

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

**June 2008**

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## 1 Stewardship's Response - Standard Information

Stewardship is an umbrella charity representing, and working with, protestant Christian churches in the UK.

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## 2 About Stewardship

Stewardship is a financial support services charity and representative umbrella body for the Christian charitable sector. The charity currently provides a range of professional services to over 3,000 Christian church and charity clients. This includes a significant number of Christian charity formations each year.

Stewardship's mission purpose is sharing knowledge and encouraging good practice in law and finance. As part of this mission purpose, we offer a multi-disciplinary consultancy helpline and an annual training programme. Both provide specialist professional support in charity law, finance, and tax, and other matters of current sector interest. Our range of Sovereign Accounts promote and encourage tax effective giving to charity. With over 28,000 donors and 17,000 beneficiaries, the Charity's gross income now exceeds £50 million per annum.

We work with charities ranging from the very smallest to large international operations covering a wide range of legal and financial services. Stewardship therefore has considerable experience of working with Trustees, church leaders as well as with the key sector regulators such as the Charity Commission, Office of the Third Sector, HMRC etc. Examples of our work with the Charity Commission include our engagement at a number of levels with the Commission during the passage of the Charities Bill through Parliament and collaboration with the Charity Commission and other sector representatives in producing Model Governing Documents for Independent Churches (available from [www.eauk.org/resources/publications/trust-deed.cfm](http://www.eauk.org/resources/publications/trust-deed.cfm) )

## 3 Detailed Response

### 3.1 Introduction

Stewardship is grateful for this opportunity to respond to the Charity Commission's Draft Supplementary Guidance on Public Benefit and the Advancement of Religion. The Charity Commission is required, under Charities Act 2006, to prepare guidance on the 'Public Benefit requirement' contained in the Act and charity trustees are required under the Act to have due regard to that guidance.

As an umbrella body representing protestant churches in the UK, this Consultation on Public Benefit and the Advancement of Religion is of prime importance and relevance to Stewardship and its constituency.

We are most grateful to the Charity Commission for the care and diligence with which the Draft Guidance has been put together. We trust that our response will assist the Commission in producing final Supplementary Guidance which meets the need of and serves the faith sector for a number of years to come.

The Consultation Document asks 15 specific questions. However, Stewardship has a number of other comments and concerns to express which are included in the appropriate section of our Response below. Responses to the specific consultation questions are highlighted in the text.

### 3.2 General comments

We are pleased to see that *Charities and Public Benefit* (January 2008) and *Analysis of the law underpinning Charities and Public Benefit* (January 2008) together make the following principles clear:

- That the law on the question of public benefit in relation to charities advancing religion has not been changed by Charities Act 2006, other than that the *presumption* of public benefit is now removed. Previous judicial authority therefore remains extant.
- The Public Benefit Requirement of Charities Act 2006 is primarily a *purposes* (objects) test although examination of activities *may* be necessary to determine whether the public benefit requirement is met.;

In relation to the second bullet point above, we note that reference *may* be made by the courts to activities if it assists the court in objectively determining how the charities purposes will, or may, operate or be carried out for the public benefit. As Slade J commented in *McGovern v AG* [1981], "...The question of whether a purpose will or may operate for the public benefit is to be answered by the court forming an opinion on the evidence before it ... No doubt in some cases a purpose may be so manifestly beneficial to the public that it would be absurd to call evidence on this point. ..."

In the light of the above, we are concerned that the Charity Commission Guidance on the question of public benefit is not interpreted by Commission staff, by politicians, Local Authorities or others as a subjective question, or one that is the subject of political analysis, or of public opinion.

The Guidance should therefore be constructed with utmost care so as to make it *clear* that the law demands an objective analysis, based on the existing legal authorities and that the Commission cannot and should not (even inadvertently) lead public or political opinion.

This is an area of great concern amongst the Christian community not just for the present but how various statutory and public bodies and MPs may interpret the 'public benefit' question in future years. We would therefore like to see a prominent statement on these matters of principle at the beginning of the Guidance document.

The guidance should also make it clear that 'advancement of religion' is primarily about a spiritual purpose, carried out for the benefit of the public and that other elements of public benefit (such as social benefits in the community that are the result of and flow from one's faith) are secondary to the spiritual outworking of one's religion. Whilst *Analysis of the law underpinning Charities and Public Benefit* (January 2008) is clearer on this point, *Public Benefit and Advancement of Religion* is not so clear.

In similar vein, we are concerned by reference to 'modern social conditions'. Whilst the impact of changing social conditions illustrated by the example in section D6 of *Charities and Public Benefit* (January 2008) (charities providing cigarettes as useful sedatives for sick and wounded men at the time of the First World War) are clearly understood, it is less clear how 'modern social conditions' impacts on the (spiritual) purpose of advancement of religion. It has long been accepted that public worship and other activities that advance the spiritual dimension of faith are not only charitable but for the public benefit. If, in the light of the relevant authorities, that is the case now, it is difficult to see how that is capable of changing in future. This is an objective legal position that cannot, in our view, be changed. Our concern is that assessment of the narrower question of public benefit derived from 'advancement of religion' may be influenced at a future time by subjective political and public perception.

### **3.3 Specific comments – Section by Section**

#### **Section B5**

In the context of our General Comments above, we feel that Paragraph 2 of this section should be given a degree of prominence and additional text added to highlight the important principles covered by our General Comments.

#### **Section B8**

We are very pleased to note the desire of the Commission to work closely with representative professional and umbrella bodies, as well as with users of charities, in assessing whether charities continue to meet the public benefit requirement. Our expectation is that the Commission would want to involve Stewardship closely as an umbrella body with in depth knowledge and experience of the Christian charity sector. We would therefore be interested to know at an early stage how this would work in practice. In addition to sector wide work, we would be more than happy to assist the Charity Commission with specific cases within our constituency if that is felt to be appropriate.

#### **Section B11**

##### **Definition of 'Objects'**

Although it would appear to be unintentional, the definition here is misleading. It suggests a difference in meaning between the words 'objects' and 'aims' and in doing so implies (incorrectly) that a charity can act outside of its own objects clause ("An

organisation's aims (or purposes) are usually expressed in the 'objects clause' of its governing document", which is followed by the phrase "... sometimes the objects clause does not adequately or fully express the organisation's aims ...".) For the same reason, the definition appears to suggest that objects/aims can be extended at will.

Rather than suggesting that the objects clause is not the sole determinant of what may or may not be *intra vires* the charity, we believe that the intention is to emphasise that specific objects may not fully express how the charity will outwork a particular object or that it may be couched in terms that can be ambiguous.

### 3.4 C. The Meaning of the Advancement of Religion

#### Section C1: Definition of Religion

We are concerned by the reference here to existing case law on the definition of religion being "considered in the context of current social and economic conditions". Our comments here apply equally to the reference to social and economic conditions on Page 9 and to Section D. There are two principle concerns here:

1. We are struggling to understand why 'economic conditions' have any bearing on the judicial definition of religion. We would appreciate some elaboration here and perhaps examples to illustrate the point being made;
2. Whilst the point on diversity of faiths is well made in relation to current social conditions, we would very much appreciate more explicit assurance both here and in Section D that the historic definition of (Christian) religion should not be affected by current social (and economic) conditions.

#### What do followers or adherents believe in? (Page 13)

The Consultation document states that "To be a religion, followers or adherents must believe in something that has the attributes of ...

- A divine or transcendental being, entity or **principle**."

It would seem to us that the reference at the end of this bullet to "... or principle" is out of place. Reference to belief in 'a principle' goes well beyond the definition of religion. Whilst belief in a principle may well be charitable (perhaps under the charitable purpose of the advancement of citizenship), it has no place within the definition of religion and should be removed.

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

We are content with the terminology used with the exception of reference to '... or principle' which should be removed. The point made in the Consultation Document about personal or non personal, singular or plural could be overcome by removing reference to 'personal creator' and using singular and plural references for being, entity etc.

#### What degree of cogency, coherence, seriousness and importance does the belief system have? (Page 14)

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?

We are largely content with this wording. However, it is difficult to understand why there is reference here to 'seriousness' and 'importance' which appear to introduce a role of subjective judgement on the part of the Charity Commission. Further, we are concerned that the description could be misinterpreted. It may be taken to imply that 'seriousness' and 'importance' is evidenced through the degree of organisation and structure rather than on the belief system itself.

For example, would that mean that new churches, expressing a fresh and emerging expression of Christianity perhaps around a single charismatic leader could meet resistance to charitable status? Even though the belief system is orthodox, the way of expressing that may not be.

### **What is the nature of the relationship between the believer and the 'supreme being or entity'? (Page 15)**

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'?

Please retain the reference to 'worship' which very well expresses the Christian response to the Godhead and is well understood within the Christian (and other) faiths. Additional reference could be made to 'pleasing or being inspired by' [the object or focus of the religion]. Reference could also be made to 'ceremonies or practices directed towards or inspired by [the object or focus of the religion]'

We feel that the words 'respect for' or 'have a connection with' are too vague for these purposes.

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'?

Aside from worship of God, Christianity describes a living two way personal relationship with God the father and our Lord Jesus Christ, through the indwelling person of the Holy Spirit within us.

### **Section C2: Religions that are capable of meeting the definition of a religion**

We are not sure of the object of including the nine historic faith communities as defined by LGIFN in the Guidance. It risks the potential of offending some religions not listed whilst drawing attention to those that are.

We suggest that the Table and the paragraph following it are deleted.

### **Section C2: Advancing Religion**

The comments in the final paragraph on Page 16 are, in our view, misleading in that the implication is that a charity cannot make a political point or political campaign that is within its objects. The text should make clear that there are circumstances where political campaigning can be charitable (perhaps by reference to Section D7 of CC9).

Whilst the example given on Page 17, of the Christian religion putting forward 'traditional' male/female roles is accepted, it contains subtle nuances such that the likelihood of misinterpretation is high; some churches hold a distinct understanding of the role of males and females in *church* life according to what they regard as Biblical principles. We would contend that teaching adherents Biblical principles (whilst accepting that there are varied theological understandings on some matters of

doctrine), is indeed advancing the Christian faith. Indeed, this is recognised in the Table under the heading 'Facilitating Religious Practice'.

We are not clear of the point being made in relation to the promotion of a particular miracle.

It seems that the confusion created by this section arises from unclear drafting. If the Guidance is intended to make the point that a political purpose (object) or promotion of a particular miracle as a purpose (object) would not be charitable, then there is no issue. However, the text seems to confuse purposes with activities. In other words political activity in support of the object of advancing religion is clearly acceptable as charitable *activity* as would promoting a particular miracle in support of that object.

### Facilitating Religious Practice (Pages 17-19)

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.

Our general comments on Section C2 cover our concerns over the potential misinterpretation of the examples relating to political activity and belief in miracles. The Table of examples on Pages 17-19 is very useful, although the non-exhaustive nature of this list ought to be *clearly* signposted.

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

It would be useful to illustrate that religion can be advanced internationally as well as locally.

We would like to see examples which illustrate encouraging adherents to live out their faith on a day to day basis. Christianity is not a faith that demands ritual or simply 'doing' but living in relationship with God and increasingly in a way that reflects Christ's example. Encouraging and developing adherents in their lifestyle and life choices is therefore an important part of faith.

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

In the context of Christianity, we strongly disagree with the basic presumptions here. The two paragraphs immediately prior to Q7 state that "Pastoral and missionary work should ... be *distinguishable* from *purely secular and / or social work in similar fields*". The example which follows states that "activities such as caring for the sick, or housing homeless persons ... *would not* form part of the public benefit requirement for a religious organisation unless undertaken as a *specific obligation* of a religion" (italics added)

We consider that these statements are incorrect and objectionable. Pastoral care and missionary work, particularly of the kind mentioned in the quotes above, are an integral part of the Christian faith. Jesus said that one of the two greatest commandments is that we should love one another as ourselves. Therefore, it is very misleading to say in the Supplementary Guidance that such pastoral care etc. *should be distinguishable* from purely secular and/or social work in similar fields. Both can and should exist together without there being any question over fulfilment of the public benefit requirement.

We also consider that it is wrong to require that such pastoral care etc. be undertaken as a *specific obligation* of a religion if it is to be considered as fulfilling the public benefit requirement. Much of the practical demonstration and outworking of Christianity derives from, and is motivated by, our faith rather than being a specific obligation of it – as evidenced by the words of Jesus referred to above. Our understanding is that the Commission accept that social care in all its guises is implicit in the tenets of the Christian faith and is a way of advancing religion for the public benefit. The potential for this to be the case is recognised in the Table on Page 24 of the Guidance “Pastoral and missionary work expressing, in practical ways, the religious teaching and contributing to addressing social needs ...”.

If there are particular points on these themes that the Commission needs to draw attention to for the benefit of non-Christian religions, then these two paragraphs need to be reworked so as not to be misunderstood by trustees of Christian faiths.

#### **Section C4: Proselytising**

This section should make a prominent statement that proselytising is not only a valid way of advancing religion but that assuming that the religion being advanced is charitable, it is also for the public benefit to proselytise if it causes one to consider their own position, faith and self development, so long as there is no *force or coercion* which denies the person being proselytised choice or *the option to walk away*.

Whilst we note the comments made in the final sentence of Paragraph 2 of Section C4, we are unclear as to what the European Court of Human Rights was referring to in the reference to “... forms of activities offering material or social advantages with a view to gaining new members of the Church ...” Some elaboration and examples here would be helpful.

#### **Section C5: Religion and human rights and discrimination legislation**

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?

Yes, this would be helpful but with careful consultation with interested parties so as to ensure that the right messages are conveyed. Carefully constructed examples of what would or would not be acceptable would be illuminating.

We would note that there is sometimes a feeling within the Christian charitable sector that there is undue discrimination against Christian religions resulting from over-compensating efforts not to discriminate against other religions. This is therefore a sensitive area.

### **3.5 D. The Charity Commission’s approach to public benefit in the light of current social and economic conditions**

#### **Section D1: Current Social and economic conditions**

We note the desire of the Commission to work with umbrella and national bodies, where appropriate, around the question of whether an individual organisation’s aims and activities carried out in pursuance of those aims are for the public benefit. Stewardship is happy to assist the Commission in this way in respect of our constituents and in particular with reference to churches and Christian charities outside of a formal denominational structure.

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

The issue of current social and economic conditions and the role of public opinion are two sensitive areas for many in our constituency. In this context, we feel that the assurances given should be considerably strengthened. For example, the courts' view that only a radical change of social and economic conditions, supported by sufficient evidence, would justify deciding that something previously charitable is no longer charitable should be brought out here.

We struggle to understand why 'economic conditions' have any bearing on the judicial definition of religion. We would appreciate some elaboration here and perhaps examples to illustrate the point being made.

As noted in our general comments, we would very much appreciate more explicit assurance that the historic definition of (Christian) religion should not be affected by current social (and economic) conditions.

## **Section D2: The role of public opinion**

This is another area of considerable concern and sensitivity within the Christian charitable sector, yet the comment here is brief in the extreme. Paragraph 1 should make specific reference to Section D8 of *Charities and Public Benefit*. Better still, much of the text of Section D8 should be repeated here in order to provide appropriate assurances concerning the role of evolving public opinion over time.

We are concerned as to how 'harm' will be interpreted. For example, if a Christian evangelist is proselytising in an area predominantly occupied by members of another religion and a disturbance ensues, will that be classed as 'harm' in the context of public benefit? There are complexities here that are not brought out in the draft Guidance.

### **3.6 E. Public Benefit – Principle 1: There must be an identifiable benefit or benefits**

#### **Section E2: It must be clear what the benefits are**

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?

This is another area of concern for the Christian charitable sector. Although the Guidance (page 23) very rightly recognises that some of the public benefits of religion are intangible and that these benefits may be difficult to identify, the Table on Page 24 is prefaced with the comment "Where there is sufficient evidence of benefit to society ...". Some more specific examples of the kind of evidence needed to support these intangible benefits would therefore be immensely helpful and would serve to diffuse current concerns.

The comments at the foot of page 24 and top of page 25 cover immensely sensitive areas. In our view, it may well be acceptable according to charity law to promote one or two tenets of a religion as part of a charitable purpose. It does not necessarily imply a causal link with the particular views of the founder. The Guidance seems to assume

that the Commission has a role of the subjective arbiter of prevailing social views. We therefore would like to see this paragraph carefully re-worded.

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

No! As noted in our response to Q10, much more is needed by way of example of the kind of evidence required to demonstrate intangible benefits is needed. Comment should be flexible and not prescriptive.

### Section E3: Principle 1b: The benefit must be related to the aims

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?

Our understanding is that the Commission accept that a number of activities that could conceivably fall within other charitable purpose are implicit in the tenets of the Christian faith and are accepted as *advancing religion* for the public benefit. We have covered this in response to Consultation Q7 in relation to missionary and pastoral care activities but the point is much wider covering, for example, relief of poverty, advancement of education (in third world countries, for example), advancement of health or arts, relief of need by reason of youth, age, ill health, and so on.

The principle that the single aim of *advancing religion* potentially encompasses a number of other charitable purposes should be clearly stated in the Guidance.

We are of the view that where this principle applies to a particular organisation, it should be open to that organisation to choose whether they adopt a single purpose of advancing religion or that they list out a series of charitable objects. However, where they do this, we would not expect the Commission or the courts to limit the scope of that organisation's activities that it could carry out in pursuance of the advancement of religion for public benefit in any way as a result of it separately listing other charitable purposes.

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

The word 'proof' in the last sentence of Paragraph 3 should refer to 'evidence'.

The first bullet point following Paragraph 4 should, in our view, more properly read "any **significant actual** detriment or harm is outweighed by the benefits" rather than "any potential harm ..." since there is a requirement for *reasonable* evidence of detriment or harm.

The question then arises as to who decides on the question of what is or isn't harm and the level of evidence required to demonstrate that harm or detriment? How is the detriment or harm balanced against public benefit from that particular activity?

Some examples of what may reasonably be regarded as harmful or detrimental in this context would be helpful.

## Encouraging or promoting violence or hatred towards others (Page 27)

Paragraph 3 under this heading reads “If proselytising were carried out in a way which resulted in a threat to public order or other harmful outcomes ...”. The way that this is worded implies that if a charity proselytises in a perfectly lawful and charitable way (for example as street evangelism) but a member or members of the public respond to that evangelism in an unreasonable way which led to a public order issue, then the public benefit v. harm or detriment question could be in point. However, the public order issue in those circumstances should be directed towards those that respond in an intolerant way towards the evangelist, not the other way round.

This is not a theoretical issue but one that has arisen in practice on a number of occasions. The Guidance should therefore be reworded. For example “If proselytising were carried out in a way which **actively promoted** a threat to public order or other harmful outcomes ...” would seem to be a suitable alternative.

## Illegality (Page 28)

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?

If the charity’s activities are legal within England and Wales and would be considered to be activities that are for the public benefit if they were carried out within England and Wales, then we consider that it is for the trustees of the charity to exercise their discretion in relation to overseas activities, taking into account the laws, etc. of the foreign country.

In the scenario posed at the foot of Page 28, it is quite conceivable that staff and volunteers may be prepared to take the sorts of risks outlined given their commitment to the charity’s purposes. Provided that they have assented to these risks and there are no other public benefit considerations (for example risks to the local community), then we are of the view that there is not a public benefit issue for the purposes of the Charities Act 2006 and preceding case law.

The Commission should therefore give clear guidance as to whether a charity acting internationally in this way can comply with the (England and Wales) public benefit requirement.

The current text suggests sensible risk management without being clear on this point. It may be that the Commission would wish to issue separate guidance on risk management in this context (for example, by suggesting that charities provide written advice of the risks to staff and volunteers which are acknowledged by them in writing).

### 3.7 F. Principle 2 - Benefit must be to the public or a section of the public

#### Section F2: Principle 2a: The beneficiaries must be appropriate to the aims

Paragraph 4 of Page 31 states that organisations for the advancement of religion should be encouraged to be open and transparent about views that their followers may hold that could be viewed as discriminatory in a secular context. Whilst this is an admirable objective, we question how practical it is.

Given that many religious activities are participative and provided the principle of free choice (choice to leave the organisation) is observed, this is probably not so important an issue as may appear at first sight. This section should therefore be rephrased in that context.

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

Paragraph 2 on Page 33 refers to membership structures within a religious organisation. The idea that membership be open to all of those aged over 18 who are interested in the aims of the organisation simply does not translate to churches. For example, in most Baptist churches membership is open to those who, on profession of their faith, have been baptised (adult baptism by full immersion) and accepted into membership. Other churches and denominations have their own procedures for membership. Some do not have membership structures at all.

In the Baptist example, persons under the age of 18 may be accepted into membership if they are able to profess faith for themselves and they are baptised by full immersion. Conversely just because someone is 'interested' in the aims of the church (at whatever age) will be insufficient for them to be accepted into membership.

This paragraph therefore needs re-drafting.

### **Section F4: Principle 2c: People in poverty must not be excluded from the opportunity to benefit**

The first paragraph here refers to "Many religions use a system of tithing, or something broadly similar, where followers or adherents *pay an agreed amount of their income in the form of a 'tax'* to the religious organisation" (italics added). The words in italics risk being offensive to Christian churches. Whilst the concept of tithing is Biblical, there is no requirement in the Christian faith to pay an 'agreed' amount and is certainly not viewed as 'a tax'. The Biblical principle is that giving to the church is voluntary and in response to God's love and generosity towards us.

The paragraph should therefore be significantly re-phrased to avoid offence.

### **General consultation questions**

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

See above. We have no additional comments.

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

It is not easy to pitch the level of a document like this where there are underlying legal principles that need to be explained in sufficient depth so as not to be misleading. However, there are aspects of the document that, as noted in our response, are liable to misinterpretation. Other parts feel quite technical and may be off-putting to the lay trustee. We have attempted to identify the key areas that could be problematic to our constituency. There may be additional points of relevance to other religions.