



# THE PUBLIC BENEFIT REQUIREMENT

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**A Church Growth Trust Briefing Paper**



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## **1.0 The purpose of this briefing paper**

Many churches and Christian charities will be aware that there have been recent changes in the law that require them to show that they are providing a public benefit in order for them to be a charity. There is some confusion as to what this requirement means in practice. The purpose of this briefing paper is to explain the public benefit requirement and to give some guidance as to how independent churches may comply with it. However this briefing paper does not do away with the need for trustees to familiarise themselves with the Charity Commission's ("the CC") official guidance mentioned in Section 2 below, but it is hoped that the paper will facilitate understanding of and compliance with the public benefit requirement and the CC's official guidance.

This paper only relates to churches and Christian charities in England and Wales.

## **2.0 Background**

The requirement for charities to be for the public benefit has been a legal requirement for hundreds of years in English law. However the Charities Act 2006 stated that there was to be no presumption in law that charities were set up for the public benefit (i.e. just because something was called a charity, did not mean it would be considered to be a charity, unless it could be shown that it provide public benefit. This caused considerable confusion for churches and other charities. In addition the Charity Commission were required to issue guidance in line with its 'public benefit objective' 'to promote awareness and understanding of the operation of the public benefit requirement'. These principles were retained in the Charities Act 2011 ("the Charities Act") which replaced the Charities Act 2006.

The CC duly issued guidance on public benefit in 2008, but it had to be substantially revised following challenges by the Independent Schools Council and the Attorney General. The Upper Tribunal (a special court set up to deal with cases involving the CC) gave its decision on those challenges, confirming that the guidance issued by the CC was wrong and unclear in parts. The CC has accordingly revised its guidance on the public benefit requirement ("PBR") which is now comprised in three parts issued in September 2013.

The three parts are entitled 'Public Benefit: the public benefit requirement', 'Public Benefit: running a charity' and 'Public Benefit: reporting'. There were two other papers namely, 'Public Benefit-an Overview' and 'Public Benefit – Analysis of the law relating to public benefit' ("Analysis of the Law") published by the CC at the same time, but these do not form part of the CC's official guidance on the PBR.

All of these publications are available on the CC's website for downloading. See Section 10 Additional Information below.

## **3.0 Summary**

In the past "advancement of religion" was assumed to be charitable. Now for churches, as with other charities, to be a charity they need to show that they are set up and operating for the public to benefit from them. This paper explains what the law means by "public" as this has to be more than just one or two members of the public (in addition to members of the church) and what the law means by "benefit", as this not only talks about being beneficial,

but also that any harm caused by the charity will not be more than the benefits. Churches can be comforted that in most cases the act of churches holding public services (i.e. meetings open for members of the public to attend and advertised as such) will be considered in itself to be offering benefit to the public. There is no requirement for churches to have activities that are linked to the community or of a community nature; although most churches, which are impacting their communities, will provide these and they are considered to be further evidence of the church providing public benefit. Examples of church activities that provide public benefit are given.

The paper sets out in Sections 4 to 6 inclusive what the public benefit requirement is. Section 7 relates this to churches and Section 8 sets out in more detail how the “benefit” and “public” elements relate to church charities and activities. Section 9 explains what church trustees need to do to ensure that the church continues to offer public benefit and that this is reported correctly to the Charity Commission.

There are also some useful Appendices to the paper which include the following:

- examples of charitable purposes;
- ways in which churches can advance religion for the public benefit;
- how to navigate through the Equality Act, discussing the exceptions and exemptions which allow churches, because of their beliefs, to discriminate against certain groups or individuals;
- commentary on the Preston Down Trust case, which helped to clarify the Charity Commission’s views and legal opinion on what makes a church charitable and what stops it from being so;
- more detail of accounting and reporting procedures and requirements.

#### **4.0 What is the Public Benefit Requirement?**

Briefly stated the PBR has two main elements; the ‘benefit’ element and the ‘public’ element and these two elements each break down into two aspects.

##### **4.1 The ‘benefit’ element**

The purpose of the charity must:

- 4.1.1 be beneficial, and
- 4.1.2 any detriment or harm that results from the purpose must not outweigh the benefit.

##### **4.2 The ‘public’ element**

The purpose of the charity must:

- 4.2.1 benefit the public in general, or a sufficient section of the public, and

4.2.2 not give rise to more than incidental personal benefit.

This brief summary of the PBR is taken from the CC's official guidance in 'Public Benefit: the public benefit requirement' and is deceptively simple. It is amplified in more detail in Section 8 of this briefing paper.

## **5.0 Why is it important to know about the PBR?**

It is important for trustees of charities and those managing charities on behalf of the trustees to know about the PBR because:

- 5.1 An organisation cannot be a charity unless it is for the public benefit. This applies not only when the organisation applies for registration with the Charity Commission, but continuously after it has been registered for as long as it operates<sup>1</sup>.
- 5.2 In making decisions exercising their powers or duties as trustees, charity trustees must 'have regard' to the CC's official public benefit guidance whenever that guidance is relevant<sup>2</sup>.
- 5.3 Charity trustees who are obliged to provide an annual report each year (see Section 9 below) must include a report on how they have carried out their charity's purposes for the public benefit<sup>3</sup>.
- 5.4 The charity trustees' report, when required, must contain a statement by them as to whether they have complied with the duty in Section 17(5) Charities Act to have regard to the CC's public benefit guidance<sup>4</sup>.

## **6.0 What is the authority for the PBR?**

The authority for the PBR comes from the decisions of the courts in England down the centuries and this has now been established in legislation by Parliament in the Charities Act.

- 6.1 Section 1 of the Charities Act defines "charity" as an institution established for charitable purposes only.
- 6.2 In turn Section 2 of the Charities Act provides that a charitable purpose is a purpose referred to in the list set out in Section 3(1) of the Charities Act and which is for the public benefit. In other words, an institution cannot be a charity unless it is for the public benefit, as well as having a purpose falling within the list set out in Section 3(1) of the Charities Act.
- 6.3 Section 3(1) of the Charities Act lists 15 categories of charitable purpose (set out in summary in Appendix 1) including the advancement of religion, the relief of poverty and the relief of those in need because of youth, age, ill health, disability, financial

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<sup>1</sup> See Sections 2(1)(b) and 4 of the Charities Act 2011

<sup>2</sup> See Section 17(5) Charities Act

<sup>3</sup> Rule 40(2)(b) Charities (Accounts and Reports) Regulations 2008 ("the 2008 Regs")

<sup>4</sup> See Rule 40(2)(c)(ii) of the 2008 Regs

hardship or other disadvantage. It may at first seem attractive when preparing the purposes in a proposed charity's governing document (i.e. its trust deed or, in the case of a company limited by guarantee or a charitable incorporated organisation, its articles of association), to include a wide range of purposes, but it should be appreciated that the PBR has to be satisfied in respect of each and every purpose set out in the charity's governing document.

## **7.0 What is 'religion' for the purposes of charity law?**

### **7.1 Is it likely to be a contentious issue?**

Whilst considering the elements necessary for an organisation to be a charity it is worth looking quickly at the CC's view of what a religion is when they consider an application for registration. It is however unlikely that an independent church applying for registration as a charity with properly drawn purposes would fail to be for the advancement of 'religion' within the CC's interpretation of 'religion'.

### **7.2 The CC's view of 'religion'**

The CC have stated in their publication 'The Advancement of Religion for the Public Benefit' (published in 2008 and amended in 2011) their view, based on decisions made in past court cases, as to the characteristics of a belief system which they will regard as a religion:

- 7.2.1 the belief system involves belief in a god (or gods) or goddess (or goddesses), or supreme being, or divine or transcendental being or entity or spiritual principle, which is the object or focus of the religion which the CC refer to as 'supreme being or entity'. The CC do not however, specify the nature of that supreme being or require it to be analogous to the deity or supreme being of a particular religion.
- 7.2.2 the belief system involves a relationship between the believer and the supreme being or entity by showing worship of, reverence for or veneration of the supreme being or entity.
- 7.2.3 the belief system must have a degree of cogency, cohesion, seriousness and importance.
- 7.2.4 the belief system promotes an identifiable positive, beneficial, moral or ethical framework capable of benefiting society and not being a self-promoting organisation set up to promote one or two persons, or a trivial system set up for perhaps frivolous reasons.

### **7.3 The statutory gloss on 'religion'**

Section 3(2)(a) Charities Act provides that the term 'religion' includes:

- 7.3.1 a religion which involves belief in more than one god, and
- 7.3.2 a religion which does not involve belief in a god.



This gloss on the meaning of 'religion' for charity law purposes was intended to allow for religions that do involve belief in a divine or transcendental being or entity or spiritual principle, but do not necessarily revere a supreme being or entity as a 'god'. Hinduism and Buddhism are examples of religions within this meaning of 'religion', but clearly the express exclusion of the need for any belief in a god opens the way for a greatly extended meaning of the term; although such extension will be limited by the continuing need to satisfy the PBR.

## **8.0 Public Benefit in more detail drawing on the CC's 'Analysis of the law relating to public benefit' published in September 2013 and other guidance published previously**

### **8.1 The 'Benefit' element**

#### **8.1.1 The benefit of the purpose of the organisation must be identifiable and related to the aims of the charity**

The CC have said in their 'The Advancement of Religion for the Public Benefit' Guidance that:-

"To be recognised as charitable, all organisations advancing religion must be able to show that there is a moral or ethical framework which is promoted by the religion.

In charity law it is the existence of an identifiable, positive, beneficial moral or ethical framework that is promoted by a religion which demonstrates that the religion is capable of impacting on society in a beneficial way."

Followers of the religion will identify the meaning given to their lives and the development of their spiritual life within a moral or ethical framework which is important to them, but it is the benefit of that moral or ethical framework to wider society which is required to satisfy the PBR, as well as providing benefits to the followers of the religion being advanced.

The CC say further in the 2011 Guidance:-

"The benefits to the public should be capable of being recognised, identified, defined or described, but that does not mean that they also have to be capable of being quantified. Benefits that can be quantified and measured may be easier to identify, but we also take non-quantifiable benefits into consideration, provided it is clear what the benefits are. The benefits may or may not be physically experienced. We realise that often in the case of charities whose aims include advancing religion, some of the benefits are not tangible and could be potentially difficult to identify. However this is not to say that a public benefit assessment would only take account of tangible, practicable benefits."

So the benefit has to be identifiable by looking at the purpose or object of the charity and deciding whether that purpose, if fulfilled, will achieve a benefit for the public in the way it is to be fulfilled by the particular organisation, and if so, the benefit must be defined. However it is not necessary to demonstrate the amount of benefit; only that it exists. In their Analysis of the Law the CC have said:-

“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 health. Religion may be promoted by providing recreational activities. In every case it should be clear how the engagement results in advancing the religion as understood in the 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.”

In summary the purpose of advancing religion must lead on to the activity of the charity and the benefit to the public must derive from the activity of the charity.

### **8.1.2 How may benefit be established?**

The courts have said that the benefit must “in principle, be capable of being proved by evidence”<sup>5</sup> and “the question whether a gift is or may be operative for the public benefit is a question to be answered by the Court by forming an opinion upon the evidence before it”<sup>6</sup>.

These pronouncements by the courts that evidence of public benefit has to be proved may seem daunting for churches, but the courts have also tempered these statements when it was said “there are many cases on this question of whether a bequest is charitable or non-charitable where the purpose is so obviously beneficial to the community that to ask for evidence would really be quite absurd”<sup>7</sup>.

The CC have therefore been able to say in their official guidance ‘Public Benefit: the public benefit requirement’ “In the majority of cases, it will be clear that an organisation’s purpose is for the public benefit” and in their Analysis of the Law they say “The requirement for evidence is in practice tempered in a number of respects. The court will regard some benefits as being too obvious to require formal proof.”

In practice therefore any active independent Christian church which is regularly open to the public for Christian worship services following a set of orthodox doctrines (e.g. the Evangelical Alliance’s Basis of Faith) will be able to claim that it is for the public benefit, because it will have an identifiable moral and ethical framework and is capable of impacting society in a beneficial way by meetings for worship open to the public.

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<sup>5</sup> Lord Reid in *Scottish Burial Reform and Cremation Society Ltd v Glasgow Corporation* 1968 AC 138 at 146E

<sup>6</sup> *Re Hummeltemberg* 1923 1 Ch. 237 at 242

<sup>7</sup> *Mr Justice Vaisey in Re Shaw’s Will Trusts* 1952 Ch. At 169

### **8.1.3 Examples of church activities giving rise to public benefit**

The CC have given other examples of ways in which advancing religion has the potential to be for the public benefit:

- the provision of sacred spaces, church [buildings] and worship services;
- the provision of public rituals and ceremonies;
- contributing to the spiritual and moral education of children;
- contributing towards a better society by for example promoting social cohesion;
- carrying out, as a practical expression of religious beliefs, other activities (e.g. advancing education or conflict resolution, or relieving poverty), which may also be charitable;
- contributing to followers' or adherents' good mental and physical health;
- aiding the prevention of ill health, speeding recovery and fostering composure in the face of ill health;
- providing comfort to the bereaved;
- healthcare and social care;

A fuller list of examples of ways religion can be advanced for the public benefit is shown in Appendix 2 and is drawn from the 2011 Guidance Annex B.

In addition the CC went on to say that it may be sufficient to demonstrate just one benefit.

When a church charity applies for registration with the CC or gives a report to comply with reporting obligations (e.g. as part of its end of year accounts), it should describe the public benefit which it provides by its intended activities, so if the church intends or carries on any of these activities they will materially help in proving public benefit.

### **8.1.4 The Preston Down Trust case**

The recent case of the registration (eventually) of the Preston Down Trust ("PDT"), decided in January 2014 and further reported on by the CC in February 2016, is instructive on the issue of public benefit and religious charities, particularly the matters referred to in Sections 8.1.1 to 8.1.3 above. The case is referred to in more detail in Appendix 4 of this briefing paper.

### **8.1.5 How relevant are the personal views of those setting up a charity as to whether it is for the public benefit?**

Just because the persons setting up a charity think it is for the public benefit does not mean that it is. It is for the court or the CC, interpreting the decisions of the court, to decide whether a particular purpose is for the public benefit. It is therefore important when forming a charity, or operating one as a trustee, to make sure that the intended benefit is one which the law, as interpreted by the CC, regards as a benefit.

For example, an organisation set up by Christians solely for the purpose of private prayer would very probably be regarded as for the public benefit by those who set it up, as answered prayer could be of great benefit to the public, but it is unlikely to satisfy the PBR because it is not possible in a court to prove that prayer is effective in achieving a response from God or otherwise<sup>8</sup>.

Related to this point is the CC's view of the law that a charity for the advancement of religion must 'not simply be for the benefit of the adherents of the particular religion themselves'. Thus the saying of prayers in private or acts of worship in private, whilst being beneficial to those who participate and certainly for the advancement of religion, lack the necessary element of public benefit and cannot on their own constitute a charitable activity.

The Preston Down Trust Case, referred to in Section 8.1.4 above of this briefing paper and set out in detail in Appendix 4, contains a further example of this principle.

### **8.1.6 Any detriment or harm resulting from the charity's purpose must not outweigh the benefit**

The CC's official guidance in 'Public Benefit: the public benefit requirement' says that they will take detriment or harm into account where it is reasonable to expect that it (i.e. detriment or harm) will result from the individual organisation's purpose. This will be based on evidence, not on personal views. Where the benefit of a purpose is obvious and commonly recognised, there is an even greater need for evidence of detriment or harm to be clear and substantial, if it is to outweigh that benefit.

The CC have given examples of detriment or harm in their guidance 'The Advancement of Religion for the Public Benefit':

- something that is dangerous or damaging to mental or physical health (e.g. refusal to allow medical treatment of children);

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<sup>8</sup> In a case called *Re Hetherington* (1990 Ch. 1) it was decided that the celebration of a religious rite in private does not contain the necessary element of public benefit since any benefit of prayer is incapable of proof in the legal sense.

- something that encourages or promotes violence or hatred towards others (e.g. proselytising in a way which results in a threat to public order or other harmful outcomes); and
- unlawfully restricting a person's freedom (e.g. restriction or prevention of freedom to leave a religious community).

They have in the same publication given some general guidance to religious charities on this issue. General disagreement with the beliefs, activities or practices of a particular religion does not constitute evidence of the existence of detriment or harm.

In some cases detriment or harm might arise not from concerns about the nature of the religion, but from the abuse or misuse of religious teachings due to misinterpretation, misapplication or perversion of some of the narratives and/or doctrines and teachings of the religion. Detriment or harm might arise as a result of the way in which a particular religion is practised.

Carrying on an activity in a foreign country where that activity is illegal (e.g. proselytising), may result in detriment or harm such as by exposing the charity's staff and volunteers to risks to their personal safety, arrest and imprisonment and by stirring up conflict in that country, thereby endangering the intended beneficiaries.

In any case where the purposes or doctrines of the organisation may or do cause some detriment or harm the CC will have to make an assessment of whether they result in or may result in harm or detriment and then whether that detriment or harm outweighs the benefit.

#### **8.1.7 Can a charity have political aims?**

A charity cannot exist for a political aim, which is any aim directed at furthering the interests of any political party, or securing or opposing a change in the law, policy or decisions. However campaigning and political activity can be legitimate activities for a charity to undertake. A charity can campaign for a change in the law, policy or decisions where such change would support the charity's aims. Charities can also campaign in support of existing laws.

Political campaigning or other political activity must be undertaken by a charity only in the context of fulfilling its aims and not as the continuing and sole activity of the charity.

An example of legitimate campaigning for a charity whose aim is the advancement of the Christian faith would be opposition to a law or proposed law which restricted freedom to practice the Christian faith.

The CC have published guidance on political activity by charities in 'Speaking Out: Campaigning and Political Activity by Charities' CC9 available on their website. See Section 10 Additional Information below.

### **8.1.8 The Preston Down Trust case**

Again the Preston Down Case referred to in Appendix 4 of this briefing paper is instructive on the matter of detriment or harm in relation to public benefit.

## **8.2 The 'Public' element**

### **8.2.1 The public in general**

The phrase 'the public in general' means that all of the public can benefit from the purpose of the organisation and the benefit is not limited to people with a particular need or who have to satisfy some other criteria. If a stated purpose does not specify who can benefit, it will generally be taken to mean that it will benefit the public in general.

If it helps understanding, the word 'community' may be treated as having a similar meaning to 'public' in this context.

However it is clear that any organisation which has purposes solely for the benefit of followers or adherents of the religion being advanced will not be regarded as for the benefit of the public. There must be benefit for the wider public, at least by the public being able to participate in the rites and services of the religion or by charitable acts or conduct undertaken by the followers or adherents of the religion.

Thus the PBR may be satisfied where the religious beliefs and practices, reflected in the doctrines and practices of the particular religion, encourage its followers to conduct themselves in a socially responsible way in the wider community. The PBR may also be satisfied when the values held and expressed by the religion are put into practice in a way that leads to the moral or spiritual welfare or improvement of society. Going further, the PBR may be satisfied where the followers of the religion put these values into practice (e.g. by taking positive action to help others in society, such as visiting people who are distressed, sick or dying, or providing food and shelter to the homeless).

These are all ways of providing benefit to the public; the most obvious being the offering of participation in services to the public and the taking of positive action to help others in the community.

Church charities when they are being set up or reporting on activities, should find no difficulty in establishing that they are for the benefit of the public generally, if their purposes are expressed as for the public benefit without restriction and the intended activities and services of the charity are open to any member of the public who wants to use them.

In making application for registration with the CC or preparing a report where one is required, the trustees should describe all the ways of interaction with the public which come within these categories.

### **8.2.2 What is ‘a sufficient section of the public’?**

A charitable purpose cannot, as has been said above in Section 8.2.1, effectively exclude the public from benefit but it can benefit a section of the public where that section is appropriate (or sufficient) in relation to the specific purpose of the charity. There is not a set minimum number of people who have to benefit in order to be a public class of people. Whether or not a section of the public is a public class is not the same for every purpose.

It will sometimes be difficult to determine whether the number of potential beneficiaries of an organisation is a sufficient section of the public, but the CC have said by way of guidance in the ‘The Advancement of Religion for the Public Benefit’ Guidance:

“Restricting benefit to a section of the public is acceptable where restricting benefit in that way is reasonable and relevant to the organisation’s aims. Restrictions cannot be arbitrary and must be justifiable; public benefit will be affected where the restrictions are unreasonable.”

### **8.2.3 Examples of benefit to a sufficient section of the public**

The benefit to a section of the public (referred to below as “a class”) can be restricted in various ways including the following:

- Where the class of people who can benefit is sufficiently wide or open in nature (given the charitable purposes to be carried out and the resources available to the charity) to constitute a sufficient section of the public. An example of this, common for church charities, is a limitation to a particular area such as a town or district or even a whole country or group of countries abroad. A church could set up a charity for its home town or for evangelism in a town or area or for evangelism in a foreign country or even a continent. Many relief charities, including Christian ones, are set up to benefit a part of the world.
- Where the class of people whom the purposes of the charity are intended to benefit have a particular charitable need which justifies restricting benefits to them. Examples of charitable need are poverty, illness, disability, age (whether young or old), marriage, profession or occupation (e.g. a charity for the advancement of Christianity amongst lawyers or accountants could be an acceptable section of the public).
- Where there are restrictions on the class of people who may be followers of the religion to be advanced, but the wider public benefits from the positive behaviour of the followers promoted by the doctrines of the religion.

- It could be acceptable to restrict access to church services to Christians, because Christians are a large section of the community and there are benefits to the wider community from the practice of their beliefs, but it would be more difficult to justify restriction of access to services to members of the church as that would be too small a section of the public, unless membership had a low level of eligibility (i.e. it is easy for people to become members). Where there are restrictions on access to church services, the PBR may be more easily met by the church demonstrating its beliefs by its activities and the outworking of Christian love in the community.
- If the number of people who actually benefit from a church is quite small, because there are few people who attend services, it can still provide a benefit to a sufficient section of the public, so long as its services are open to all who wish to attend. For example, a church situated in a rural, sparsely populated area may have a congregation in single figures. Provided that the services are open to all who wish to attend, the small number would not affect public benefit.
- It is reasonable for a place of worship to be locked when not in use and often concerns about security and/or racial or religious abuse can mean that a place of worship cannot be left unattended so that members of the public can enter the building when they wish for quiet contemplation. Adequate provision should be made to inform people when they can enter the premises by for example a prominently displayed notice.
- It is possible to restrict the benefits of a charitable purpose to persons by reference to 'protected characteristics' under exemptions allowed by the Equality Act 2010 ('the Equality Act'). See Appendix 3 of this briefing paper. There is some overlap between this type of restriction and restrictions whereby a charity is specifically helping certain people as shown in the second bullet point above. In so far as there is overlap the relevant Equality Act exemption will have to be complied with. See Section 10 Additional Information below for link to the CC's guidance on the Equality Act.

#### **8.2.4 Examples of restrictions on beneficiaries of the organisation which will not satisfy the PBR**

Here are a number of examples where restrictions placed on those who can benefit from the charity would prevent it from meeting the public benefit requirement:

- A purpose which defines who can benefit on the basis of a 'protected characteristic', but which does not satisfy the requirements of the Equality Act (see Appendix 3 of this briefing paper).
- A purpose which defines benefit by reference to a person's skin colour.



- A purpose which defines who can benefit on the basis of a personal connection, such as family or employment or membership of an unincorporated association, except where the benefit is to relieve or prevent poverty (see Section 8.2.5 below).
- A purpose which excludes the poor. It follows from this that where a church makes a charge for any of their services or requires a subscription, it must be affordable by those in poverty or there must be provision for concessions in appropriate cases.
- A purpose which is confined to a closed religious organisation.
- A purpose where the number of people who can benefit is negligible.

A number of other examples of unacceptable restrictions are given in the official CC guidance 'Public Benefit: the public benefit requirement'.

### **8.2.5 The relief of poverty and public benefit**

The relief of poverty is a separate and distinct charitable purpose identified in Section 3 Charities Act, but sometimes charities set up for a church include the relief of poverty in their purposes, because they intend to engage in activities for that purpose.

There is an overlap here in that relieving poverty in the name of Jesus Christ could be an activity for the advancement of Christianity. So there may be no need for a church to have a separate purpose of relieving poverty. It is always advisable however to have it as a power of the trustees.

Nevertheless, if a church charity does have a separate purpose of relieving poverty, the PBR is relaxed, because the relief of poverty is in a special category in charity law. In the case of the relief of poverty the PBR can be satisfied with a reduced 'public' aspect, so that in the following cases the beneficiaries can be defined by reference to family relationships or employment by particular employer or membership of an incorporated association.

For a church to support a group linked in any of these ways would be unusual, but it might for example arise where a church wished to relieve poverty amongst employees or ex-employees of a mission organisation.

### **8.2.6 Personal benefits from carrying out the purpose of the organisation must be 'incidental' only**

A charitable purpose may only confer personal benefits if they are 'incidental' to carrying out the purpose. Personal benefit is 'incidental' when an individual or organisation receives a benefit as a necessary result or as a by-product of carrying out the purpose. 'Incidental' in this context does not mean just minor.

A purpose is not charitable if the benefits it may confer on individuals (or other legal entities) are more than incidental to the furtherance of the charitable purpose. Whether this is so in any particular case is a question of degree.

An obvious example of incidental benefits which are permissible is that members of a church congregation will receive incidental benefit in attending worship services. Providing services of worship to the particular congregation is part of fulfilling the purpose of the church charity for the benefit of the public as a whole.

The position may be less clear where leaders or members of a church fellowship are in receipt of remuneration (e.g. salary) or other benefits (e.g. gifts). In those cases the trustees of the charity must be satisfied that the remuneration and/or benefits are reasonable, necessary for the proper administration of the charity and the fulfilment of its purposes.

Benefits for church leaders can take various forms ranging from the payment of salaries, subsistence, accommodation and other living expenses to increased income from the sale of merchandise such as videos, DVDs, books and tapes in which the leader has an interest, paid sabbaticals, non-work travel paid for by the charity and self-promotion by seminars, book tours and receipts of royalties from publications.

The provision of reasonable retirement benefits to individuals, including the provision of accommodation in retirement for those who have worked for churches or similar organisations for the advancement of religion, are legitimate aspects of expenditure necessary for the achievement of a charity's purposes for the public benefit.

All of these kinds of personal benefits must be considered by the trustees and approved only if they are necessarily incidental to the achievement of the charity's purpose for the benefit of the public or a sufficient section of it. This issue is not to be confused with the issue of trustee remuneration and/or benefits which are only permitted if authorised by the charity's governing document or by the CC (see the CC's Guidance CC11 entitled 'Trustee expenses and payments' available on the CC's website and see Section 10 Additional Information below).

## **9.0 Public Benefit: Running a Charity**

A charity must be run for the public benefit as well as set up for the public benefit in the first place. It must therefore continue to provide 'benefit' and that benefit must be provided to the public or a sufficient section of the public as explained in the Sections 4 and 8 of this paper. The CC's guidance on running a charity for the public benefit is contained in their guide 'Public Benefit: running a charity' available on their website.

### **9.1 The trustees' reporting duties**

The trustees have to be able to report that they have had regard to the CC's public benefit guidance when exercising any powers or duties to which the guidance is relevant. Not every decision of the trustees is affected by the PBR, but the decisions which are affected will relate to the following:

### **9.1.1 Ensuring that the charity's purpose is carried out in a way that is beneficial to the public**

The most common way for independent churches to do this is to run services for public worship and teaching which are open to anyone who wishes to attend.

Qualifications required for or restrictions on attendance must be justified in the interest of achieving public benefit. The more qualifications or restrictions the more difficult it will be to achieve public benefit from those worship activities.

### **9.1.2 Managing risks of detriment or harm to the charity's beneficiaries or to the public from carrying out the charity's purposes**

Examples of 'detriment or harm' arose in the Preston Down Trust case (see Appendix 4 of this briefing paper), but another example, not arising in the Preston Down Trust case, might be placing pressure on church members to give so much to the church that they are themselves impoverished. Trustees must identify risks of harm or detriment and ensure they do not outweigh the benefit.

### **9.1.3 Deciding who benefits**

For independent churches running services for public worship regularly which are open to all who wish to attend will be an easy way to achieve public benefit, as there will be no qualification or restriction on access to the benefit. Limitation of access because of the capacity of the church facilities and possible opening times will be appropriate where necessary.

- **Access**  
Access must provide for those with disabilities and opening times should be displayed on a public notice board outside the church or hall.
- **Groups sharing a common characteristic**  
Other benefits provided by the church should be as open to the public as possible, but it is permissible for facilities to be restricted to certain beneficiaries such as young people for youth groups and Sunday schools, for men, for women or for the elderly where the facility or benefit such as a fellowship group is designed for the needs of those groups. However regard must be had to the Equality Act in relation to special groups designated by age or by sex (see Appendix 3 of this briefing paper).
- **Church membership**  
The PBR does have an effect on how independent churches operate their church membership. Requirements for membership should therefore be based on objective criteria such as profession of faith or baptism. It would be important that any person who fulfils those requirements is eligible for membership. In that way membership is open to the public or a sufficient section of the public.

- **Charges for services/benefits**  
Sometimes charges are made for services/benefits provided by the church, such as fees for children's groups or for a fellowship meal or a church weekend away. The legal requirement is that, where charges may be more than the poor can afford, the service/benefit must be provided in a way that does not exclude the poor. For example discounts could be made available in appropriate circumstances.
- **Donations to the church**  
Donations to the church such as regular offerings should be voluntary, so that no one (including the poor) is denied access for lack of a donation, but that also means that there should not be a requirement to contribute for example a tithe. Donations or free will offerings must be genuinely voluntary to avoid the risk of detriment or harm.

#### **9.1.4 Making sure that any personal benefits are no more than incidental**

A charity's beneficiaries will have a personal benefit from the charity and that is perfectly acceptable so long as the benefit is incidental to the carrying out of the charity's purposes. 'Incidental' in this context means 'necessarily arising from' rather than minor or small. For example a person attending church services and meetings of the church will develop their own spiritual and moral life as an incidental benefit of the church providing services to the public. That is an acceptable personal benefit for the individual attending because it arises in the course of and as a result of providing public benefit.

Personal benefits can take the form of financial benefits in the form of cash, grants or other payments or non-financial benefits, such as payments in kind, free accommodation, meals, transport or other facilities. For example when a church employs a pastor or minister, youth worker or administrator, that employee will or may receive personal benefits, both financial and non-financial. The trustees must ensure that these benefits are incidental (i.e. a necessary result or by-product of carrying out the church charity's purposes).

Personal benefits to trustees and to persons connected to them are in a special situation, in that they are not allowed to receive any personal benefit from the charity (other than benefits common to all the beneficiaries, such as being able to attend the church's services), unless that benefit is authorised by the charity's governing document (i.e. its trust deed, constitution or articles of association as appropriate) or by the CC. The CC issue separate guidance in their booklet 'Trustee expenses and payments' CC11, available on their website, about this topic, although that is not part of their official guidance on the PBR. Also see Section 10 Additional Information below.

## 10.0 Additional Information

### 10.1 Charity Commission guidance on the public benefit requirement

General guidance on public benefit is set out in various documents, which are available on the Charity Commission's website:

'Public Benefit: the public benefit requirement':

<https://www.gov.uk/government/publications/public-benefit-the-public-benefit-requirement-pb1>

'Public Benefit: running a charity':

<https://www.gov.uk/government/publications/public-benefit-running-a-charity-pb2>

'Public Benefit: reporting':

<https://www.gov.uk/government/publications/public-benefit-reporting-pb3>

'Public Benefit-an Overview':

<https://www.gov.uk/government/publications/public-benefit-an-overview>

'Public Benefit – Analysis of the law relating to public benefit' ("Analysis of the Law"):

<https://www.gov.uk/government/publications/legal-analysis-public-benefit>

Additional guidance specifically relating to religion is set out in the Charity Commission's guidance 'Advancement of religion for the public benefit':

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/358531/advancement-of-religion-for-the-public-benefit.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/358531/advancement-of-religion-for-the-public-benefit.pdf)

### 10.2 Additional Charity Commission guidance

The Charity Commission have produced further guidance on various subjects, including:

'Speaking Out: Campaigning and Political Activity by Charities':

<https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9>

'The Equality Act 2010 guidance':

<https://www.gov.uk/guidance/equality-act-2010-guidance>

'Trustee expenses and payments':

<https://www.gov.uk/government/publications/trustee-expenses-and-payments-cc11>

'Charity reporting and accounting: the essentials':

<https://www.gov.uk/government/publications/charity-reporting-and-accounting-the-essentials-cc15b>

## APPENDIX 1 – Charitable purposes set out in Section 3 of the Charities Act 2011

- a. The prevention or relief of poverty;
- b. The advancement of education;
- c. The advancement of religion;
- d. The advancement of health or the saving of lives;
- e. The advancement of citizenship or community development;
- f. The advancement of the arts, culture, heritage or science;
- g. The advancement of amateur sport;
- h. The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality or diversity;
- i. The advancement of environment protection or improvement;
- j. The relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;
- k. The advancement of animal welfare;
- l. The promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services;
- m.
  - (i) any other purposes recognised under the law prior to 1<sup>st</sup> April 2008, or
  - (ii) which may reasonably be regarded as analogous to the purposes described in paragraphs (a) to (l) or paragraph (m)(i) above, or
  - (iii) any purposes analogous to purposes within paragraph (m)(ii) above or to purposes within this paragraph (iii).

## **APPENDIX 2 - Examples of ways in which charities can advance religion for the public benefit**

### **A. Seeking new followers or adherents**

- Proselytising (seeking to convert someone to a faith or religion) is used by many charities advancing religion as an accepted and established means of attracting new followers. Churches will often regard evangelising as an essential part of the outworking of the Christian faith.

There are circumstances in which the way in which proselytising is carried out can affect public benefit such as where it involves:

- Exerting improper pressure on people in distress or need; or
- Activities that entail the use of violence or brainwashing; or
- Activities offering material or social advantages with a view to gaining new members.

### **B. Encouraging and facilitating the practice of the religion by existing followers**

Examples include:

- the provision and maintenance of a building used for religious practice (including churches): also including meeting houses, adjoining halls and meeting rooms used for related activities, e.g. religious instruction for children;
- the conducting of religious ceremonies, e.g. naming and baptismal ceremonies, or the celebration of marriages or funerals;
- the maintenance of public churchyards and other religious burial places;
- the saying of masses open to the public;
- the provision and maintenance of religious or devotional artefacts and items used in religious services, rituals or practices;
- the provision and maintenance of religious stained glass windows and other religious works of art within places of worship;
- 'passive advancement', meaning leaving religious buildings open for people to enter and benefit from personal spiritual contemplation.

**C. Raising awareness and understanding of religious beliefs and practices, including:**

- advancing a particular interpretation of a religious doctrine or advancing particular religious tenets, provided the charity is not doing so in order to achieve a political purpose;
- producing and promoting religious books, tracts, films and other information for the public, including providing religious resource centres and libraries;
- promoting the study of religious teachings and practices and scriptures;
- promoting religious narratives and/or doctrines through producing and performing musical and theatrical liturgy;
- providing religious instruction and supervision;
- providing or supporting schools and educational establishments. including theological training colleges, which provide education in accordance with the principles and practices of the religion;
- support of religious office holders for acting as such, including the provision of stipends and other living allowances, pensions and retirement accommodation;
- promoting prayer, praise and study.

**D. Religious devotional acts, including:**

- visiting the sick;
- Sitting with a deceased person's body so that it is not left unattended;
- Administering the sacraments to the sick and dying.

**E. Missionary and outreach work, including:**

- the provision of prison, industrial, university and hospital chaplaincy;
- prison and hospital visiting;
- the encouragement and support of pastoral work;
- cultural and community activities provided either in the place of worship or in the buildings attached, such as the provision of free community kitchens;
- work for reconciliation truth telling and peace;
- developing understanding regarding peace and human rights.



**F. Religious communication, including:**

- sermons and religious seminars, talks, meetings and conferences;
- charitable religious television and radio broadcasts;
- the provision of religious material via the internet;
- street and door-to-door communications.

**G. Retreat and pilgrimage, including:**

- provision of property for retreat;
- organising the holding of long or short stay retreat; where the people who attend return to society to practise their beliefs;
- organising open pilgrimages where the pilgrimage is part of the public worship of a recognised religious group and where the purpose of the pilgrimage is more than personal devotion.

**H. Advancing religion generally, including:**

- charities set up in general terms for religious purposes;
- charities set up to support religious societies and institutions;
- charities set up to support more than one religion or denomination, such as Protestant Christianity;
- ecumenical and inter-faith charities.

NB There is a difference between a religious person undertaking work as part of their religion and a person who has religious beliefs undertaking work in furtherance of a secular purpose. It is important in public benefit terms to be able to distinguish why the activity is being carried out, since activities are what organisations do in order to carry out their purposes and therefore the activities must be related to those purposes.

## **APPENDIX 3 – The Equality Act 2010 (“Equality Act”) and the Public Benefit Requirement (“PBR”)**

### **1.0 Introduction**

The Equality Act is relevant to the PBR because it prohibits discrimination in certain ways and so a charity must ensure that it does not discriminate in a way that is contrary to the Equality Act when it is set up to benefit certain groups (e.g. residents of a town and not others) or to benefit certain national groups (e.g. people from China). This aspect is referred to briefly in Section 8 above.

From the point of view of satisfying the PBR a charity may be permitted under the Equality Act to discriminate in certain ways, but if it discriminates so as not to be for the public benefit, even although it is acting lawfully under the Equality Act, it will cease to qualify as a charity unless it changes its way of working and/or its purpose so as to provide public benefit. It is important therefore for a charity to steer a safe passage between the Equality Act and the PBR.

The CC have published ‘Equality Act guidance for charities’ available on their website, which is helpful, but not directed at charities for the advancement of religion in particular.

### **2.0 What briefly does the Equality Act do?**

The Equality Act is designed to make it unlawful to discriminate against anyone because of a ‘protected characteristic’ in various areas of activity. The ‘protected characteristics’ are the following:-

- Age
- Disability
- Gender
- Reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race (which is deemed to include colour, nationality, ethnic or national origins)
- Religion
- Sex
- Sexual orientation.

Where discrimination is permitted under the Equality Act in favour of someone or a group of people who share in common a protected characteristic, that may in itself discriminate against another individual or group of people who share some other protected characteristic (e.g. discrimination in favour of married people may discriminate against young people, because married people tend to be older). In that scenario the charity would have to satisfy one of the exceptions to equality law that would allow that kind of restriction.

Usually in the case of independent churches, there will be no restrictions on who may benefit from its activities and so the Equality Act does not affect the situation. However there may be a restriction to the effect that the church’s services are for the benefit of residents of a certain area. As place of residence is not a protected characteristic the Equality Act still does not come into play.

However the Equality Act does come into play for example where a church provides meetings or activities which are aimed at groups which have a protected characteristic. The obvious example would be meetings for men only or women only where by definition the opposite sex is excluded from benefit and therefore discriminated against. Other examples from church life would be separate meetings and activities for young people and for elderly people, the solemnisation of marriages between a man and a woman, but not between a couple of the same sex and the hiring out of the church hall, but not to other faith groups.

### **3.0 Employment**

Employment by a church or Christian organisation being restricted to Christian employees is another example of discrimination affected by equality law, but that is outside the scope of this paper because it is not connected to the PBR.

### **4.0 Exceptions to the Equality Act which allow charities, in particular Christian church charities, to discriminate**

#### **4.1 “The charities exception”**

Under Section 193 of the Equality Act a person is treated as not going against the Equality Act by restricting the provision of benefits to persons who share a protected characteristic (see paragraph 2 above) if the governing instrument of the charity (i.e. its trust deed, constitution, articles of association, will or similar document) restricts benefits to people with a shared protected characteristic. In addition the provision of the benefits must be either “a proportionate means of achieving a legitimate aim” or “for the purpose of preventing or compensating for a disadvantage linked to the protected characteristic”.

The CC interpret the word “proportionate” as meaning “fair, balanced and reasonably necessary” and they interpret “legitimate aim” as meaning an aim which has a reasonable social policy objective such as health improvement or the protection of children, is consistent with the charity’s stated purpose for the public benefit and is not itself discriminatory. It will be lawful to discriminate when a charity restricts itself to providing benefits for a group which shares a protected characteristic such as race, sexual orientation or gender and the restriction is the only effective way of carrying out the aim.

For example, if a charity is established in its governing document to educate children of Chinese ethnic origin in the Christian faith in the local community which has a large Chinese community it may be legitimate for it to provide education in the Christian faith to local children of Chinese origin, but not to other children, since its resources are set up for that and ways of providing such benefits to children of Chinese origin would not be suitable for children of other origins.

Where the benefits provided by the charity are to tackle a particular disadvantage or need linked to a protected characteristic, this exception is easier to apply than the exception of providing benefits as a proportional means of achieving a legitimate aim. It is therefore appropriate to see whether this exception applies to a given situation before examining the previous one. For example, if a charity has a purpose

of relieving poverty amongst people of a particular ethnic origin, the charity can carry out that purpose if it can be shown that poverty is particularly severe amongst that group of people, compared to the general population.

The CC say that this provision will not apply to charities which have freedom to choose any charitable purpose. If such a charity limits its benefit to a group of people with a shared protected characteristic it will not be clear which particular disadvantage is being tackled. However such a charity may be able to take advantage of the positive action exemption (see paragraph 4.3 below) or some other exemption provided by the Equality Act.

Discrimination is not allowed by reference to skin colour. The Charities Exception does not apply to discrimination by reference to skin colour.

Indirect discrimination, which is prohibited by the Equality Act, may arise if there is a restriction on who may benefit from the charity but the restriction does not relate to a protected characteristic and the effect of the restriction is that people who share a protected characteristic are disadvantaged by the restriction compared to others who don't share that characteristic and the restriction is not a proportionate means of achieving a legitimate aim. For example a church provides meals for poor people in their church hall. The community has a large Jewish community but the church say they cannot provide meals for Jewish people because their supplier cannot provide kosher meals. This disadvantages Jewish people. The church's policy is unlikely to be justifiable, because they could seek alternative suppliers who would supply kosher meals.

#### 4.2 Exemptions for religious or belief organisations

Paragraph 2 of Schedule 23 of the Equality Act provides an important exemption for 'religion or belief' organisations which are defined as organisations, purposes are:

- to practise a religion or belief;
- to advance a religion or belief;
- to teach the practice or principles of a religion or belief;
- to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief; or
- to foster or maintain good relations between persons of different religions or beliefs.

An organisation whose sole or main purpose is commercial cannot qualify as a religious or belief organisation. Charities may engage in some types of trading, but they are not commercial in that they cannot have profit making as a primary aim. Charities would normally be able to carry on some types of trading without losing the benefit of this exemption.

Paragraph 2(3) of Schedule 23 provides that a religious or belief organisation can discriminate on the grounds of a person's religion or belief or their sexual orientation by restricting:

- membership of the organisation;
- participation in activities undertaken by the organisation or on its behalf or under its auspices;
- the provision of goods, facilities or services in the course of activities undertaken by the organisation or on its behalf or under its auspices;
- the use or disposal of premises owned or controlled by the organisation.

There are conditions which apply to this exemption. Paragraph 2(6) of Schedule 23 provides that a restriction on the ground of religion or belief can only be imposed because of the purpose of the organisation, or to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.

Paragraph 2(7) of Schedule 23 provides that a restriction on the ground of sexual orientation can only be imposed because it is necessary to comply with the doctrine of the organisation, or to avoid conflict with strongly held convictions, being in the case of a religion, the strongly held convictions of a significant number of the religion's followers, or being, in the case of a belief, the strongly held convictions relating to the belief of a significant number of the belief's followers.

It is to be noted that restrictions imposed within this exception do not have to be set out in the governing document of the charity nor do they have to be justified by the criteria required in the case of the Charities Exception set out in paragraph 4.1 above.

Because a charity must satisfy the PBR, a restriction relating to religion or belief is only permitted if the purpose continues to be for the public benefit. For example a care home for Christians can be capable of being for the public benefit, but if it was only for Christians, who are English or from a particular local church this may not meet the PBR. So although a church charity may under the religion or belief exception limit its membership to followers of Christianity the conditions of membership must not be so restrictive as to nullify public benefit and generally, provision of worship services should be open to the public.

Independent churches and their leaders will normally be able to qualify as organisations claiming this exception, because they advance a religion (i.e. Christianity) and they do not have commerce as their sole or main purpose.

However they can only make restrictions on the benefits they provide in relation to the Christian faith or in relation to sexual orientation (i.e. by imposing restrictions

discriminating against persons who are not of the Christian faith or against persons on the ground of their sexual orientation).

The religion and belief organisation exception will often be relevant when churches hire out their premises to other individuals or organisations. Churches should create and publicise a clear hiring policy, which sets out any policies to exclude certain types of organisation or individuals (e.g. political groups (these can be excluded, because they do not have a protected characteristic), anti-Christian groups or groups advocating same sex relationships). Any such exclusions involving protected characteristics should relate the exclusion to Christian faith and doctrine.

#### 4.3 “Positive Action” in service provision

Section 158 of the Equality Act allows for service providers (including charities) to help people who are disadvantaged or under represented to achieve the same opportunities as everyone else by positive action.

Who can take advantage of this exception? The Section applies if a person reasonably thinks that:

- persons who share a protected characteristic suffer a disadvantage connected to the characteristic;
- persons who share a protected characteristic have needs that are different from the needs of persons who do not share it; or
- participation in an activity by persons who share a protected characteristic is disproportionately low.

What can be done under this exception? The Equality Act allows for people (including charities) to take action which is a proportionate means of achieving the aim of:

- enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage;
- meeting those needs; or
- enabling or encouraging persons who share the protected characteristic to participate in that activity.

In summary the service provider, including charities, (a) must reasonably believe that the group, which they wish to benefit, shares a protected characteristic which puts them at a disadvantage or has a special need or for some reason people in the group do not avail themselves of the service provider’s benefits and (b) can take positive action to remedy those problems in a proportionate way.

By way of example of positive action, a church operates a fellowship meeting on a Wednesday afternoon for anyone who wishes to attend. The church arranges for elderly people, who are unable to travel without transport being provided door to

door, to be transported by volunteers to the church premises and for them to be taken home afterwards. The elderly are receiving special treatment not offered to other attenders, but this is permissible under Section 158 of the Equality Act as positive action for elderly people to enable them to benefit from the church's services equally with others.

## **APPENDIX 4 - The Preston Down Trust decision of the Charity Commission given in January 2014**

### **1.0 Introduction**

A summary of the eventual decision by the Charity Commission (“the CC”) to register the Preston Down Trust (“PDT”) as a charity for the advancement of religion is given in this section because the case is instructive in showing how the CC were satisfied that the PBR was met, although they had previously refused to register it. Although the PDT was an organisation having purposes reflecting what used to be called ‘the Exclusive Brethren’, now known as the Plymouth Brethren Christian Church (“PBCC”), the case provides guidance of general application to Christian churches on the PBR. By using this example Church Growth Trust (“CGT”) is not in any way endorsing the work of PBCC or associating with them. CGT has always worked with the Open or Christian Brethren rather than the Exclusive Brethren and therefore, other than where quoting from specific documents, this paper refers to PBCC as Exclusive Brethren in order to distinguish between the different parts of the Brethren Movement. For more detail or the history of the Brethren Movement see CGT’s briefing paper on this subject.

### **2.0 A Short History of the Case**

The PDT was originally set up by a Trust Deed dated 30<sup>th</sup> September 1978, which was varied under powers reserved in the 1978 Deed by another Deed dated 28<sup>th</sup> January 2004 in which the Objects (or purposes) of the PDT were stated to be:

- i) The carrying on of the service of God including the celebration of the Lord’s Supper, Gospel Preachings, Bible Readings and Addresses on the Word of God and other meetings of a Christian Religious character according to the injunctions contained in the Holy Scriptures and the tenets and practices of those Christians forming a worldwide fellowship variously known as and hereinafter referred to as ‘Brethren’ who hold and practise the teachings of Christ and His Apostles contained in the Holy Scriptures as expounded by His servants, ministers of the Lord in the Recovery [and other former and current PBCC leaders] and after the death of [current leader] with any other persons who hereafter is recognised by Brethren worldwide as the successor, as a minister of the Lord in the Recovery.
- ii) Any other charitable religious purpose connected with Brethren

When the PDT applied to be registered as a charity in February 2009 their application was rejected by the CC in 2012 on the grounds:

- 2.1 the CC was not satisfied that the access to PDT religious services was sufficiently open to the public;
- 2.2 the CC thought that the religious doctrines and practices of PBCC limited the engagement of PDT with the community beyond the Brethren themselves and had a limited beneficial impact on the wider community;
- 2.3 the CC was also generally aware of allegations with regard to detriment and harm which might work against public benefit.



PDT appealed to the First Tribunal against the CC's decision but the case was stayed to allow for further discussions to take place and further evidence to be produced including the preparation of a revised Trust Deed. The new revised Trust Deed would contain restated Objects and statements of Core Doctrines of the PBCC and Faith in Practice.

On 3rd January 2014 the CC published its decision to register the PDT as a charity in the light of the new evidence and revised Trust Deed.

### **3.0 The issues addressed by the CC**

There were a number of issues addressed by the CC, including:

- 3.1 Were the expressed purposes of PDT sufficiently certain to be charitable?
- 3.2 Were those purposes exclusively charitable?
- 3.3 Were the purposes of PDT for the public benefit which question divided into three sub issues:
  - was there benefit to the wider community, not just to the particular adherents of the PDT?;
  - were those who benefit a sufficient section of the public?;
  - were there elements of detriment, harm, public disadvantage or disbenefit which outweigh or militate against public benefit?

### **4.0 Were the expressed purposes of PBT sufficiently certain to be charitable?**

The CC had concerns that the purposes set out in the Deed dated 28<sup>th</sup> January 2004, quoted at paragraph 2 above, were not sufficiently certain because they depended on, in part, the exposition of current and future leaders of PBCC and these may not be known in their entirety and may change in the future. This uncertainty was rectified by the new Deed of Variation prepared by PDT and submitted to the CC following rejection of their application for registration, which set out the following revised purposes:-

- (a) the advancement of the Christian religion for the public benefit including by the carrying on of the service of God in accordance with the Old and New Testaments of the Holy Bible as followed by those Christians forming part of a worldwide fellowship known as the "Plymouth Brethren Christian Church" ("the Brethren") whose core doctrine is summarised in Schedule 1 to this Deed and whose proper practices in furtherance of some aspects of that core doctrine are summarised in Schedule 2 to this Deed; and
- (b) any other charitable purposes connected with Brethren".

The CC were satisfied that this revised statement of PDT's purposes was sufficiently clear in intent to establish charitable purposes and acceptable for registration.

## **5.0 Were those revised purposes exclusively charitable?**

Because the revised purposes of PBT referred to a stated set of core doctrines and practice the potential for future non-charitable purposes was removed and so it became acceptable for registration.

## **6.0 Was there benefit to the wider community, not just to the adherents of the PDT**

As a preliminary issue the CC decided that in a court case in 1981 called *Holmes v Attorney General*, reported only in the Times newspaper, when a Brethren meeting hall trust was held to be charitable, too much emphasis was placed by the court on a presumption of public benefit which presumption had been expressly removed by Section 3(2) Charities Act 2006. There had been a change in the law in that respect, so that according to the CC, “public benefit must ensure [be available] to the wider community not simply to the particular adherents of any religion” and the public benefit must be established in each case without any presumption of a charitable purpose being for the public benefit.

The CC said “An enclosed religious community which is devoted solely to worship, prayer and meditation without any external contact is not charitable because as a matter of law the public benefit of such activities cannot be assessed” but “a private religious group which is not wholly shut off from the outside world may be charitable if there is sufficient external interface and consequent public benefit in its endeavours. This will be a question of fact to be assessed on the evidence in each case.”

Where access to religious services is the issue, these must be held in public to confer public benefit and religious services conducted in private may be charitable if public benefit can be found elsewhere. In the latter case it would depend on the extent or beneficial impact of any such wider engagement. The CC concluded that public benefit for a religious charity would be determined by the extent to which its moral and ethical teaching impacted on the community, leading to a betterment of society generally.

Having regard to this conclusion the CC went on to consider the effect of the doctrine of separation from evil, which features strongly in Exclusive Brethren doctrine and practice, resulting in restrictions on various activities, such as eating/drinking with non-members, joining professional bodies, marrying outside of the Exclusive Brethren and children participating in a number of school activities including school dinners and religious worship and attending university.

The CC took account of evidence from expert academics and theologians and from individuals as to the Exclusive Brethren doctrines and practices, the interaction between the Exclusive Brethren and the wider community and the Doctrine of Separation, its consequences for members, their families and friends, for the wider community and for society.

The CC judged that the Exclusive Brethren have a beneficial impact through their instruction and edification of the public in a Christian way of life by:

- 6.1 providing the public with access to worship. The public have an opportunity to attend and to participate to some extent in services even although the public is excluded from Holy Communion services. The requirement to be a well-disposed

person and adhere to their dress code does not prohibit public attendance and is common to some other religions;

- 6.2 engaging in street preaching which involves distribution of religious publications and spreading the word of God; and
- 6.3 engaging to a certain extent in the wider community including through disaster relief (e.g. distribution of food and bibles to the public).

## **7.0 Were those who may benefit a sufficient section of the public?**

There was some evidence that the Exclusive Brethren are inward facing with a strong focus on their nuclear and extended families and on their local meeting halls and wider Exclusive Brethren fellowship.

The CC indicated that it is more difficult for an internally focussed organisation to demonstrate benefit to the wider community. However there was evidence that the Exclusive Brethren members live their lives as members of the community. They impact in a positive way living out their Christian beliefs in particular by responding to local disasters, assisting those in need and donating to charity. Although the evidence may tend to suggest that the Exclusive Brethren operate predominantly, rather than exclusively, for the benefit of their members, that was not necessarily fatal to charitable status.

As stated above where a religious group is not wholly shut off from the outside world it may be charitable if there is sufficient external interface and consequent public benefit in its endeavours. It seems that the CC concluded there was sufficient “external interface and consequent public benefit” in the case of PDT.

## **8.0 Were there elements of detriment, harm or public disadvantage or disbenefit outweighing public benefit?**

It has been established by the court that, even if there is clear benefit arising from the purposes of an organisation, where these are outweighed by the detriment or harm to the community by pursuing its purposes, then the PBR will not be met. In 1948 the House of Lords decided that the National Anti-Vivisection Society was not a charity, because the moral benefits to the community arising from campaigning to prevent live animal experimentation were outweighed by the material benefit to humankind arising from medical research. To have lost that research would have done more harm than good.

The factors which indicated detriment arising from the Exclusive Brethren’s activities were considered by the CC to be:

- 8.1 the doctrines and practices of the Exclusive Brethren resulted in the imposition of strict codes of behaviour restricting freedom of choice through a centralised system;
- 8.2 the disciplinary practices gave rise to arbitrary variations in practice;
- 8.3 harsh disciplinary action often for minor transgressions;

- 8.4 physical separation of family members often leading to permanent divisions within families;
- 8.5 detrimental impact on health and wellbeing of those subject to discipline;
- 8.6 lack of support and isolation from friends within the Exclusive Brethren;
- 8.7 the impact of the doctrines and practices on those who leave the Exclusive Brethren resulted in the complete severing of family ties and many other issues resulting from the broken relationships;
- 8.8 the impact of the doctrines and practices on children resulted in limitation on educational activities for children, loss of social interaction with non-Exclusive Brethren, inability to attend university and limited career opportunities.

The CC found on the evidence that there were elements of detriment and harm which came from doctrine and practices of the Exclusive Brethren and which had a negative impact on the wider community, as well as on individuals, particularly in relation to children and to those who leave the Exclusive Brethren.

#### **9.0 Changes in practice and procedure made by the Exclusive Brethren to enable registration as a charity**

Nevertheless the 'Faith in Practice' statement incorporated in the revised Trust Deed made ten significant improvements to those detrimental elements which were briefly:-

1. The Doctrine of Separation confirms drawing away in a moral sense rather than a physical sense and permits interpersonal and social interaction with non-Exclusive Brethren;
2. Living a Christian life acknowledges that Holy Scripture commands us to be good neighbours to others and deal with all other people openly, honestly and fairly, giving time and money to assist those in need;
3. Showing compassion involves caring for those who are receptive to care in the Exclusive Brethren community and also in the wider community including former Exclusive Brethren;
4. In relation to disciplinary practices due provision will be made for the welfare of the church member who is under review covering emotional, health, family and financial considerations;
5. In relation to disciplinary practices again, if repeated pastoral care is unsuccessful the next stages of admonition are to be incremental from attending meetings of the Assembly and eventual excommunication by the members on their own personal decision or in other very rare cases as an extreme or last resort measure;
6. In the treatment of individuals no action is to be taken in any way vindictively, maliciously or unfairly within or outside the community;

7. In relation to the education of children every care is to be taken to provide for and support the welfare and education of children and young persons within the community. This allows for instance young people to be out of fellowship from the Exclusive Brethren while they attend university and then return when their studies are complete;
8. In relation to those who leave the Exclusive Brethren reasonable assistance is to be given in terms of support and/or financial assistance relating to employment or other matters where they have been dependent on the community;
9. The importance of maintaining relationships when a person leaves the Exclusive Brethren is recognised so reasonable steps should be taken to allow the continuation of family relationships... in particular for children;
10. In relation to the ability of former Exclusive Brethren to attend funerals it is confirmed so that the Doctrine of Separation allows members of the extended family of the deceased including former Exclusive Brethren to attend their funeral service.

On the basis of these findings, changes to the Trust Deed and the statements of Core Doctrines of the Brethren and Faith in Practice the CC decided that PDT could be registered as a charity, but if the trustees did not comply with these revisions then a breach of trust would arise and the CC may take appropriate action.

## **10.0 General principles demonstrated in the PDT case**

### **10.1 In connection with access to worship:**

- a church may adopt security measures and ask visitors questions to check whether they are well disposed to the church community;
- advertising services on publicly visible notice boards outside church premises and providing contact details for further information about services was an acceptable way of inviting the public to services;
- the number of people attending services from outside the church community was “not necessarily determinative but the numbers should not be negligible”.

### **10.2 In connection with reaching out to the wider community:**

- church outreach events, charitable giving and work supporting the community are acceptable means of providing a benefit to the wider public;
- living out Christian beliefs in the wider community is beneficial even although the church community such as the Exclusive Brethren is predominantly inward facing;
- street preaching alone is not likely to be a form of interaction with the wider community, because it involves little or no interaction with

the public, but the distribution of Christian literature including the Bible is charitable.

### **11.0 Possible trouble ahead and the need to be demonstrative!**

In their report of the PDT case the CC said of a case decided in the courts 30 years previously “both the diversity of religion and public attitudes towards religion and its benefits to society have evolved during this period”.

It is possible that in the future the way in which the CC regard the benefit from the advancement of religion will change in accordance with “public attitudes”, but this is no more than a possibility, not a prediction. However it will be important for churches to demonstrate the benefit which they provide to the wider community whenever they have opportunity, so as to justify their charitable status.

### **12.0 The CC Case Report on the Preston Down Trust dated 15<sup>th</sup> February 2016**

The CC carried out a review of the operation of the PDT since January 2014 when it had been registered as a charity. The following points of interest emerge from the review:-

- 12.1 The CC recommended that the trustees consider what else they can do to publicise all the meetings that are accessible to non-members to show genuine openness of worship to the public;
- 12.2 There was evidence of work undertaken with the wider community in clearing car parks, village hall tidy ups, snow wardens, rest area managers, litter clearing, repairing, repairing coastal defences, work within the local hospital and prison and funds applied for the benefit of the wider community such as helping homeless persons and a donation towards an air ambulance. The CC recommended that a basic grant making policy be drawn up.
- 12.3 The CC recommended that policies be drawn up by PDT for complaints, grant making, financial controls, conflicts of interest and safeguarding.
- 12.4 The CC advised that more detailed minutes of trustees’ meetings be kept which show that the trustees made their own decisions in the best interests of the charity, including some detail of the discussions (the reasoning behind the decision), as well as the final decision, particularly on key decisions.

## APPENDIX 5 - Public Benefit Reporting

The Charity Commission's ("the CC") public benefit guidance on trustees' obligation to report on public benefit is contained in 'Public Benefit: reporting' available on their website and is a part of their official guidance on the Public Benefit Requirement ("PBR"). There is further guidance from the CC in their publication 'Charity reporting and accounting: the essentials' CC15c published in March 2015, which sets out the reporting requirements for charities, including the requirement for annual reports for financial years ending on or after 31<sup>st</sup> March 2015. For financial years prior to that see CC guide CC15b.

The annual trustees report, submitted with the accounts, is not only important for setting out how the charity is meeting its public benefit requirement, but also an opportunity for the charity to show others what it is doing and to "showcase" its good work (Matthew 5:16). If the accounts are filed with the CC, often potential funders will look at the annual report as part of its assessment of the charity. It is important therefore to make the report as positive and full as possible.

### 1.0 Statutory authority

The obligation for trustees to make a report is contained in Rule 40 of the Charities (Accounts and Reports) Regulations 2008, which is set out in full in 'Public Benefit: reporting'.

### 2.0 What is required by way of report?

The requirements relevant to public benefit are:

- 2.1 For a charity which is considered to be a smaller charity (i.e. with annual income below £500,000), the annual report must set out briefly a summary of the main activities undertaken by the charity to further its charitable activities for the public benefit<sup>9</sup>. More detailed guidance as to the contents of the annual report is referred to in paragraphs 2.9 to 2.11 inclusive below.
- 2.2 For a charity which is considered to be a larger charity (i.e. with annual income of £500,000 or above), it must prepare an annual report which contains not only the information required and referred to in paragraph 2.1 above, but also additional information by way of "a review of the significant activities undertaken by the charity during the relevant financial year to further its charitable purposes for the public benefit or to generate resources to be used to further its purposes"<sup>10</sup>. More detailed guidance as to the contents of the annual report is referred to in paragraph 2.9 to 2.11 inclusive below.
- 2.3 For every charity required to prepare an annual report (whether under paragraph 2.1 or under paragraph 2.2), the annual report must contain a statement by the charity trustees as to whether they have complied with the duty in Section 17(5) of the Charities Act 2011 (previously Section 4(6) of the Charities Act 2006)), to have due regard to guidance published by the CC.

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<sup>9</sup> See sub paragraph (i) paragraph (b) Rule 40(2), as amended by SORP 2015

<sup>10</sup> See sub paragraph (ii) paragraph (b) Rule 40(2) as amended by SORP 2015

- 2.4 All registered charities, other than Excepted Charities (for an explanation see Church Growth Trust briefing paper “Does our Church Need to Register 2012?”) and Exempt Charities, should prepare an annual report and make it available on request.
- 2.5 If a charity has an annual income of more than £500,000, then the annual report must be in a long form as referred to in paragraph 2.2 above, but if the annual income is less than £500,000, then the annual report may be in brief form only as referred to in paragraph 2.1 above.
- 2.6 Charitable companies must follow the same requirements with regard to annual reports as mentioned in paragraph 2.5 above, but their annual reports are usually integrated with the Directors’ Report. Charitable Incorporated Organisations must prepare annual reports in the form as referred to in paragraph 2.5 above.
- 2.7 Excepted Charities are not required to prepare annual reports, but if they do register with the CC, then they will have to prepare annual reports as referred to in paragraph 2.5 above.
- 2.8 Annual Reports must be filed with the CC within 10 months of the end of the financial year in the case of charities having an annual income in excess of £25,000. In the case of a charitable company the annual report may be combined with the Directors’ Report and, where the income exceeds £25,000, the annual report combined with the Directors’ Report must be filed with the CC within 10 months of the end of the company’s financial year. Charities with annual income of less than £25,000 are required to produce accounts and an annual report, even though they do not need to file them with the CC. In the case of Charitable Incorporated Organisations the annual report must, no matter what the level of annual income, above or below £25,000, be filed with the CC within 10 months of the end of the financial year.
- 2.9 The guidance set out in the two SORPs (‘Statements of Recommended Practice’) FRSSE (Financial Reporting Standard for Smaller Entities) and FRS102 (Financial Reporting Standard) which apply for accounting periods beginning on or after 1<sup>st</sup> January 2015 sets out the requirements for the reports referred to in paragraph 2.1 above (“brief report”) and in paragraph 2.2 above (“long report”) in relation to ‘Objectives and Activities’ and ‘Achievements and Performance’. However it is to be noted that the FRSSE SORP has been withdrawn for accounting periods commencing on or after 1<sup>st</sup> January 2016 and so FRS102 only will apply. Extracts from the SORPs FRS102 Module 1 are set out in Parts 1 and 2 of Appendix 6 to this briefing paper. The requirements for Annual Reports in respect of accounting periods prior to 1<sup>st</sup> January 2016 are similar. All annual reports must provide the information contained in a brief report, but charities which require a statutory audit of their accounts must also supply the additional information required in a long report as stated in the Module 1.
- 2.10 The CC website provides helpful examples of both a brief report and a long report. There is an example of a brief report for a Parochial Church Council, an example of a charitable company long report and there are further examples of long reports taking account of SORP.



- 2.11 The Parochial Church Council example will be particularly useful in that it can readily be adapted for an independent church. In this example, for a fictitious church called St Emilion, Barchester, the church has an income of £69,600 and so an audit of the accounts is not required and a brief report is appropriate. The annual report includes, as required by the SORP, sections headed 'Objectives and Activities' and 'Achievements and Performance'.

The section headed 'Objectives and Activities' describes the PCC's commitment to enabling as many people as possible to worship and to become part of the parish community. It goes on to say how the incumbent and the PCC have considered the CC's guidance on public benefit and are trying to enable ordinary people to live out their faith. There then follows a brief description of the church's activities ranging from worship and prayer to missionary and outreach work to maintaining the fabric of the church building.

The section headed 'Achievements and Performance' has a number of paragraphs with sub headings (e.g. 'Worship and Prayer', 'The Church Centre Complex', 'Pastoral Care' and 'Mission and Evangelism'), going through each of the church's activities in greater detail and describing what has been achieved in each area of activity, including the numbers of people in attendance at each activity where relevant.

## APPENDIX 6

### **PART 1 – Extract of requirements for brief and long reports under SORP relevant to public benefit**

#### Objectives and Activities

1. Explain the main activities undertaken to further the charity's purposes for the public benefit.
2. Include a statement confirming whether the trustees have had regard to the CC's guidance on public benefit.
3. The report should explain the activities projects or services identified in the accompanying accounts.

#### Achievements and Performance

The report must contain a summary of the main achievements of the charity. The report should identify the difference the charity's work has made to the circumstances of its beneficiaries and if practicable explain any wider benefits to society as a whole.

### **PART 2 – Extract of additional requirements for long report under SORP relevant to public benefit**

#### Objectives and Activities

1. Good reporting provides a coherent explanation of the charity's strategies for achieving its aims and objectives and explains how the activities it undertakes contributed to their achievement.
2. In particular the report of larger charities must provide an explanation of:
  - its aims, including details of the issues it seeks to tackle and the changes or differences it seeks to make through its activities;
  - how the achievement of its aims will further its legal purposes;
  - its strategies for achieving its stated aims and objectives;
  - the criteria or measures it uses to assess success in the reporting period;
  - the significant activities undertaken (including its main programmes, projects or services provided), explaining how they contribute to the achievement of the stated aims and objectives.
3. Larger charities in their report should also provide the user with a more detailed understanding of their short term and longer-term aims and objectives. A charity with longer-term aims and objectives should explain how the aims and objectives set for the reporting period relate to its longer-term aims and objectives. When explaining activities it is important for the user to understand their scale and the resources used in their delivery(e.g.

it may be helpful to provide details of the amount spent on, or the number of staff engaged, in undertaking a particular activity).

4. The report must include an explanation of the use the charity makes of the following:
  - Social investment, when this forms a material part of its charitable and investment activities. In particular, the report must provide an explanation of its social investment policies and explain how any programme related investments contribute to the achievement of its aims and objectives;
  - Grant making, when this forms a material part of its charitable activities. In particular the report must explain the charity's grant making policy and explain how its grant making activities contribute to the achievement of its aims and objectives;
  - Volunteers, when their contribution is significant to a charity's ability to undertake a particular activity. The explanation should help the user to understand the scale and nature of the activities undertaken. However measurement issues, including attributing an economic value to the contribution of general volunteers, prevent the inclusion of their contribution in the statement of financial activities.
5. Charities reporting on the contribution of general volunteers may provide:
  - an explanation of the activities that volunteers support or help to provide; and
  - details of the contribution in terms of volunteer hours or staff equivalents.

#### Achievements and Performance

1. Good reporting sets out how well the activities undertaken by the charity and any subsidiaries performed and the extent to which the achievements in the reporting period met the aims and objectives set by the charity for the reporting period. Good reporting provides a balanced view of successes and failures along with the supporting evidence, and demonstrates the extent of performance and achievement against the objectives set and the lessons learned.
2. In particular the report must review:
  - the significant charitable activities undertaken;
  - the achievements against objectives set;
  - the performance of material fundraising activities against the fundraising objectives set;
  - investment performance against the investment objectives set, where material financial investments are held; and
  - if material expenditure was incurred to raise income in the future, the report must explain the effect this expenditure has had, and is intended to have, on the net return from fundraising activities for both the reporting period and future periods.

3. The report should provide a balanced picture of a charity's progress against its objectives. For example it may explain progress by reference to the indicators, milestones and benchmarks the charity uses to assess the achievement of objectives.
4. In reviewing achievements and performance, charities may consider the difference they have made by reference to terms such as input, activities, outputs, outcomes and impacts, with impact reviewed in terms of the long term effect of a charity's activities on both individual beneficiaries and at a societal level. Charities are encouraged to develop and use impact reporting (impact arguably being the ultimate expression of the performance of a charity), although it is acknowledged that there may be major measurement problems associated with this in many situations.