



CATHOLIC BISHOPS' CONFERENCE OF ENGLAND AND WALES

Response to Charity Commission's Consultation on Draft Supplementary Guidance on Public Benefit and the Advancement of Religion - June 2008

This response is made on behalf of the Catholic Bishops' Conference of England & Wales together with those charities the details of which are set out in the Appendix. Our comments are as follows:

Consultation Questions 5 and 6

- Q5 Do you agree with our examples of when a religion can be said to be advanced? If not, please say what you do not agree with, and why.**
- Q6 Do you wish to suggest any other examples of ways in which religion can be advanced?**

We have no difficulty with the general statements made on page 16 of the consultation explaining what the Charity Commission understands by "advancing religion", but we do think that the general guidance and list of examples given could be clearer to underline that the law accepts that religion can be advanced in ways that are pastoral and missionary.

It would be helpful too if the Commission were to be clearer that where religious organisations properly undertake pastoral, educational or missionary activity as a genuine expression of the religion, then they do not need to have wider charitable objects than "advancing religion". In practice most Catholic religious trusts (including the dioceses and religious orders) will have widely drawn objects clauses. But for religious charities that may have more narrowly focussed objects to "advance religion", and which properly undertake pastoral or social work in the furtherance of this religious object, then the guidance should also be clearer that the public benefit of such work can and should be brought into the equation under the heading of advancing religion.

We agree with the comments made by the Church of England in querying the following sentence at the bottom of page 16 of the draft guidance:



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“Advancing religion does not mean advancing a political purpose in the name of religion, nor does it mean advancing a particular viewpoint which is held by a religious person or which perhaps refers to extracts from religious texts which serves to promote that viewpoint”

Whilst the first clause is clear and unexceptionable, the rest of the sentence is both very unclear and potentially misleading. What exactly is meant to be excluded by *“advancing a particular viewpoint which is held by a religious person”*? Some major religious charities (e.g those taking forward the inspiration of a founder of a religious order, or dedicated to promoting the teaching of venerated saint, or indeed the founder of a religion) would potentially come under this description. Equally, for the Commission to seek to query the status of a religious charity on the grounds that it *“perhaps refers to extracts from religious texts which serve to promote that viewpoint”* also seems unduly restrictive for the reasons spelt out by the Church of England in their response. We believe this section of the Guidance needs reworking.

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

As we noted above, we believe that the Guidance could be clearer that pastoral and missionary work can constitute advancing religion. Again, we agree with the Church of England that there is no problem with the Commission making clear that a religion can be advanced through such pastoral or social activities provided they are the outworking of the religion.

But the paragraph on page 19 appears to go further than this. It states that *“Pastoral and missionary work should clearly and explicitly relate to the particular form of religious teaching and practice and be distinguishable from purely secular and /or social work in similar fields”* . It is the second part of this sentence which is particularly confusing. By definition, such work will be distinguishable from purely secular work because of its distinct religious motivation and inspiration. But that is different from how that work is publicly presented or promoted and the extent to which the underlying religious motivation is brought to the fore in the particular activities properly undertaken by the Charity. That we believe should be



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a matter for the religious charity and in no way affect the charitable status of its work as 'advancing religion'.

Our concern here is heightened by the following sentence in the text box on page 19 which reads: *"For example, activities such as caring for the sick, or housing the homeless persons, undertaken for other purposes, although beneficial in themselves, would not form part of the public benefit requirement for a religious organisation unless undertaken as a specific obligation of a religion."*

The phrase 'undertaken for other purposes' is very unclear. Furthermore, a charity which properly undertakes pastoral or missionary work as the outworking of its aim of advancing religion may surely do so by reference to more than just "specific obligations of a religion". The beliefs and ethics of a religion may inspire particular charitable activities that are manifestly an authentic religious response to the needs of the time, but yet in ways that may not necessarily be identifiable as "a specific obligation of a religion".

Furthermore, we agree with the Church of England that particularly in the light of increasing regulations on faith based providers of services, this section of the guidance is fraught with difficulty and needs complete revision.

It would be helpful if the Guidance made it specifically clear that the reporting of public benefit in the context of a religious charity carrying out pastoral and missionary work (including educational activities, relief of poverty etc) is in respect of the advancement of religion, and not under any other charitable head.

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 other charitable purposes? Are organisations for the advancement of religion likely to have any difficulty in demonstrating that the benefits they provide are related to their aims?

As noted above, many Catholic charities in practice have more than one aim, and we do not believe that this gives rise to any major difficulties. We agree with the Church of England, however, that the text box preceding the question gives a misleading example, because as they say



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“it represents an activity ancillary to the achievement of the charity’s religious purposes and does not, therefore, need to be secured by the adoption of a secondary object”. The proposed advice in this section is confusing and needs revision.

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.

The general principle here, we suggest, should be to leave a wider margin of judgement for the charity concerned. In our case, there are Catholic organisations and in particular religious orders which will be undertaking pastoral work sometimes in difficult and dangerous environments. Occasionally, staff or volunteers can be exposed to significant risks and yet wish to continue precisely because of the strength of their religious commitment to the work. Any assessment of the public benefit of a religious charity in terms of detriment or harm needs to take full account of the freedom religious charities should have to carry on working in areas of known risk.

It is also suggested in the guidance that public benefit might be affected where activity might *“have possible repercussions which could impact on international relations – for example, where the actions of the charity working in a particular country could possibly damage diplomatic or economic relations between the UK and that country or even threaten the national security within the UK.”* We assume it would not be for Government to determine what was and what was not for the public benefit in such circumstances, or indeed we would question whether the state of relations between the UK government and foreign states should be relevant in considering public benefit. This needs to be more clearly stated in the guidance.

General comment

Some anxiety has been raised that the Charity Commission in some places in this guidance may be straying beyond the clear limits set by the courts in the arena of judging religious beliefs. As the draft guidance states on page 23, “As between different religions, the law is neutral”. And hitherto, the presumption of public benefit has meant that the assessment was a negative rather than a positive one. But on page 24 of the Guidance it states *“It will no longer be sufficient to simply say that the religious beliefs are not immoral or are not of any harm for it to be concluded*



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that they are for the public benefit". This then prompts the question of whether the Charity Commission sees itself as required to assess the public benefit of religious beliefs *per se*, and the possible role public opinion might in future play in any such evaluation. We accept that the Commission clearly has to find practicable, fair and reasonable ways of identifying the public benefit of religious charities. But for the avoidance of unnecessary anxiety on this score, it would be extremely helpful for the Commission to spell out more clearly the limitations it sees on its own role, and the judgements it believes lie beyond its competence in this regard.

We trust the Commission will take the above into account when finalising the Guidance.

Archbishop Peter Smith
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1st July 2008