

Public Benefit and the Advancement of Religion

Draft supplementary guidance for consultation

Public Benefit and the Advancement of Religion

Contents

- A. Foreword
- B. Introduction
- C. The meaning of the advancement of religion
- D. The Charity Commission's approach to public benefit in the light of current social and economic conditions
- E. Public benefit – Principle 1: There must be an identifiable benefit or benefits
- F. Public benefit – Principle 2: Benefit must be to the public, or a section of the public

Consultation questions

A Foreword

A message from the Chair and the Chief Executive of the Charity Commission to charity trustees and anyone thinking of setting up a new charity.

Dear Reader

Historically, the concept of charity has often been closely linked with a religious sense of duty about helping others. One of the reasons why the advancement of religion has been recognised as something that is inherently for the public benefit is because of this connection between religion and charitable endeavour. Much of that charitable endeavour is now recognised in its own right in other charitable purposes, such as the prevention or relief of poverty, but the advancement of religion itself remains a charitable purpose.

Our guidance *Charities and Public Benefit* explains in general terms what the public benefit requirement means. In addition to that guidance we have also prepared this supplementary guidance for trustees of charities or anyone thinking of setting up a charity for the advancement of religion.

Religious belief and faith has, by its nature, both personal and public dimensions. In relation to public benefit, it is the public dimension that is of primary concern. Among many other things, religion helps to provide a moral and ethical framework for people to live by and can play an important part in building social capital and community cohesion.

To be recognised in law as a charity, an organisation must have charitable aims (or 'objects') which are for the public benefit. This is known as the 'public benefit requirement'. Although all charities already have to meet this requirement, the Charities Act 2006 highlights it by explicitly including public benefit in the definition of a charitable purpose. It retains the current law on public benefit but creates a new level playing field by requiring all charities to demonstrate, explicitly, that their objects are for the public benefit; previously the law presumed this to be the case for charities which advance education or religion or relieve poverty.

There are approximately 23,000 charities on the Charity Commission's register set up for the purpose of advancing religion. All will have to describe the impact of their beliefs, doctrines and practices and show that they are beneficial and available to the wider community. We appreciate that some trustees of charities advancing religion may find it difficult to put into words what their charity does that is for the benefit of the public.

This guidance, tailored to the particular needs of charities advancing religion, is designed to help them do so. We hope that trustees find it helpful.

Dame Suzi Leather Chair

Andrew Hind Chief Executive

B INTRODUCTION

B1. What is this draft supplementary guidance about?

This draft supplementary guidance is about how the principles of public benefit, set out in our general public benefit guidance *Charities and Public Benefit*, relate specifically to charities concerned with the advancement of religion. It explains what these charities need to consider in order to meet the public benefit requirement. When published it will form part of the Commission's statutory guidance in this area, to which trustees must by law have regard.

B2 The 'public benefit requirement'



All charities must have charitable purposes or 'aims' that are for the public benefit. This is known as the 'public benefit requirement'.

Although all charities already have to meet this requirement, the Charities Act 2006 highlights it by requiring all charities to demonstrate, explicitly, that their aims are for the public benefit, including charities advancing education, or religion or relieving poverty which were previously presumed to be for the public benefit. The Charity Commission has to ensure all charities meet the public benefit requirement and provide guidance on what the requirement means. Charity trustees are required to have regard to the Commission's public benefit guidance and to report on their charity's public benefit.

B3 Charitable Purposes



Charitable purposes (or aims) are those that fall within the various descriptions of charitable purposes in the Charities Act 2006, set out below, and any new charitable purposes that might be recognised in the future.

- a) the prevention or relief of poverty;**
- b) the advancement of education;**
- c) the advancement of religion;**
- d) the advancement of health or the saving of lives;**
- e) the advancement of citizenship or community development;**
- f) the advancement of the arts, culture, heritage or science;**
- g) the advancement of amateur sport;**
- h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;**
- i) the advancement of environmental protection or improvement;**
- j) the relief of those in need, by reason of youth, age, ill-health,**

- disability, financial hardship or other disadvantage;
- k) the advancement of animal welfare;
 - l) the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services;
 - m) other purposes currently recognised as charitable and any new charitable purposes which are similar to another charitable purpose.

You can find out more about charitable purposes in our *Commentary on the Descriptions of Charitable Purposes in the Charities Act* on our website.

B4 The principles of public benefit

1

There are two key principles of public benefit and, within each principle there are some important factors that must be considered in all cases. These are:

Principle 1: There must be an identifiable benefit or benefits

- 1a It must be clear what the benefits are
- 1b The benefits must be related to the aims
- 1c Benefits must be balanced against any detriment or harm

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

- 2a The beneficiaries must be appropriate to the aims
- 2b 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
- 2c People in poverty must not be excluded from the opportunity to benefit
- 2d Any private benefits must be incidental

These key principles of public benefit are explained more fully in our general public benefit guidance, *Charities and Public Benefit*.

To accompany that guidance we have also published an *Analysis of the law underpinning Charities and Public Benefit*, which explains the legal underpinning for the principles of public benefit set out in *Charities and Public Benefit*.

We have also published a summary, *Charities and Public Benefit: Summary Guidance for Charity Trustees*.

All of these publications can be found on our website at

www.charitycommission.gov.uk under 'About Charities' – 'Public Benefit'. Hard copies are available by calling *Charity Commission Direct* on 0845 300 0218.

B5 Charities advancing religion

Not all religious purposes are charitable. Consideration needs to be given to whether the purpose is 1) actually advancing a religion; and 2) whether it is for the public benefit. This draft supplementary guidance explains the meaning of advancement of religion as a charitable aim and provides specific guidance on how the principles of public benefit set out in *Charities and Public Benefit* relate to charities with that aim.

The Charity Commission is the regulator of charities, including charities advancing religion. It is not the regulator of religion itself and cannot make subjective or value judgements as to the truth or worth of religion or religious beliefs. Our role as regulator is to ensure that registered charities have charitable aims that are for the public benefit. The public benefit requirement is not intended to outlaw or prohibit any particular religious purposes; rather it is to determine whether or not a particular organisation with aims to advance a religion qualifies as a charity.

There are some charities advancing religion that are currently excepted from the requirement to register as a charity. Changes introduced by the Charities Act mean that that exception will no longer continue and so those charities will, in future, be required to register. Initially, only excepted charities with an annual income of £100,000 or over will have to register. Those under the £100,000 threshold will not have to register, but will come under our jurisdiction. This £100,000 threshold is an interim level and may be reduced in the future following a review of the Charities Act. However, this will not be for at least 5 years from implementation of the Charities Act. Part of the registration process includes demonstrating that the public benefit requirement will be met. However, for many types of charity, approved governing documents and special arrangements regarding registration, (including the need to demonstrate public benefit), are being agreed with relevant umbrella bodies to simplify this process. Please see our website under 'Registering a Charity' for further details.

B6 The effect of the removal of the presumption of public benefit for charities advancing religion



The advancement of religion has long been recognised as a charitable purpose and is included in the list of descriptions of charitable purposes in the Charities Act.

The Charities Act creates a level playing field whereby all charities now have to explicitly demonstrate that their aims are for the public benefit. Previously the law presumed this to be the case for charities advancing religion, as well

as charities advancing education or relieving poverty.

The effect of this is not to suggest that the advancement of religion is no longer charitable, but simply that, in meeting the public benefit requirement, the same rules apply to charities advancing religion as apply to all other charities.

B7. Reporting on public benefit



Charity trustees have a new duty to report in their Trustees' Annual Report on their charity's public benefit. The level of detail trustees will need to provide in their public benefit report will depend on whether their charity is above or below the audit threshold. An audit is required when a charity's gross income in the year exceeds £500,000, or where income exceeds £100,000 and the aggregate value of its assets exceeds £2.8 million. Most charities already explain their activities in their Trustees' Annual Report. This information now needs to be set in the context of the charity's aims to show how in practice the aims have been carried out for the public benefit.

For smaller charities, below the audit threshold, trustees are required to include a brief summary in their Trustees' Annual Report of the main activities undertaken in order to carry out the charity's aims for the public benefit. The statement should also confirm that the trustees have had regard to our public benefit guidance where relevant. Trustees can, of course, provide fuller public benefit statements if they wish.

For larger charities, above the audit threshold, trustees are required to provide a fuller explanation in their Trustees' Annual Report of the significant activities undertaken in order to carry out the charity's aims for the public benefit, as well as their aims and strategies. They are required to explain the charity's achievements, measured by reference to the charity's aims and to the objectives set by the trustees. 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; we will not be prescriptive about the number of words or pages needed. 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.

B8. Assessing public benefit

We will assess whether the aims of all organisations applying to register as charities are for the public benefit. Charities that are already registered have to continue to meet the public benefit requirement. We will do this by carrying out research studies on the extent to which different types of charity are meeting the requirement and by working with representative professional and umbrella bodies and with users of those charities.

In some cases we might need to carry out detailed assessment of individual charities. Where that needs to happen we will advise the trustees, where necessary, on what needs to change in order to meet the public benefit requirement, and give clear reasons and advice on what happens next where it is not possible for the organisation to meet the requirement.

In some cases we might ask the trustees to change the way in which they are carrying out their charity's aims in order to meet the public benefit requirement; sometimes, it will be because the trustees are acting in breach of trust. Therefore, in this draft supplementary guidance, where we indicate that trustees might be asked, in certain circumstances, to show a link between their activities and their charity's aims, or to explain why they are carrying out their charity's aims in a particular way, this might be required either to show that they are carrying out their charity's aims for the public benefit or to show that they are not acting in breach of trust.

No charity will be expected to make changes overnight and we will take reasonable account of how much time and resources might be needed by a charity that needs to make changes in order to meet the requirement. A charity or anyone affected by one of our public benefit decisions, that disagrees with it, can seek a review of that decision using our internal decision review procedures and, if they consider it necessary, can make a further appeal to the new Charity Tribunal and, ultimately, to the courts. However, by working constructively with charity trustees and undertaking extensive public consultation on our public benefit guidance, we would hope such circumstances would be rare.

B9. Using this draft supplementary guidance



Charity trustees are not legally required to follow this guidance but they must have regard to it when it is relevant for their charity. As with all the Charity Commission's published guidance, that means they should be able to show that:

- they are aware of the guidance;
- in making a decision where the guidance is relevant, they have taken it into account; and
- if they have decided to depart from the guidance, they have good reasons for doing so.

As explained in section [B10](#) below, we indicate in this draft supplementary guidance where there is a specific legal or regulatory requirement that trustees must comply with, and where guidance is suggested as minimum good practice, but for which there is no specific legal requirement. However, the Charities Act has introduced a new statutory duty for trustees to have regard to guidance we publish on public benefit. We have therefore indicated which elements of this draft supplementary guidance form part of our statutory guidance on public benefit.

Section **C** explains the meaning of the advancement of religion as a charitable purpose.

Section **D** explains the Charity Commission's approach to public benefit in the light of current social and economic conditions.

Section **E** explains how public benefit principle 1: there must be an identifiable benefit or benefits, applies to charities for the advancement of religion. The guidance contained in this section forms part of our statutory guidance on public benefit.

Section **F** explains how public benefit principle 2: benefit must be to the public, or a section of the public, applies specifically to charities for the advancement of religion. The guidance contained in this section forms part of our statutory guidance on public benefit.

Our Analysis of the law underpinning Public Benefit and the Advancement of Religion sets out the legal underpinning for this draft supplementary guidance and can be found on our website.

B10 'Must' and 'should': what we mean

In this booklet, where we use '**must**', we mean it is a specific legal or regulatory requirement affecting trustees or a charity. Trustees must comply with these requirements. To help you easily identify those sections that contain a legal or regulatory requirement we have used the **L** symbol next to that section.

We use '**should**' for items we regard as minimum good practice, but for which there is no specific legal requirement. Trustees should follow the good practice guidance unless there is a good reason not to.

B11. Some technical terms used

The following terms are used throughout this booklet, and should be interpreted as having the specific meanings given below.

The Charities Act: the Charities Act 1993 as amended by the Charities Act 2006

Activities: we use this term when talking about what organisations do in order to carry out their aims.

Aims: in this guidance we use this term to mean the purposes of an individual organisation. It is important to be able to distinguish clearly between an individual organisation's purposes and charitable purposes in general. We have therefore used the term 'aims' as shorthand for the purposes of an individual charity or of an organisation applying for registration as a charity.

Audit threshold: under the Charities Act, an audit is required when the charity's gross income in the year exceeds £500,000 or when income exceeds £100,000 and the aggregate value of its assets exceeds £2.8 m.

Beneficiary or Beneficiaries: the people an organisation's aims are intended to benefit. For charities advancing religion beneficiaries include followers or adherents, potential followers or adherents and the wider public.

Charitable purpose(s): in this guidance we use this term specifically when talking about the charitable purposes included in the list of descriptions of charitable purposes in the Charities Act.

Excepted charities: Over the years some groups of charities, including charities advancing religion, were excepted from the obligation to register with the Commission. The Charities Act will require some of these charities to register with the Commission.

Governing document: a legal document setting out the charity's aims and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, will, conveyance, Royal Charter, Scheme of the Charity Commission, or other formal document.

Larger charities: charities whose income and/or assets are above the audit threshold.

Objects: an organisation's aims (or purposes) are usually expressed in the 'objects clause' of its governing document. However, not all charities have a governing document with an objects clause, and sometimes the objects clause does not adequately or fully express the organisation's aims. There is therefore a distinction between an organisation's aims and the words that appear in its objects clause.

Private benefit: we use this term to mean any benefits that a person or organisation receives other than as a beneficiary of a charity. It does not, therefore, include the sorts of personal benefits people receive as a beneficiary, such as being a follower or an adherent of a religion.

Public benefit reporting requirement: this means the statutory requirement for charity trustees to report in their Trustees' Annual Report on their charity's public benefit.

Smaller charities: charities whose income and/or assets are below the audit threshold.

SORP: The Statement of Recommended Practice, issued in March 2005 which sets out the recommended practice for the purpose of preparing the Trustees' Annual Report and accounts of a charity on an accruals basis. The accounting recommendations of the SORP do not apply to charities preparing receipts and payments accounts, which are non-company charities whose gross income does not exceed £100,000.

Statutory guidance on public benefit: this is the guidance on public benefit that the Charity Commission is required to produce under section 4 of the Charities Act.

The Charity Tribunal: the Charity Tribunal, established by the Charities Act, is the first level of appeal against legal decisions of the Charity Commission.

The public generally: the public in general; the rest of the public not covered by a defined class of beneficiaries.

Trustees: the people who serve on the governing body of a charity. They may be known as Trustees, Directors, Board Members, Governors or Committee Members, Church Council members, Elders or Management Committee Members. Charity trustees are responsible for the general control and management of the administration of a charity.

C THE MEANING OF THE ADVANCEMENT OF RELIGION

C1 Definition of religion

There is no full, legal definition of what constitutes a religion for the purposes of charity law. The Oxford English Dictionary definition is: "...*Belief in or sensing of some superhuman, controlling power or powers, entitled to obedience, reverence and worship,... , especially as a means to achieve spiritual or material improvement; acceptance of such belief (especially as represented by an organised Church) as a standard of spiritual and practical life; the expression of this in worship etc. ...*" "*A particular system of such belief*" "*Devotion; fidelity, conscientiousness, pious attachment*".

Whilst this is not a legal definition of what constitutes a religion, it does indicate the characteristics that typically feature in a religious belief system.

Although the advancement of religion has long been recognised as a charitable purpose, and there are a great many legal cases that deal with the advancement of religion, none of those cases sets out a legal definition of what is a religion. Some cases do, however, give useful indications as to when the advancement of religion is charitable. Much of the case-law in this area stems from a time when there was not the diversity of faiths widely practised in England and Wales that there is today. So, although some of that case-law may still be relevant in deciding what constitutes a religion, it needs to be considered in the context of current social and economic circumstances.

In 1999, the Commission reaffirmed the criteria, identified from the relevant case-law, to be applied in deciding whether an organisation is charitable for the advancement of religion. At that time they were:

- a) do followers or adherents have a belief in a supreme being?
- b) do followers or adherents worship the supreme being?
- c) does the organisation advance the religion?
- d) is the organisation established for the public benefit?

The concept of a 'supreme being' was not limited to that of a theistic personal creator god. It was not necessary to be more specific, or to require the concept to be similar or equivalent to a supreme being of any particular religion.

'Worship', in that context, was taken to mean a process in which followers or adherents take part in acts or practices expressing their belief in the 'supreme being' by showing reverence for, or veneration of the 'supreme being'. Reverence and veneration would be characterised by features including deep respect, homage, adoration, devotion, obeisance and submission.

The Charities Act does not include a full definition of religion. Instead it

provides a clarifying, partial definition of what religion includes. Section 2(3) of the Charities Act 2006 states that:

“religion includes:

- (i) a religion which involves a belief in more than one god, and*
- (ii) a religion which does not involve a belief in a god”.*

The intention of the legislation was to clarify that religions that involve belief in more than one god and those that do not involve belief in a god are included within the meaning of religion derived from existing case-law.

The following factors are relevant in considering whether or not a particular belief system is a religion.

- **What do followers or adherents believe in?**

To be a religion, followers or adherents must believe in something that has the attributes of either:

- a personal creator god or gods;
- a supreme being; or
- a divine or transcendental being, entity or principle.

As stated above, the Charities Act 2006 states that ‘religion’ includes a religion which does not involve a belief in a god. This is because there are some religions that have a belief in a supreme being or entity but do not necessarily revere that being or entity as a personal ‘god’.

Some religions do not recognise a ‘master’ or a ‘creator’ but believe in ‘supreme beings’ who are worthy of devotion because of their status of purity or ‘oneness’. These ‘beings’ are examples of a state to which the followers or adherents of the religion aspire.

For example, in Buddhism the terms ‘supreme being or entity’ are inappropriate. Although there are deities in Buddhism, earlier attempts to deify the Buddha did not take root. Buddhism is a ‘realised’ not a ‘revealed’ religion and Buddhists believe they should follow a path laid out by the Buddha which can ultimately lead to attaining the profound spiritual awakening and peace of heart that he experienced.

The criteria set out by the Commission in 1999 used the term ‘supreme being’ to describe what followers or adherents must have a belief in. We question whether this term is still appropriate to describe an entity or entities which can be personal or non-personal, singular or plural. Any term that is used must be capable of including beliefs that involve belief in one god, more than one god or no god.

An alternative to ‘supreme being’ that has been suggested is ‘a divine or transcendental being, entity or principle’.

Consultation questions:

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

From here, in this draft, we will use the term 'supreme being or entity' when referring to the object or focus of a religion.

- **What degree of cogency, coherence, seriousness and importance does the belief system have?**

To be a religion, the practice of which it is charitable to advance, it must be a sincere religious belief system of substance or significance, capable of benefiting society, having a certain level of cogency, coherence, seriousness and importance as opposed to a self-promoting organisation set up to promote one or more persons, or a trivial system set up for, perhaps, frivolous reasons. This is consistent with the definition of 'belief' in European Convention on Human Rights case-law which has defined 'beliefs' as *"more than just mere opinions or deeply held feelings"*, which involve *"a holding of spiritual or philosophical convictions which have an identifiable formal content"*.

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'*

Consultation questions:

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?

- **What is the nature of the relationship between the believer and the 'supreme being or entity'?**

The process in which followers or adherents take part in acts or practices expressing their belief in the 'supreme being or entity' by showing reverence for, or veneration of, the personal or non-personal 'supreme being or entity' is often called 'worship', but different religions use other concepts. Reverence and veneration are characterised by qualities including deep respect, homage, adoration, devotion, obeisance, submission, prayer and meditation.

As with 'supreme being or entity', we think the term 'worship' may not be considered appropriate with regard to some religious belief systems, such as those that do not involve belief in a personal creator god or gods, or where the belief system is based on a belief that followers or adherents

can attain a state of purity or oneness after death from living good lives.

For example, in Jainism we understand that although there is a belief in a 'supreme being or entity', there is no worship of that 'supreme being or entity' by the followers or adherents; they do not connect with the 'supreme being or entity' for help, for example. Rather, the 'supreme being or entity' serves as an inspiration to followers or adherents to live better lives.

For these belief systems, and for any definition of religion to embrace all recognised religious beliefs, instead of the term 'worship' alone, it may be more relevant to use such terms as 'worship or have reverence or respect for', or 'have a connection with', the 'supreme being or entity'.

Whatever term is used to describe it, the relationship must have some or all of the qualities described above.

This relationship with the 'supreme being or entity' is usually spiritual in nature, characterised by feelings of connectedness or unity with a force or power that is greater than the self, which is apart from the self but which may also exist within. It is this feeling of connectedness or unity that followers or adherents regard as sacred and revered. It may also instil in followers or adherents feelings of self-worth which might motivate or be expressed through the quality of life they lead and meaningful and purposeful activity, especially that which involves helping others and inspiring others to do likewise.

Consultation questions:

- Q3. What would be the most appropriate terminology for us to use to describe 'worship' or other forms of relationship with a 'supreme being or entity'?
- Q4. If you are a follower or an adherent of a religion, do you have a different expression to describe your relationship with your 'supreme being or entity'?

C2 Religions that are capable of meet the definition of a religion

There are a number of religions that are **capable** of meeting the definition of a religion, and have beliefs, tenets and practices that are **capable** of meeting the public benefit requirement.

For example, the Department for Communities and Local Government's Interfaith Network's list of the nine historic faith communities, which are:

Baha'i

Buddhism

Christianity

Hinduism
Islam
Jainism
Judaism
Sikhism
Zoroastrianism

We recognise that there will be other examples of religions, not included in the list above, that are also capable of meeting the criteria for a religion and are capable of meeting the public benefit requirement.

This does not mean that any organisation advancing a religion that is capable of meeting the criteria for a religion necessarily meets the public benefit requirement. This is because we need to consider the specific aims of an organisation, and the way in which it will carry out those aims, to ensure that it will do so in a way that meets the public benefit requirement set out in *Charities and Public Benefit*.

C3 Advancing religion

The Charities Act includes ‘the advancement of religion’ in the list of descriptions of charitable purposes. To be charitable for the public benefit, a religion has to be ‘advanced’.

In general, to ‘advance’ a religion means to promote, sustain and increase belief in a ‘supreme being or entity’ together with the ‘worship’ of, or respect for, such ‘supreme being or entity’ by means of some or all of reverent submission, veneration, deep respect, homage, adoration, devotion, obeisance, submission, prayer and meditation.

‘Advancing’ a religion can be concerned with seeking new followers or adherents to the religion by way of ‘proselytising’, further guidance on which is given in section **C4** below.

Not all religions are ‘advanced’ by seeking new followers or adherents. In some cases (eg Sikhism) followers or adherents are born into the religion and people who are not born into the religion are not able to convert to it. In those cases, the ‘advancement’ of the religion will not be concerned with encouraging people to join the religion, since that is determined by birth, but may be concerned with the personal and social consequences of the religion being practised by such followers or adherents.

Not everything that is done in the name of religion will necessarily be actually advancing religion for the public benefit.

Advancing religion does not mean advancing a political purpose in the name of religion, nor does it mean advancing a particular viewpoint which is held by

a religious person or which perhaps refers to extracts from religious texts which serve to promote that viewpoint.

For example, part of a religious organisation's beliefs might include pacifism. If an organisation is set up by that religion to promote a tax boycott so that taxes are not used to fund warfare or the supply of armaments, the purpose of this activity is not advancing religion.

An organisation, set up with objects for the advancement of the Christian religion, carries out those aims by putting forward the trustees' views on how 'traditional' male/female roles should be followed within society using selected passages from the Bible to support their views. This includes calling for the abolition of the Sex Discrimination Act and the Equal Opportunities Commission. The organisation does not meet the criteria for a charity advancing religion; putting forward a particular personal viewpoint and seeking changes in the law based on quotes from religious texts does not amount to advancing religion in a way that is charitable.

Some religious beliefs include belief in miracles. A 'miracle' is generally regarded as an event that appears inexplicable by the laws of nature and so is held to be supernatural in origin or an 'act of God'. There is a distinction, though, between advancing a religious belief that includes a belief in miracles amongst its tenets, beliefs and practices, and promoting belief in a particular miracle, not in that context. Advancing belief in a *particular* miracle or miracles not acknowledged by a recognised religion, or not capable of promoting the moral or spiritual welfare of the community, would not, of itself, be charitable.

Simply having a religious belief is not advancing religion. Being a religious person is not the same as advancing a religion. If it were, then closed religious orders that do not interact with the wider community would be charitable, which they are not. There must therefore be some means by which the religion is advanced.

The following examples illustrate the many different ways in which charities can advance religion:

Facilitating religious practice

Examples of advancing religion by facilitating religious practice include:

Places of worship, including:

- the provision and maintenance of a building used for religious practise (including churches, gurdwaras, mosques, synagogues, and temples; also including meeting houses, adjoining halls and meeting rooms used for related activities e.g. religious instruction for children);
- the conducting of religious ceremonies eg naming ceremonies, the celebration of marriages, funerals;
- the maintenance of public churchyards and other public religious burial places;

- the saying of masses open to the public;
- the saying of special prayers for a year after the death of a person;
- the provision and maintenance of religious or devotional artefacts and items used in religious services, rituals or practices;
- the provision and maintenance of religious stained glass windows and other religious works of art within places of worship;
- 'passive advancement', meaning leaving religious buildings open for people to enter and benefit from personal spiritual contemplation.

Raising awareness and understanding of religious beliefs and practices, including:

- producing and promoting religious books, tracts, films and other information for the public, including providing religious resource centres and libraries;
- promoting the study of religious teachings and practices and scriptures;
- promoting religious narratives and/or doctrines through producing and performing musical and theatrical liturgy;
- providing religious instruction and supervision;
- providing or supporting schools and educational establishments which provide education in accordance with the principles and practices of the religion;
- support of religious office holders for acting as such.

Religious devotional acts including:

- visiting the sick;
- sitting with a deceased person's body so that it is not left unattended.

Missionary and outreach work, including:

- the provision of prison, hospital, university and industrial chaplaincy;
- prison and hospital visiting;
- pastoral work;
- cultural and community activities provided either in the place of worship or in the buildings attached, such as the provision of free community kitchens in gurdwaras.

Religious communication, including:

- sermons and religious seminars, talks, meetings and conferences;
- charitable religious television and radio broadcasts;
- the provision of religious material via the internet;
- street and door-to-door communications.

Retreat and pilgrimage, including:

- provision of property for retreat;
- organising the holding of long or short stay retreat; where the people who attend return to society to practise their beliefs;
- organising open pilgrimages where the pilgrimage is part of the public worship of a recognised religious group and where the purpose of the pilgrimage is more than personal devotion

Advancing religion generally, including:

- charities set up in general terms for religious purposes;
- charities set up to support religious societies and institutions;
- charities set up to support more than one religion or denomination, such as Protestant Christianity;
- ecumenical and inter-faith charities, such as the Council for Christians and Jews.

Proselytising

- see section C4 below.

Consultation questions:

- 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?

Whatever way trustees choose to advance religion, the activity must in a clearly demonstrable way, be an expression of the advancement of the particular religion. 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.

For example, activities such as caring for the sick, or housing 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.

Consultation questions:

- 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?

The advancement of religion as a charitable aim involves the promotion of a particular form of religious belief and practice. This has to be distinguished

from the advancement of generalised religiousness or religious practice or sentiment. An organisation might be set up to encourage people to have any form of religious faith or mode of worship and to practise morality. This is not the same thing as the advancement of religion. However, the organisation might be charitable under another charitable purpose, such as the promotion of moral or spiritual welfare or improvement.

C4. Proselytising

In principle, charity law recognises that proselytising (seeking to convert someone to a faith or religion) is an activity capable of advancing religion.

The European Court of Human Rights has considered the compatibility of proselytising under the European Convention on Human Rights in a specific case regarding the Christian religion. It confirmed that a democratic society has a number of beliefs and held that freedom to manifest one's religion includes, in principle, the right to convince one's neighbour. The European Court of Human Rights did, however, maintain that a distinction has to be made, in the context of the case in question, between 'bearing Christian witness', (which can be considered an essential mission and responsibility of many churches and Christians to demonstrate through their own words and deeds, their beliefs in the life, works and teachings of Jesus Christ), and improper proselytising, not having due respect for the freedom of thought, conscience and religion of others. The court gave as examples of improper proselytising, forms of activities offering material or social advantages with a view to gaining new members of the Church, or exerting improper pressure on people in distress or need, or activities that entail the use of violence or brainwashing.

In most cases, lawful proselytising by charities advancing religion does not present public benefit difficulties. However, there are circumstances in which the way in which the proselytising is carried out, or the effects of the proselytising, can affect public benefit. These are dealt with in section [E4](#) below.

C5. Religion and human rights and discrimination legislation

The Human Rights Act 1998 protects the rights of individuals and organisations to freedom of thought, conscience and religion. This right to hold or adhere to a religion or belief or to change one's religion is unqualified. There is also a right to manifest those beliefs without discrimination, subject to legal restriction which may be necessary to protect the general health, morality and order of society.

Human rights laws are capable, in some circumstances, of limiting the right to manifest a religion or belief. Charity law also has definite limitations. Only those organisations advancing religion, that are able to demonstrate that their aims are for the public benefit, can be recognised as charities.

Consultation questions:

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?

D The Charity Commission's approach to public benefit in the light of current social and economic conditions

D1. Current social and economic conditions

The Commission does not have the remit (or the desire) to change or try to modernise long-held religious beliefs. This is stated explicitly in *Charities and Public Benefit*.

Section D6 of *Charities and Public Benefit* confirms that our approach to decisions about what is charitable and what is or is not for the public benefit will be influenced by what is relevant and appropriate for current social and economic conditions, for example recognising the variety of religious and non-religious beliefs in England and Wales today.

We recognise that several mainstream religions will be able to meet the definition of a religion and have beliefs, tenets and practices which are capable of meeting the public benefit requirement. It will not be necessary for the beliefs, tenets and practices of each religion to be re-established with us each time an organisation advancing that religion applies for charitable status. However, each individual organisation will itself still have to show that its aims are for the public benefit and that what it is doing to carry out those aims will be for the public benefit. Where appropriate we will work with umbrella and national bodies to help them assist their members in this.

Consultation questions:

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

D2. The role of public opinion

As *Charities and Public Benefit* makes clear, charitable status is not decided on the basis of public opinion.

We recognise that, in many areas, including in the area of religion, opinions can be divided. The fact that some members of society do not agree with particular religious beliefs, or do not support certain religious practices, does not in itself mean that the aims of the organisation advancing religion concerned will not be for the public benefit. However, where there are public concerns based on evidence of detriment or harm then, as with detriment or harm generally, this would be taken into consideration in any public benefit assessment.

E Public benefit – Principle 1: There must be an identifiable benefit or benefits

E1. Important factors to consider



The following are important factors to consider when deciding whether an organisation's aims meet the 'benefit' principle of the public benefit requirement:

Principle 1a it must be clear what the benefits are

Principle 1b the benefits must be related to the aims

Principle 1c benefits must be balanced against any detriment or harm

E2 Principle 1a: It must be clear what the benefits are



To be recognised as charitable, all organisations advancing religion must have a moral and ethical code which is capable of impacting on society in a beneficial way.

It is not relevant, when deciding if an organisation is a religion for the purposes of charity law, whether or not the substance of religious narratives and/or doctrines can be proven to be 'true'. As between different religions, the law is neutral. However, whether a religious organisation's aims are for the public benefit is a question of judgement based on factual evidence. This means that there must be an assessment of whether the aim is for public benefit. The Charity Commission, or the Charity Tribunal or the courts, have to decide whether there is public benefit in the light of the evidence and facts before them.

As for other charitable purposes, if it is not possible to show evidence of a benefit, then the law cannot take account of it in assessing public benefit.

For many followers or adherents, religion helps to develop a person's spirituality (including their relationship with a 'supreme being or entity') and at the same time provides a moral and ethical code to live by (although it is accepted that this is not unique to religious organisations). This moral framework is considered by many to offer benefits to wider society, as well as individual comfort, solace and a sense of well being.

In some cases the benefit will be clear, tangible and easy to describe. With religion though, some of the benefits are not tangible and could potentially be difficult to identify. However, this is not to say that a public benefit assessment would only take account of tangible, practical benefits.

Another issue which might arise when assessing whether the benefit is clear is the extent to which a religious organisation may campaign on social and

moral issues. Religious organisations, like other charities, may, under charity law, engage in political activities and campaigning, provided this is in support of their religious purposes. If the benefits of religious aims are centred on the promotion of a moral code and responsible behaviour, then charities advancing religion may, in principle, be able to campaign on a potentially wide range of moral and social issues. Further guidance on this is contained in our publication *Campaigning and Political Activities by Charities* (CC9).

Where there is sufficient evidence of benefit to society, the following are examples of the ways in which advancing religion has the potential to be for the public benefit:

- the provision of ethical and moral codes in society;
- the provision of sacred spaces, churches and worship services;
- the provision of public rituals and ceremonies;
- contribution to spiritual well-being;
- contribution to the spiritual and moral education of children;
- contribution towards promoting social cohesion;
- pastoral and missionary work expressing, in practical ways, the religious teaching and contributing to addressing social needs and the furthering of other charitable purposes;
- the contribution to followers' or adherents' good mental and physical health; aiding the prevention of ill-health, speeding recovery and fostering composure in the face of ill health;
- the inspiration religion can provide to others.

Consultation questions:

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?

We are aware that these benefits are not unique to religion and may appear in other charitable purposes, such as animal welfare, protection of the environment or of historic buildings, education, elevation of public taste in art or music, mental and moral improvement, promoting patriotism.

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

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

accepted as beneficial) as well as concerns about what the real aim of the organisation is. This would be because only promoting one or two tenets of a religion may amount to promoting the particular views of the founder or founders of the charity, rather than advancing religion. The promotion of a person's particular point of view is not a charitable purpose.

Consultation questions:

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

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



All charities must act within their aims, usually set out in the objects clause of their governing document. In assessing public benefit, we will take into account any benefits that arise from carrying out those aims.

When assessing public benefit of an organisation, only the benefits which arise as a result of pursuing its aims will be taken into consideration.

Every aim must be for the public benefit. Therefore, if a charity has more than one aim, each aim must be for the public benefit. The public benefit shown by one of more of the aims cannot be used to 'off-set' any aim or aims which lack public benefit.

Some charities might carry out some unrelated activities which are not connected to achieving their charitable aims. Any benefits arising from such activities would not count towards any public benefit assessment of the charity's aims.

There might be instances where benefits arise from what a religious organisation does which are not related to its aims.

For example, a church might have historical records on births, deaths and marriages within the parish covering several hundred years which it makes available for public inspection and/or study. In some cases, this might be an aspect of the organisation's advancement of religion aims. For example, genealogical research is a religious obligation for Mormons. In other cases, it might not be connected with the advancement of religion and, as such, could not be used as a way of demonstrating the public benefit of the church's advancement of religion aims. In those cases where a religious organisation has these records, and makes them available for public inspection, they might wish to adopt a secondary object, along the lines of the maintenance and upkeep of church records, to ensure that the benefits of this are included in a public benefit assessment of the charity's aims.

Consultation questions:

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?

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



In *Charities and Public Benefit* examples of things that might be evidenced to be detrimental or harmful include:

- something that is dangerous or damaging to mental or physical health;
- something that encourages or promotes violence or hatred towards others;
- unlawfully restricting a person's freedom.

It also states that no organisation that has aims that are illegal, or that intentionally deceives or misrepresents its aims and so is a sham, can be a charity.

In the same way that public benefit must be capable of being demonstrated, so must detriment or harm where this is an issue. In assessing the public benefit of religious organisations we will consider any evidence of significant detrimental or harmful effects of that organisation carrying out its aims in its particular circumstances. Disagreement with the beliefs, activities or practices of a religion does not constitute 'proof' of detriment or harm.

In some cases detriment or harm might arise not from general concerns about the nature of the religion, but from the abuse or misuse of religious teachings due to misinterpretation, misapplication or perversion of some of the narratives and/or doctrines and teachings of the religion. In other cases, detriment or harm might arise as a result of the way in which a particular religion is practised. In such cases, for the organisation's aims to be for the public benefit, we would have to be satisfied that either:

- any potential detriment or harm is outweighed by the benefits; or
- there is evidence of the public benefit of promoting the particular practice or doctrine.

Dangerous or damaging to mental or physical health

One possible example of this type of detriment or harm is the refusal to allow medical treatment, or the taking of medicines, on religious grounds. The question of detriment or harm in this case hinges on a question of personal choice. Where the choice of whether to do so is made by a fully consenting adult, and the practice of not taking medicine or undergoing treatment can be justified through the teachings of the faith, this will not affect public benefit. The withholding, on religious grounds, of medical treatment without someone's consent, or for children or other vulnerable people, is a

contentious area. If consent is withheld because to administer such treatment would be contrary to a fundamental aspect of the faith, and if the withholding of consent is not against the law, or is managed by the law in another way, for instance by the state taking over the power to consent, then we would need to consider whether any possible damage to mental or physical health outweighs the general benefits of people having the freedom to follow their religion.

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

Public benefit can also be called into question where there is evidence that the way in which a particular organisation advances a religion can be damaging to a person's mental health, for example because of the techniques that it uses.

Encouraging or promoting violence or hatred towards others

The law will not be drawn into the truth or otherwise of religious narratives and/or doctrines. Charity law recognises that some religious beliefs may preach against practices or behaviours which others in society believe are acceptable or positive.

However, public benefit will be affected in the case of any religious organisation which promotes hatred or violence or criminal acts towards others.

If proselytising were carried out in a way which resulted in a threat to public order or other harmful outcomes, we would need to assess the detriment or harm and whether the positive aspects of the religion could outweigh the negative or detrimental.

Another area of difficulty is where people hold certain adverse views about other people of a different ethnic background or religion to their own. It is one thing to hold these views but it is quite another actively to promote those views where they could cause harm. It is a question of balancing the right to hold views and the responsibility to respect everyone in society. Consideration would be given to what effect promoting those views would have on the community. Would it promote harm to certain persons in the community, for example?

Unlawfully restricting a person's freedom

Some organisations advancing religion encourage their followers or adherents to live together in a religious community. Provided that members of the community are free to exercise personal choice as to whether they are at liberty to leave the community without intimidation or threat of repercussions, then public benefit will not be an issue on that ground.

The freedom to exercise personal choice is not just an issue that applies to

religious communities. To be for the public benefit, charities advancing religion must not unlawfully restrict the freedom of their followers or adherents to exercise this personal choice.

Illegality

In *Charities and Public Benefit* we explain that no organisation that has aims that are illegal can be a charity.

As recognised charities in England and Wales are subject to the jurisdiction of the High Court, this means that their aims cannot be illegal under the law of England and Wales.

For example, polygamy is not legal in England and Wales but may be, or is, legal in other countries.

However, the law of England and Wales is not universal and the laws of other countries will often be different. This means some charities which are recognised in England and Wales might either have aims that are illegal in another country, or might be carried out in a way that is illegal in another country.

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

In our separate guidance, *Charities Working Internationally*, we say: “*In cases where there is a risk that an activity contemplated by the trustees in a foreign country will be subject to local legal challenge, the trustees should assess the extent of the risk that they would be running and the extent to which that risk could be removed or reduced. In these situations, the trustees should consider extremely carefully what course of action will be in the best interests of the charity using both their knowledge of local conditions and the needs of their beneficiaries. They would need to take appropriate legal and other advice. Finally they should balance the benefits of carrying out that activity against the dangers and disadvantages, including the potential human, financial and reputational cost, of doing so.*”

Consultation questions:

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?

However, where a charity's actions give rise to detriment or harm then public benefit might be affected. Detriment or harm can occur where the carrying out of the charity's aims in a country where it is illegal to do so might:

- expose the charity's staff and volunteers to harm, including risks to their personal safety or liberty – for example where staff or volunteers are exposed to risks of arrest and imprisonment;

- stir up conflict within the country they are working in, possibly endangering the lives of their proposed beneficiaries – for example, disseminating religious literature in a country that is experiencing religious conflicts where that would further inflame the conflict; or
- have possible repercussions which could impact on international relations—for example, where the actions of the charity working in a particular country could possibly damage diplomatic or economic relations between the United Kingdom and that country or even threaten national security within the United Kingdom.

F. Principle 2 – Benefit must be to the public or a section of the public

F1. Important factors to consider



The following are important factors to consider when deciding whether an organisation's aims meet the 'public' principle of the public benefit requirement:

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

Principle 2b: 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

Principle 2c: people in poverty must not be excluded from the opportunity to benefit

Principle 2d: any private benefits must be incidental

There are now many organisations set up for the advancement of religion (and there are many diverse religious traditions present in our society, the advancement of each of which may be charitable under the law). All of them, to be recognised as charitable, have to demonstrate that their purposes are for the **public** benefit. This means it would not be sufficient for any such organisation to show that it is for the benefit of the adherents of the religion themselves. There must be an identifiable benefit or benefits to the public or a sufficient section of the public.

In respect of charities for the advancement of religion, public benefit might be satisfied if:

1. the religious beliefs and practices reflected in the doctrines and codes of the particular religion were beneficial, in that they tended to lead to the moral or spiritual welfare or improvement of society; and
2. that benefit was for the public or a sufficient section of it.

As regards 1 above, on one level the benefit of the follower or adherent responsible for developing his/her social conscience, and the benefit of the organisation creating an uplifting 'feel good' effect on such followers or adherents conducting themselves responsibly towards others, might, in turn, promote more benevolent behaviour. On another level, the benefit might be through the follower or adherent putting these values into practice in wider society and encouraging others to do so, for example by visiting sick persons. The public may benefit from those benevolent acts both individually and more generally. The promotion of that behaviour might also prevent or deter irresponsible behaviour in others.

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



The beliefs and practices of a religion have to be sufficiently accessible to, and capable of benefiting, the public generally or a section of it. Who constitutes 'the public or a section of it' is based on whom the organisation's aims are primarily intended to benefit.

Considering whom the aims are primarily intended to benefit is therefore important when assessing whether a charity benefits the public or a section of the public. With charities for the advancement of religion, it is considered that the beneficiaries are normally both the followers or adherents and the wider public or, in the case of a charitable religious order, the beneficiaries are the members of the order, the wider church and the public generally. The 'wider public' can in some cases benefit through being able to participate in the rites and services of the religion and in others by, for example, being the recipient of a charitable act undertaken by an adherent as part of his or her religious belief.

Charities advancing religion can require their followers or adherents to comply with the religiously derived norms of behaviour promoted by that religion. However, where doing so involves breaking the law, or where there is evidence of detriment or harm being caused, this will affect public benefit (see section [E4](#) above).

Organisations for the advancement of religion should be encouraged to be open and transparent about views their followers or adherents might hold which, in a secular context, could be viewed as discriminatory. This is not to say that these views cannot be held, but that the religious organisations should be open about their views so that members of the public are able to make an informed choice about whether they attend or support organisations holding those views.

Accessibility is an important aspect of public benefit. If people cannot join a religion or, as followers or adherents of a religion, cannot interact with others outside the religion, this could draw a comparison with a closed religious order and, like a closed religious order, the organisation's aims would not be seen as being for the public benefit.

Where it is possible to join or convert to a religion, it may be that the process of joining, or converting, is a long and difficult one. Obviously, joining a religion is usually not a step that is taken lightly. Those connected with the faith might wish to be assured that those joining them in that faith are sincere and are expected to show a degree of commitment. This is acceptable provided that the process of joining or converting is not used inappropriately or unreasonably as a means of denying legitimate access to those who truly wish to join the religion.

Another aspect of accessibility is access to places of worship and concerns about security. These concerns can mean that the place of worship has to be locked when not in use, and people can no longer simply enter the building for

quiet contemplation. In these circumstances, we would expect adequate provision to be made to inform people when they can enter the premises – a prominently displayed notice outside the property, for example.

It is well established that the celebration of religious worship, ceremonies, rituals and other rites in public confers the beneficial effect of those practices on the members of the public who attend. It is recognised that some activities carried out, such as naming, marriage and funeral ceremonies, will be participated in not only by followers or adherents, but also the public. The participation need not be active and may involve being able to sit in on ceremonies and services as an observer. In some cases, these will be incorporated into public open services. In others, the benefits might be confined only to certain followers or adherents. In these cases we will need to look at whether the private nature of the rite or practice is consistent with the need for the organisation to demonstrate public benefit. Obviously we will need to look at the significance of the rite or practice in the religion, and of its relevance to the whole of that religion's activities, including who can and cannot participate in it. We consider that, in **most** cases, this is unlikely to be a problem.

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



Public benefit may not be shown where the practices of the religion are essentially private or limited to a private class of individuals not extending to the public generally. However, where it is a restricted class, the benefit is still to the public generally.

A restriction on who can have the opportunity to benefit may be reasonable:

- where the class of people who can benefit is sufficiently wide or open in nature (given the charitable objects to be carried out and the resources available to the charity) to constitute a sufficient section of the public; or
- because the class of people whom the aims are intended to benefit have a particular charitable need which justifies restricting the benefits to them.

However, restrictions cannot be arbitrary and must be justifiable.

For example, it is acceptable for a charity advancing Judaism to restrict its activities to people within the Jewish community. Similarly, it is accepted that within the Jewish religion there are certain restrictions, such as the study of the Torah or Jewish texts which, by nature, are targeted at men, not women. However, women who wish to study these may do so separately.

Usually, charities should provide as much benefit as possible given their particular circumstances. Where one of the objects of a charity established to advance religion is to offer aid, it would be natural that any restrictions on the number of people who could benefit from that aid were dictated by the organisation's resources.

For example, a chapel situated in a rural, sparsely populated area might only have a single figure congregation because of its isolated position. Provided that the services at the chapel are open to all who wish to attend, this small number would not affect public benefit.

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

In the case of some charities advancing religion that charge fees, there might also be some restrictions on who can benefit based on the ability to pay those fees. Where that is the case, please see our separate draft supplementary guidance *Public Benefit and Fee-Charging*.

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



Many religious organisations 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. This is a well established practice and can be voluntary or mandatory. If the level of tithing is such that people in poverty are unable to access the services and facilities offered by the religion, the public benefit of that religion may be called into question. If financial contribution is used in practice (if not officially) as a way of restricting who can join or benefit, for example if there is any pressure, covert or otherwise, put on the follower or adherent to pay, regardless of their ability to do so, this again could call into question the public benefit of the organisation's aims.

People in poverty are a charitable beneficiary class and therefore benefits can be restricted to them. However, they cannot be excluded from benefiting simply because they cannot afford to pay any fees charged. There must be some other material way, related to the charity's aims, in which they can benefit. This is not to say that people in poverty actually have to benefit; it is the opportunity to benefit that is the issue, not the actual enjoyment of benefit.

Similarly, where faith healing is a part of the religion, if a charge is made for the healing, then the charges should be set at such a rate as not to exclude people in poverty from benefiting from the healing.

Not all religious organisations charge for their services, and some leave the

choice of payment with the members of the public.

For example, in Judaism, a charge is made for membership of a synagogue, but concessionary rates may apply.

Examples of the types of services that religious organisations might charge for include:

- ceremonies, such as weddings, funerals, naming;
- education and teaching;
- saying prayers for the deceased;
- counselling;
- marriage guidance;
- retreat;
- exorcisms;
- pilgrimages, Hajj;
- use of property;
- religious artefacts or jewellery;
- religious stationery e.g. Christmas or Diwali cards;
- media:
 - books;
 - magazines;
 - DVDs and CDs (eg of choir performances).

If the tenets of the religion are only available as a course of study and that course is only available on payment, we will need to consider to what extent the spiritual development of the follower or adherent is dependent upon their ability to pay. We will also need to consider to what extent those costs might exclude people in poverty. See also our draft supplementary guidance *Public Benefit and Fee-charging*.

F5. Principle 2d: Any private benefit must be incidental



Any private benefits that arise will usually do so either as a necessary but incidental way of the organisation furthering its religious aims, or as a consequence of doing so. In both cases, the trustees must be satisfied, on reasonable grounds, that the activity which results in a private benefit is an effective way of furthering the religious purposes. In addition, in all the circumstances, the extent of the benefit must be reasonable.

Any evidence of private benefit, that is more than legitimately incidental, would have to be carefully examined. Private benefit might arise, for

example, in the case of benefits to religious leaders. If the purpose of the religious organisation is to enhance the wealth of the leader or leaders, this would not be charitable. Any benefits given to such persons must be reasonable and the trustees must be satisfied that they are necessary for the proper administration of the charity.

Examples of the types of private benefits to religious leaders which might arise include:

- the payment of subsistence, accommodation and other living expenses;
- the payment of remuneration for their services;
- the enhancement of the leader's personal reputation or the reputation of their ministry;
- increased income from the sale of merchandise, such as videos, books and tapes in which the leader has an interest; or
- an increase in the value of their associated intellectual property rights or the payment of other personal gifts to the leader.

In many cases, the benefits that arise will not be more than legitimately incidental. However, in some cases, they might be more than legitimately incidental and affect public benefit. Where there are such concerns, an assessment would need to be made of the nature and extent of the benefit, as well as whether there is an express power to provide those benefits in the organisation's governing document.

For example: an organisation set up to advance religion operates as a religious community whose small number of members and the trustees derive significant personal benefit from the lavish property they reside in, financed by their commercial jewellery trading activities, which are extensively interwoven with the operation of a commercial company. The amount of charitable activity is minimal and any public benefit is outweighed by the extensive private benefit derived.

Benefits may be considered ancillary where, for example, personal benefits arise to members of congregations because the activities overflow from the place of worship itself to a hall in the form of social activities.

We are not concerned with the benefits anyone receives as a direct result of being a beneficiary of a charity.

We are aware that some charitable religious orders continue to look after ageing members of the order, by providing accommodation and a pension for example. Usually, those members will have given up possessions when they joined the organisation. They have been engaged in various charitable works on the basis that their reasonable and modest personal needs would be met. The meeting of those continuing needs after retirement is no more than a legitimate working out of the understanding on which the charitable work was undertaken in the first place. The private benefits to those retired members of

the order would therefore be regarded as legitimately incidental. It may also be the case that looking after those in need could be undertaken as part of the organisation's charitable religious aim.

Examples of the types of non-incidental private benefit that might arise in religious organisations include:

- paying the expenses of the religious leaders and sometimes their families including:
 - very generous salary;
 - accommodation (not always commensurate with need);
 - travel (including mode of travel eg private jet);
 - elevation of the status of the founder of a religion (and possibly of their family too) including self promotion and power;
- promotion of the teachings of a religious leader who is still alive including book tours, seminars, receipts of royalties from publications;
- religious communities, for example where, in addition to free accommodation, expenses of an over-generous scale are given and sometimes paid employment is also offered;
- the upkeep of private chapels to which the general public have no right of access;
- the saying of private masses or the upkeep of a particular grave.

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?

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

Consultation questions

The following is a list of all the consultation questions that appear throughout the draft guidance:

Consultation questions		Section
Q1	What would be the most appropriate terminology for us to use to describe the object or focus of a religion?	C1
Q2	Do you have any comments on the suggestion that one way of describing a coherent belief system is: ' <i>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</i> '? Do you wish to suggest alternative wording?	C1
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?	C1
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'?	C1
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.	C3
Q6	Do you wish to suggest any other examples of ways in which religion can be advanced?	C3
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?	C3
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?	C5
Q9	In the light of assurances given in this section, is it clear enough how our assessments in the light of current social and economic conditions will affect our assessment of organisations established to advance religion? If not, in what ways might it be clarified further?	D1
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?	E2
Q11	Is the often inherently intangible nature of religion dealt with clearly enough?	E2
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?	E3
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?	E4
Q14	Is there anything that you would have expected us to cover in this draft supplementary guidance that we have not included?	

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