



## Parliamentary Briefing

# Charitable registration and public benefit, Westminster Hall, 13 November 2012

This briefing sets out the Charity Commission's role and legal duties when registering charities and in relation to public benefit; and summarises our decision to reject the application for charitable status of a Brethren meeting hall, the Preston Down Trust. The latter is a source of intense current concern among Parliamentarians and has been interpreted as a revocation of charitable status and even as a threat to other Christian groups. We ask you to bear in mind that this case is limited to an individual group and we have no general concerns about religious organisations. The case is about whether the organisation meets the charity law definition. Nearly 20% of registered charities are for the advancement of religion. We register hundreds of Christian charities each year.

### Charitable registration

- The Charity Commission is the regulator and registrar of charities in England and Wales. It is required to determine whether organisations that apply for charitable status are charitable in law.
- The legal definition of a charity is an organisation that is established for exclusively charitable purposes that are for the public benefit.
- It is for organisations to demonstrate that they are charities, not for the Charity Commission to demonstrate that they are not.
- Decisions of the Charity Commission are appealable. Applicants can either ask us to review our decisions or appeal in the First-tier Tribunal (Charity).
- The Commission follows the rulings of the Tribunal and regards them as a helpful way of clarifying the law.

### Public benefit

- The Charities Act 2006 removed the legal presumption that charities established for the advancement of education and religion are for the public benefit.
- In practice, this means that all organisations have to demonstrate that they provide public benefit in order to meet the legal definition of a charity when they apply for registration.

- Parliament chose not to define public benefit. However, the 2006 Act nevertheless required the Commission to ‘promote awareness and understanding’ of public benefit and to produce guidance. In the words of the Independent Schools Council (ISC), ‘the Charity Commission, to be fair to them, were given a very difficult task’. This view is widely shared.
- Before publishing guidance, the Commission consulted particularly closely with religious and educational charities since these were the groups liable to be most affected by the removal of the presumption.
- In 2011, an Upper Tribunal ruling found parts of the Commission’s guidance were wrong in law and the Commission withdrew the relevant parts. The ruling followed a judicial review brought against the guidance by the ISC.
- The Commission rewrote the guidance and consulted on it. This public consultation closed in late September and we aim to publish the revised guidance in Spring 2013.
- The Tribunal judgement makes it clear that it is for charity trustees, not the Commission or the courts, to determine how to provide public benefit.

## Registration of a Brethren meeting hall

- The Commission was in a constructive dialogue with the religious charity community, during and after the passage of the Charities Act 2006 and throughout our consultation on guidance for religious charities.
- In 2009, a Brethren meeting hall, the Preston Down Trust, applied for registration. It was agreed this individual application would be a test case for other meeting halls.
- The question is whether the organisation is a **charity** in law (the Commission is not the regulator of religion). It is for the applicant to demonstrate this through the evidence they submit.
- Our decision was delayed pending relevant Tribunal decisions on public benefit in 2011 (the ISC case) and 2012.
- On 7 June this year we wrote to the Preston Down Trust’s solicitors concluding that we were not satisfied that the organisation met the legal definition of a charity. A copy of this letter is attached to this briefing.
- Shortly afterwards, the Brethren issued a mass briefing to MPs stating that the Commission had decided ‘to revoke the charitable status of the Gospel Halls of the Plymouth Brethren Christian Church.’ We think it is clear from the 7 June letter that this was not an accurate statement of our position.
- Our view remains that the Tribunal is the proper place to reach a decision and we look forward to clarification on this important point of law.
- The Commission regards this case as confined to the circumstances of this individual group. The forthcoming appeal also relates to this individual organisation, not other religious groups.

- Evidence submitted at the Public Administration Select Committee on 30 October, and subsequently reported in the **Sunday Times**, included what purported to be an extract from our 7 June letter:

*Garth Christie: Could I just read you out what was included in the refusal letter we got from Kenneth Dibble from the Charity Commission. This was the letter when our charitable status test case was refused. He says, "This decision makes it clear that there was no presumption that religion generally, or at any more specific level, is for public benefit, even in the case of Christianity or the Church of England. **The case law on religion is rather ambiguous. Our view is that the definition is rather dated. It is our job to define it**". We would feel that was a job for Parliament rather than for the Charity Commission.*

The quotation is misleading in two ways: the decision referred to is the Tribunal's not ours and the text in bold is not in the letter at all (see the letter page 2 paragraph 2). We have contacted the committee to clarify this evidence.

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