-charitable ancillary activity will not defeat a main charitable purpose unless the activity becomes a main object.

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

By way of introduction it might be appropriate to make the distinction between new religions and traditional religions. New religions must persuade courts of their claim to charity status and to be a bona fide religion by reference to common law principles. Traditional religions should remain recognised as such without the need to conform to some secular construct of new criteria not warranted by the case law dealing with the charitable nature of trusts for the advancement of religion.

Christians refer to "God" and we find it odd that, since the Charities Act 2006 itself uses the word god in its partial definition, this is not adopted by the Charity Commission as part of the term it uses in the guidance.

Given the origin of charity in European Christianity, and that historically bodies with Christian beliefs directed in traditional ways to the advancement of those beliefs have dominated the charitable sector, it seems inappropriate that Christian charities should now have to adopt unsuitable terminology not found in the case law. For that reason we consider that the reference to a supreme being should come after express reference to god. Attempts to extrapolate criteria from other heads of charity by reference to undefined and possibly

indefinable “level playing field” criteria is not at all helpful, and we do not think it appropriate for the Commission to be accounted fit adjudicators of spiritual and doctrinal matters.

In any event, while we would seek to see the term god used in the guidance, any changes in this area should be additions rather than replacements, such as the Commission’s suggestion of “a supreme being, entity or principle”.¹ Removal of the term “supreme being” would certainly lead to confusion in the law. It would also be impossible for any church to accept that it worshipped an “entity”.

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?

Case-law from the European Court on Human Rights refers to belief systems that have a certain “level of cogency, seriousness, cohesion and importance”. At one level, therefore, we can accept that the definition is suitable: a religion should be cogent, serious, cohesive and important, and it is right that entirely frivolous claims to religious status are barred. However, we are reluctant to accept that it is appropriate for the Charity Commission to adopt this phrase as an all purpose definition of religion within charity law because it was devised for a different specific purpose. **What is a religion for the purposes of charity law should be determined from the common law, which is probably more tolerant of a breadth of religions than human rights jurisprudence.** Furthermore, in assessing the nature of a religion in such a way, the Charity Commission risks delving into matters of faith and belief that the courts have consistently and rightly avoided.

The second part of the description (“*and that relates the nature of...*”) should not present difficulties for religious believers, except for one issue. The final phrase “the way its believers should live” privatises religious belief as a subjective matter, not concerned with absolute truth. Coherent belief has to be “more than just mere opinions or deeply held feelings”. Belief has to do with what is true for everyone. For example, Christians would claim that ‘Love your neighbour’ is a moral imperative for everyone, not just for Christians. So it would be better to say “the way people should live” rather than “the ways its believers should live”.

It would be helpful for the Commission to make clear that the established world religions are accepted as of an obviously beneficial nature but that otherwise the religion in question would need to argue the case by reference to the common law.

Section C2 of the draft guidance lists those religions which are “capable” of meeting both the definition of religion and the public benefit requirement. It is misleading and perverse to say that the faiths on the list “*are capable*” of meeting the definition of a religion. They plainly are religions. And all are of sufficient coherence to be protected by the European Convention.

To say that the beliefs, tenets and practices of Christianity are “capable of meeting the public benefit requirement” creates huge uncertainty and is very unhelpful. This particular sentence is alas lacking in historical sensitivity and liable to hamper trustees of Christian charities in their work.

Section 3(3) of The Charities Act 2006 makes clear that the understanding of “public benefit” has the same meaning as given by the courts. The courts have upheld the right for churches to be charities. It would be helpful for the Commission to make clear that:

¹ Public Benefit and the Advancement of Religion (Draft), The Charity Commission, February 2008, page 14

- a) Christianity and the “other principal religious traditions represented in Great Britain” (a phrase from section 375(3) of the Education Act 1996) are religions for the purposes of charity law
- b) A genuine church or place of worship holding public services and carrying out the usual ancillary activities accepted as being pursuant to its main purposes meets the relevant public benefit requirement.

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?

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’?

Whatever additional terms are used to cover non-theistic belief systems, ‘worship’ should be retained. It is certainly the most relevant term for Christians and the other monotheistic faiths.

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.

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

The examples given in the guidance are all legitimate ways in which religion can be advanced. However, we feel that in some areas the guidance is over prescriptive and unwarranted by case law.

Social reform

The Christian faith is a world view which speaks to the whole of life. Christians believe that God knows what is best for us. Christians have a moral obligation to love their neighbours – this can include telling your neighbour that there is a better way to live. Down the centuries Christians have been at the forefront of social reforms which have stood the test of time.

The guidance accepts that social reform and campaigning is or may be a legitimate activity for charities for the advancement of religion:

“Another issue which might arise when assessing whether the benefit is clear is the extent to which a religious organisation may campaign on social and moral issues. Religious organisations, like other charities, may, under charity law, engage in political activities and campaigning, provided this is in support of their religious purposes. 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.” (Pages 23-24)

But the guidance also states:

“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.*” (Pages 16-17) [italics added]

The statement in italics is unclear and seems to involve issues of theological interpretation which the courts have been content to leave to believers themselves.

If a “personal viewpoint” is shared by thousands of others, based on the same religious texts, is it then valid? How many quotes from a particular religious text saying the same thing are necessary before it becomes a belief that is more than merely personal?

Does the fact that a particular viewpoint has been the tenet of the religion for centuries mean that, even though it has become unfashionable, it is more than a personal viewpoint? *It is important that the guidance gives assurances on this issue.*

Dr Barnardo not only founded many children’s homes, he also pioneered adoption and fostering. Any pioneering work necessarily involves being willing to be a minority of one. Barnardo’s inspiration was Psalm 68:6, “He setteth the solitary in families”.²

Beliefs based on Biblical texts motivated Christian individuals to campaign for an end to slavery, a limit on the working hours in factories and an increase in the age of consent from 12 to 16.³ Few would dispute the value of these legislative changes now.

A religious charity campaigning on a moral issue will often use religious texts as a basis for its position. Religious organisations base their “moral codes” and definitions of “responsible behaviour” on such religious texts. They must be allowed to conduct campaigns on moral issues with reference to the textual foundation of their beliefs.

Campaigns by secular charities

The extent to which religious charities can campaign should be no more restricted than the extent to which non-religious charities can campaign. Allowing non-religious charities greater freedom to campaign would be to privilege one side of the debate.

Additional restrictions would imply that religious grounds for acting, such as statements in a religious text, are less valid than other grounds. This is particularly the case when it is considered that religious charities may take a directly opposing view to another charity on a particular issue.

For example, during the recent Human Fertilisation and Embryology Bill, medical charities campaigned *for* the legalisation of experiments on animal-human hybrids, whilst many religious charities campaigned *against*. The religious charities objected on moral grounds, but they also cited prominent scientists who argued that the research in question was unnecessary.

The campaign by religious charities was motivated by their beliefs about the sanctity of human life and the difference between humans and animals based on religious texts. This motivation should not be considered less legitimate simply because of this basis, because doing so would privilege one side of the debate and use the law to suppress a religious view.

Banning Christian charities from basing campaigns on the Bible would be just as wrong as requiring them to constantly quote from the Bible when seeking to communicate to people who are not Christians. Provided their beliefs are easily accessible (for example on their website), religious charities should be entitled to make common sense statements and their own judgements on matters of communication.

The British Humanist Association does not constantly spell out its atheist beliefs in its public statements. Neither does the association seem to quote from the Humanist Manifesto. It appears to be, in the traditional view of the law, “adverse to all religion”. The BHA could not be a charity under the religion head. Its opinions on the public benefit of religion ought not to be

² Mrs Barnardo and Marchant, J, *The Memoirs of the late Dr Barnardo*, Hodder and Stoughton, 1907, page 196 quoted in Morgan, P, *Children as Trophies*, The Christian Institute, 2002, page 14

³ William Wilberforce, Lord Shaftesbury and Josephine Butler respectively

taken into account, since the position of its trust deed is to work for the elimination of religion. Asking the BHA to comment on matters of religion is rather like asking the BNP to comment on the matter of race relations.

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?

A charity which is founded to carry out pastoral work in the context of a certain religious belief should publicly state that belief and demonstrate that the charity's practice, ethics and ethos conform to that religious belief.

Such charities might seek to ensure that the Trustees and the staff personally adhere to the religious belief in question.

A charity which has a clear religious ethos will often find it impossible to divide pastoral work from religious practice. Christian pastoral workers will pray with those they counsel or minister to. They will read and teach the Bible. They may also administer the sacrament of holy communion.

We would point out that there is a tension in this area between the Charity Commission's demands for distinctiveness and the other pressures of discrimination law and attitudes of public authorities which tend to restrict religious expression, particularly in the context of public service provision.

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?

The Commission must set out any principle that it proposes to use to define a detriment, but we certainly do not want the Commission to act as a policing body for discrimination or human rights law. There is a huge danger that guidance from the Commission in these areas will have a chilling effect on free speech and religious liberties.

The Commission is not a specialist body concerned with human rights or discrimination law. Neither is it equipped to resolve a fundamental conflict of rights – these matters are for Parliament or the new Supreme Court. The Commission does not have a statutory role in this area.

Each individual charity has a legal duty to comply with the law of the land. That is a matter for them. It is for the courts to determine whether this duty has been met.

If the Commission gives its own interpretation of discrimination law, then its interpretation will have great force. A charity which disagrees with the Commission's view could be risking de-registration. So statements from the Commission in these sensitive areas would have a considerable impact on religious liberties.

The interpretation of discrimination and human rights law is a very sensitive matter, involving as it does freedom of association, freedom of speech and freedom of religion.

Employment and discrimination law contain many exceptions for religious bodies. These exceptions are vital for religious liberty. There are also obvious exceptions for organisations which seek to combat discrimination. For example an organisation which existed to defend Jewish human rights could restrict its services to Jews.

Beyond this there are also cases where the courts must grant an exception in order to give effect to article 9 rights to manifest religion and article 10 rights to freedom of expression, which may only be limited on the strictest of conditions. The High Court has endorsed the principle of *Ontario Human Rights Commission v. Brockie*⁴ whereby the state should not cause a person to act against their core beliefs. (See *Christian Institute & Ors, Re Judicial Review*⁵). This principle can also be extended to religious organisations.

There is a danger that the Commission will be entering highly controversial territory by giving guidance on human rights and discrimination legislation.

If the Commission became aware of repeated breaches of the law by a particular charity, then it would have a more objective basis on which to draw conclusions about public benefit.

C4. Proselytising

This is covered by Section C4 of the draft guidance but is also affected by Section E4 (the detriment/harm balance).

It is misleading to say that proselytising “is an activity capable of advancing religion”. It is like saying that postmen are “capable” of delivering letters.

The courts have strongly endorsed the view that evangelism and missionary activity are principal ways in which religion is advanced. To say that such activity is “capable of advancing religion” is to distort the emphasis in the law and a whole string of cases. Without the intentional spreading of Christian beliefs, Christian belief will simply die out. This could equally be said of many other world faiths. There are very few religions in the world which are non-proselytising. Orthodox Judaism would be one example, where a believer is essentially born into the faith.

It is at the heart of Christianity that an individual believer must personally accept and embrace the Christian faith even if they were born into a Christian family.

Definition

It would be useful to know what definition of proselytism the Commission are using.

The concise Oxford English Dictionary defines proselytise as “verb. convert from one religion, belief or opinion to another”. Proselytise tends not to be used of a person who changes from having no particular belief to a definite belief.

“Evangelise” refers exclusively to an activity which seeks to convert people to Christianity.

*Kokkinakis v Greece*⁶ uses the term proselytism in a different way to the English dictionary definition. Evangelism is made synonymous with proper proselytism. (see the quotation in the Commission’s own legal analysis at 2.25 (c) (iii) and discussion below).

In the case of *The Kingston Meeting Rooms Trust (Feltham) Holmes v Attorney General (The Exclusive Brethren)*⁷ the court used the term “proselytism” as being synonymous with evangelism.

⁴ [2002] 22 DLR (4th) 174

⁵ [2007] NIQB 66 at paras 86-88

⁶ (1994) 17 EHRR. 397

⁷ (1981) Times, 12 February; [1981] Ch Comm Rep, paras 26-30

Is the Commission wanting to use the word proselytise as referring to an activity which seeks to convert people from one faith to another faith?

Improper proselytism

Any charitable activity is “capable” of being combined with criminal activity. The use of force, violence, intimidation, harassment, extortion or brainwashing by anyone is a criminal offence. Such activities are deeply repugnant to Christians. Where a charity was involved in committing such crimes, then, of course, everyone would expect the Charity Commission to take action. It really goes without saying.

Kokkinakis v Greece is one of the leading cases which strongly support the right of a religious believer to try to convince his neighbour. It is for the state to guarantee this right. Obviously the state does not guarantee the sort of improper activities which are listed in Section C4. But the existence of abusive extremes must have no impact on legitimate activity.

The improper activities, listed as “exerting improper pressure on people in distress or need, or activities that entail the use of violence or brainwashing”, are matters for the criminal law. For the other activities listed we accept that the Charity Commission regulates “activities offering material or social advantages with a view to gaining new members of the Church”.

If a charity is manipulating people into giving donations or providing benefits in return for donations then the Commission has a remit to step in. *Some* religious charities have broken the rules, but so too have charities concerned with the relief of poverty or disease.

Section C4 as drafted distorts the thrust of the *Kokkinakis* decision and UK case law. If there has to be a section on “proselytism” at all (and the word has unfortunate negative implications or even a disreputable connotation), the guidance should make it clear that “improper proselytism” is a high threshold involving exploitation, manipulation or coercion. Clear assurances were given during the passage of the Charities Act 2006 making clear that proselytism would be permitted.

When it comes to evangelism the clear impression is that the Commission proposes to bring in an activities test. Page 20 of the guidance states:

“In most cases, lawful proselytising by charities advancing religion does not present public benefit difficulties. However, there are circumstances in which the way in which the proselytising is carried out, or the effects of the proselytising, can affect public benefit.”

Analysis of the law

The Commission has published its own selective and incomplete analysis of the law. Some cases have been cherry picked others ignored. Section 2.25 deals with the issue of proselytism and the explicit limitation of the right to convert from one religion to another (as protected by article 9):

2.25 (c) (ii) Proselytising is one way of advancing religious purposes. It may raise public benefit issues if it breaks the law or results in harm or detriment. It would not be compatible with public benefit principles for an organisation to seek, outside the terms of article 9 of the European Convention on Human Rights, to inhibit anyone from their rights of freedom of thought, conscience or religion and to manifest or change such beliefs. *This would particularly need to be considered if the sole purpose of an organisation is to convert people from one religion to another.* [italics added]

We question this analysis

- 1) In certain circumstances proselytism may be the predominant way (not just one way) of advancing religious purposes. A church in an inner-city area may be surrounded in its neighbourhood by people of a non-Christian faith. A missionary working overseas for a Christian charity may be in a non-Christian culture. In both cases their charitable status is put in doubt by the guidance. The church is in a safer position as it holds acts of worship, but what about a charity which seeks to establish a church in a non-Christian neighbourhood?
- 2) We accept that if there is improper proselytism which breaks UK criminal law (as opposed to the law of other nations) then that will be an issue for the Commission to act upon.
- 3) The sharing of a religious faith can lead to controversy. For example, Muslims in the UK can vigorously object if a family member converts to Christianity. The Commission should not consider this as a harm or detriment. Clearly there will be examples, such as brainwashing, which are obviously outside the scope of article 9. We are concerned about the many other potential cases where the Commission could apply a narrow interpretation of article 9 and penalise a religious charity for what is a legitimate activity. Proselytism was accepted as such by *West v Shuttleworth*.⁸ In *Kingston Meeting Rooms Trust (Feltham) Holmes v Attorney General* proselytism played a decisive role. In this case, Walton J found that a public benefit element was present because the Exclusive Brethren proselytised and allowed the public to attend their meetings. He went on to state that, following *Thornton v Howe*, he was not concerned 'in any way to evaluate the precise amount of benefit'. That was a finding of law which cannot be trumped by evaluation schemes constructed by the Commission.
- 4) There will be an obvious chilling effect where charities will curtail their activities because of possible action against them by the Commission.
- 5) We believe that a religious charity is entitled to seek to convert people from one religion to another as its sole activity. The Commission clearly does not accept this. We wonder what the legal basis is for this view.

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. It really is not at all clear why or how "assessments in the light of current social and economic traditions" will be done or are capable or likely to be done in an objective way. We feel that the test is too vague and leaves too many questions begging. Being so subjective, the test readily lends itself to those wanting to restrict the promotion of religious belief.

The comments in this section do not compensate for the general tone and approach of the guidance. "Current social and economic conditions" seems very subjective when combined with other aspects of the guidance.

Page 22 of the guidance says that

"The Commission does not have the remit (or the desire) to change or try to modernise long-held religious beliefs".

⁸ (1835) 2 My & K 684

We would add that the Commission does not have the competence to carry out this inappropriate, inherently sociological and contradictory task in relation to established religions.

There are other points in the guidance when it seems that examination of belief is exactly what would take place. For example:

“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.” (page 23)

In passing we note that the reference to “impacting on society” brings in the discarded social and economic impact phrase which, after considerable criticism, was rejected as inappropriate in a definition of objectives of the Commission in sections 1B (2) and(3) of the Charities Act 2006 and in the new section 14 of the Charities Act 1993.

The guidance also comments:

“It will no longer be sufficient to simply say that the religious beliefs are not immoral or are not of any harm for it to be concluded that they are for the public benefit.” (page 24)

It is plain from these quotations that the Commission will be assessing the moral and ethical code of the charity. How will the Commission decide which moral and ethical codes are beneficial and which are not? This is straying into the territory of assessing the public benefit of *beliefs*.

Use of the term “society”, and particularly the reference to the relevance of “impact on society” before public benefit can be present, means that the guidance comes across as being secular in its approach. Such language opens up wide avenues of interference with religious freedoms. We do not believe it is appropriate for the Commission or any Tribunal to carry out assessments of the public benefit of the alleged moral and ethical code of a charity, except in clear cases of immorality (e.g. enjoined promiscuity) or illegality (involving e.g. drug abuses in the course of “worship or alleged pastoral activities”). The risk of such assessment being carried out by, or on the basis of views advanced by, dedicated humanists, or ideologically secular activists is not to be discounted.

D2. The role of public opinion

On page 22, the draft guidance says:

“We recognise that, in many areas, including in the area of religion, opinions can be divided. 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.”

It is the final sentence which causes concern. Those who do not agree with a particular organisation’s religious views could seek to cause trouble by making complaints to the Charity Commission. *What safeguards would there be against baseless claims regarding evidence of detriment or harm?*

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?

As indicated in our introduction, we have serious doubts about whether the Charity Commission has the legal right to introduce the sort of activities tests proposed for religious charities or to forge a new unwarranted notion of public benefit not defined by the statute or discoverable in the case law. For that reason we suggest that, in each case, asserted “principles” or posited examples in the guidance should be identified as either based in a specified regulatory consideration, or justified by reference to specifically identified authority in the case law. We have it in mind that, in arguments with the Commission, established religions with established activities will need to identify as early as possible the relevant points of law which are in issue if the matter goes beyond Commission level to the Tribunal and then to appeal. We would also seek assurance that points of law will be routinely identified by the Commission as early as possible.

Setting aside our major reservations about this area and adopting the Charity Commission’s own approach for the purposes of argument, there is a clear opportunity in this section of the guidance to give specific and detailed examples of how organisations advancing religion could explicitly demonstrate public benefit. The Commission should consider organisations advancing different religions, such as a church, a mosque or a synagogue, and suggest ways in which they can, consistently with the case law, be accepted as being (or shown to be) for the public benefit as legitimately advancing the main purpose. This is the kind of practical guidance religious organisations require on this issue, rather than just general statements of principles and broad categories.

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

No. There are serious concerns over the approach taken in the guidance to the issue of evidence of benefit.

Evidence of benefit

The guidance says that religious charities will have to:

- “demonstrate, explicitly, that their objects are for the public benefit” (pages 3 & 4)
- “describe the impact of their beliefs, doctrines and practices and show that they are beneficial and available to the wider community” (page 3)
- “explicitly demonstrate that their aims are for the public benefit” (page 6)
- “have a moral and ethical code which is capable of impacting on society in a beneficial way” (page 23)

The guidance states (page 23):

“whether a religious organisation’s aims are for the public benefit is a question of judgement based on factual evidence...As for other charitable purposes, if it is not possible to show evidence of a benefit, then the law cannot take account of it in assessing public benefit.”

There is no case law justify these principles, which are invented and cannot be deduced from the language of the Charities Act 2006. The Act contains no language expressly calling for explicit demonstration of what has been accepted as public benefit.

The subsequent paragraphs go on to acknowledge that with regard to religion “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.” The guidance does not make it clear how benefits that are manifestly intangible and not susceptible of proof will be taken into account. The Charity Commission must make clear what kind of factual evidence it is expecting religious groups to be able to produce in order to prove public benefit. Religious organisations are being strained through a secular sieve that is completely unsuitable for evaluating them.

We say that the ultimate benefit of conversion to Christianity is receiving the forgiveness of sins and eternal life. What greater public benefit can there be than proclaiming the truth and providing people with the good news of salvation, the consequences of which will last forever? However, these are fundamentally matters of faith and cannot be legally proved. It is because of this inability to prove the aspects of faith that the courts have consistently declined to judge between religions. As the guidance correctly observes on page 23, “as between different religions, the law is neutral.” Again, it appears from the guidance that the Charity Commission is contradicting the courts’ approach illustrated by the cases of *West v Shuttleworth* and *Attorney General v Becher*⁹ and setting itself up to engage in tasks that the courts in their wisdom have said are not their place: testing religious belief and accepting or assessing the legitimacy of seeking converts from another faith.

It is noticeable that the draft guidance for advancement of education contains the following statement:

“The broad benefit of education is likely to be self-evident” (page 19).

The guidance on education mentions claims that “research shows that life-long learners are more likely to be happier, healthier, have better jobs, contribute more to society, live longer and have more fulfilled lives”. Similar claims can be made from research regarding religion.¹⁰ The draft guidance for advancement of religion should include a statement acknowledging the self-evident benefit of religion. A failure to include such a statement that the broad benefit of a bona fide established religion is likely to be self-evident would undermine the very idea of a level playing field between charities by creating a lower evidential threshold for educational charities.

Promoting limited tenets of a religion

The draft guidance states on page 24:

“If a religion’s narratives and/or doctrines teach its followers or adherents that, in order to achieve salvation, they must refrain from, for example, entering into gay or lesbian relationships or using contraception, this will not necessarily mean that public benefit is not satisfied. However, where an organisation confines itself to promoting only one or two tenets of a religion there may be difficulties (depending upon the tenet and what is being promoted) in showing that the promotion of such a limited range of beliefs result in an identifiable public benefit (particularly if part of that range would not be generally accepted as beneficial) as well as concerns about what the real aim of the organisation is.” (pages 24-25)

The phrase “not necessarily” causes uncertainty. The guidance should make it clear that holding such doctrines and beliefs will never disqualify organisations adhering to a religion from charitable status. The Commission should not be considering the doctrines of a religion in order to assess their public benefit.

It is clear that public opinion (“generally accepted”) is being used to assess the public benefit of beliefs. That is wrong in principle. And it puts religious believers in a vulnerable position because religious charities will always lose out if the yardstick is public opinion in an increasingly secular society.

We would be interested to see the Charity Commission’s definition of what constitutes a tenet. It appears that the Charity Commission proposes to conduct its own assessment of the tenets

⁹ [1910] 2 IR 251

¹⁰ See for example Clark, A and Lelkes, O, ‘Deliver us from evil: Religion as insurance’, *Papers on Economics of Religion*, 06/03, 2006, Department of Economic Theory and Economic History of the University of Granada.

of each religion in order to establish if a sufficient number of tenets, of sufficient importance, are being promoted by a particular charity. Surely the Charity Commission is not qualified to evaluate the elements of religious belief in this way?

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?

Charities for the advancement of religion frequently have more than one aim.

E4. Principle 1c: Benefits must be balanced against any detriment or harm

In section E4, the guidance argues that detriment or harm must be balanced against the benefit to make sure that an organisation is providing a net benefit. The over-broad wording used in this section raises many issues for religious organisations.

Interpretation of doctrine

“In some cases detriment or harm might arise not from general concerns about the nature of the religion, but from the abuse or misuse of religious teachings due to misinterpretation, misapplication or perversion of some of the narratives and/or doctrines and teachings of the religion.” (page 26)

In this section the assessment of detriment or harm will entail the Charity Commission establishing which beliefs are misinterpretations, misapplications or perversions of the narratives, doctrines or teachings of a religion. This task involves assessing the legitimacy of particular views by examining underlying doctrines and their source, such as a religious text. *Ultimately, this is a theological judgement. If the Charity Commission goes down this road, then the regulator will cease to be neutral between religions.*

Dangerous or damaging to mental health

Pages 26-27 of the draft guidance state:

“The withholding, on religious grounds, of medical treatment without someone’s consent, or for children or other vulnerable people, is a contentious area. If consent is withheld because to administer such treatment would be contrary to a fundamental aspect of the faith, and if the withholding of consent is not against the law, or is managed by the law in another way, for instance by the state taking over the power to consent, then we would need to consider whether any possible damage to mental or physical health outweighs the general benefits of people having the freedom to follow their religion.

Whilst exercising personal choice regarding medical treatment might not affect public benefit, public benefit is more likely to be an issue where an organisation advancing religion seeks to actively discourage members of the public in general from seeking medical treatment.”

The law is properly involved in issues of consent for medical treatment. Where parents who are Jehovah’s Witnesses refuse consent for a blood transfusion for their child then the state can

intervene. The JW's are wrong about blood transfusions and wrong about their doctrine. But either the JW's are to be admitted as a charity or they are not. *The Charity Commission cannot accept the bits of a religion that it likes and object to the parts that it doesn't like. It's a package.*

The views of Jehovah's Witnesses on blood transfusions are well known. As far as we are aware, JW's accept the decisions of the courts in relation to children. In relation to adults no court can make an adult (with mental capacity) accept medical treatment against their will.

It is for the courts to deal with conflicts of rights on medical treatment. It is not for the Commission. The issue is much wider than blood transfusions. Many parents would strongly object to their daughter being given an abortion or contraception without their knowledge. They oppose current medical practice in these areas on religious grounds. If a church encouraged parents to act in this way, would that become an issue for the Commission?

If the Commission took action against religious bodies because of their beliefs on medical ethics it may be discriminating against them on the grounds of religious belief under Part 2 of the Equality Act 2006.

Encouraging or promoting violence or hatred towards others

In this section the guidance states, at page 27:

“...public benefit will be affected in the case of any religious organisation which promotes hatred or violence or criminal acts towards others. If proselytising were carried out in a way which resulted in a threat to public order or other harmful outcomes, we would need to assess the detriment or harm and whether the positive aspects of the religion could outweigh the negative or detrimental.”

The wording of this section is very loose and poses great concerns for religious liberties and free speech. Where violence or criminal acts are threatened, then this is a matter for the police. If any charity promotes violence or criminal acts against people then clearly the Commission should act. The Commission should not give the impression that the problem is only from religious bodies. There have been animal rights activists and even schools which promote extreme violence.

Hatred means “intense dislike”. The danger with using a phrase such as “promotes hatred” is that it could be interpreted very broadly, including being taken by some to incorporate mere disagreement. In order to uphold European Convention rights to freedom of expression and freedom of religion the guidance must emphasise at this point that the threshold will be high.

When Parliament considered this subject during the passage of the Racial and Religious Hatred Act 2006 it recognised that free speech and proselytising needed to be explicitly protected in the Act.¹¹ It would be preferable for the Charity Commission to leave this whole matter to the criminal law. Where an organisation promotes illegality, it is already clear that it cannot be charitable. There is no need for the Charity Commission to investigate the nature of religious organisations' proselytising unless there are serious and persistent allegations that the criminal law has been breached.

When it comes to hatred the guidance makes no distinction between the beliefs of a religion and the conduct it includes. It therefore gives scope for religious beliefs to be assessed for public benefit. The guidance must make a distinction between beliefs and conduct.

¹¹ See Section 29J, Racial and Religious Hatred Act 2006

We are not aware of any examples in the past 50 years where proselytising (seeking to convert people from one religion to another) has resulted in a threat to public order in the UK. Perhaps the Commission could provide examples.

There have been a number of occasions where issues of public order have arisen in relation to street preaching. The courts have generally taken the view that the role of the police is to ensure that free speech is maintained. Hecklers do not have a veto on free speech. Public policy must not create an incentive for hecklers to agitate ever more vociferously in order to silence a speaker they dislike.

*Redmond-Bate v DPP*¹² and the recent case of *R (Laporte) v Chief Constable of Gloucestershire Constabulary*¹³ make clear that the role of the state is to secure free speech.

The catch-all description “other harmful outcomes” is too general, vague and undefined and opens the door for opponents of religious belief to present dubious evidence of detriment. The Commission should provide further firm examples of the kind of outcomes covered by this section.

“Another area of difficulty is where people hold certain adverse views about other people of a different ethnic background or religion to their own. It is one thing to hold these views but it is quite another actively to promote those views where they could cause harm. It is a question of balancing the right to hold views and the responsibility to respect everyone in society.

Consideration would be given to what effect promoting those views would have on the community. Would it promote harm to certain person in the community, for example?”
(page 27)

There are a number of phrases used above that are too open to interpretation or rather misinterpretation. The guidance introduces a dangerous idea of censoring “adverse views” about other religions without specifying what sort of adverse view it has in mind. The view that another religion is false could be said to be adverse, yet many religions make exclusive claims to the truth. If a Christian evangelist says that Jesus is the only way of salvation, this immediately brands all other religions false. If the guidance is to use the phrase “adverse views” or similar, the phrase should be defined. The threshold must be high, so as not to inhibit proselytising.

Phrases such as “where they could cause harm” are wide open to interpretation. Under this wording the Commission could act when no harm has been actually caused. It would be enough that harm *could* occur. The term “harm” is not defined.

“Responsibility to respect everyone in society” also has many possible interpretations. Would an attempt to convert people from their religious view be an example of a lack of respect for the views of those people?

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?

Some of the content of the guidance raises concerns about the potential impact on certain charities working abroad. For example, on pages 28-29:

¹² [2000] HRLR 249

¹³ [2007] 2 AC 105

“...some charities which are recognised in England and Wales might either have aims that are illegal in another country, or might be carried out in a way that is illegal in another country.

For example, charities for the advancement of religion that wish to proselytise overseas should be aware that proselytising, whilst legal in England and Wales, is illegal in some countries.”

“Detriment or harm can occur where the carrying out of the charity’s aims in a country where it is illegal to do so might:

- expose the charity’s staff and volunteers to harm, including risks to their personal safety or liberty – for example where staff or volunteers are exposed to risks of arrest and imprisonment;
- stir up conflict within the country they are working in, possibly endangering the lives of their proposed beneficiaries – for example, disseminating religious literature in a country that is experiencing religious conflicts where that would further inflame the conflict; or
- have possible repercussions which could impact on international relations—for example, where the actions of the charity working in a particular country could possibly damage diplomatic or economic relations between the United Kingdom and that country or even threaten national security within the United Kingdom.”

It is possible that these kinds of statements could cause problems for domestic charities involved in missionary activities to e.g. Muslim countries. Many missionaries operate in areas that are dangerous for them, but do so because they feel called by God to that work. Equally, in order to advance the Christian religion in certain countries, it may be necessary to break the unjust and oppressive law of that country by e.g. smuggling, possessing and distributing Bibles. In some countries it is a capital offence to convert to Christianity. Some charities help converts escape the country. It would be wrong for the Charity Commission to penalise such activities.

A UK charity exposing human rights abuses in a country the UK Government wishes to be on friendly terms with could on the above analysis be jeopardising its charitable status. This cannot be right.

F3. Principle 2b: Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted

Membership criteria

It is a central to religious liberty that religious organisations choose their own members and regulate their own activities. Membership is not open to all comers. If it was, freedom of association would be obliterated. Mosques would have to accept Jews as members, synagogues would have to accept Muslims and so on. We note that Part 2 of the Equality Act 2006 specifically protects the right of religious organisations to select their own membership.

Church membership depends on the individual holding to and living by the doctrines of that particular church. When someone applies to be a member of a church those in spiritual authority make an assessment.

The Charity Commission *appears* to accept the principle that religions can assess the sincerity and commitment of those who want to join them. However, the guidance includes a caveat:

“This is acceptable provided that the process of joining or converting is not used inappropriately or unreasonably as a means of denying legitimate access to those who truly wish to join the religion.” (page 31)

The guidance also states:

“If the religious organisation has a membership structure, we would expect to see membership open to all those (over the age of 18) interested in the aims of the organisation. As with all membership organisations, there can be circumstances where the trustees can refuse an application for membership but only if, acting reasonably and properly, they consider it to be in the best interests of the charity to refuse the application. Equally, a member can be removed from membership if it is agreed that to do so would be in the best interests of the charity. The member concerned should be entitled to a right of appeal before the final decision is made.” (page 33)

To have membership open to all those “interested in the aims of the organisation” is to have virtually no membership criteria as anyone who wants to be a member can be said to be interested in the aims of an organisation.

If words have their plain meaning then *it seems that the Commission wants to be able to adjudicate on the membership rules of religious organisations*. It also prescribes standards of reasonableness without specifying the legal case law authority for this. The Charity Commission completely oversteps the mark here. The Commission has no role in assessing the membership criteria of churches or religious organisations or whether there are appropriate rights of appeal. *These are spiritual matters which are no business of the Commission*.

Independent churches

Many independent churches have their procedures in place based on their theological beliefs, where the decisions on membership are vested in the leadership (e.g. eldership) of the church. Once their decision is made, this is final, and as a private body it is not subject to human rights law. There could be no appeal because there is no other body fit to appeal to, in line with the governmental structure of the church. Such churches do not accept any external authority in spiritual matters.

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

It is important that religious charities are given guidance on the rights and protections available to them in the law should the Commission challenge their activities. The guidance should therefore include information on the processes of appeals against Charity Commission decisions and the circumstances in which these could be launched. There should also be mention in the guidance that:

- In the exercise of its functions the Charity Commission must not discriminate on the grounds of religion or belief under Part 2 of the Equality Act 2006
- The Commission has a duty to uphold human rights protections relating to religion and free speech under the Human Rights Act 1998 and European Convention.

The seemingly studied avoidance of references to established religions and to Christianity as the majority religion, or any explicit guidance in relation to Islam or analysis of its teachings in the (as we think) unjustified “level playing field” aspirations of the Commission, is puzzling. The guidance is light on material enabling an Islamic charity to justify its position as a religion, its fulfilment of the Commission’s criteria on the social and economic impact on society and its need to “deliver”, how it should deliver and to whom it should deliver public benefit. It is disappointing that the Commission has not published its preliminary inquiries and reasoning on this theme and the materials which we assume it must or should have got by now. The same may be said of the Hindu religion and Buddhism. The hypothetical examples in the guidance give hostages to fortune and may be may be overly restrictive or unexpectedly mischievous.

More solid examples justified by authority must be used if the guidance is to be of significant practical use to religious individuals, organisations and charities.

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

There are several points at which the guidance is too vague. With regard to the detriment or harm section in particular, subjective terms are used that could be open to misinterpretation and subjective, preconceived analysis. These should be clarified.