THE DEVELOPMENT OF TOLERANCE AND DIVERSITY IN THE TREATMENT OF RELIGION IN CHARITY LAW

Francesca Quint[1] and Peter Hodkin[2]

1. Introduction

This article is based on a joint paper delivered in May 2006 at the Fifth International Roundtables for the Semiotics of Law held at Universite du Littoral, in Boulogne, of which the theme was Law, Tolerance and Diversity.

Words such as "religion" and "church" have carried different meanings at different times and in different places. These words invariably connote preferential treatment, and sometimes even the right to exist at all – and reflect the attitudes of the government and the underlying prevailing views of the relevant society.

The other side of the coin is that certain groups or belief systems which are not favoured by the government/society are excluded, discriminated against or even banned.

The favoured groups and activities are usually referred to as religions, churches and charities; the disfavoured as superstitions, heresies and cults. There is an obvious emotional slant to the language chosen.

The legal definitions have been changed over the centuries to reflect growing tolerance and diversity in the treatment of religions in charity law. However, there is still some way to go before all religious groups are treated equally. Intolerance

1 Barrister, Radcliffe Chambers, 11 New Square, Lincoln's Inn, London WC2A 3QB; Tel: 020 7831 0081; Email: fquint@radcliffechambers.com.

2 Solicitor, Principal, Hodkin & Company, 42-44 Copthorne Road, Felbridge, East Grinstead RH19 2NS; Tel 01342 325765 Email peter@phodkin.fsnet.co.uk.

is still evident in the failure to provide inclusive definitions, despite modern international human rights conventions which aim to eliminate such discrimination. The 2006 charities legislation in the United Kingdom presents an opportunity to remove discrimination, but also the risk that more intolerance will be created. In this paper we will trace the development of tolerance and diversity in the treatment of religious purposes under the law relating to charities in England and Wales, and suggest how the opportunity provided by the new Charities Act may be realised, and intolerance reduced or avoided.

2. What is a charity?

In general terms, a charity is a trust or other organised body which the law recognises as providing benefit to the public, and which is not operated for any individual gain or profit. But not every body established for the public benefit is a charity: this depends on the nature of the purpose.

Four heads or categories of charity were defined by Lord MacNaghten in *Income Tax Special Purposes Commissioners v Pemsel*[3]: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community not falling under any other preceding heads.

The Charities and Trustee Investment (Scotland) Act 2005 and the Charities Act 2006, which is due to come into force in relation to the meaning of charity in early 2008, reflect these heads of charities, but specify a number of other charitable purposes (which were traditionally considered as part of the fourth head of charity), e.g. the advancement of health. They also remove the presumption that charities for the relief of poverty or the advancement of education or religion benefit the public, and require such benefit to be positively proved in relation to any purpose which aspires to be charitable.

Charities are given favourable tax treatment, and do not generally have to pay income tax, corporation tax, capital gains tax or stamp duty and are given relief on local property tax. Gifts to charities also have favourable tax treatment, e.g. donors avoid inheritance tax and income tax and corporation tax. In addition they enjoy legal privileges. Gifts for charitable purposes are valid, and charitable trusts can be arranged to last indefinitely, whereas gifts and trusts for most non-charitable purposes are invalid.

3 [1891] AC 531.

3. Religious charities

The very earliest reported case relating to a charitable purpose dates from 300 A.D. A Roman citizen left money for celebratory games which, as it happened, had a religious function. Otherwise, the earliest charities were mediaeval schools, hospitals and almshouses and the support of (at that time Catholic) churches, monasteries and convents.

Until relatively modern times, gifts to religion and for religious purposes were regarded as charitable, but the only religion recognised by the State was first the Catholic Church, and then, after its establishment by Henry VIII, the Church of England.

Trusts for the support of any religion which was not the established religion were termed "superstitious uses" and were illegal. These included Catholic, non-Conformist and Jewish religious purposes. The original rationale was to assist the established (State sponsored) religion, whilst preventing support for heresy and false religions.

The 19th and 20th centuries have seen a progressive development of tolerance and pluralism, and the gradual acceptance of many other religions as providing a public benefit, and as entitled to the same favourable treatment. The modern rationale for according religious groups charitable status and thus favourable treatment was expressed by Mr Justice Walton in *Holmes v HM Attorney General*[4] where he stated: "It has long been settled that the law presumes that it is better for a man to have a religion – a set of beliefs which take him outside his own petty cares and lead him to think of others – rather than to have no religion at all."

Among charities, religious organisations may be considered the ultimate, in promoting altruistic and selfless behaviour in individuals, and thereby leading to the creation of other charities. But, even today, intolerance towards religion generally, or certain religions in particular, leads to hardship, injustice and suffering around the world. It also has to be recognised that religion itself is often used as an excuse for intolerance, unfair discrimination, violence and terrorism.

4. The development of tolerance

The Charitable Uses Act 1601 (also known as the Statute of Elizabeth) contained a preamble setting out recognised charitable purposes, which until now has been regarded as a primary statement of charitable purposes in English law. The only

4 (1981) The Times, 12 February.

reference in the preamble to a religious purpose is the repair of churches. This referred to Church of England church buildings. Sir Francis Moore MP, a member of the Parliament which passed the 1601 Act explained why the advancement of religion as such is not mentioned in the preamble: "Lest the gifts intended to be employed upon purposes grounded upon charity might, in times of change (contrary to the minds of the givers), be confiscated into the King's Treasury. For religion being variable according to the pleasure of succeeding princes, that which at one time is held orthodox, may at another be accounted superstitious, and then such lands are confiscated."[5] He was thinking of Henry VIII.

But case law subsequently recognised the promotion of the established religion, as well as the support of the clergy as charitable. See for example *Pember v Inhabitants of Kington*[6], where the maintenance of a preaching minister was held to be charitable.

Until the Toleration Act 1688 the purposes of other religions/denominations were still held to be superstitious, i.e. illegal. The Toleration Act 1688 still did not apply to Catholics, Jews or Unitarians.

In 1754 Judaism was held to be superstitious (*De Costa v De Paz*[7]).

But progressively different religious purposes were held to be lawful/charitable as shown by the following chart:

5 Moore, Sir Francis "Readings upon the Statute 43 Elizabeth" in Duke, Law of Charitable Uses, (1676) 131 at 132.

6 (1839) Duke 82.

7 (1753) 2 Swanst. 487n.

1732	*Attorney General v Hickman*[8]	Baptist Chapel
1808	*Attorney General v Wansay*[9]	Presbyterianism
1813	Unitarian Relief Act	Unitarianism
1832	Roman Catholic Charities Act	Roman Catholicism
1834	*Bradshaw v Tasker*[10]	Roman Catholicism
1837	*Straus v Goldsmit*[11]	Judaism
1843	*Shore v Wilson*[12]	Unitarianism
1846	Religious Disabilities Act	Judaism
1874	*Dowson v Small*[13]	Methodism
1898	*Re Brown*[14]	Plymouth Brethren
1919	*Bourne v Keane*[15]	Bequest for masses no longer "superstitious" so not unlawful
1948	*Re Doering* (a Canadian case)[16]	Church of the New Jerusalem
1970	*R v Registrar General ex p Segerdal*[17]	Buddhism regarded as a religion (obiter)
1975	*Joyce v Ashfield Municipal Council*[18]	Exclusive Brethren
1983	*Church of the New Faith v Commissioner for Payroll Tax* (an Australian case)[19]	Scientology
1999	*Varsani v Jesani*[20]	Hinduism – assumed charitable

8 (1732) Kel. W 34; 25 E.R. 482

9 (1808) 15 Ves. 231; 33 E.R. 742

10 (1837) 2 My. & K. 221; 39 E.R. 928

11 (1837) 8 Sim. 614; 59 E.R. 243.

12 (1842) 9 Cl. & Fin. 355; 8 E.R. 450.

13 (1874) 22 W.R. 514; LR 18 Eq. 114.

14 (1898) 1 I.R. 423.

15 (1919) AC 815.

16 (1949) 1 D.L.R. 267.

17 (1970) 2 Q.B. 697.

18 (1978) AC 122.

19 (1983) 57 ALJR 785; (1982) 154 CLR 120.

20 [1999] Ch. 212.

But there still has to be a benefit to the public. This is a fundamental principle in charity law. In *Yeap Cheah Neo v Ong Cheng Neo*[21] the Court held that promoting Chinese ancestor worship was a benefit only to the family concerned, not the public. In *Gilmour v Coats*[22] the House of Lords held that a gift to an enclosed religious community was not charitable, as there was no proof of benefit from intercessory prayers. On the other hand in *Re Hetherington*[23] a bequest for masses for the donor's soul was charitable because they were to be said in public.

An act of worship in public is said to benefit the community by the (direct) "edifying and improving effect on those attending". But even where a Jewish synagogue was open to members only, it was still charitable because its members lived and worked in the community and therefore there was a indirect benefit to the public even though the services were not open to the public (*Neville Estates v Madden*[24]).

Until the Charities Act 2006, a gift for the advancement of religion has been presumed to provide a public benefit, and be charitable. In *Re Watson*[25] Plowman J said: "The only way of disproving a public benefit is to show that the doctrines inculcated are – 'adverse to the very foundations of all religions, and that they are subversive of all morality.'"

5. The modern era and the definition of religion

Whilst historically "religious charity" has been defined by reference to those religions favoured by the government of the day, such an approach is hardly appropriate in the modern era of human rights and tolerance. In recent years the courts have continually emphasised that the court cannot discriminate between religions.[26]

21 (1875) LR 6 PC 381.

22 [1949] AC 426.

23 Sub nom. *Gibbs v McDonnell* [1990] Ch 1.

24 [1962] Ch 832.

25 [1974] 1 WLR 1472.

26 *Varsani v Jesani* [1999] Ch 219, CA.

Lord Reid explained the modern stance in 1949:

> *"The law of England has always showed favour to gifts for religious purposes. It does not now in this matter prefer one religion to another. It assumes that it is good for a man to have and to practice a religion, but, where a particular belief is accepted by one religion and rejected by another, the law can neither accept nor reject it. The law must accept the position that it is right that different religions should each be supported, irrespective of whether or not all of its beliefs are true. A religion can be regarded as beneficial without it being necessary to assume that all its beliefs are true, and a religious service can be regarded as beneficial to all those who attend it without it being necessary to determine the spiritual efficacy of that service or to accept any particular belief about it."*[27]

However this still begs the question as to what, in law, is a religion?

Parliament first grappled with this question, in the context of the modern approach, in 1894. At that time a considerable number of secular charitable trusts had come over the years to be in the control of churchwardens. Parliament wanted to transfer the control of all of these secular trusts from the churchwardens, whilst at the same time ensuring that the control of all trusts for religious purposes were not transferred. To achieve this aim they had to define a "religious purpose". The government minister responsible for the Local Government Act 1894[28] explained that the definition of "ecclesiastical charity"[29] was intended to sweep in all religious charities by defining all religious purposes[30]. According to the Act property was held for religious purposes if it was held for one or more of the following purposes:

a. for any spiritual purpose that is a legal purpose; or

b. for the benefit of any spiritual person or ecclesiastical officer as such; or

c. for use, if a building, as a church, chapel, mission room, or Sunday school, or otherwise by a particular church or denomination; or

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27 *Gilmour v Coats* [1949] AC 426.

28 56 & 57 Vict. Chapter 73. An Act to make further provision for local government in England and Wales. The Act made provision, inter alia, for the regulation of property held by trustees for any public purpose connected with a parish, subject to exceptions for ecclesiastical charities.

29 In section 75 of the Act.

30 Hansard, 19th February 1894

d. for the maintenance, repair, improvement of any building as aforesaid, or for the maintenance of divine service therein; or

e. otherwise for the benefit of a particular church or denomination, or of any members thereof as such.

Whilst the Local Government Act 1894 was subsequently repealed, its definition of an ecclesiastical charity[31] has been retained in subsequent legislation including the Charities Acts 1960[32] and 1993[33]. It may be considered to be an enlightened definition, free from Judeo-Christian bias, which easily embraces both theistic and non-theistic religions.

There is no English judicial definition of religion, but in 1931 the Court of Appeal defined what the religious head of charity – namely the advancement or promotion of religion – meant. In *Keren Keyemeth Le Jisroel v Inland Revenue Commissioners*[34] the Court of Appeal ruled that: "The promotion of religion means the promotion of spiritual teaching in a wide sense, and the maintenance of the doctrines on which it rests, and the observances which serve to promote and manifest it." In *Re Thackrah*[35] Bennett J stated: "[This definition is] what is meant by 'promotion of religion' as that phrase is understood in these courts."

Unfortunately Dillon J did not refer to this legal definition in his judgment in *In re South Place Ethical Society*[36]. Instead he combined two definitions of the word "religion" from the Oxford English Dictionary when ruling that an ethical society did not have the charitable purpose of advancing religion, although it did have the charitable purpose of advancing education. Dillon J suggested (obiter) that the two essential attributes of a religion were "faith in a God and worship of that God".

Despite this judicial suggestion, the Charity Commission have registered as charities many religious bodies, including Jains, Taoists, Buddhists and Hindus on the basis that they are charities for the advancement of religion. These bodies do not meet Dillon J's suggested criteria, but do pass the *Keren Keyemeth* test.

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31 See s 75.

32 See s. 45(1).

33 See s. 96(1).

34 [1931] 2 KB 465.

35 [1939] 2 All ER 4.

36 [1980] 1 WLR 1565.

In 1999, however, in a decision relating to the Church of Scientology[37], the Charity Commission stated that, for the purposes of charity law, a theistic element was necessary, and they would only consider a belief system as a religion if it involved belief in and worship of a Supreme Being. "Worship" was defined as acts indicating reverence or respect for the Supreme Being. In reaching this conclusion the Charity Commission did not refer to those recognised religious denominations which do not meet this criterion, and also admitted that they were not bound to reach this conclusion because of any binding precedent. It can be seen as a retrograde step to revert to a Judeo-Christian oriented definition of religion, contrary to the trend towards greater diversity and pluralism seen elsewhere.

In November 2005 the Home Office minister responsible for the Charities Bill in the House of Lords declared that a definition of religion which required belief in and worship of a Supreme Being did not include Buddhism and other major religions, and was "not as comprehensive or rigorous as the approach to the meaning of religion adopted by the courts in relation to the [European Convention on Human Rights]."[38]

In *R (Williamson) v Secretary of State for Education and Employment*[39] Lord Walker remarked that

> "*The trend of authority (unsurprising in an age of increasingly multi-cultural societies and increasing respect for human rights) is towards a 'newer, more expansive, reading' of religion*".

6. International pluralism and human rights

Modern human rights treaties and instruments are explicit and unequivocal not only in seeking to protect the right to freedom of thought, conscience and religion[40], but also in prohibiting discrimination in this area[41]. The terms "belief"

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37 Decisions of the Charity Commissioners: The Church of Scientology, 17th November 1999. The decision predated the entry into force on 1st October 2000 of the Human Rights Act 1998.

38 See Lords Hansard 8th November 2005, col 557

39 [2005] 2 WLR 590.

40 see article 18 Universal Declaration of Human Rights and article 9 European Convention on Human Rights.

41 see article 14 European Convention on Human Rights and article 26 International Covenant on Civil and Political Rights (ICCPR).

and "religion" are to be broadly construed and the protection extends to theistic, non-theistic and atheistic beliefs and "is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions..."[42]

The Human Rights Act 1998 incorporated the European Convention on Human Rights into domestic law. Section 13 states:

> "*If the court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right*."

In the 1996 European Court of Human Rights case *Mannousakkis v Greece*[43], the court criticised and then struck down measures that vested officials with "very wide discretion" on matters relating to religion. The court held that "the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate." The point was reiterated in October 2006 in the case of *The Salvation Army v Russia*[44] where the court stated:

> "*the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which article 9 affords. The State's duty of neutrality and impartiality, as defined in the court's case law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs*".

The case further emphasised that where a State created any situation for a religious organisation which had "an appreciably detrimental affect on its functioning and religious activities" this constituted an interference with article 9 rights, which could only be justified in very limited defined circumstances "necessary in a democratic society".[45] A failure to grant charity status to any religious organisation would clearly have a detrimental effect on its functioning.

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42 United Nations Human Rights Committee General Comment 22 on Article 18 ICCPR.

43 23 EHRR 387.

44 Application no. 72881/01. See also *Metropolitan Church of Bessarabia v Moldova* (2002) EHRR 13 and Church of Scientology Moscow v Russia (2007) App 18147/02

45 Article 9(2) European Convention on Human Rights.

True to its principle of non-discrimination, the European Court of Human Rights has accepted as religions Islam[46], the Krishna Consciousness Movement[47], Jehovah's Witnesses[48], the Divine Light Zentrum[49], the Church of Scientology[50] and Druidism[51], among others. But the Court has never offered a precise definition of religion. In the case of *Campbell and Cosans v United Kingdom* (1982)[52] the Court stated that "philosophical convictions" were akin to "beliefs" and "denote views that attain a certain level of cogency, seriousness, cohesion and importance", but offered no method of differentiating religious and non-religious beliefs.

It is possible to identify characteristics which are shared by all organised belief systems which are commonly regarded as religions. As already noted, the two attributes suggested by Dillon J namely "faith in God" and "worship of that God" are not attributes of Sankhya Hinduism, Jainism, Taoism, Theravada Buddhism, Unitarianism and other well-known faiths.

A number of such faiths, such as Jainism, entirely reject the notion of a supreme being, or of any entity outside of themselves having dominion over them. Many Jains do not engage in any kind of worship, and consider holy statues and temples as totally unnecessary. Rather, they believe that by conducting themselves in the correct manner they can eventually achieve an ideal spiritual state, free from the bounds of this physical universe. Other religions, notably most forms of Christianity and Islam, believe that worship of a supreme being is a necessary route to salvation.

The principal characteristic that all religions share is a belief in a life force which is separate from, or separable from, the physical human body. The death of the human body is therefore not necessarily an end to the human life force, or spirit, although the form it is believed to take varies very considerably.

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46 *Ahmad v United Kingdom* (1982) 4 EHRR 126

47 *Iskcon v United Kingdom* (1994) 76A DR 90

48 *Kokkinakis v Greece* (1993) 17 EHRR 397, *Hoffman v Austria* (1993) 17 EHRR 293

49 *Omkarananda and the Divine Light Zentrum v Switzerland* (1981) 25 DR 105

50 *Church of Scientology Moscow v Russia* (2007) App 18147/02

51 *Chappell v United Kingdom* (1987) 53 DR 241

52 4 EHRR 293

In the most comprehensive judicial review of the meaning of religion carried out by a Commonwealth Court, Australia's highest court ruled in 1983[53] that religion involved (1) belief in a supernatural being, thing or principle, and (2) acceptance of canons of conduct in order to give effect to that belief.

The Australian High Court therefore identified a belief in something spiritual, coupled with a defined activity directly associated with that belief, as the necessary components of a religion. The use of the word "canon", which usually refers to the rules of a church, conveys the idea of "cogency, seriousness, cohesion and importance".

This definition of religion has also been adopted in New Zealand.[54]

In 2004 the Supreme Court of Canada offered a similar, if slightly more expansive, test. The court stated:

> "*religion is about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfilment, practices which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.*"[55]

The Canadian Supreme Court went on to state:

> "*a truly free society is one which can accommodate a wide variety of beliefs, diversity or tastes and pursuits, customs and codes of conduct... the essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.*"

Put simply, these recent pronouncements appear to accept that a religion is any organised system of belief and practice that promotes access to a spiritual dimension. Whether the body that advances that religion is a charity depends on

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53 *Church of the New Faith v Commissioner for Payroll Tax* (1982) 154 CLR 120.

54 *Centrepoint Community Growth Trust v Commr of Inland Revenue* [1985] 1 NZLR 673. The court approved the definition given by Mason ACJ and Brennan J in *Church of the New Faith v Commissioner for Payroll Tax* (1982) 154 CLR 120.

55 *Syndicat Northcrest v Amselem* [2004] 2 SCR 551.

whether it also provides a benefit to the public and otherwise meets the normal requirements of any charity.

7. The Charities Act 2006 and the way forward

The Charities Act resulted from a concerted effort by the Government and the charitable sector to decide how charity law should be updated. The Bill itself, and the draft Bill before it, were subject to an extraordinary amount of scrutiny and led to the expression of strong (and sometimes conflicting) views.

The Act expressly states that "religion" includes a religion which involves a belief in more than one god or in no god[56]. It is clearly intended therefore that religion will be given a broad and inclusive meaning in line with European and international human rights standards. As mentioned above, it also removes the presumption that an organisation for the advancement of religion provides a public benefit, and the concern has been expressed that this opens another door to discrimination. One of the arguments made for this change was that the government wished to create a "level playing field", where it would be necessary for all charities to demonstrate that they provide a public benefit, especially since they were all entitled to the same range of tax reliefs and other privileges.

The Act also starts the process of removing exceptions and exemptions which previously allowed many Christian churches to operate without supervision by the Charity Commission, so that in future they will be required to register as charities with the Commission, and demonstrate their public benefit.

But what does this actually mean? Listening to the debates one would be forgiven for thinking that the Charity Commission intend to examine in detail the activities of every charity, and decide whether those activities provide a public benefit. However that is not what the Act states. The Act refers to "purposes", and it is the purposes of the organisation that have to be for the public benefit.

The Charity Commission are required to publish guidance on how charities, including religious charities, will be expected to demonstrate that their purposes are for the public benefit[57]. At the time of writing they are involved in a consultation exercise. They have indicated, however, that it will not be necessary

56 See s. 2 (3)(a) of the Act.

57 See s.4 Charities Act 2006.

for religious bodies to engage in altruistic activity outside the practice of the religion in order to meet the public benefit test[58].

Many religious charities have identical purposes – for example, the thousands of Church of England churches. Will the Charity Commission differentiate between a tiny parish church with a congregation of 10, none of whom engage in any charitable activities in the wider community, and a large city church with a congregation of 2,000, many of whom go out of their way to help others?

During the debate on the Bill the Charities Minister stated "that the burdens will not be onerous for religious charities"[59]. He then went on to state:

> "*As with all charities, public benefit has two dimensions. First, there must be an identifiable benefit. Secondly, it must be accessible not only to the adherents of a particular religion, but to the wider community*"

But the Minister also acknowledged that the important role that religious charities had was "motivating charitable giving and contributing in other ways to stronger communities". This is consistent with the present concept that the public benefit of religion is not the benefit derived by the person participating in a religious practice, but rather the benefit to others of mixing with such a person, who has become more altruistic and decent as a result of his or her religious belief and practice.[60] The benefit must therefore be accessible to the wider community, even though they are not all adherents of the particular religion, and do not necessarily participate directly in its services.

It thus appears that Christian charities which are not churches but which provide a private religious retreat, for a fee, to Christians looking for some quiet religious solace, will be able to maintain their charitable status; Hindu temples will be able to continue fund themselves by selling *pujas* (private religious services performed for individuals); and Buddhist charities which only teach meditation techniques will still have a charitable purpose.

According to the Minister, the Charity Commission will consider the "doctrines, beliefs and practices of a religion" to see whether its promotion is likely to produce these public benefits. How, though, in practice, is this going to occur? There are many religions, and many religious works. Even within what might be considered a single religion there are different groups and sects, each of which

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58 Consultation on draft guidance on public benefit, Charity Commission, March 2007.

59 See House of Commons Hansard 25th October 2006 Col 1609.

60 *Neville Estates Ltd v Madden* [1962] Ch 832.

may emphasise, or differently interpret, particular religious teachings. Will the Charity Commission become experts on them all? How do we avoid subjective opinion creating unfair distinctions? Are we going to be faced with the situation where small, poorly understood, religious groups are asked to demonstrate that the practice of their religion actually produces more altruistic and decent people, when for established religions this will simply be assumed?

If the Charity Commission are expected to judge the merits of particular religious beliefs and practices, how do they do so without falling foul of the edicts of the European Court of Human Rights that there is no discretion "on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate", and that the "State's duty of neutrality and impartiality, as defined in the court's case law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs"?

There is a clear potential for discrimination contrary to the Human Rights Act if the Charity Commission do not adopt procedures which are entirely neutral, and applied equally to all religious bodies no matter what their size or prominence in society. The solution could be to require all registering religious bodies to self-certify that the religious doctrine, beliefs and practices that they advance have a tendency to make people more altruistic and behave morally. This self-certification would need to be open to challenge. However, any challenge would not be based on isolated failures, such as criminal acts by individual priests, but rather on the general case for that religion, and by looking at what the religious body actually does.

Any public benefit test that is more onerous than this, would not only require a religious body to prove public benefit greater than that which they are presently presumed to provide, but it is submitted would also be unworkable and contrary to the requirements of the European Court of Human Rights.

8. Terrorism

In recent years efforts have been made by the Government and the Charity Commission to protect charities from what they term "terrorist abuse". Following the Terrorism Act 2000 and the Anti-terrorism, Crime and Security Act 2001, which sought to cut support and funding of terrorist organisations, the Charity Commission issued operational guidance in January 2003 concerning charities and terrorism[61]. More recently[62], the Home Office and H M Treasury have issued a

61 "Charities and terrorism", OG 96.

62 28th May 2007.

joint Consultation Document entitled "Review of Safeguards to Protect the Charitable Sector (England and Wales) from Terrorist Abuse". This document emphasises the need for extra resources to be provided in order to protect charities, which are perceived as particularly vulnerable to infiltration by extremists, and ensure a continuing diverse and vibrant charity sector.

The Charity Commission has said that it believes that the incidence of charity involvement with terrorist organisations is rare, but has made clear that any links between charity and terrorist activity will not be tolerated. It will refuse to register any organisation that supports terrorism, and regards it as one of the duties of charity trustees to safeguard their charity from terrorist involvement. Charity trustees who allow charity monies to be used to support terrorism not only commit a criminal offence for which they can expect to be punished but also bring the name of charity, and indeed of their religion, if the charity is associated with a particular religious group, into disrepute.

Whilst terrorism, and the understandable public anxiety about extremists, create significant new challenges, they must not, however, be allowed to undermine civilized values. A policy of zero tolerance towards crime and violence should not become an excuse for suspicion or intolerance towards law-abiding religious groups.

9. Conclusion

Tolerance and diversity as concepts fit well with the spirit of the present age of human rights and pluralism. Of course it is necessary to prevent abuse in order to enable law-abiding religious groups to continue to operate effectively, but we should no longer see unjustified discrimination in the application of charity law to religious organisations. Neutrality and fairness can best be achieved, in our view, by adopting simple, transparent and objective tests, both in deciding whether a particular body advances religion, and in deciding whether that body delivers a public benefit. It is hoped that the Charities Act 2006, and its interpretation and application by the Charity Commission, the new Charity Tribunal it will establish[63], and the Courts, will deliver this result.

63 See s.8 Charities Act 2006.