

**Analysis of the law
underpinning
*The Advancement of
Religion for the Public
Benefit***

**This legal analysis is designed to be read in
conjunction with**

***The Advancement of Religion for the Public Benefit
(December 2008)***

PUBLIC BENEFIT: STATEMENT OF THE BASIS FOR THE CHARITY COMMISSION'S ROLE AND ACTIONS

In 2006, Parliament passed new legislation for charities which, amongst other provisions, gave fresh emphasis to the requirement for all charities' aims to be, demonstrably, for the public benefit. It is in both our interests, as the regulator of charities in England and Wales, and the interests of the charities that we regulate, that our approach to public benefit maintains and, if possible, increases the public's trust and confidence in charities.

Our approach to assessing public benefit comes from the statutory objective set for us by Parliament in the Charities Act 2006, 'To promote awareness and understanding of the operation of the public benefit requirement', and our corresponding duty to produce statutory guidance to help fulfil this objective.

We believe that the statutory objective and the requirement to issue guidance, together with our responsibilities as regulator, mean that we have an obligation to set out a coherent set of principles on public benefit derived from our interpretation of the underlying case law which already exists.

We interpret this case law in the context of modern circumstances, taking into consideration the new framework for charitable status set out in the Act, the existing case law, and the fact that the presumption of public benefit for some types of charities has been removed.

We also consider the impact of the Human Rights Act, which requires fair and equal treatment of the application of the public benefit principles to different types of charity, and that any differences in treatment are necessary, proportionate and legitimate.

Our role is to bring all these elements together and, where necessary, interpret the law to deal with areas that lack clarity. Our interpretation of our new responsibilities is underpinned by our general guidance on the principles of public benefit which we published on our website at the start of 2008.

We will be transparent about the basis on which we take decisions about public benefit and proportionate in the actions we take. Where our decisions affect whether a charity remains as a charity, or indeed whether the way in which it operates is for the public benefit, the charity, or anyone affected by our decision, who disagrees with the regulatory action that we take, can challenge that action with the Charity Tribunal or the Courts where appropriate.

December 2008

Analysis of the law underpinning *The Advancement of Religion for the Public Benefit*

INTRODUCTION

11. The Commission's supplementary guidance, *The Advancement of Religion for the Public Benefit* explains how the key principles of public benefit apply to charities concerned with the promotion or advancement of religion in language that is as clear as it can be to ensure that as many people as possible can follow and understand it. This document is intended to be a summary of the Commission's view of the law underpinning that guidance and necessarily uses more technical language. *The Advancement of Religion for the Public Benefit* is based on this legal analysis and the cases referred to in it.
12. This analysis is not intended to be a comprehensive legal digest, but a useful reference point for trustees, their advisers and the public. It reflects law and practice at December 2008. It is not binding in law and does not affect any rights to challenge decisions either through the courts, the Charity Tribunal or the Commission's internal Decision Review process. It should be borne in mind that it offers a general analysis of the law. Whether the analysis is appropriate in any particular case will depend on all the facts of that case. In deciding individual cases we will apply the law.
13. To be a charity, an organisation has to be established for one or more purposes within descriptions recognised by the law as capable of being charitable, and for the public benefit. Previously, under charity law, purposes for the advancement of religion (and for the relief of poverty and advancement of education) were presumed to be for the public benefit, unless the presumption was rebutted by evidence to the contrary. In all other cases, public benefit had to be shown. Section 3(2) of the Charities Act 2006 removes this presumption of public benefit for poverty, education and religious purposes. Apart from this removal of the presumption, the law on public benefit is unaltered by the Charities Act 2006.
14. The Commission will take the same approach as the courts and the Charity Tribunal in applying the law. This includes recognising the impact of modern social conditions. Although the law in relation to advancing religion has largely developed in a Judaeo-Christian context it now falls to be considered in the context of a multi-faith society.

Part 1. INTRODUCTION TO PUBLIC BENEFIT

- 1.1 Each individual charity must be able to demonstrate that its particular aims are for the public benefit¹. In the case of charities for the advancement of religion², the general position is that the purpose must not simply be for the benefit of the followers of the particular religion or teaching themselves. In *Holmes v Attorney General*³ Walton J commented:

“... It is not for the benefit of the adherents of the religion themselves that the law confers charitable status, it is in the interests of the public.”

- 1.2 There is no longer any presumption that, because a purpose falls within the description “the advancement of religion”, it is for the public benefit. Section 3(2) of the *Charities Act 2006* provides: *In determining whether [the public benefit] requirement is satisfied in relation to any ...purpose, it is not to be presumed that a purpose of a particular description is for the public benefit.*
- 1.3 Formerly, the proposition was stated that “*as between different religions the law stands neutral, but it assumes that any religion is at least likely to be better than none*” (in *Gilmour v Coats* and articulated by Cross J in *Neville Estates v Madden*⁴). It is necessary to interpret this now in the modern context. There is no longer any presumption of public benefit. That proposition was extended in what was said in *Holmes v AG* “*that it is better for man to have a religion - a set of beliefs that take him outside his own petty cares and leads him to think of others - rather than to have no religion at all*”⁵. It is arguable that with the removal of the presumption and in the modern context, the benefits that religion may bring may also be available from other moral codes⁶. The proposition may now be interpreted as meaning that advancing religion can be seen as a public good if such advancement can be demonstrated to be in relation to a system having a benign and positive content which is being advanced for the benefit of the public.
- 1.4 Not every ‘religion’ can claim that its promotion or advancement is charitable. A religious organisation whose practices or doctrines are adverse to the foundations of religion or subversive to morality or are illegal cannot be for the benefit of the public⁷. Unless an organisation advancing a religion is in a position to show that such

¹ *Oppenheim v Tobacco Securities Trust* [1951] AC 297; *AG v National Provincial Bank* [1924] AC 262. This may be for the benefit of a community abroad.

² and charities promoting moral or spiritual welfare or improvement

³ The Times, February 12th 1981

⁴ [1962] Ch 832, 853

⁵ The Times February 12 1981

⁶ Article 9 European Convention on Human Rights – freedom of thought conscience and religion. With regard to other moral codes, see the Commission’s consultation on Public Benefit and the Advancement of Moral or Ethical Belief Systems.

⁷ *Thornton v Howe* [1862] 31 Beav 14 and *Re Watson* [1973] 1 WLR 1472, 1482 per Plowman J

advancement is for the public benefit, then that organisation will not be charitable either⁸.

- 1.5 Plowman J in *Re Watson* in 1973 considered a case for the publication and distribution of the fundamentalist Christian writings of an individual⁹. He quoted authority that the court does not prefer one religion or sect to another. He said that "*where the purposes in question are of a religious nature ... then the court assumes a public benefit unless the contrary is shown*". But he then went on to say: "*having regard to the fact that the court does not draw a distinction between one religion and another or one sect and another, the only way of disproving a public benefit is to show, in the words of Sir John Romilly MR in *Thornton v Howe* 32 Beav 14, 20, that the doctrines inculcated are "adverse to the very foundations of all religion, and that they are subversive of all morality."* The Commission has not accepted that that is a complete or accurate statement of the law. Plainly there are other ways of disproving a public benefit (eg the beneficiaries may be insufficiently numerous or may be required to have some common characteristic determined by personal relationship or contract). In so far as that part of the judgment is inconsistent with the judgment of the court of appeal and opinions given by the House of Lords in *Gilmour v Coats*, it is not regarded as binding.
- 1.6 Public benefit must be capable of being shown¹⁰. In the Court of Appeal in *Gilmour v Coats*, it was held:

*"...the question whether a trust is beneficial to the public is an entirely different one from the question whether a trust is for the advancement of religion. In answering the latter question, the court is not concerned with the truth or otherwise of the religious benefits entertained by particular religions which it recognises as such. When, however, the question is whether a particular gift for the advancement of religion satisfies the requirement of public benefit, a question of fact arises which must be answered by the court in the same manner as any other question of fact i.e. by means of evidence cognisable by the court."*¹¹

A religion must be capable of producing beneficial effects and evidence will need to be given to demonstrate that its beliefs, doctrines and practices have this capability.

- 1.7 The public benefit requirement will not be satisfied under the *Charities Act 2006* unless an organisation provides evidence to show both its impact on the public and that the impact is beneficial¹².
- 1.8 The opinion of the promoters or the organisation is not determinative¹³. The motives, intention or beliefs of the promoters – however kind or sincere – do not determine the question and are immaterial¹⁴.

⁸ s2(1) *Charities Act 2006*

⁹ Expert theological evidence assessed their intrinsic worth as nil but not irreligious or immoral: *Re Watson* [1973] 1 WLR 1472.

¹⁰ ss2(1) and 3 *Charities Act 2006*

¹¹ *Gilmour v Coats* [1948] Ch 340 C.A. Ld Greene MR at page 347.

¹² Public benefit must be present as a matter of fact: When the question is whether a particular gift for the advancement of religion satisfies the requirement of public benefit a question of fact arises which must be answered by the court ... by means of evidence cognisable by the court. *Gilmour v Coats* [1948] Ch 340 C.A. Ld Greene MR at page 347

¹³ *Re Hummeltenberg* [1923] 1 Ch 237

- 1.9 The question has to be decided on the basis of relevant evidence (or in the light of generally well-known facts and where it would be absurd to call for further evidence). Benefit must be proved at the time a decision has to be made. The fact that something was once considered beneficial does not finally settle the question now.
- 1.10 If we conclude that the element of public benefit has not been proved (even where it is not disproved and we decide it is incapable of proof one way or the other), we must decline to register.
- 1.11 The benefits, tangible or intangible, must be available to the public at large or to an appreciably important section of the public¹⁵. Where the practice of a religious organisation is essentially private or is limited to a private class of individuals, not extending to the public generally, the element of public benefit will not be established¹⁶.

¹⁴ *Re Delaney* [1902] 2 Ch 642

¹⁵ In case of *The Church of Scientology (England and Wales)* (Decision of the Charity Commissioners of 17 November 1999) (hereafter 'Scientology decision'), it was found it was necessary to receive Scientology services before one could access the highly formalised system of doctrines, practices and beliefs of Scientology and this may constitute a filter on public benefit, though requiring membership of or adherence to a particular organisation promoting a belief system may not necessarily be fatal.

¹⁶ Scientology decision. See also *Re Hetherington* [1990] Ch 1 and *Re Coats' Trusts* [1948] Ch 340, 357 (Ld Evershed)

Part 2. THE ADVANCEMENT OF RELIGION

What can be regarded as 'religion'?

- 2.1 There are general principles (outlined below) to which a purpose must conform if it is to be regarded as within the Charities Act's description of 'the advancement of religion'. The law does not automatically recognise as a religion everything that may designate itself as a religion¹⁷. Also, in the *Anti-vivisection Society* case, Lord Simonds held that 'to give [a] purpose the name of "religious" or "educational" is not to conclude the matter'. These general principles (gathered from the common law of England and Wales), elucidated by the Act, continue to govern the matter in charity law. The body of law which has developed concerning the European Convention right to freedom of thought, conscience and religion is also part of the modern context,¹⁸ and decisions of other common law jurisdictions having a similar system of charity law will be of persuasive authority. But the advancement of religion as a charitable purpose in England and Wales has to be understood in light of the laws of England and Wales.
- 2.2 As a general proposition, for its advancement to be capable of being charitable in this context, a religion should have a certain level of cogency, seriousness, coherence and importance¹⁹.
- 2.3 Further, to be charitable for the advancement of religion, the content of any system of faith and worship has to be of a positive nature, impacting beneficially on the community. Therefore there could not be regarded as charitable any systems promoting destructive figures; temples of Satan and other forms of demonology, or worshipping as a god that which would be personally or socially harmful²⁰; or advancing any practice by which one attempts to tame supposed occult powers so as to place them at one's service (thus having supernatural powers over others). The advancement of such systems and others comprising practices or doctrines which are adverse to the foundations of religion or subversive to morality or are illegal could not form the subject matter of charity (see *Thornton v Howe* supra). In *Cocks v Manners* (LR 12 Eq 585) (confirmed by the House of Lords in *Gilmour v Coats*), Sir John Wickens, V-C., said: "It is said, in some of the cases, that religious purposes are charitable, but that can only be true as to religious services tending directly or indirectly towards the instruction or the edification of the public..."
- 2.4 To be charitable, therefore, a religious purpose has to be serious, tend directly or indirectly to the moral and spiritual improvement of the public as well as being for the public benefit.
- 2.5 There will be some purposes which are considered to be beneficial and religious, and indeed seriously religious, but which do not fall within the legal framework.

¹⁷ *Re Coats' Trusts, Coats v Gilmour* [1948] Ch 340 (CA) at pp 346 and 347 per Lord Greene MR

¹⁸ we cite it below on cogency, seriousness, clarity of belief system and on the detrimental effects of some types of persuasion

¹⁹ *Campbell and Cosaus v UK* (1982) 4 EHRR 293 at 304

²⁰ See *Picarda: The Law and Practice Relating to Charities* (London: Butterworths 3rd ed 1999, p 116 fn 19)

2.6 For example, fostering individual private piety is not charitable:

Cocks v Manners (supra): “A voluntary association of women for the purpose of working out their own salvation by religious exercises and self-denial seems to me to have none of the requisites of a charitable institution.”

Re Joy, Purday v Johnson (1888) 60 LT 175 at 178, Chitty J held that the real object contemplated by the testator was the non-charitable purpose of improvement of the membership of a society by prayer, not the suppression of cruelty to animals, which would have been a valid charitable purpose.

Re White [1893] 2 Ch 41 - “A society for the promotion of private prayer and devotions by its own members and which has no wider scope, no public element, no purpose of general utility... would not be ... charitable...”

In *Gilmour v Coats* in the House of Lords Lord Simonds said:

It is, perhaps, significant that even in Ireland, where in regard to the saying of masses the law has thus been established, there is no consensus of opinion that a gift to a community of contemplative nuns is charitable: see Munster and Leinster Bank v A-G, Maguire v A-G, and Re Keogh. From the judgment of Black J in Munster and Leinster Bank v A G I would quote these words ([1940] I R 30) which succinctly express my own view:

“There are perhaps few forms of human activity, good in themselves, but solely designed to benefit individuals associated for the purpose of securing that benefit, which may not have some repercussions or consequential effects beneficial to some section of the general community; and unless a further and sweeping inroad is to be made on the rule against perpetuities, the line must be drawn somewhere. Cocks v. Manners [see above] has drawn it.”

In *Re Warre’s Will Trusts*, on the matter of a retreat house, Harman J said: “Activities which do not in any way affect the public or any section of it are not charitable. Pious contemplation and prayer are, no doubt, good for the soul, and may be of benefit by some intercessory process, of which the law takes no notice, but they are not charitable activities.”

2.7 Thus, in *Re Hetherington*²¹ it was held that the celebration of a religious rite in private does not contain the necessary element of public benefit since any benefit of prayer or example is incapable of proof in the legal sense and any element of spiritual or moral improvement (edification) is limited to a private not public class of those present at the celebration²².

²¹ [1990] Ch 1

²² Following *Gilmour v Coats*, *Yeap Cheah Neo v Ong Cheng Neo* [1875] LR 6 PC 381 (a gift for private prayers) and *Hoare v Hoare* [1886] LT 147 (for the establishment and support of a private chapel for the services of the Church of England in a private house)

- 2.8 However, according to the same case, the holding of a religious service which is open to the public is capable of conferring a *'a sufficient public benefit because of the edifying and improving effect of such celebration on the members of the public who attend'*.
- 2.9 There may be other purposes related to religion whose pursuit would not be charitable because the purpose itself is not exclusively charitable. There have been a number of cases where bodies established for certain denominational institutions or purposes are not necessarily for exclusively charitable religious purposes. So a trust *'for Roman Catholic purposes'* may not be for exclusively charitable purposes furthering the Roman Catholic faith²³; a bequest to vicar for time being of a parish *'for parochial institutions or purposes'* would not be charitable²⁴; a bequest to an archbishop to be applied *'in any manner he might think best for helping to carry on the work of the Church in Wales'* is not charitable²⁵; and a generally stated purpose *'for religious, educational and other parochial requirements'* is not charitable²⁶.
- 2.10 Historically, charity law in England and Wales has developed empirically within the context of the traditional monotheistic religions. But it has embraced for many years religions other than Christianity and Judaism. In *Bowman v. Secular Society* [1917] AC 406, Lord Parker effectively held that it was not just the promotion of Christianity that would be recognised but (at a time when the English sovereign also exercised the function of sovereign over the Indian sub-continent and many other overseas territories) that the Courts of this country were not precluded *"from giving effect to trusts for the purposes of religions which, however sacred they may be to millions of His Majesty's subjects, either deny the truth of Christianity or, at any rate, do not accept some of its fundamental doctrines"*.
- 2.11 The Commission has recognised as charitable organisations that advance Christianity, Judaism, Islam, Hinduism, Buddhism, and Jainism amongst other religions. It will be appropriate to take into account the changed religious, social and cultural landscape of England and Wales in 2008, particularly the habits of society, contemporary ideas and conditions and current ideas of social service²⁷. The law needs to be interpreted in the light of modern conditions.
- 2.12 In the Commission's Scientology decision, it was stated (inter alia) that the following general principles are firmly established:
- (i) Trusts for the advancement of religion take effect as charities without assessment by the court of the worth or value of the beliefs in question, unless the tenets of a particular sect inculcate doctrines adverse to the very foundations of all religion and/or subversive of all morality²⁸.
 - (ii) The law does not prefer one religion to another²⁹ and as between religions the law stands neutral³⁰.

²³ *MacLaughlin v Campbell* [1906] 1 IR 588

²⁴ *Re Stratton, Knapman v A-G* [1931] 1 Ch 197, CA

²⁵ *Re Jackson, Midland Bank Executor and Trustee Co Ltd v Archbishop of Wales* [1930] 2 Ch 389

²⁶ *Trustees of Cookstown Roman Catholic Church v IRC* (1953) 34 TC 350

²⁷ *National Anti-Vivisection Society v IRC* [1948] AC 31

²⁸ *Thornton v. Howe* (1862) 31 Beav 14

²⁹ *Thornton v. Howe*, supra; *Gilmour v. Coats* [1949] AC 426

- (iii) In deciding whether a gift is for the advancement of religion, the court does not concern itself with the truth of the religion, a matter which is not susceptible of proof. This does not mean that the court will recognise as a religion everything that chooses to call itself a religion³¹.
- (iv) In addition, in order to be charitable, the trust must not only be for the advancement of religion, it must also be of public benefit. This is a question of fact which must be answered by the court in the same manner as any other question of fact, i.e. by means of evidence cognizable by the court³².

2.13 The English courts have resisted closely defining what it is that makes some belief systems religious and others not. However in the Scientology case, the Commissioners accepted that there are various characteristics of religion which can be discerned from the legal authorities:-

- (1) Belief in a god or a deity or supreme being – *R v Registrar General ex parte Segerdal* [1970] 2 QB 697 per Lord Denning.
- (2) Reverence and recognition of the dominant power and control of any entity or being outside their own body and life (i.e. outside the body and life of the follower of that religion) - *Segerdal* (Winn L J).
- (3) Two of the essential attributes of religion are faith and worship: faith in a god and worship of that god - *South Place Ethical Society*. [1980] 1 WLR 1565 at 1572D-E (Dillon J)
- (4) A trust for the purpose of any kind of monotheistic theism would be a good charitable trust - *Bowman v Secular Society* [1917] AC 406 at 448 - 450 (Lord Parker of Waddington)
- (5) Worship must have at least some of the following characteristics: submission to the object worshipped, veneration of that object, praise, thanksgiving, prayer or intercession - *Segerdal* (Buckley LJ) at page 709 F - G
- (6) It would not seem to be possible to worship in this way (i.e. with reverence) a mere ethical or philosophical ideal - *South Place Ethical Society* (Dillon J) at page 1573A
- (7) Promotion of religion includes “*the observances that serve to promote and manifest it.*” - *Keren Kayemeth Le Jisroel v IRC* [1931] 2 KB 465, 477 (Lord Hanworth MR). (affirmed [1932] AC 650)
- (8) There must be a promotion of the religion, meaning “*the promotion of spiritual teaching in a wide sense, and the maintenance of the*

³⁰ *Neville Estates v. Madden* [1962] Ch. 832

³¹ *Re Coats' Trusts, Coats v Gilmour* [1948] Ch 340 (CA) at pp 346 and 347 per Lord Greene MR

³² *Re Coats' Trusts* supra at p 347

doctrines on which it rests, and the observances that serve to promote and manifest it.” – Keren Kayemeth Le Jisroel v IRC (Lord Hanworth MR). This would include observance of particular common standards, practices or codes of conduct as stipulated in particular scriptures or teachings.³³

- (9) To advance religion means “*to promote it, to spread the message ever wider among mankind; to take some positive steps to sustain and increase religious belief and these things are done in a variety of ways which may be comprehensively described as pastoral and missionary*”. - *United Grand Lodge v Holborn BC* [1957] 1 WLR 1080 (Donovan J).
- (10) Promotion of religion includes a missionary element or other charitable work through which the beliefs of the religion are advanced - *United Grand Lodge v Holborn BC* (Donovan J).
- (11) Public benefit is a necessary element in religious trusts as it is in other charitable trusts - *Re Coats’s Trusts, Coats v Gilmour* [1948] Ch 340 at 344 (Court of Appeal) (Lord Greene MR).

2.14 Having considered these characteristics, the Commissioners concluded that the definition of a religion in English charity law was characterised by a ***belief in a supreme being and an expression of that belief through worship***. The cases also make clear that there must be advancement or promotion of the religion.

2.15 The understanding of ‘religion’ is further refined by the *Charities Act 2006* which enacted that a purpose is a charitable purpose if it falls within a list of descriptions and is for the public benefit. The list includes (s2 (2) (c)) ‘the *advancement of religion*’. The word ‘*religion*’ here is given a clarifying partial definition to include (s2 (3) (a))

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

2.16 Section.2 (5) of the *Charities Act 2006* has the specific effect of preserving the common law meaning of religion subject to the clarification in s.2 (3(a)).

2.17 Leaving context (including case law) aside, ‘*religion*’ does not today have a plain and unambiguous meaning which is generally accepted. Dictionary definitions of ‘religion’ often quoted³⁴ suggest it can mean (i) belief in some superhuman controlling power entitled to obedience, reverence and worship; or it can mean (ii) a system defining a code of living (especially as a means to achieve spiritual or material improvement).

2.18 The Commission’s *Scientology* decision effectively concludes that - on the authorities - the first, and not the second, is the meaning it has in English law.

³³ see also *The Church of the New Faith v Commissioner for Payroll Tax* (1982) 154 CLR 120 (a persuasive authority, Australian High Court)

³⁴ Such as that in the Shorter OED, a version of which was quoted by Dillon J in *South Place Ethical Society*

- 2.19 The common law understanding of ‘religion’ as set out by the Commission in its Scientology decision remains, in the Commission’s understanding, the basis of the law.
- 2.25 Thus the characteristics of a religious belief system (which must be serious and have a clear structure and belief system³⁵) include the following elements:

(a) **Belief in ‘supreme being or entity’**

In the Scientology decision, the Commission concluded that “*belief in a supreme being remains a necessary characteristic of religion for the purposes of English charity law. It would not, however, in their view, be proper to specify the nature of that supreme being or to require it to be analogous to the deity or supreme being of a particular religion.*” Slightly different terminology for this object of belief from that used in our Scientology decision is adopted in the guidance.

(b) **Worship of ‘supreme being or entity’**

The concept here is narrower than the Human Rights notion of manifesting one’s beliefs by means of teaching, practice or observance³⁶. It is, however to be broadly understood³⁷. ‘Worship’ imports conduct indicative of *reverence or veneration* for the supreme being or entity³⁸. Worship is seen in activities *including acts of submission, veneration, praise, thanksgiving, prayer or intercession*³⁹. Such description of these characteristics is largely drawn in the context of one religious tradition and should not be seen as an exclusive list. But it remains the case that one cannot worship with reverence what is simply an ethical or philosophical ideal⁴⁰. Such belief should be seen to give rise to distinct patterns of behaviour in the believing community expressive of the relationship with what is regarded as the supreme being or entity. This would continue to be the point of distinction between charities falling under this description of charitable purposes and others, including those which may be charitable for the promotion of moral or spiritual welfare or improvement.

(c) **‘Advancement’ of religion**

- (i) The charitable purpose requires some promotion or advancement of the religion: *To advance religion means to promote it, to spread its message ever wider among mankind; to take some*

³⁵ see *X v UK* (1977) 11 DR 55

³⁶ cf *Kalac v Turkey* (1999) 27 EHRR 552, ECtHR

³⁷ On page 24 of the Scientology Decision, it was stated: “*The Commissioners thus concluded that the English legal authorities indicated that the criterion of worship would be met where belief in a supreme being found its expression in conduct indicative of reverence or veneration for that supreme being. The Commissioners noted and welcomed the fact that the concept of worship so understood, distilled from the decided English cases was reflected in the common English definition of the word “worship”. The Commissioners also noted that the concept of worship so understood provided objective criteria by which worship can be identified for the purposes of recognising an organisation to be charitable as advancing religion and so falling within a distinct third head of English charity, at the same time as being sufficiently broad to allow recognition of a range of belief systems commonly recognised as religions.*”

³⁸ *R v Registrar General ex parte Segerdal* [1970] 2 QB, 697 Winn LJ at p. 709A

³⁹ *R v Registrar General ex parte Segerdal* per Buckley LJ at p. 709 F-G.

⁴⁰ *Re South Place Ethical Society*, Dillon J at p.1573A.

*positive steps to sustain and increase religious belief; and these things are done in a variety of ways which may be comprehensively described as pastoral and missionary*⁴¹. To advance or promote a religion does not necessarily mean that an organisation should proselytise.

- (ii) Proselytising is one way of advancing religious purposes⁴². It may raise public benefit issues if it breaks the law or results in harm or detriment. It would not be compatible with public benefit principles for an organisation to seek, in a manner that breaches the rights protected by article 9 of the European Convention on Human Rights, to inhibit anyone from their rights of freedom of thought, conscience or religion and to manifest or change such beliefs. This would particularly need to be considered if the sole purpose of an organisation is to convert people from one religion to another.
- (iii) European jurisprudence (as set out in *Kokkinakis v Greece* (1993), 17 EHRR 397, EctHR) considered attempts to forbid the proselytising activities of a Jehovah's Witness. The court confirmed that a democratic society has a plurality of beliefs. It held that freedom to manifest one's religion includes in principle the right to try to convince one's neighbour. The court did however maintain that:

"a distinction has to be made between bearing Christian witness and improper proselytism. The former corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches describes as an essential mission and a responsibility of every Christian and every Church. The latter represents a corruption or deformation of it. It may, according to the same report, take the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brainwashing; more generally, it is not compatible with respect for the freedom of thought, conscience and religion of others."

- (iv) It is unlawful in some countries to proselytise. The question then arises: Is it possible to recognise as charitable for the public benefit here a purpose to be pursued abroad which is not charitable and which may be illegal abroad? The Commission in its annual report for 1993 set out its understanding of the relevant law as regards the charitable status of institutions operating abroad. That understanding was considered in the High Court by Jacob J in *Armenian Patriarch of Jerusalem v Sonsino* [2002] EWHC 1304 who held '*the Commission is clearly right about this*'. In 1993, we said:

⁴¹ *United Grand Lodge* case

⁴² *Re Maguire* (1870) LR 9 Eq 632; *AG v Becher* [1910] IR 251; *AG v City of London* (1790) 1 Ves 243; *IRC v Pemsel* [1891] AC 531

One should first consider whether they would be regarded as charities if their operations are confined to the United Kingdom. If they would, then they should be presumed also to be charitable even though operating abroad unless it would be contrary to public policy to recognise them.

So it would seem that an organisation whose main purposes include proselytising, even if to be carried on internationally, may be charitable in England and Wales, unless it is demonstrated that there is harm or detriment that would outweigh the public benefit. This harm or detriment would need to be demonstrated by evidence. That evidence might include the consequences for the public in England and Wales of an organisation pursuing a purpose which is illegal in the country in which it is operating, or evidence of other harm or detriment such as the significant destabilising of a community, or for other reasons of public policy.

It is not possible to give comprehensive guidelines as to what the courts would rule contrary to public policy.

Where no purpose which may be contrary to a foreign law is to be promoted, but the activities in that jurisdiction would involve acting contrary to local law there, the position is much less clear. It may be that the pursuit of the purpose there (unless carried on in a manner likely to raise similar concerns) is nevertheless still charitable so far as the law of England and Wales is concerned, but that the charity trustees would need to proceed carefully and prudently. We explore these matters in our publication *Charities Working Internationally* as follows:

86. 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.

- (v) In contrast to the advancement of religion, the general advancement of a general religious sentiment (the advancement of “religion” without distinguishing any particular religion, be what it may) would not be within the description here being considered⁴³, though it may, if carried out for the public benefit, be

⁴³ cf the *United Grand Lodge* case: *The “Antient Charges”* set out at pp 3 to 15 of the “*Constitutions*” begin by saying that a Mason is obliged to obey the moral law, and to act according to the dictates of his conscience. They go on as follows: *Let a man's religion or mode of worship be what it may, he is not excluded from the Order, provided he believe*

otherwise charitable under the residual head, alongside the promotion of moral or spiritual welfare or improvement or the promotion of efficiency and effectiveness of charities or charitable purposes, if it meets the relevant criteria. In particular the Commission has recognised the purpose of promoting religious harmony.⁴⁴

(vi) Another way of advancing a religion would be by means of undertaking pastoral work. Many religious charities will also have objects directed to other charitable purposes for the relief of need of different descriptions in society and may quite properly thereunder promote what might in other contexts appear to be purely secular purposes (and without bearing any particular religious badge or branding). However, where a charity is operating solely in furtherance of a purpose to advance religion, then any secular pastoral work which it undertakes should be as a means of advancing the particular religion (i.e. as part of a programme of positive steps to sustain and increase religious belief and worship⁴⁵ by promoting its spiritual teachings and maintaining its doctrines and observances). Motivation alone does not suffice⁴⁶ to invest a secular purpose not directed to increasing religious belief and worship with a character of advancing religion. It is clear that religion may be advanced by reference to what appear to be secular activities. A convent in *Cocks v Manners* (1871) LR 12 Eq 574 was held charitable and there the nuns were engaged in exterior works (“teaching the ignorant and nursing the sick”) as part of their religious work. The provision of recreational facilities as a main aim may be wholly for the advancement of religion: *Belfast City YMCA v NI Valuation Comr* [1969] NI 3 (CA) (recreational facilities); *Neville Estates v Madden* (church hall). In the *United Grand Lodge* case [1957] 1 WLR 1080, 1090 Donovan J said that taking positive steps to sustain and increase religious beliefs was

in the glorious architect of heaven and earth, and practise the sacred duties of morality. Masons unite with the virtuous of every persuasion in the firm and pleasing bond of fraternal love: they are taught to view the errors of mankind with compassion, and to strive, by the purity of their own conduct, to demonstrate the superior excellence of the faith they may profess. Thus Masonry is the centre of union between good men and true, and the happy means of conciliating friendship amongst those who must otherwise have remained at a perpetual distance.” There is nothing comparable to that in Masonry. This is not said by way of criticism. For Masonry really does something different. It says to a man, “Whatever your religion or your mode of worship, believe in a Supreme Creator and lead a good moral life”. Laudable as this precept is, it does not appear to us to be the same thing as the advancement of religion. There is no religious instruction, no programme for the persuasion of unbelievers, no religious supervision to see that its members remain active and constant in the various religions they may profess, no holding of religious services, no pastoral or missionary work of any kind. Counsel for the appellants relied strongly, however, on the following finding in the Case: “As a general description of the basis of Freemasonry, it is an organisation devoted to advancing the acceptance and practice of basic religious principles, which may be particularised as man's relations to God, to his neighbour and to himself.” Without wishing to be pedantic, it is not easy to understand the term “basic religious principles”. Had quarter sessions said “basic moral principles” their meaning would have been clear; and indeed when they go on to give particulars it would seem that this is really what they do mean. In any event, however, the main object of Freemasonry must be discovered from a consideration of its constitution and its work; and such consideration leads us to the view that its main object is clearly not the advancement of religion.

⁴⁴ See Guidance on Commission website

⁴⁵ *United Grand Lodge v Holborn BC* [1957] 1 WLR 1080 (Donovan J)

⁴⁶ *Re Delaney* [1902] 2 Ch 642

something done “*in a variety of ways which can be comprehensively described as pastoral and missionary*”. More recently, the Pilsdon Community House (a religious community, living according to Christian principles and giving practical help in cases of drug addiction, drink, having been in prison or loneliness) was considered in *Re Banfield* [1968] 1 WLR 546. That community was “*doing the work of God in practical Christianity*” by receiving and tending for people who were failing to stand up to the strains of life. The court held that the fact that a religious community makes its services available to those of all creeds and of none does not prevent it being a charity for the advancement of religion. It was held that, on a true construction, furthering the purposes of the community amounted to the advancement of religion. It is difficult to see, however, how religion is being advanced unless it is possible for members of the public to make the connection in each case between the conduct of pastoral work of a secular kind on the one hand and the advancement of the particular form of faith and worship which is the object of promotion on the other.

(vii) Religion may be advanced either by promoting the totality of the religious and spiritual teachings of a religious body or by particular reference to some of its tenets or to the religious teachings of a particular individual or group. However, the promotion of a single or a limited number of tenets cannot be used as a cover for a purpose to advance a particular non-charitable (particularly a political) agenda of any individual or group.

(d) **for the public benefit** (see Part 3).

2.26 In all cases, there must be certainty as to the purpose for which assets are to be applied.

A trust cannot be charitable if its objects are too vague to be carried into effect or controlled by the court (the court must be able to come to a conclusion as to the propriety of any item of expenditure that might be challenged). The body must be one the administration of which the court itself could if necessary undertake and control⁴⁷. In *Re Hummeltenberg* [1923] 1 Ch 237, Russell J said: *To quote what Lord Eldon said in the case of Morice v. Bishop of Durham (1): "As it is a maxim, that the execution of a trust shall be under the control of the Court, it must be of such a nature that it can be under that control; so that the administration of it can be reviewed by the Court.* In particular, the description of the purpose and the class to be benefited must be sufficiently certain to enable people of common sense to carry out the expressed aims.

2.27 The Commission is concerned to regulate charities (bodies formally established for legally charitable purposes exclusively and subject to the charity jurisdiction of the court). It does not regulate faith communities, which may be more loosely constituted and have wider remits.

⁴⁷ *Re Hummeltenberg supra*

- 2.28 Charity law has a particular understanding of the advancement of religion for the benefit of the public (see *United Grand Lodge v Holborn Borough Council* [1957] 1 WLR 1080; and the *Scientology* decision p 18 and p 43 and following).
- 2.29 It cannot be said that all of the purposes of a faith community or denomination, or of its regional or local bodies, are exclusively charitable in that sense. For example, a denomination may have purposes directed to the sanctification of its members by means of private prayer (whose purpose and public benefit will not be susceptible of demonstration by means of evidence cognisable by the court), or for engagement with the personal or communal life of individuals in the body politic, or parts of it, in ways not wholly directed to the advancement of religion as indicated in the cases.
- 2.30 The cases in this area of law in relation to a variety of denominations are well established. Not every Roman Catholic purpose is charitable (*McLaughlin v Campbell* [1906] IR 588). Anything which is focussed simply for a main purpose of achieving the benefit or welfare of the adherents of a faith community themselves (*Holmes v AG* The Times 12 Feb 1981 - Brethren), or which does not so much promote religion among the public or take positive pastoral or missionary steps to sustain and increase religious belief among the public (*United Grand Lodge* case) but rather is directed to promoting a particularly holy way of life as a model for others (*Gilmour v Coats* [1949] AC 426), or which promotes private prayer or private spiritual practices amongst the religious adherents for their own spiritual benefit and development (*Re Joy* (1888) 60 LT 175; Tudor on Charities 9th ed p. 94) would not be charitable. A gift to an Anglican vicar of a parish 'for parochial institutions or purposes' (*Re Stratton* [1931] 1 Ch 197) or 'for parish work' (*Farley v Westminster Bank* [1939] AC 430) is not charitable.
- 2.31 The point was made on behalf of the Attorney General in *Re Schoales* that there is no distinction, from the point of view of validity as a gift for charitable purposes, between a gift to the Church of England and a gift to another Church (or faith community). In that case the issue was whether a gift to the quasi-corporate institution consisting of those individuals who carry on the Roman Catholic religion (i.e. the Roman Catholic Church) was charitable. It was held charitable on the basis of an implied restriction in such a gift or trust to the teaching of the doctrines and supporting the work and services of the Church (i.e. a limitation to such of the wider purposes of the relevant church as would then be considered legally charitable for the advancement of religion). The practical application of that case is that, although not all of the purposes of a church, denomination or faith community will be exclusively charitable in law, a gift for the general purposes of a particular church or denomination or faith community falls to be construed in law as a gift which has to be applied only for such of its purposes as are for the advancement of religion (as understood in the charity cases) for the public benefit, and hence charitable. But it remains the case that not every purpose of a faith community is apt to be accepted as charitable.
- 2.32 What is true of faith communities generally is also true of their local and regional branches.

Part 3. PRINCIPLES OF PUBLIC BENEFIT – Principle 1: There must be an identifiable benefit or benefits

Introduction

- 3.1 In its Scientology decision, the Commission noted in relation to the legal test of public benefit under the third head of charity that it is clear⁴⁸ that the burden is upon the religious organisation in question to demonstrate both its impact upon the community and that the impact is beneficial, if public benefit is to be demonstrated.
- 3.2 Some clear principles emerge from the decided cases:
- A gift for the advancement of religion must be beneficial to the public (or a sufficient section of the public)⁴⁹ and not simply for the benefit of the adherents of the particular religion themselves⁵⁰.
 - It is settled law that the question whether a particular gift satisfies the requirement of public benefit must be determined by the court and the opinion of the donor or testator is irrelevant⁵¹.
 - The court must decide whether or not there is a benefit to the community in the light of evidence of a kind cognisable by the court⁵².
- 3.3 The presence or absence of the necessary element of public benefit has also been considered in a number of cases. The essential distinguishing feature seems to be whether or not the practice of the religion is essentially public. The case *Re Hetherington* [1990] Ch. 1 focused on the question of public benefit in relation to religion. In that case the Judge summarised the principles established by the legal authorities. In concluding that a gift for the celebration of masses (assumed to be in public) was charitable he drew upon cases concerning a variety of religious practices his conclusion included:
- the celebration of a religious rite in public does confer sufficient public benefit because of the edifying and improving effect of such celebration on the members of the public who attend; but
 - the celebration of a religious rite in private does not contain the necessary element of public benefit since any benefit of prayer or example is incapable of proof in the legal sense and any element of edification is limited to a private not public class of those present at the celebration⁵³;
 - where there is a gift for a religious purpose which could be carried out in a way which is beneficial to the public (i.e. by public masses) but could also be carried

⁴⁸ *Coats v Gilmour* [1948] Ch 340 C.A. Ld Greene MR at page 347

⁴⁹ *National Anti-vivisection Society case*

⁵⁰ see *AG v Holmes*

⁵¹ *Re Hummeltenberg* [1923] 1 Ch 237 *Re Delaney* [1902] 2 Ch 642

⁵² *Gilmour v Coats* [1948] Ch 340 C.A. Ld Greene MR at page 347

⁵³ *Re Hetherington* and the cases there cited

out in a way which would not have a sufficient element of public element (i.e. by private masses) the gift is to be construed as a gift to be carried out by methods that are charitable, all non charitable methods being excluded.

- 3.4 It is clear from *Re Hetherington* and the cases cited there that it is the public nature of the religious practice which is essential to the gift being charitable.
- 3.5 The Commission concluded that the decided cases indicated that where the practice of the religion is essentially private or is limited to a private class of individuals not extending to the public generally, the element of public benefit will not be established.

Principle 1: There must be an identifiable benefit or benefits

- 3.6 The benefits are to be identified from the organisation's beliefs, doctrines and practices - where the moral and spiritual values (and how they will be promulgated and the general effect of their promulgation) will be found.

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

- 3.7 To be charitable a religious purpose must tend directly or indirectly to the moral and spiritual improvement of the public⁵⁴. The moral and spiritually improving impact of the religious purpose must be capable of being demonstrated. The benefits may be of many types.
- 3.8 This might be shown in the consequential effect that the beliefs and practices promoted by the particular teachings, codes and doctrines have on the followers and others (encouraging them to act as more responsible members of society). Religious organisations will generally promote volunteering time and/or money to help others in society, respect for property and people and the world, abhorrence of violence, honesty, and the shaping of collective values in moral ways. They may promote trust, reciprocity, civil engagement and community cohesion, providing a bridge or link between people in communities diverse in terms of age, gender, class, ethnicity or language.
- 3.9 Cross J in *Neville Estates v Madden* considered the Catford Synagogue (a body with restricted limited membership). It maintained regular sabbath and other religious services and Hebrew and religious classes. A communal hall was erected near the synagogue and social functions were held there. It was held that the purposes were charitable as being religious purposes, notwithstanding that social activities were carried on by members of the synagogue as part of its activities and that the trust was for the benefit of the limited membership, because the social activities were merely ancillary to the religious purposes, and the religious purposes had the requisite element of benefit to the public, since the members of the synagogue mixed with their fellow men and did not live secluded from the world.

Cross J said in that case:

⁵⁴ *Cocks v Manners* (1871) LR 12 Eq 574, 585 per Wickens V-C

“the House of Lords in Gilmour v. Coats has made it clear that a trust for a religious purpose must be shown to have some element of public benefit in order to qualify as a charitable trust. ... The trust with which I am concerned resembles that in Gilmour v. Coats in this, that the persons immediately benefited by it are not a section of the public but the members of a private body. All persons of the Jewish faith living in or about Catford might well constitute a section of the public, but the members for the time being of the Catford Synagogue are no more a section of the public than the members for the time being of a Carmelite Priory. The two cases, however, differ from one another in that the members of the Catford Synagogue spend their lives in the world, whereas the members of a Carmelite Priory live secluded from the world. If once one refuses to pay any regard - as the courts refused to pay any regard - to the influence which these nuns living in seclusion might have on the outside world, then it must follow that no public benefit is involved in a trust to support a Carmelite Priory. As Lord Greene said in the Court of Appeal: ‘Having regard to the way in which the lives of the members are spent, the benefit is a purely private one.’ But the court is, I think, entitled to assume that some benefit accrues to the public from the attendance at places of worship of persons who live in this world and mix with their fellow citizens.”

- 3.11 There will be another difficulty in clearly identifying the benefit where political purposes are in point. One particular form of engagement may be to use political means to promote or advance the particular body of teachings or practices in wider society. Charities may engage in political activities and campaigning, provided this is a *means* of furthering of their charitable purposes rather than a main purpose in itself⁵⁵. So, if the *purpose* (rather than simply a means) is to bring about changes in the law (e.g. a repeal of abortion legislation, or the effecting of the secularisation of the state⁵⁶) then a body which is a charity could not engage in activity to promote that main aim and, conversely, a body promoting such a main aim could not be a charity.

Principle 1b: The benefits must be related to the aims

- 3.12 Where it is a case of a trust for the general promotion of a religion, it will be necessary to establish that the core tenets and practices of the religion are beneficial and essentially public. Commonly, religions and belief systems will enjoy engagement with the wider community as part of their tenets or core practices. Such engagement may be of a general kind or may comprise specific social welfare activities, or work directed to advancing education or promoting health⁵⁷. Religion may be promoted by providing recreational activities⁵⁸. In every case it should be clear how the engagement results in advancing the religion as understood in the cases (particularly the United Grand Lodge and Keren Kayemeth cases) and members of the public should be able to make the link between the undertaking of such pastoral work and the advancement of the particular religion being promoted.
- 3.13 The general promotion of a religion may involve the dissemination of teachings, the provision of buildings accommodating public observances and services, the

⁵⁵ See the Commission’s leaflet CC9

⁵⁶ *Bowman v Secular Society* supra

⁵⁷ *Cocks v Manners* supra

⁵⁸ *Trustees of City of Belfast YMCA v Northern Ireland Valuation Commissioner* [1969] NI 3

administration of those services or the provision of religious personnel to provide the services.

- 3.14 The public may benefit where religious observances and buildings (churches, temples, synagogues, gurdwaras, mosques, meeting houses or other religious buildings which are used for practising the religion) are open to the public. In *Re Hetherington* it was concluded that the celebration of a religious rite in public impacts beneficially on the public by virtue of the morally and spiritually improving effects of the celebration on the members of the public who attend. Those morally and spiritually improving effects now have to be shown to be operating (by reference to their impact and doing good in society). They will thus have to be described and evidenced in ways a court could evaluate.

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

- 3.15 In the *Anti-vivisection Society* case⁵⁹, the principle was clearly stated in that any assumed public benefit from the advancement of morals amongst people, which could, or might, result from the society's efforts to abolish the practice of vivisection was far outweighed by the detriment to medical science and research, and, consequently, to the public health, that would result if the society succeeded in its object. On balance the object of the society was gravely injurious to the public benefit and hence could not be charitable. Lord Simonds protested against the notion that the court *must see a charitable purpose in the intention of the society to benefit animals and thus elevate the moral character of men but must shut its eyes to the injurious results to the whole human and animal creation. ..Where on the evidence before it the court concludes that, however well-intentioned the donor, the achievement of his object will be greatly to the public disadvantage, there can be no justification for saying that it is a charitable object..... The test is to be applied from evidence of the benefit to be derived by the public or a considerable section of it, though a wide divergence of opinion may exist as to the expediency, or utility of what is accepted generally as beneficial. The court must decide whether benefit to the community is established.* He cited with approval authority to the effect that:

"There is probably no purpose that all men would agree is beneficial to the community: but there are surely many purposes which everyone would admit are generally so regarded, although individuals differ as to their expediency or utility. The test or standard is, I believe, to be found in this common understanding." But, the court must still in every case determine by reference to its special circumstances whether or not a gift is charitable.

- 3.16 Some activities, or the way some tenets or practices are promoted, may have a negative effect on public benefit by tending to produce social or personal harm. Such potential harm would have to be balanced against the overall public benefit otherwise established. Where the particular practice or doctrine includes an act which would be against the law, or in contravention of public policy, then it may mean that public benefit cannot be established and hence the body will not be a charity (despite the public benefit otherwise established from the totality of the practices and doctrines).

⁵⁹ *National Anti-Vivisection Society v IRC* [1947] 2 All ER 217

- 3.17 The law will not be drawn into the truth or otherwise of religious doctrines. However, public benefit will be affected if illegality or public policy issues arise in connection with the dissemination of those beliefs, for example if a religion were to promote unlawful discrimination or racial hatred or incite violence.

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

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

- 3.18 It is the benefit from the purpose that must be considered. The court does not adopt the same yardstick for measuring benefits in every category of legal charity. The standard for the advancement of religion differs from that of advancing education, for example⁶⁰.
- 3.19 Whilst in most cases we should expect to see a wide public benefit going beyond the members of the religious community concerned itself (see *Holmes v AG* above), it may be (for reasons stemming from the extract from *Neville Estates v Madden* above) that immediate benefits could be enjoyed by that religious community on the reasonable premise that such wider public benefit will flow.
- 3.20 An evaluation will have to be made on the basis of the particular purpose in individual cases.

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 ability to pay any fees charged.

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

- 3.21 The actual number of people who can benefit at any one time can be quite small as long as anyone who could qualify for the benefit is eligible⁶¹. But public benefit will not be satisfied where the adherents are a small number of people who are an enclosed group of followers, who will not have any contact with society in general, even if in theory any member of the public could train to join that group⁶². Nor is it possible to argue that the adherents in the enclosed environment themselves provide public benefit by virtue simply of constituting a good example model lives. But, even where there may be benefits to the adherents themselves (for example, their own spiritual development or personal salvation or liberation), and there is some element of private prayer or contemplation, where the adherents actually directly engage with members of the public an element of public benefit might be shown⁶³.
- 3.22 Benefit must be accessible. One essential distinguishing feature is whether or not the practices or promotion of the tenets are essentially public in nature. They may be public in nature by the openness of access for the public to services for example. In cases where access is only to a limited membership, the impact or benefit may

⁶⁰ *Gilmour v Coats* [1949] AC 426, 449

⁶¹ see *Re Le Cren Clarke* [1996] 1 All ER 715

⁶² *Gilmour v Coats*. See also the example of Dominican Convent in *Cocks v Manners* [1871] LR 12 Equity 574

⁶³ *Neville Estates Ltd v Madden* [1962] Ch 832, 853. See also the example of the Sisters of Charity in *Selley Oak in Cocks v Manners* [1871], Commissioners Decision in *Caldey Abbey* 1969; *Holmes v AG* [1981] and the Commissioners' Decision in the *Society of the Precious Blood* 1989

arise from those attending practising their religion in the wider world as for example in the Catford Synagogue case mentioned above. In common with non-religious belief systems, we would need to see that the doctrines, beliefs and practices of the organisation are accessible to the public and capable of being applied by members of the public according to individual judgement or choice from time to time in such a way that benefit may result. But the general public benefit would have to be proved and any individual private benefit shown to be no more than incidental to it.

- 3.23 It is rare that fees which are more than nominal are charged for access to religious materials, services or instruction by a body established for the advancement of religion⁶⁴. Where this is the case, then the Commission's guidance on fee charging will need to be consulted and generally followed. Today, however, it is not uncommon for religious charities to invite voluntary subscriptions from their adherents, sometimes of substantial proportions of the family income⁶⁵. Provided the process comprises one of invitation to which a genuinely voluntary response or refusal is to be made, and that it is not a precondition of the receipt of benefit from the organisation, then there is no difficulty in soliciting such subscriptions. Charities may, of course, charge reasonable amounts for the provision of particular services (such as naming ceremonies or other family rituals performed as part of a religious service) provided they are affordable by all in society.

Principle 2d: Any private benefits must be incidental

- 3.24 *"A gift could be beneficial and may tend to the advancement of religion but if it appeared that the benefit was private and not public, the gift would fail to be a valid charitable gift."*⁶⁶
- 3.25 Private benefits will not be incidental where the practices of the religion are essentially private or limited to a private class of individuals not extending to the public generally.
- 3.26 Particular problems may arise in relation to group leaders of religions or non-religious belief systems. Any evidence of private benefit which may be more than legitimately incidental would have to be carefully examined.
- 3.27 Similarly benefits may be afforded to members of religious communities. Often clergy and members of religious orders will receive benefits for their everyday sustenance. In the nature of the particular charity there may be a requirement for the heart of the central decision-making function an inside knowledge of faith, teachings, disciplines and practice on the part of those uniquely qualified by training and way of life to understand the many complexities of the task. In many cases, there has never been any doubt in the minds of subscribers that suitable and modest living expenses – sufficient to maintain a fitting livelihood⁶⁷ - would be afforded to clerical and religious members of bodies of charity trustees of the certain charitable trusts. That level of remuneration is not afforded to them because they are a trustee

⁶⁴ This has not always been the case e.g. Pew rents were the principal source of financial support for many churches during the 19th and earlier part of the 20th century. Each individual or family paid a periodic rental fee for the right to occupy a certain pew during services.

⁶⁵ e.g. the practice of tithing

⁶⁶ Lord Greene MR in *Gilmour v Coats* [1948] Ch 340, 345

⁶⁷ including, nowadays, in so far as its use may not be necessary for pastoral requirements, a motor car or access to one.

but on the same footing as their fellow clerics or members in the relevant diocese or religious congregation and for the purpose of enabling the charitable work of the charity for the benefit of the public. There may be a lack of specific authorisation mentioning remuneration and explicitly referring to charity trustees. But it is not the trustee who has put himself or herself in a position of benefit but, effectively, the requirements of the charity. The legitimacy of this sort of arrangement has been considered. In *Cocks v Manners*⁶⁸ Sir John Wickens VC considered the religious congregation of the Sisters of Charity of St Paul. He upheld its charitable status:

“The community of sisters at Selley Oak is, in point of law, a voluntary association for the purpose of teaching the ignorant and nursing the sick. I cannot distinguish it in this respect from any of the numerous voluntary associations established in London ... in which zealous persons unite for the purpose of performing charitable functions, taking out of funds of the association so much as is necessary for their own wants and extending their operations as their means permit.”

- 3.28 Similarly *Re Banfield*⁶⁹ dealt with a similar body and found no difficulty in relation to a gift to the community as a whole which was held to be charitable. The body’s “*object and purpose was to found a community where persons could lead a simple, pious life together.... It exists to dedicate everything to God, even the most humble workaday tasks, and to do the will of God in practical Christianity. "Principally we are a religious community of men and women who have taken no specific vows, but who have agreed that prayer and work and practical charity should be our supreme purpose." ... It receives and tends the needs of those members of the public who need help for divers reasons, such as drug addiction, or drink, or having been in prison, or even loneliness or mere failure to stand up to the strains of life.*”
- 3.29 In organisations such as this, the plain intention of the founders of the charity and of its subsequent subscribers is for the religious personnel involved in the administration of the organisation to continue to receive the benefit of living expenses on the same basis as other clerical and religious members of the organisation. In doing so, such persons acting as charity trustees are not putting themselves in a position of potential conflict of interest and duty. They are placed there by necessary implication of the objective provisions establishing the organisation and regulating its conduct.
- 3.30 There would seem to be no issue where a shrinking religious community has in practice fewer assets available for the external works of charity because its assets are required to maintain elderly members of the community. This seems to be no more than a working out of the understanding on which the assets were contributed by the contributors in the first place and the discharge now of what was understood then to be the legitimate incidents of providing the external charitable service while it was being provided in the past. It is also the case that the provision of appropriate care for retired religious personnel is itself a charitable purpose⁷⁰.

⁶⁸ (1871) LR 12 Eq 574

⁶⁹ [1968] 1 WLR 846

⁷⁰ *Re Forster* [1939] Ch 22