



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

The Legal Test

Whether or not a CAM organisation is a charity will be determined by the legal test¹, which is principally:

- whether its purposes fall within the descriptions of purpose in the Charities Act 2011
- whether those purposes are for the public benefit

Charitable Purposes

Many CAM organisations will pursue objects which fall within the descriptions of purpose the advancement of health or the saving of lives or the relief of need arising from age, ill-health, disability or other disadvantage; although other descriptions may also be relevant.

The advancement of health specifically includes the relief of sickness, disease and human suffering², which may be considered to include:

- the restoration to health through the cure and treatment of sickness (curative)
- the diagnosis and treatment of sickness (diagnostic)
- the relief of symptoms of sickness or suffering resulting from sickness (palliative)

Relief may be provided by direct or indirect means. The Commission considers that, in order for a purpose which is to be furthered by specific means to be charitable, it must be possible to demonstrate that the means are capable of furthering the purpose.

Public Benefit

The legal requirement for a charitable purpose to be for the public benefit is referred to as “the public benefit requirement”. The following points regarding the assessment of public benefit are particularly relevant to this review:

- it is a matter for the Court, or the Commission, to determine on the evidence before it whether the requirement is satisfied³
- benefit may be so clear that it is not necessary to require further evidence⁴
- the benefit which arises must outweigh any potential harm⁵

¹ Section 1, section 2 Charities Act 2011

² Section 3(2)(b) Charities Act 2011

³ Re Hummeltenberg [1923] 1 Ch 237; National Anti-Vivisection Society v Inland Revenue Commissioners [1948] AC 31 (“National Anti-Vivisection Society”); Independent Schools Council v Charity Commission [2011] UKUT 421 (“ISC”)

⁴ McGovern v Attorney General [1982] Ch 321 (“McGovern”)

⁵ National Anti-Vivisection Society

- a proposed benefit must not be too vague or remote⁶
- if the element of public benefit is incapable of proof then the organisation will not be recognised as charitable⁷
- what is considered of public benefit may change over time as a result of social or economic circumstances or the development of scientific knowledge⁸
- the benefit must be related to and arise from the purpose⁹

The Commission has issued statutory guidance on the [public benefit requirement](#).

Although there is little case law on CAM therapies as a means to further charitable purposes, the courts have recognised the broad nature of health purposes¹⁰. This includes the provision of patient comforts¹¹, as well as meeting the physical and psychological comfort of patients¹².

The Commission's view of the law relating to the advancement of health and the prevention or relief of sickness by organisations using alternative or complementary methods was set out in detail in the Annex to its decision relating to the Soteria Network¹³. Following the outcome of this review, the Commission considers that that analysis remains a correct statement of legal principles, but can usefully be expanded and updated.

The Commission does not recognise promotion of an individual's "well-being" irrespective of whether or not that person is ill as being charitable for the purpose of the relief of illness¹⁴.

The courts have recognised some purposes relating to the promotion of faith healing as charitable¹⁵. The Commission does not consider that these cases provide a legal basis for accepting purposes which include the advancement of faith healing (or any other form of therapy) otherwise than as purposes for the advancement of religion. This is because, on the modern understanding of the public benefit requirement, the analysis applied in these cases would not be sufficient to establish that a health benefit has been demonstrated. The cases do not demonstrate that the necessary element of benefit was shown, and, to the extent that the cases might have relied on a presumption of public benefit, they cannot now be used as a precedent¹⁶.

Patient-reported evidence

Public benefit is to be assessed based on evidence which can be relied on by a court.

⁶ *ibid*

⁷ *Re Hummeltenberg*, at 242; *National Anti-Vivisection Society*, at 66; *McGovern*, at 334

⁸ *National Anti-Vivisection Society*

⁹ *ISC*

¹⁰ *Re Resch* [1969] 1 AC 514 (PC)

¹¹ *Re Adams* (1968) Ch 80

¹² *Re Dean's Will Trusts* [1950] 1 All ER 882

¹³ Decision of the Charity Commission 29 February 2012

¹⁴ *NFSH Charitable Trust Decisions of the Charity Commission* 15 August 2002

¹⁵ *Re Kerin*, *Times* 24 May 1966; *Re Le Cren Clarke* [1996] 1 All ER 715

¹⁶ *ISC*

If a benefit is claimed which ought to be capable of being demonstrated by appropriate objective means, then the Court, or the Commission, will need such evidence in order to assess the public benefit requirement.

However, if claimed benefit is limited to, for example, the comfort and support of patients, then it may be possible to demonstrate benefit based on evidence from patient experience.

The Commission will need to ensure that any evidence it considers is sufficiently robust and cogent that it can be relied upon by a court.

In some cases, the benefit provided by a purpose for the comfort and support of patients may be clear, and the Court, or the Commission, may not need any further evidence.¹⁷

Mechanism of benefit and the placebo effect

The Commission has considered whether a purpose relying on a particular treatment can be for the public benefit, in the charity law sense, if the mechanism on which the treatment relies cannot be clearly explained or demonstrated in scientific terms. This may be true of therapies for which there is an acknowledged “placebo effect” but an absence of clinical evidence for the treatment mechanism.

In these cases, it is arguable that any benefit arises from a mistaken belief on the part of patients, and that this may represent a detriment arising from the furthering of the purpose – in that the use or promotion of the treatment may result in mistaken beliefs on the part of patients.

A separate but related point is whether in the provision of CAM therapies, the Commission needs to consider every aspect of a treatment to decide whether it is effective, or whether if a benefit may arise from the circumstances of the treatment, this is enough.

The Commission considers that any purpose must be assessed as a whole, and on its own terms, to determine whether or not it is charitable. This means that any detriment or harm that may come from mistaken beliefs about a treatment will need to be taken into account, but will not necessarily mean that public benefit cannot be shown for the purpose as a whole. This also means that we will not necessarily consider the nature of a particular aspect of a treatment provided that the overall treatment can be shown to be beneficial, and that any harm does not outweigh those benefits.

The assessment of evidence

In any given case, it is for the person or organisation claiming that a purpose provides public benefit to show that the benefit is sufficiently identifiable and that the requirement is satisfied. In applications for registration with the Commission, that is the applicant.

The applicant must establish benefit on the balance of probabilities - that is, the Commission must be satisfied that an applicant’s purposes are more likely than not to be charitable.

¹⁷ See for example *Re Dean’s Will Trusts*

The categories of evidence are not closed, although in all cases, evidence must be of a kind which a court would consider. The evidence must have sufficient quality and cogency¹⁸.

Where a benefit to health is claimed, the First-tier Tribunal has indicated that the Commission should not “lightly reach findings, which result in the advantages of charitable status being conferred in respect of activities for which the science base is less than robust”.¹⁹ Accordingly, robust evidence would be required where a claimed benefit from a CAM therapy is such as to be measurable by objective evidence.

The standard of proof to be applied by the Commission is the balance of probabilities. Where the potential risk of harm is greater the evidence of benefit to outweigh potential harm may need to be greater, in order to show that the requirement is satisfied.

Detriment and harm

There is a clear risk of harm from the use of therapies or treatments which are untested or are provided by unregulated practitioners.

The Commission continues to consider that there is a greater risk of harm from alternative therapies because users may not seek, or may delay seeking, conventional treatments which have been shown to be effective.

Unfounded claims to be able to cure or diagnose could mislead the public and result in harm.

The risk of public harm for complementary, as opposed to alternative, treatment may be lower as complementary treatments are delivered alongside more conventional medicine and people receiving treatment are likely to be aware of the conventional treatment options. Also, in many cases, proponents of such treatments will only claim that they have palliative rather than curative effect, and such cases may not present the same risk that patients will forego effective cures in favour of ineffective treatments based on mistaken beliefs.

¹⁸ As noted by the First-tier Tribunal in *Cambridgeshire Target Shooting Association v Charity Commission* CA/2015/0002

¹⁹ *Ibid* above at 14.