

# **Charities Act 2006:public benefit and the advancement of religion**

January 2010

**stewardship<sup>®</sup>**

1 Lamb's Passage, London EC1Y 8AB

t: 020 8502 5600

e: [enquiries@stewardship.org.uk](mailto:enquiries@stewardship.org.uk)

w: [stewardship.org.uk](http://stewardship.org.uk)

This Briefing Paper and others like it are provided free of charge and help a great many churches and charities. Their development involves many hours of dedicated professional expertise both from within and outside of Stewardship. They are provided at our own cost as part of our mission to equip you.

If you find the material in this Briefing Paper to be of value, we would invite you to respond in the following ways:

- Subscribe to receive our email bulletins at our website, [www.stewardship.org.uk](http://www.stewardship.org.uk); and
- Tell others in your church or charity about our resources.

If you regard the material to have been of particular help and significance to you in your work (for example using it to inform a church or charity group/network) perhaps you would consider making a financial gift to Stewardship in appreciation (though please feel under no obligation).

## CONTACT DETAILS

Stewardship

1 Lamb's Passage, London EC1Y 8AB

t 020 8502 5600

e [enquiries@stewardship.org.uk](mailto:enquiries@stewardship.org.uk)

w [stewardship.org.uk](http://stewardship.org.uk)

Stewardship is the operating name of Stewardship Services (UKET) Limited, a registered charity no. 234714, and a company limited by guarantee no. 90305, registered in England

© Copyright Stewardship 2010

## COPYRIGHT

This publication is the copyright of Stewardship. We want our resources to have the maximum impact, therefore you are welcome to reproduce or otherwise distribute this material in whole or part. We simply ask two things: (1) there must be no use for commercial gain, and (2) Stewardship is clearly acknowledged with the following wording "Reproduced with permission from Stewardship. [www.stewardship.org.uk](http://www.stewardship.org.uk)". If extracts are to be used in another context, permission should be sought in advance by emailing [enquiries@stewardship.org.uk](mailto:enquiries@stewardship.org.uk) or telephoning 020 8502 5600. Thank you.

## DISCLAIMER

Whilst every care has been taken in the preparation of this material, Stewardship cannot be responsible for action taken or refrained from in reliance thereon. It is recommended that appropriate professional advice be sought in each relevant individual circumstance.

# table of contents

---

	Page	
1	Introduction	2
	1.1 What is covered in the paper.	2
	1.2 When does this apply?	2
2	The key obligations of trustees	3
	2.1 Duties of charity trustees	3
	2.2 Charities with less than £25,000 annual income	3
3	Charity Commission Statutory Guidance	3
4	What is 'Public Benefit'?	4
	4.1 The two key principles	4
	4.2 Principle 1: There must be an identifiable benefit or benefits	4
	4.3 Principle 2: Benefit must be to the public, or a section of the public	4
	4.4 Charity's Objects (Purposes) v Activities	5
	4.5 Public benefit principles apply to each and every object (purpose)	5
5	Principles of Public Benefit in more detail	5
6	Reporting on Public Benefit	9
	6.1 Charities with a gross annual income of less than £500,000	10
	6.2 In respect of a charity with a gross annual income of more than £500,000	10
	6.3 Trustees' Reports – Charity Commission examples	11
	6.4 What is the 'right' level of detail?	11
7	Public Benefit and the Advancement of Religion	11
	The new rules: a threat or an opportunity?	11
	7.1 The supposed threat of changing public opinion	12
	7.2 Difficulty in quantifying public benefit	12
	7.3 Proselytising, missionary work and public worship	12
	7.4 An opportunity	12
8	The Charity Commission Public Benefit Assessments	13
	8.1 Examples of assessments already carried out	13
	8.2 Existing charities that fail the public benefit test	13
9	Further Help and Guidance	14
	Appendix	15

# 1 Introduction

Charities Act 2006 requires, for the first time that all charities positively demonstrate, on an ongoing basis, that their activities are being undertaken for the benefit of the public. Prior to the Act, it was **presumed** that all religious charities, and those for the advancement of religion or the relief of poverty, operated for the benefit of the public. Other charities simply had to demonstrate this at the outset when registering as a charity with the Charity Commission.

Whilst the rules can seem technical and possibly difficult, the vast majority of churches and Christian charities fulfil their obligations without difficulty as a natural result of what they set out to do.

This paper sets out the key principles, giving some examples and explains some areas where it is possible to be in breach of the rules. Whilst there is technical language used by the legislation and Charity Commission guidance, it helps to remember that the overall perspective remains straightforward; if you are serving your community in Christian witness without trying to make a profit you are almost certainly providing public benefit.

## 1.1 What is covered in the paper.

This paper covers:

- The key obligations on Trustees (section 2)
- The Charity Commission statutory guidance (section 3)
- What is 'Public benefit'; the 2 principles and each of the sub-principles (section 4)
- An explanation of the principles, with examples to show how they are worked out in the context of Christian charities (section 5)
- What now needs to be covered in the annual Trustees report (section 6)
- A review of some of the concerns of the Christian community (section 7)
- What the Charity Commission is doing to assess charities' delivery of public benefit (section 8)

## 1.2 When does this apply?

The main means by which the new rules will be seen in practice is through the Trustees' Annual Report which for accounting periods beginning on or after 1 April 2008, should report on the charity's compliance with the 'public benefit requirement'. So, for charities whose accounts are made up for the year to 31 December, the first year for which their report needs to make reference to these matters, is the year ended 31 December 2009.

Charities with an accounting date between 31 March and the end of the calendar year will have to comply for the first time in their 2009 accounts. Those with a year end date of 31 January or 28 February will need to do so in their 2010 accounts.

## 2 The key obligations of trustees

### 2.1 Duties of charity trustees

Charity trustees have **two** specific duties under the new law:

- They must have regard for the Charity Commission's guidance on Public Benefit (for which, see Paragraph 3 below) when exercising **any** powers or duties to which the guidance is relevant (Charities Act 2006, Section 4).
- They must report **each year** in the Trustees' Annual Report section of the annual report and accounts:
  - on how the public benefit requirement has been met, and
  - confirm that they have had complied with their duty to have regard to the Charity Commission Guidance on the public benefit requirement (Charities (Accounts and Reports) Regulations 2008, Regulations 40 and 41).

We deal with each of these in more detail below.

### 2.2 Charities with less than £25,000 annual income

The Charities (Accounts and Reports) Regulations 2008 were amended during the course of 2009<sup>1</sup> with the effect that charities with a gross income of less than £25,000 no longer need to submit their accounts or a trustees' annual report each year to the Charity Commission.

Strictly, these charities are not relieved of the duty to report annually on their charity's compliance with the public benefit requirement. This is because trustees should prepare their annual report regardless of whether or not they are required to submit this to the Charity Commission (Section 45(1) Charities Act 1993). However, it is difficult to see a charity in this situation having problems unless the Charity Commission undertook a public benefit assessment (see Paragraph 8) on the charity in question.

These charities should be aware that the relaxation of the requirement to file accounts with the Commission does not absolve the trustees of their duty to ensure that the charity always acts for the public benefit since to do so may threaten their status as a charity (Charities Act 2006, Sections 1(a) and 2 (1) (b)).

## 3 Charity Commission Statutory Guidance

The Charity Commission issued its General Guidance ('Charities and Public Benefit') in January 2008. At the same time, they produced Summary Guidance which covers the key principles of the main guidance.

The Commission has also published Supplementary Guidance on The Advancement of Religion for the Public Benefit, The Advancement of Education for the Public Benefit, The Prevention and Relief of Poverty for the Public Benefit, and Public Benefit and Fee Charging.

The General Guidance plus, for charities formed for the advancement of religion, Sections D, E and F of the Supplementary Guidance on the Advancement of Religion for the Public Benefit together form the **Statutory Guidance** to which all charity trustees must have regard (Paragraph 2.1 above).

---

<sup>1</sup> The Charities Acts 1992 and 1993 (Substitution of Sums) Order 2009 (SI 2009/508)

There is a good deal of information to absorb, some of it fairly technical. The General Guidance runs to 36 pages and the Supplementary Guidance on Advancement of Religion, 28 pages. The Summary Guidance is covered in just 4 pages.

This Briefing Paper is intended to simplify not just the content of the Statutory and Supplementary Guidance but some of the underlying legal principles, whilst adding practical examples of how trustees may report on Public Benefit. Our aim is to provide both reassurance and practical assistance whilst at the same time giving the reader a useful overview to what can be a quite wide ranging topic.

Having read this Paper, trustees are advised to refer initially to the Commission's Summary Guidance. The law then requires that they should *have regard* to the full General Guidance and the relevant Supplementary Guidance. We suggest that this Guidance is referred to rather than read cover to cover, for those parts that are relevant to their own charity and for any further clarification needed.

Where any of the other published Supplementary Guidance is relevant to your charity's objects, you must also have regard to the Statutory Guidance contained therein.

## 4 What is 'Public Benefit'?

### 4.1 The two key principles

The Charity Commission has set out two key principles of public benefit: that there must be an identifiable benefit or benefits, and that those benefits must be to the public, or a section of the public. These principles are explained more fully in the Commission's General Guidance "Charities and Public Benefit". Within each principle there are "sub-principles" as follows:

### 4.2 Principle 1: There must be an identifiable benefit or benefits

This main principle has the following 'sub – principles':

- It must be *clear* what the benefits are
- The benefits must be *related to the aims (purposes)* of the charity
- Benefits must be *balanced against any detriment or harm*

When the Guidance refers to 'the aims', it is referring to the specific objects (purposes) of an individual charity as set out in its Constituting Document. The charity must, legally, always act within its stated objects. To do otherwise is a breach of trust. The Guidance uses the word 'aims' rather than purposes so as to distinguish between a charity's *specific* purposes and the various charitable purposes as set out in Charities Act 2006. In the remainder of this paper, we refer instead to the more usual term 'purposes' or 'objects'.

### 4.3 Principle 2: Benefit must be to the public, or a section of the public

This main principle has the following 'sub-principles':

- The beneficiaries must be appropriate to the aims
- Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted:
  - by geographical or other restrictions; or
  - by ability to pay any fees charged

- People in poverty must not be excluded from the opportunity to benefit
- Any private benefits must be incidental

#### 4.4 Charity's Objects (Purposes) v Activities

To what extent can the Charity Commission take a charity's activities into account in assessing whether or not it is (a) Charitable in law and (b) exists for the public benefit?

Some charities may have stated purposes in their Governing Document which are both unambiguous and clearly charitable, and the pursuit of which (in the form of activities) would manifestly always be both charitable and for the public benefit. Here the Commission (and the Courts) would not need to pay attention to the activities of the charity.

However, the Courts have determined that where a charity's purposes are ambiguous in the way that they are phrased, those purposes may need to be objectively interpreted in the light of proposed (or actual) activities and other background information.

On the other hand, the stated purposes may clearly be charitable, but the manner in which the activities are undertaken may need to be reviewed in order to objectively determine whether or not they are carried out in a charitable manner, or indeed if in pursuing those activities, they are carried out in a manner which meets the public benefit requirement.

It is worth noting at this point, that where a charity carries out activities that are outside of its stated purposes, the trustees will be acting in breach of trust.

#### 4.5 Public Benefit Principles apply to each and every object (purpose)

It is important to note that each and every one of the charity's charitable objects must satisfy these principles. In other words, where the charity's constitution contains more than one purpose, each and every purpose, and the activities that the charity undertakes in pursuing those purposes, must satisfy the Public Benefit Principles.

## 5 Principles of Public Benefit in more detail

### 5.1 Principles 1a and 1b:

- It must be *clear* what the benefits are
- The benefits must be *related to the aims (purposes) of the charity*

All organisations advancing religion must be able to show that there is a *moral or ethical framework which is promoted by the religion*. It is the existence of an identifiable, positive, beneficial moral or ethical framework that is promoted by Christianity which demonstrates that it is capable of impacting on society in a beneficial way.

Evangelical Christianity will meet this criteria, based as it is on the Bible, and the history of interpretation and actions stemming from its teaching.

Christianity brings meaning to our lives and being part of a church contributes to our spiritual well-being and helps develop our relationship with Jesus Christ as well as providing a moral or ethical framework to live by. This moral or ethical framework is considered by many to offer benefits to wider society, as well as individual comfort, solace and a sense of purpose.

The benefits to the public of advancing the Christian faith should be capable of being recognised, identified, defined or described - but that does not mean that they also have

to be capable of being quantified. Benefits that can be quantified and measured may be easier to identify but the Charity Commission will also take non-quantifiable benefits into account, provided it is clear what the benefits are.

The benefits may or may not be physically experienced. Some of the benefits are not tangible and could be potentially difficult to identify.

**Example:**

The church holds meetings which are open to the public without charge. In those meetings there is Bible teaching or public worship. There is an identifiable benefit to the public from being instructed in what the Bible says on specific subjects and in allowing the opportunity for members of the public to be involved or helped in 'divine worship'. It is recognised that participation in public worship brings benefits to society. It isn't always possible to quantify that benefit, but nevertheless, the benefit can be 'recognised, identified, defined or described'.

If your charity is a church and even if you are not actively involved in community projects, you will be providing benefit to the general public. Unless you are unusual, you will be providing:

- Public worship;
- Teaching on how to live changed, responsible and moral lives;
- Inspiration to help others in the local community and beyond;
- Discipleship to assist in character development and reduced selfish / anti-social behaviour;
- Teaching and opportunity to be 'salt and light' in the community.

These are just examples of intangible but identifiable benefits that can be taken into account in assessing Is there any detriment or harm that, in your view, may arise from carrying out the charity's activities? Are you aware of any widespread views among others that such detriment or harm might arise?

A Charity Commission public benefit assessment takes account of intangible as well as tangible, practical benefits. For an example of how intangible benefits may be taken into account, see the Commission's assessment report on The Church Mission Society in the Appendix.

## 5.2 Principle 1c:

- Benefits must be balanced against any detriment or harm

**Example:**

If the church undertakes street evangelism in a courteous and respectful way, it would not be considered 'detriment or harm' *simply because* some people in the community think that all religious opinion should be kept private.

Perhaps one of the areas most relevant to charities advancing Christianity is that there could be 'detriment or harm' where there is coercion in evangelism to the point where a person's freedom of thought or action is compromised. The Commission specifically mention that detriment or harm would arise where improper pressure is put on people in

distress or need. This would however need to be a significant feature such that it outweighs benefits from the organisation's activities.

**Example:**

If the approach adopted by a group in evangelism is to prey upon the vulnerable older people in the community by offering to help them, starting by being friendly but then insisting that they ceased contact with people from outside the group, then putting strong pressure on them to give up medication, rely only on those in the group, and to start 'tithing' then concerns expressed by the local community are likely to be upheld by the Charity Commission.

### 5.3 Principle 2a:

- The beneficiaries must be appropriate to the aims

This is unlikely to present a problem to churches and Christian charities. Beneficiaries will generally include those that are in the church or working with the charity but also the public at large. This may be because there are benefits specifically aimed at the wider public or because the values held and expressed through the Christian faith lead to benefits to society in general (for example, through moral or spiritual welfare). In this way, the beneficiary class is entirely appropriate and consistent with the advancement of the Christian faith.

### 5.4 Principle 2b and 2c:

- Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted:
  - by geographical or other restrictions; or
  - by ability to pay any fees charged

Here, the key point is that any restriction is not **unreasonable**. What a charity must not do is restrict religious practice or the benefits therefrom to a private or limited class of individuals. Such a restriction could be structured in a number of ways from creating a closed or semi closed membership, charging fees that prevent or limit access and so on.

Where a restriction is reasonable, justifiable and relevant to the charity's objects, the restricted activity may still be capable of being practised for the public benefit.

For example, where the groups (or classes) of people who are can potentially benefit is sufficiently wide, or open in nature, those groups may constitute a sufficient section of the public.

In another context, the charity's purposes (objects) may be restricted to those that have a particular charitable need that justifies restricted benefits only to those persons that have that need.

The number of people actually benefitting is not relevant in this context. It is the opportunity to benefit that is important.

**Example 1:**

A village church has a congregation of twelve people. Because its services are open to the public in general, it operates for the public benefit. Anyone from the village, or beyond, is welcome to attend and become part of the church.

**Example 2:**

A charity has been set up to help young people with Dyslexia provided that they reside in one of three specific postcode areas. Provided that the geographical restriction is not unreasonably restrictive, the charity is capable of meeting the public benefit requirement. Helping young people in this way is a charitable purpose and it is therefore legitimate to restrict those that can benefit to this purpose of the charity. Anyone who meets the criteria can benefit.

**Example 3:**

The charity in Example 2 is not restricted by reference to postcode areas but is established to help the young people from a few selected families with dyslexic children, who have joined together to form their charity. This is not public benefit but can be seen to be predominantly providing benefit to those families – and which is not merely incidental to providing a public benefit

- People in poverty must not be excluded from the opportunity to benefit

This primarily refers to goods and services provided by the charity for a fee or charge. How are these charges set? Is everyone charged the full rate? If so, are those of lesser means excluded from the opportunity to benefit? If so, sub-principle 2c. may be breached. Many charities overcome this obstacle by providing concessions, discounts or waivers for those that cannot afford to pay the normal rate.

**Example:**

A charity is set up to provide counselling help. It charges for its services to cover its costs at a rate of £50 for a half hour session. These charges are set at such a level that only the reasonably well-off can afford to pay. This principle is therefore likely to be breached. If however, the charity provides a system of significant discounts on its charges for people on lower incomes (say, to £15 for a half hour session) which are clearly explained, and lower income clients have been able to use the services as a result, then this principle is likely to have been met.

## 5.5 Principle 2d:

- Any private benefits must be incidental

Private benefits are those benefits received by individuals or organisations other than as a beneficiary. *Reasonable* benefits received by individuals or organisations that are received as beneficiaries and that further the charity's objects are not private benefits.

That said, a charity can provide private benefits, so long as those benefits are incidental to the charity's main purposes. In other words, they must directly contribute towards the charity's objects or are a necessary result or by product of carrying out those objects. An example of this is payment of a salary to those that work for the charity. This provides a benefit to the person receiving the salary but so long as that salary is not excessive for the work undertaken and the result is that they contribute to the charity achieving its purposes, there is unlikely to be a private benefit issue. The payment of the salary will be regarded as incidental to the achievement of the charity's purposes.

In general charity trustees are not permitted to benefit from their charity and so particular care needs to be taken in this context. There are exceptions to this general rule but they are specific and narrow. If in doubt, appropriate advice should be sought.

In the context of the church, benefits to leaders is a clear area where the question of private benefit may arise. The provision of a salary and / or accommodation needs to be reasonable, and the trustees should satisfy themselves that these private benefits are necessary for the proper administration of the charity, such that they can legitimately be regarded as 'incidental'. Excessive salary in particular may give rise to questions over private benefit.

### Example:

A salary to a full time church leader of £40,000 per year in the UK out of the income of the church of £200,000 could be taken as being reasonable. If however, the salary was £150,000 per year questions would have to be asked as to whether the church was set up for the leader's benefit or for the community it served.

Another example is media resources recorded as a result of the ministry of the church leader (e.g. books, CDs and DVDs). If the rights in the recordings properly belong to the church (as they will often do so, especially if the leader is an employee of the church, or the church has paid all the costs towards their production), the leader should not be permitted to sell those recordings for his or her own benefit. The question of 'intellectual property rights' is a very complex area but a church or charity should take advice if there is the likelihood that significant income will come from the sale of books or other media and then come to a clear agreement with the individuals concerned.

## 6 Reporting on Public Benefit

The requirement to report on Public Benefit in the charity's annual report and accounts is new.

Most charities already explain their activities in their Trustees' Annual Report. This information must now be set in the context of the charity's purposes to show how in practice the purposes have been carried out for the public benefit.

For most charities, the requirements are set out in Regulation 40(2) of The Charities (Accounts and Reports) Regulations 2008:

## **6.1 Charities with a gross annual income of less than £500,000**

*A brief summary of the main activities undertaken to further its charitable purposes, explaining how these activities furthered the charity's purposes for the public benefit (Reg. 40 (2)(b)(i)).*

It is of course open to trustees to provide a fuller public benefit statement if they wish. Trustees may wish to do this where it will promote the goodwill of the charity, assist in funding applications etc.

*The trustees' report should also confirm that the trustees have had regard to the Charity Commission's public benefit guidance (Reg. 40 (2) (c) (ii)).*

Trustees should take care not to reprint the same statements in their report year after year without proper consideration of whether the nature, or scope of the activities have changed in a way that requires them to revisit the Commission's Guidance and the implications for fulfilling the public benefit requirement. Without a regular review, there is the risk that, over a period of years, there is a less than sharp focus on ensuring that activities remain true to the original purposes of the charity and that they are achieved for the public benefit.

We therefore suggest that a process is put in place for the trustees to annually review the previous year's activities, and those planned for the coming year, in the context of both the constitutional purposes of the charity and the public benefit derived from them. This may be done as part of the annual accounts approval process. It is particularly important for newly appointed trustees to be briefed on the Charity Commission's Public Benefit guidance as part of their new trustee induction.

## **6.2 In respect of a charity with a gross annual income of more than £500,000**

*A fuller explanation of the significant activities undertaken in order to further the charity's purposes for the public benefit, including details of the aims and objectives which the trustees have set for the charity in that year.*

*Details of the strategies adopted and activities undertaken in order to achieve those aims and objectives.*

An explanation of the charity's achievements, measured by reference to the charity's aims and to the objectives set by the trustees. (Reg 40 (2)(b)(ii))

It is up to the charity's trustees to decide how much detail they want to provide to clearly illustrate what their charity has done in the reporting year to meet the requirement; The Charity Commission will not be prescriptive about the amount of detail but a charity that said nothing on public benefit in its Trustees' Annual Report, or produced only the briefest statement with no detail, would be in breach of the public benefit reporting requirement.

*A statement confirming that the trustees have had regard to the Charity Commission's public benefit guidance (Reg 40 (2) (c) (ii)).*

Trustees should take care not to reprint the same statements in their report year after year without proper consideration of whether the nature, or scope of the activities have changed in a way that requires them to revisit the Commission's Guidance and the implications for fulfilling the public benefit requirement. Without a regular review, there is the risk that, over a period of years, there is a less than sharp focus on ensuring that

activities remain true to the original purposes of the charity and that they are achieved for the public benefit.

We therefore suggest that a process is put in place for the trustees to annually review the previous year's activities, and those planned for the coming year, in the context of both the constitutional purposes of the charity and the public benefit derived from them. This may be done as part of the annual accounts approval process. It is particularly important for newly appointed trustees to be briefed on the Charity Commission's Public Benefit guidance as part of their new trustee induction.

### **6.3 Trustees' Reports – Charity Commission examples**

In order to assist charity trustees to comply with their reporting obligations, the Charity Commission have provided example trustee reports with annotations. These can be found at: [www.charity-commission.gov.uk/publicbenefit/pbreport.asp#examples](http://www.charity-commission.gov.uk/publicbenefit/pbreport.asp#examples).

Don't be put off by the apparent length of the example trustee reports. Many of the report pages are repeated to highlight different sections of text. Annotations in the margin then explain the purpose of the highlighted text in each case.

The most helpful example for many churches is likely to be that of the fictitious St. Emilion PCC. This church has a very modest income and therefore can and does elect to prepare its accounts on the receipts and payments basis. As a smaller charity it has more limited reporting obligations (paragraph 6.1 above). However, at 6 pages in total, the example (as the Charity Commission points out) goes into more detail than a church of this size probably need to. The purpose here is to illustrate the sorts of matters that trustees could report on.

Christian service providing charities may like to refer to the Dorsetshire Drugs Advice Centre example. This is a charity that is auditable and prepares its accounts on an accruals basis. In terms of the requirements for public benefit reporting, it therefore falls within Paragraph 6.2 above. The total report (including the public benefit paragraphs) runs to 8 pages which is about the length that we would expect for an average charity of this size.

### **6.4 What is the 'right' level of detail?**

It is up to the charity's trustees to decide on how much detail they provide to clearly illustrate what their charity has done in the reporting year to meet the public benefit reporting requirement. The Charity Commission is not prescriptive on this but does indicate that if nothing is said on public benefit or if the charity produced only the briefest statement with no detail, they would be in breach of the reporting requirement.

## **7 Public Benefit and the Advancement of Religion**

### **The new rules: a threat or an opportunity?**

The withdrawal of the presumption that charities that advance religion exist for the public benefit has left some in the Christian charitable sector feeling under political threat. Whilst this threat does not seem to be current in as far as both the Government and the Charity Commission have presented a fairly robust defence of churches and mainstream religion, a risk of shifting public opinion or perception of the value of, for example, Christian worship over time could conceivably result in these activities ceasing to be charitable.

For the present, that sense of threat should not be overstated for the following reasons:

## 7.1 The supposed threat of changing public opinion

The question of what is, or is not charitable under Charities Act 2006 is little changed by the Act. The case law authorities of the last 400 years are largely still applicable.

For there to be a change to the law arising from public opinion, statutory change would seem to be required. The Charity Commission's own analysis of the law on public benefit shows that case law has determined that public opinion alone is not relevant in determining what is or is not charitable and that the fact that some sections of the public may not agree with a particular cause being charitable whilst others do, is of no consequence.

Equally, it is not relevant that some might regard long-held religious beliefs as old-fashioned or out of step with the modern world or with the views of many others in society. What matters is that there is a religion and that the religion is still being advanced for the public benefit.

## 7.2 Difficulty in quantifying public benefit

Dame Suzi Leather, Chair of the Charity Commission and herself a Christian, has given public assurance that the Commission will not insist on the quantification of public benefit in the Trustees' Reports of Christian charities, recognising that many of the benefits associated with religion are intangible.

This approach is demonstrated in the Commission's Public Benefit Assessment of The Church Mission Society (see Appendix).

## 7.3 Proselytising, missionary work and public worship

Concern has been expressed that certain (political) groups may lobby for proselytising (seeking to convert someone to a faith or religion) to be viewed as not for the public benefit. However there is substantial judicial authority to support proselytising as being an integral part of advancement of religion.

Beyond domestic law, European Law also supports this view: Kokkinakis v Greece (1993) was a case where an attempt was made to forbid proselytising activities by Jehovah's witnesses. The European Court of Human Rights held that a democratic society has plurality of beliefs and that the freedom to manifest one's religion includes in principle the right to try and convince one's neighbour. This, provided that there is not coercion or improper pressure on people in distress or in need or entail the use of brainwashing or violence. Key here is respect for freedom of thought, conscience and the religion of others.

Government Ministers gave clear assurance during the passage of the Charities Act 2006 through Parliament that public worship, proselytising activities and missionary work are deemed to be for the public benefit. (For example, Commons Hansard, 25 October 2006, Col. 1617).

## 7.4 An opportunity

The new rules on demonstrating and reporting on public benefit are in some ways a wake up call to the church. A call to think carefully and objectively about the positive impact that we, as a community of Christians make to individuals and to society, *from the perspective of the outside world*. This is very much a positive thing – causing us to evaluate and re-evaluate what we are doing and achieving. It may even cause us to re-focus and do things better!

## 8 The Charity Commission Public Benefit Assessments

The Charity Commission are charged under the 2006 Act with (amongst other things) promoting awareness and understanding of the public benefit requirements of the Act. To do this, they may carry out Public Benefit Assessments on an individual charity to assess the extent to which that charity meets the public benefit requirement and operate for the public benefit.

An assessment will comprise checking that:

- The charity's objectives (purposes) fall within the charitable purposes set out in the 2006 Act (for which, see our Briefing Paper on Charities Act 2006);
- The charity is capable of being operated for those charitable purposes;
- The charity's purposes are capable of being carried out for the public benefit (as set out in the Commission's General Guidance);
- The trustees are in practice carrying out those purposes for the public benefit.

In doing so, they will also consider if there is any detriment, harm or private benefit that arises from carrying out those purposes. In the context of Christian churches, the most common issue likely to arise is that of private benefit. This can arise where, for example, recordings of a preacher's teaching ministry is sold but whereby the preacher personally benefits from the sales income. Another example may be where a new church is formed and the greater part of the church's income is paid over to the church leader or pastor.

### 8.1 Examples of assessments already carried out

The Commission has carried out the first batch of these assessments (using volunteer charities). The reports of the assessments carried out on The Church Mission Society and United Christian Broadcasters are summarised in the Appendix.

### 8.2 Existing charities that fail the public benefit test

There have been some alarming suggestions as to what may happen to a charity that fails in some way to meet the public benefit requirement. The Charity Commission will not, as of routine, remove such a charity from the Register of Charities or otherwise automatically sanction the trustees.

Provided that the trustees are co-operative with the Commission, the Commission will work with the them to enable them to take such remedial action as is necessary to address the problem, giving the trustees time to carry this out. Their stated approach is to be fair, reasonable and proportionate in the fulfilling their regulatory responsibilities. They will only consider strong regulatory action in serious cases or as a last resort.

## 9 Further Help and Guidance

### **From Stewardship:**

For details of the Stewardship Consultancy Helpline, please refer to:

[http://www.stewardship.org.uk/consultancy\\_helpline.htm](http://www.stewardship.org.uk/consultancy_helpline.htm)

Main consultants: Kevin Russell and Stephen Mathews

### **From the Charity Commission:**

The Charity Commission has built up a body of support which can be accessed from:

<http://www.charity-commission.gov.uk/publicbenefit/default.asp> The Main Guidance on Public Benefit together with Supplementary and Summary Guidance referred to in this Briefing Paper can be accessed from this page.

You may also find the example trustees' reports produced by the Commission helpful:

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

# Appendix

## Charity Commission Public Benefit Assessments

The Charity Commission have power to carry out Public Benefit Assessment Reports as part of their Statutory Objective of promoting awareness and understanding of the public benefit requirements of the Act. They may carry out Public Benefit Assessments on an individual charity or charities to assess the extent to which they meet the public benefit requirement and operate for the public benefit. The scope of the Assessment is set out in Paragraph 8 above.

The Commission's process is to undertake desk-based research, including asking the charity to fill in a questionnaire, gathering additional information if needed and visiting the charity to meet the trustees. They will then analyse this information, come to a conclusion and produce a report.

To date, they have undertaken and reported on twelve assessments. These have comprised four charities for the advancement of religion (see summaries, below), five independent schools and three care home charities.

### Summary of the Commission's Assessment Reports on charities for the advancement of religion

#### *Church Mission Society*

##### *Objects/activities*

Broadly speaking, CMS exists to further the Christian faith through wide ranging missionary and outreach activities including helping found national churches within the Anglican Communion, training and supporting people for and in evangelistic mission, education, community health, agriculture and economic development.

The Commission reviewed CMS's objects to assess whether they are capable of being charitable within the meaning of Section 2(2) of Charities Act 2006 and whether the charity's operation was fully within that object. The Commission's report on this aspect included:

*"The beliefs and practices of the Christian religion are capable of advancing religion for the purposes of charity law, and promoting the morals and ethics of the Christian faith is deemed in law to be capable of impacting upon the public in a beneficial way"*

**Comment:** This is clearly a helpful and reassuring statement of the law for Christian charities.

##### *Compliance with Public Benefit Principles*

The Report proceeds to review the two Public Benefit principles and each of the sub principles in the context of the objects and activities of CMS before concluding that CMS is a charity and is operating for the public benefit.

## Principle 1 Assessment

*Principle 1a: It must be clear what the benefits are*

*Principle 1b: The benefits must be related to the object (purposes)*

The Commission's report draws attention to the fact that evangelistic mission is carried out with the intention that, on an **entirely non-coercive and invitational basis**, people should become followers of Christ.

**Comment:** That evangelistic endeavour is undertaken in an entirely non-coercive and invitational way is fundamental in accepting that proselytising is for the public benefit.

The Commission goes on to say that some of the benefits delivered are 'difficult to quantify and may be viewed as intangible. In assessing public benefit, we take non-quantifiable benefits into consideration, provided it is clear what the benefits are.'

The following benefits are identified as being *clear* and *related to the object of the charity*:

- Contributions to founding national churches
- Equipping people for mission and evangelistic work through training and support
- Contributions to education, community health, agriculture and economic development
- Support for environmental projects, and
- Promotion of human rights

The following benefits are *intangible and more difficult to quantify*:

- Imparting positive values, attitudes and skills contributing to the development of civil society. This is attributed to the contribution of faith to people's well being and the subsequent creation of societal bonds and cohesion. Some clear benefits that emerge are:
  - Mediating in times of civil unrest
  - Encouraging British churches to play an active part in community development
  - Encouraging altruism and volunteering
  - Encouraging people to live with simplicity and a commitment to serve one another
- Providing opportunities for intercultural interchange and international friendship eg:
  - Through participation in mission work
  - Educational resources that foster cultural enrichment and international understanding.

The Commission comments that 'Although these are beneficial to the public, it is difficult to quantify the impact of these benefits in the achievement of the [object] of the charity. Nevertheless, they do involve significant benefits which can be recognised and described and which do relate to the [object of the charity].

**Comment:** The key point in relation to intangible benefits is to be able to clearly identify and recognise benefits which, although not capable of easy quantification do relate to the objects (or, purposes) of the charity.

The Commission makes passing comment to political activity observing that any that is undertaken is properly done as a means of supporting or contributing to the achievement of the charities aim and not as an aim (object) in themselves. They conclude that CMS do meet sub-principles 1a and 1b.

## Principle 1 Assessment

*Principle 1c: Benefits must be balanced against any harm*

The Commission notes that CMS recognised the potential risks of detriment or harm from operating in jurisdictions where governments object to Christian mission, and in relation to mission staff engaged in those areas. It repeats its observation that CMS evangelise in a non-coercive and invitational way before concluding that there is no evidence of detriment or harm from CMS activities.

## Principle 2 Assessment

*Principle 2a: The beneficiaries must be appropriate to the aims*

The Commission notes CMS beneficiaries are the public generally and that no-one is excluded on the basis of their faith. This principle is therefore met.

## Principle 2 Assessment

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

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

Principle 2b relates to both geographical etc. restrictions and the ability of beneficiaries to pay fees. The fee charging aspect is therefore conveniently considered alongside principal 2c. As there are no geographical or religious restrictions nor any membership restrictions, Principle 2b is met. The fee charging aspect of Principle 2b and the poverty requirement of Principle 2c. is met by CMS ensuring that, where fees are charged, no-one is denied benefit from CMS activities through inability to pay those fees.

## Principle 2 Assessment

*Principle 2d: Any private benefits must be incidental.*

This part of the review provides an interesting insight. CMS supports business development programmes in order to create job opportunities for the disadvantaged and to promote social responsibility and ethical business practice. Alongside this programmes support provision of and trading in food, clothing, shelter, education and healthcare.

As a result, benefits may accrue to individuals but it is clear to the Commission that these benefits are incidental to the main aim of proclaiming the Christian gospel by works of practical Christianity to relieve need and foster an ethical business environment for the wider public good.

## ***United Christian Broadcasters Ltd***

### ***Objects/activities***

UCB is a Christian media charity operating within the UK and Ireland. It also promotes the work of humanitarian organisations whose aims and activities are based on Christian faith. The charity seeks to change lives for good in spiritual, moral, ethical and practical ways which reflect and demonstrate the Christian faith. Its objects are:

- The advancement of the Christian religion in the UK and overseas
- The advancement of religious or other education
- The relief of the aged poor sick or disabled

The Commission report makes the point that each of these objects must be for the public benefit.

The Commission reviewed UCB's objects and concluded that they are capable of being charitable within the meaning of Section 2(2) of Charities Act 2006.

In pursuance of these objects, UCB:

- broadcasts on five Christian radio channels and one television channel;
- publishes and distributes Christian literature;
- offers a prayerline service to anyone who needs someone to pray with;
- makes available daily Bible verse readings for subscribers to UCB Mobile;
- provides the LookingforGod.com website which promotes the gospel of Jesus through video clips and personal testimony;
- operates a mail order business which distributes selected Christian resources;
- carries on an educational work including training in broadcasting and Investors in People principles; and
- provides a media platform for relief organisations whose aims and activities are based on Christian principles.

UCB is affiliated to UCB International Limited a charity in New Zealand in which it holds a 19.2% shareholding.

### ***Compliance with Public Benefit Principles***

The Report proceeds to review the two Public Benefit principles and each of the sub principles in the context of the objects and activities of UCB before concluding that UCB is a charity and is operating for the public benefit.

## Principle 1 Assessment

*Principle 1a: It must be clear what the benefits are*

*Principle 1b: The benefits must be related to the object (purposes)*

The report rightly assesses each of the stated objects in turn:

### **Advancement of the Christian religion**

The Commission did not have much difficulty in concluding that the activities give rise to clear, identifiable benefits that are related to this specific aim.

Of interest is their comment on the prayerline:

"the prayerline ... enables members of the public to telephone and ask someone to pray with them as a means of providing spiritual and moral guidance and support and this may be seen as an example of the pastoral work of the charity."

### **Advancement of religious or other education**

The activities in pursuance of this object are outlined which includes *internal* as well as external training, and sale of Christian resources. UCB is approved by the Institute of Leadership and Management as an ILM Centre and 26 people have passed this accredited training.

### **Relief of the aged, poor, sick or disabled**

The Charity Commission report that "UCB promotes the work of organisations for the relief of need whose aims and activities are based on Christian faith. It does this through its broadcasting and publications. *The benefit is not quantifiable.* However, this is recognisable and, in principle, capable of furthering the purpose of the relief of the aged, poor, sick or disabled and providing benefit to the public." *[Emphasis added]*

Mention is then made of grants provided by UCB to an orphanage in Romania. In noting that some of the beneficiaries may not necessarily fall within the above categories of need, the activity may be undertaken as part of the advancement of Christianity.

The Commission concludes that in relation to each of the Charity's stated objects, "... there are clear, identifiable benefits that are related to the charity's aims, as well as some benefits that are less tangible. The benefits are sufficient for us to conclude that the charity does meet sub-principles 1a and 1b."

## Principle 1 Assessment

*Principle 1c: Benefits must be balanced against any harm*

The Commission found no evidence of detriment or harm in UCB's activities.

## Principle 2 Assessment

*Principle 2a: The beneficiaries must be appropriate to the aims*

The Commission note UCB's beneficiaries are the public generally and that benefits are not restricted to a particular group of people. This principle is therefore met.

## Principle 2 Assessment

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

UCB's objects do not have any stated geographical restriction on beneficiaries even though, in practice, they operate within the UK and Ireland. Again, the objects contain no religious restrictions on who may benefit but airtime sales and support of humanitarian bodies is restricted to organisations whose objects and activities are based on the Christian faith. As this restriction is rational and justifiable in the context of UCB's own objects, it does not amount to an unreasonable restriction. There are no membership restrictions.

The Commission were therefore able to conclude that sub-principle 2b is met (other than in relation to fees which they considered separately when considering sub principle 2c.)

## Principle 2 Assessment

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

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

The majority of UCB's services are provided free of charge. The sale of airtime both furthers the objects of the charity and generates income. The scale of charges is relatively high but may be subject to individually negotiated discounts meaning that often no charge is made. Text messages are charged at standard rates. TV broadcasts require viewers to access them through a Sky digital box. The Commission were however able to conclude that where fees are payable, they would be affordable by most people and that fees (where charged) do not prevent people from having the opportunity to benefit from the charity's services. Sub principles 2b and 2c are met in this regard.

## Principle 2 Assessment

*Principle 2d: Any private benefits must be incidental.*

Other than in relation to one matter which is well controlled in order to avoid any conflict of interest and is not of direct interest to the subject of this Briefing Paper, there are no identified issues of private benefit and the Commission were able to conclude that this sub-principle is met.

## ***London Sri Murugan Temple & Tara Mahayana Buddhist Centre***

These were the other two charities established for the advancement of religion that were subject to Public Benefit Assessments by the Charity Commission.

Rather than summarise the reports of these two charities in the same detail as for CMS and UCB, we have extracted any salient points that may be instructive for Christian charities.

### ***London Sri Murugan Temple***

#### **Charitable objects**

Object (c) of the Temple's governing document reads "... to promote the educational religion (sic) spiritual and moral interest of Members and their families".

Although the Commission did conclude overall that the Temple's objects were capable of being charitable within s2(2) Charities Act 2006, they did comment on this particular object as follows:

*"We considered whether the reference in clause (c) to promoting the educational, religion, spiritual and moral interest of Members (determined in accordance with limiting provisions in the Constitution of the charity) and their families had any implications on the charity's ability to act for the public benefit. In practice, the charity makes no distinction between members and non-members in identifying its beneficiaries and providing its services. This is also only one of the ways by which the charity may further its aim. However, as it stands, this provision is not consistent with the charity's overall public benefit purposes."*

This particular object gives rise to matters under various of the public benefit principles. However, the Temple has identified its membership provisions as being in need of constitutional reform and the fact that this object has not been used in its restricted form in recent times means that the Commission were able to conclude that it did not act to prevent the Temple from operating for the public benefit.

#### **Private benefit**

Of the Temple's nine priests, eight are provided with accommodation at the Temple. This is a part of their employment terms and are legitimate expenses in furthering the aims of the charity. Contributions towards services go directly to the charity. No fees are paid directly to priests.

Private benefits (limited to individuals or a private class) also include use of the Temple's function room for private hire (which, if confined to times when the function room is not required for use for the charitable purposes, would be an appropriate use of resources to raise funds for application for the charitable purposes).

The priests also engage in private blessings and services that take place in individual homes. The Commission note that **private celebration of religious rites is not charitable**. However, the private blessings and services form only a very small part of the activities of the charity, do not appear to involve anything other than minimal or no use of charitable resources and do not prejudice the pursuit of the charitable aims for the public benefit. On that basis, the Commission felt able to disregard them and to conclude that private benefits are incidental.

This perhaps poses an interesting question for Christian churches whose clergy may visit elderly, sick or housebound individuals in their homes to administer holy communion. It is difficult to see that this is a problem, not only for the reasons stated by the Commission in the Sri Murugan case but because the purpose of these visits is to enable those individuals to access and benefit from the services of the church. These activities may also fall within another of the churches objects where an object relating to care for the elderly, sick etc. is a separate constitutional object.

## *Tara Mahayana Buddhist Centre*

There is little that caused the Commission any concern in relation to this charity. One point of interest concerns two of the charity's trustees who live in charity property. In both cases their occupancy predates their appointment as trustees and they occupy their accommodation on the same terms as other residents who are not trustees. Their proximity to the Charity's Centre enables them to ensure that the Centre operates according to the charity's objects.

The Commission had little trouble in concluding that, in these circumstances, any private benefit was incidental to the public benefit.