

A summary of Charity Commission guidance on public benefit and the advancement of religion

The Charity Commission published its guidance on the advancement of religion on the 17 December 2008. This information sheet seeks to provide an overview for trustees on the essentials of that guidance. This guidance must be read in conjunction with our top level guidance relating to the delivery of Public Benefit by charities and the overarching principles which is available at www.bllaw.co.uk/charityinformationsheet

What is religion?

- It is a system of belief that has certain characteristics that have been identified by case law and clarified by the Charities Act 2006. The statutory definition includes:
 - a religion involving a belief in more than one god (male or female)
 - a religion which does not involve a belief in a god
- The characteristics include:
 - belief in a god or gods (male or female), or supreme being, or divine or transcendental being or entity or spiritual principle, which is the object or focus of the religion
 - a relationship between the believer and the supreme being or entity by showing worship of, reverence for or veneration of the supreme being or entity
 - a degree of cogency, cohesion, seriousness and importance
 - an identifiable positive, beneficial, moral or ethical framework

Advancing religion

- Advancing religion means to promote or maintain or practice it and increase belief in the supreme being or entity or spiritual principle that is the object or focus of the religion.
- Examples of the ways in which religion may be advanced are by:
 - seeking new followers
 - encouraging and facilitating the practice of religion by followers by:
 - provision of sacred spaces, churches and worship services (including provision and maintaining religious artefacts, graveyards, stained glass windows etc)
 - raising awareness of religious beliefs and practices
 - promoting prayer, praise and study

- encouraging charitable acts
 - religious devotional acts
 - missionary and outreach work
 - religious communication
 - retreat and pilgrimage etc
 - general advancement of religious purposes, ecumenism and support of religious societies and institutions.
- Activities undertaken by the charity must be undertaken in support of its aims. A charity for the advancement of religion can have very broad aims which may overlap with other charitable aims (eg advancement of education, relief of poverty, conflict resolution). These wider activities, as a genuine practical expression of religious beliefs, will not require separate aims. However, where they are not a practical expression of religious belief then the activity is not charitable.

The identifiable benefit

- The existence of an identifiable, positive, beneficial moral or ethical framework that is promoted by a religion demonstrates that the religion is capable of impacting on society in a beneficial way.
- The benefits to the public should be capable of being recognised, identified, defined or described. The benefits must be clear even if they cannot be quantified. The Commission accepts that some benefits may be intangible and potentially difficult to identify in the case of the advancement of religion.
- Followers and adherents might identify the significant benefits of their religion as being the meaning it gives to their lives, the way in which it contributes to their spiritual well-being, development of spirituality as well as providing a moral and/or ethical framework to live by. This provides an individual comfort, solace and sense of purpose and benefits wider society.
- In addition to the benefits arising as a direct result of the activities undertaken to advance the religion (outlined above) the following are examples of identifiable benefit to society:
 - contribution to a better society
 - contribution to the spiritual and moral education of children
 - contributing to the followers' or adherents' good mental and physical health and speeding recovery from ill health
 - improved health and social care
 - the receipt of charitable acts (as part of the practice of the religion)
- The amount of benefit cannot be judged to a 'nicety' but in general terms should be as much as possible given the charity's circumstances.

Your beneficiaries

- The organisation must demonstrate that their aims are for the public benefit not solely for the benefit of the followers or adherents of the religion.
- The organisation must benefit the public or a (sufficient) section of the public.
- Normally the public in the case of religious charities would be the followers or adherents, the wider pool of believers and the public generally. In the case of a religious order the beneficiaries are the members of the order and the wider public.
- The wider public benefits when the values held and expressed by followers or adherents of the religion lead to an improvement in society's moral and spiritual welfare or an improvement in society generally.
- The actual number of people who benefit from a charity advancing religion may be quite small provided the opportunity to benefit is available to the public or a sufficient section of the public.

- Where benefit is not to the public generally, it can be to a section of the public where a restriction is reasonable and relevant and can be justified. For example this may include:
 - circumstances where the class of people able to benefit is sufficiently wide or open to constitute a sufficient section of the public
 - where the class of people the aims intend to benefit, have a particular need
 - circumstances where there are restrictions on the class of people who may be followers or adherents of the religion but the wider public benefits from the activities of that class (generated by the doctrines of the religion)
- Access to places of worship can be restricted in certain circumstances but:
 - not beyond what is reasonable, and
 - as long as the class of supporters and adherents is sufficiently wide
- Justifiable circumstances for restricting access to places of worship would be for private ceremonies (eg naming, marriage and funerals) and in the interests of security. Where the places of worship are not always open then the times of public access must be published (eg by notice outside the property).

Religious charities can require supporters and adherents to comply with religiously derived norms of behaviour.

Private benefit

- A private benefit is a benefit that a person or organisation receives other than as a beneficiary of the charity (eg a payment for services).
- Private benefits will usually arise either:
 - as a necessary but incidental means by which the charity furthers religion, or
 - as a consequence of doing so
- In either case there must be reasonable grounds for believing that the activity is a proper way of furthering the charity's aim of advancing religion.
- Religious leaders can receive benefits as long as they are **reasonable and necessary** for the proper administration of the charity. Examples of the benefit may include:
 - payment of subsistence, accommodation or living expenses
 - remuneration for services delivered
 - enhancing a leader's reputation or reputation of their ministry
 - increased income from sales of merchandise, in which the leader has an interest (e.g. books and recordings)
 - personal gifts to the leader
 - an increase in the value of associated intellectual property (arising from religiously generated activities)
- Subject to issues of the reasonableness of the benefit, looking after ageing members of a religious community (eg by providing accommodation and a pension) could be considered legitimately incidental or be part of the charitable aim of the religion.

Having a religious belief or being a religious person is not advancing religion for the public benefit so religious orders are not charitable and neither is the upkeep of private chapels or saying private masses.

Charging fees

- People in poverty are a beneficiary class and cannot be excluded from the **opportunity** to benefit. The meaning of 'in poverty' needs to be considered in the context of a charity's aims, whom those aims are intended to benefit and where it carries out its aims (one size will not fit all).
- Charities advancing religion requiring mandatory payments by followers or adherents must not pitch the level of payment at a level that prevents followers or adherents in poverty taking part in advancing the religion.
- Fees can be reasonably charged for naming ceremonies, education and teaching, retreats, pilgrimages, counseling, using property, religious artefacts and stationary, publications, electronic media etc.

Detriment or harm

- In assessing public benefit account must also be taken of and detriment or harm arising from the organisation carrying out its aims. Examples of such detriment or harm include things that:
 - are damaging to the environment
 - is a danger to mental or physical health
 - encourage violence or hatred towards others
 - restrict a person's freedom
 - the way in which a particular organisation advances religion
- The Commission will not judge between belief systems.
- Certain activities, considered legally charitable in England and Wales, may in fact be illegal in other countries (eg proselytising). This may:
 - expose the charities staff and volunteers to harm or
 - provoke conflict and endanger lives

And thereby the activities may be considered a detriment to the charity and not of benefit to the public. The way in which the advancement is promoted may also be a factor in determining public benefit.

- In circumstances where the charitable activities in other countries are illegal or may be detrimental or harmful to its followers, adherents, employees or volunteers, charities should have regard to the Charity Commission publication **Charities Working Internationally** and consider carefully what is in the best interests of the charity.
- In circumstances where the beliefs of a charity for the advancement of religion may impact detrimentally on a follower or adherents mental or physical health (eg by refusing to allow medical treatment) or restricts a person's freedom (eg by requiring them to live in a religious community or restricting change in the beliefs) then the determinant will largely be the freedom of a follower or adherent to exercise personal choice.

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