



Consultation

The use and promotion of complementary and alternative medicine: making decisions about charitable status

Introduction

Only organisations which have purposes which are exclusively charitable can be charities. The range of charitable purposes is defined in law and includes purposes which advance health or relieve the needs of elderly or disabled people. Some organisations carry out these purposes by using or promoting complementary and alternative medicine (or 'CAM') therapies. The Charity Commission (the 'Commission') is reviewing its approach to making decisions about whether these organisations are charities, and in this consultation the Commission explores some of the issues and seeks views to inform that review.

The Commission knows that some people hold strong opinions on the subject of CAM therapies, whether in support of such therapies or against them. As the Commission explains in this document, its role is not to decide whether these therapies are 'good' or 'bad', or whether or not they should be made available to the public. The Commission does not have a view on these subjects. The question whether an organisation which uses or promotes CAM therapies is a charity is a question of law, and the Commission can only make decisions about this in line with what the law says.

This document explains what the consultation is about; describes the Commission's legal role; sets out what makes an organisation a charity; and gives a number of questions on which the Commission would welcome your views.

The annex to this document gives more detail about the legal framework for the Commission's decisions about charitable status, and defines what it means by some of the phrases the Commission uses in this document.

What is this consultation about?

This consultation is about the Commission's approach to deciding whether an organisation which uses or promotes CAM therapies is a charity.

This consultation relates to organisations whose purposes involve the use or promotion of CAM therapies. To the extent that these are charities, the Commission anticipates that these will in most cases be charities for the advancement of health or related purposes. Not all charities whose work relates to CAM will be affected by the issues considered in this consultation.

The Commission's decisions about charitable status

Whether or not an organisation is a charity is a question of law, and the test for charitable status is set out in legislation passed by Parliament and decisions of the courts. The Commission looks to the law when making decisions but does not itself set requirements for something being a charity. When the Commission receives an application for registration, it assesses whether the organisation has met the legal requirements for being a charity. To do this the Commission considers:

- the purposes of the organisation (what it is set up to do) - what the purposes are and whether they fall within what the law defines as charitable purposes
- whether the purposes are for the public benefit - this means identifying:
 - what the benefits of the organisation's purposes are
 - whether the benefits are available to the public at large, or to a sufficient section of the public

When assessing whether an organisation's purposes are beneficial, the Commission considers whether there is a benefit which results from them, and also whether there is any potential harm which may result. If there is the potential for harm, then this must not outweigh the benefit if the organisation is to be registered as a charity.

Deciding whether an organisation which uses or promotes CAM therapies has charitable purposes for the public benefit

If the Commission is to register, as a charity, an organisation with purposes which involve the use or promotion of CAM therapies, the Commission needs to be satisfied that the use or promotion of these therapies will further those purposes, and that this will be for the public benefit.

For example, if an organisation is established to provide specific treatments to reduce the symptoms of a particular disease, then in order for the Commission to register it as a charity it must be satisfied that the treatments it intends to use will tend to reduce those symptoms - so that it is clear that the organisation's purposes will advance health for the benefit of the public.

The Commission also needs to assess whether the purposes of the organisation may cause any harm.

In making these assessments the Commission relies on evidence, whether provided by the applicant organisation or from other sources. This means that, if the Commission is to register an organisation as a charity, it needs to have information on which it can base a conclusion that its purposes are charitable for the public benefit. The Commission does not decide whether particular therapies do, as a matter of scientific fact, have the effects which are claimed; the Commission decides whether there is enough evidence that it can conclude that a particular purpose will be furthered for the public benefit.

The Commission does not support or oppose the use or promotion of CAM therapies. The registration of a CAM organisation as a charity is not an endorsement of the organisation or its activities - it is a recognition that the organisation is a charity and meets the criteria for registration, including demonstrating that its purposes are for the public benefit.

As this is a legal test, the Commission can only rely on evidence which it believes a court would recognise if it had to decide whether or not the relevant organisation is a charity.

The Commission's current guidance describes its approach to the types of evidence it can use as follows:

Examples of suitable evidence include:

- peer-reviewed research (ie research scrutinised by fellow professionals) in recognised medical journals, for example **The Lancet** or **BMJ**
- recognition by the Department of Health or other governmental health regulatory or health provision body

Examples of evidence which is **not** sufficient to demonstrate efficacy include:

- testimonial or anecdotal evidence
- articles or features of a non-scientific nature promoting the method, treatment or therapy

Deciding whether evidence is sufficient in relation to the claims made is not always straightforward.

Factors that can help include:

- the source of the evidence - is it sufficiently independent and authoritative?
- is the evidence accepted in academic or scientific circles? If not, can any differences of expert opinion be rationally explained?
- does the evidence fully address the claims made for the method?
- is the method recognised and/or supported by the Department of Health or other governmental health provision body?
- what is the method's relationship with conventional medicine?

A detailed review of CAM therapies was undertaken by the House of Lords Select Committee on Science and Technology in 2000. The Commission's current approach adopts the classification of CAM therapies set out in the Committee's report as part of the framework for assessing applications from CAM organisations.

If you are interested in knowing more about the Commission's current approach you can read the guidance which its staff use. A link can be found in the annex to this document.

Issues on which the Commission is seeking views

A Level and nature of evidence

The Commission's current approach acknowledges that some CAM therapies have been recognised in legislation or amongst the wider public. As part of this review the Commission is considering whether any particular degree of public or regulatory recognition can be used as evidence to support the use or promotion of CAM therapies being charitable.

Question 1: What level and nature of evidence should the Commission require to establish the beneficial impact of CAM therapies?

Question 2: Can the benefit of the use or promotion of CAM therapies be established by general acceptance or recognition, without the need for further evidence of beneficial impact? If so, what level of recognition, and by whom, should the Commission consider as evidence?

B Conflicting and inconsistent evidence

In some cases there may be conflicting evidence as to whether or not a particular treatment is effective; or there may be only a very limited amount of evidence which supports claims of beneficial impact for a treatment.

Question 3: How should the Commission consider conflicting or inconsistent evidence of beneficial impact regarding CAM therapies?

C Alternative therapies and the risk of harm

When considering the benefits which are claimed for a CAM therapy, the Commission considers whether there is any potential for harm as a result of the use or promotion of that therapy. Where an alternative therapy is offered instead of conventional therapies for curing a medical condition, there is a risk of harm if people who are in need of treatment may not seek, or may delay seeking conventional treatment as a result.

Question 4: How, if at all, should the Commission's approach be different in respect of CAM organisations which only use or promote therapies which are complementary, rather than alternative, to conventional treatments?

D Palliative alternative therapy

If an alternative therapy is only offered on a palliative basis, to relieve symptoms of a condition rather than to cure or diagnose, the risk indicated at section C may not be the same.

Question 5: Is it appropriate to require a lesser degree of evidence of beneficial impact for CAM therapies which are claimed to relieve symptoms rather than to cure or diagnose conditions?

E Other comments relating to the Commission's approach to making decisions relating to organisations which use or promote CAM therapies

The Commission would welcome any other observations which you may have on its current approach to registering CAM organisations as charities. Please note that the Commission is not consulting on its approach to registering charities generally, but on its approach which applies specifically to CAM organisations.

Question 6: Do you have any other comments about the Commission's approach to registering CAM organisations as charities?

Consultation questions

This section repeats, for ease of reference, the consultation questions in this document:

Question 1: What level and nature of evidence should the Commission require to establish the beneficial impact of CAM therapies?

Question 2: Can the benefit of the use or promotion of CAM therapies be established by general acceptance or recognition, without the need for further evidence of beneficial impact? If so, what level of recognition, and by whom, should the Commission consider as evidence?

Question 3: How should the Commission consider conflicting or inconsistent evidence of beneficial impact regarding CAM therapies?

Question 4: How, if at all, should the Commission's approach be different in respect of CAM organisations which only use or promote therapies which are complementary, rather than alternative, to conventional treatments?

Question 5: Is it appropriate to require a lesser degree of evidence of beneficial impact for CAM therapies which are claimed to relieve symptoms rather than to cure or diagnose conditions?

Question 6: Do you have any other comments about the Commission's approach to registering CAM organisations as charities?

What the Commission is not consulting on

This consultation is not about any of the following matters:

- whether or not CAM therapies in general, or any particular CAM therapies, are effective
- what evidence may exist in support of or against the efficacy of any particular CAM therapy
- whether or not any particular organisation should be, or should continue to be registered as a charity
- the Commission's approach to registering charities generally

The Commission is not asking for evidence on any of these matters in connection with this consultation, and responses on these matters will not influence the outcome of this policy review.

Once the Commission has completed its review of its policy in this area, it will consider whether it is necessary to review the registration of any particular charity.

How to respond

You can respond to this consultation by the following methods:

Email: legalcharitablestatus@charitycommission.gsi.gov.uk

Post: Charity Commission
Re: CAM Consultation
PO Box 211
Bootle
L20 7YX

When responding, it would be helpful to the Commission if your response could address each of the questions. The Commission would be particularly interested in hearing from charities and other organisations which use or promote CAM therapies, or which have a professional interest in them and/or in the legal process for registering charities.

Deadline for responses

If you would like to respond to this consultation, please ensure that your response reaches the Commission by one of the methods in 'How to respond' on or before **Friday 19 May 2017**.

What the Commission will do next

The Commission will consider all responses to this consultation which it receives by the deadline referred to. As part of its review the Commission will hold focused discussions with relevant organisations so that it can explore the views of those with particular experience and expertise on this subject in more detail.

After the end of the consultation period, the Commission will decide whether its approach to CAM should be changed, and if so, what changes should be made. The responses which it receives will not alone determine the outcome of its policy review. The outcome will be determined by the Commission's own review of its current policy, having considered the responses received to this consultation, in conjunction with legal advice which it receives.

Once that process is complete, if the Commission decides that any changes should be made to its published guidance, it will make these changes.

Use of your data

All information contained in the consultation responses (including personal information) may be published or disclosed in accordance with the access to information regime. This is primarily set out in the Freedom of Information Act 2000 (FOIA), Data Protection Act 1998 and Environmental Information Regulations 2004.

The Commission can only treat information in your consultation response as confidential if that's consistent with the law. There is a statutory Code of Practice under FOIA which public authorities must comply with. This sets out how confidential information must be dealt with. The Commission can't give assurances that all information will be kept confidential, but it will take into account any representations that you make.

If you object to any information in your consultation response (including your personal details) being published, please say so. Please explain why you think the information should be confidential. This will help the Commission to decide whether there are grounds for not publishing it.

Annex

The legal framework

The Commission's role

The Commission is the regulator and registrar of charities in England and Wales. Its 5 statutory objectives include increasing public trust and confidence in charities and promoting awareness and understanding of the public benefit requirement.

Every charity in England and Wales with an annual income of over £5000 must apply to register with the Commission, unless it is exempt or excepted.

Amongst the functions which the Commission carries out are determining whether institutions are or are not charities, and maintaining an accurate and up-to-date register of charities.

The Commission's legal role is not to decide whether any particular therapy is or is not effective as a matter of scientific fact, but to decide whether the purposes of an institution are exclusively charitable for the public benefit. This involves assessing, based on the evidence available to it, whether an organisation's purposes will operate in the way which their promoters intend, and whether this will be for the public benefit, in the charity law sense.

Charitable status

Whether or not something is a charity is a question of law. Not everything which is beneficial for the public, or which is widely regarded as being so, is charitable.

A charity is any organisation which is established for exclusively charitable purposes, and is subject to the High Court's charity law jurisdiction. It can be a legal entity, such as a company; a trust, run by trustees; or a group of people who form an unincorporated association.

In order to be registered as a charity, an organisation must be able to demonstrate that it will further the purposes for which it has been set up, and that those purposes are exclusively charitable and for the public benefit. It must, if required, provide evidence to support this.

The scope of what is charitable can change over time with changes in law or social circumstances.

Charitable purposes are those purposes set out, or referred to, in section 3 of the Charities Act 2011.

The Commission has issued **guidance on the descriptions of charitable purpose, and on the public benefit requirement**.

GOV.UK provides more information on **charitable purposes**.

The advancement of health and related descriptions of purpose

The advancement of health or the saving of lives is a description of purpose in section 3 of the Charities Act 2011, and includes the prevention or relief of sickness, disease or human suffering. 'Health' in this context includes both physical and mental health. A range of purposes have been accepted by the Courts or by the Commission as being within this description.

A separate, related description of purpose is the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage.

Some registered charities for the advancement of health, or other related purposes, use or promote CAM therapies in carrying out their work.

The Commission's current guidance for its staff on assessing whether an organisation which uses or promotes CAM is a charity, **OG 304**, is available online.

Public benefit

As well as being within one of the statutory descriptions of purpose, a purpose must be for the public benefit in order to be charitable. 'Public benefit' is a legal concept based on decisions of the Courts. In order for a purpose to be for the public benefit, it must be beneficial, and must benefit the public in general or a sufficient section of the public.

The Commission's detailed guidance on the **public benefit requirement (PB1)** can be found on GOV.UK.

In assessing whether a purpose is for the public benefit, the Commission may need to ask for evidence as to whether or not the purpose will have the beneficial effect which is claimed. This consultation is about the level and nature of evidence which the Commission should require in assessing whether CAM organisations are charities.

Words used in this document

Although widely used, the phrase 'complementary and alternative medicine' is not easy to define. The Commission uses this phrase in this consultation to refer to any form of therapy which does not form part of what is generally accepted in the United Kingdom as being conventional medicine. The Commission accepts that this definition is not precise, but to its knowledge there is no widely agreed, clear definition of what constitutes CAM.

'Complementary' therapies are those which are offered alongside conventional medicine, and are not intended as a substitute for it.

'Alternative' therapies are offered separately from conventional medicine. They may be offered alongside or instead of conventional medicine.

Where this document refers to a 'therapy', this includes any form of therapy, treatment, medication, supplement or other practice which is intended to diagnose, alleviate or cure any medical condition, or otherwise to further any charitable purpose by its promotion or application.

In this document the Commission uses the term 'CAM organisation' to mean any organisation which is established to further purposes which will involve the use or promotion of CAM therapies. This may mean that its purposes expressly refer to the use or promotion of CAM therapies, or that its purposes are to be furthered in a way which relies on them.