

# CHARITY COMMISSION

## DECISION OF THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES MADE ON 17<sup>TH</sup> NOVEMBER 1999

### APPLICATION FOR REGISTRATION AS A CHARITY BY THE CHURCH OF SCIENTOLOGY (ENGLAND AND WALES)

#### 1. *The issue before the Commissioners*

The **Board of Commissioners** considered an application by the Church of Scientology (England and Wales) (**CoS**) for registration as a charity pursuant to **section 3(2) of the Charities Act 1993**. In reaching their determination of the application the **Commissioners** considered whether **CoS** is charitable as being an organisation:

- (i) established for the charitable purpose of the advancement of religion and/or
- (ii) established for the charitable purpose of the promotion of the moral or spiritual welfare or improvement of the community,

and if in the case of (i) or (ii) above **CoS** is so established for such a charitable purpose, whether it is established for the public benefit.

#### 2. *Conclusion*

The **Commissioners** having considered the full legal and factual case and supporting documents (including expert evidence) which had been put to them by **CoS** and having considered and reviewed the relevant law, taking into account the principles embodied in the European Convention on Human Rights (**ECHR**), the **Commissioners** concluded that **CoS** is not established as a charity and accordingly is not registrable as such. In so determining the **Commissioners** concluded as follows -:

**CoS** is not charitable as an organisation established for the advancement of religion because having regard to the relevant law and evidence:

- (a) Scientology is not a religion for the purposes of English charity law. That religion for the purposes of charity law constitutes belief in a supreme being and worship of that being (*section 6, pages 12 to 25*). That it is accepted that Scientology believes in a supreme being (*section 6, page 25*). However, the core practices of Scientology, being auditing and training, do not constitute worship as they do not display the essential characteristic of reverence or veneration for a supreme being (*section 6, pages 25 to 26*).
- (b) That even were **CoS** otherwise established for the advancement of religion, public benefit should not be presumed given the relative newness of Scientology and public and judicial concern expressed – ie the presumption of public benefit available to religious organisations as charities was rebutted (*section 8, pages 40 to 43*); and that
- (c) Public benefit arising from the practice of Scientology and/or the purposes of **CoS** had not been established (*section 8, pages 43 to 44 and pages 47 to 48*).

**CoS** is not charitable as an organisation established to promote the moral or spiritual welfare or improvement of the community because having regard to the relevant law and evidence:

- (a) The practice of Scientology and the purposes of **CoS** are not analogous to the legal authorities establishing the moral or spiritual welfare or improvement of the community as a charitable purpose (*section 7, pages 26 to 29*), and in taking a broader view of the authorities, would not be likely to achieve such a purpose (*section 7, pages 30 to 37*).
- (b) That even were **CoS** otherwise established for the promotion of the moral or spiritual welfare or improvement of the community, public benefit arising out of the practice of Scientology and/or the purposes of **CoS** had not been established (*section 8, pages 45 to 47 and page 49*).

### 3. *The Application for Registration as a charity*

#### *The application*

In September 1996 a newly incorporated body<sup>1</sup> called the Church of Scientology (England and Wales) (**CoS**) applied to the Commission for registration as a charity for the advancement of religion accompanied by a full legal and factual case.

In 1997 the **Commissioners** indicated to **CoS** that they would consider whether **CoS** was a charity in law (not just the narrower question of whether **CoS** was charitable under a particular head of charity law, as advancing religion). If necessary, this might include other heads of charity such as the promotion of education or a purpose under the fourth head of charity such as the promotion of the moral or spiritual welfare or improvement of the community.

The promoters submitted further legal and factual argument that if and in so far as **CoS** is not a charity for the advancement of religion, it is charitable under the fourth head of charity as being established for the moral or spiritual welfare or improvement of the community. That argument also dealt with public benefit issues arising under that head.

The application was subsequently significantly augmented by **CoS** by the submission of international law argument which covered the Government's then proposal to incorporate the European Convention on Human Rights (**ECHR**) (and thus those provisions making it unlawful to discriminate against individuals on the grounds of their religion or other beliefs) into domestic law, and the effect of this upon the application. Since then the Human Rights Act 1998 (**HRA**) has been passed although it does not yet have legal effect. At present the Government proposes to bring the **HRA** into force in October 2000.

#### *The Church of Scientology*

The **Commissioners** noted the following background to the application for registration as a charity.

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<sup>1</sup> A company limited by guarantee holding minimal property

The Church of Scientology (the Church) is an international organisation which promotes a belief system, doctrines and practices known as Scientology. Its international headquarters are in the USA although it is organised world-wide. Assets owned by the Church in this country are currently held and administered by a branch of the Church incorporated in Australia. The Church has now established a company under the Companies Acts called the Church of Scientology (England and Wales) (CoS) to further its work in this country.

The activities of the Church of Scientology carried on in England and Wales are based principally at its properties at Saint Hill, East Grinstead in Sussex, although there are other Scientology centres eg at Poole and Plymouth. There are said to be about 200,000 adherents in this country. Scientology is based on the writings of the late L Ron Hubbard.

Scientology claims to be a religion both in recognising the existence of a supreme being and in carrying out forms of worship through auditing and training.

Scientology organisations have been recognised legally as religious in character in other countries for certain purposes. Most notably, by the Internal Revenue Service in the USA as an exclusively religious or charitable organisation under **s501(c)(3)** of the **Internal Revenue Code** and thus exempt from Federal Income Tax and by the High Court of Australia (in **Church of the New Faith v Commissioner of Payroll Tax (1983) 154 CLR 120 (HC of A)**) as a religious, or public benefit, institution entitled to an exemption from paying payroll tax under the Payroll Taxes Act 1971.

#### *The objects of CoS*

The objects of CoS as set out in its Memorandum and Articles of Association are as follows:

*The advancement of the Scientology religion and in particular but not so as to limit the generality of the foregoing:*

- (1) *the espousal, presentation, propagation and practice of, and the ensuring and maintaining of the purity and integrity of, the religion of Scientology;*
- (2) *the advancement of the religious and other charitable work of Scientology Churches and Missions in England and Wales.*
- (3) *the maintenance of the fabric and furnishings of Scientology Churches and Missions in England and Wales;*
- (4) *the production, publication and dissemination of Scientology religious works;*
- (5) *the advancement of religious education in accordance with the doctrines and practice of Scientology.*

## *Doctrines and Practices of Scientology*

The **Commissioners** considered the comprehensive summary of the doctrine and core religious practice of Scientology put to them by **CoS** in their submission. In relation to Scientology doctrine they noted that:

- Scientology is based exclusively upon the research, writings and recorded lectures of the late L. Ron Hubbard - all of which constitute the scriptures of the 'religion'. These encompass more than 500,000 pages of writings, nearly 3,000 recorded lectures and more than 100 films. They include axioms that precisely define the fundamental laws and truths of life, including who one is, what one is capable of, and how one might realise one's natural spiritual abilities. From these axioms come a great number of fundamental principles individuals can use to achieve spiritual infinity, as well as to improve their immediate lives and the lives of those close to them. A fundamental doctrine of Scientology is that spiritual freedom can be attained only if the path outlined in Hubbard's works is followed without deviation. Hubbard is the only source of Scientology, and has no successor.
- Scientology doctrine divides an individual's existence into eight distinct divisions, called "dynamics", each of which represents an area of life where every individual has an urge and determination to survive. Pursuit of survival along these dynamics is the common denominator of all life. The eight dynamics are best conceived as concentric circles ranging from the first dynamic in the centre, out to the eighth dynamic in the outer parameter as follows:
  - (1) the first dynamic, self, is the effort to survive as an individual;
  - (2) the second dynamic is the urge to exist as a future generation, which encompasses the family unit;
  - (3) the third dynamic is the urge to survive as a member of a group, such as a company, a church or a social organisation;
  - (4) the fourth dynamic is the urge for survival of man as a species;
  - (5) the fifth dynamic is the urge to survive for all life forms, whether animal or vegetable;
  - (6) the sixth dynamic is the urge for survival of the physical universe and reflects the drive of the individual to enhance the survival of all matter, energy, space and time;
  - (7) the seventh dynamic is the urge to exist as a spiritual being; and
  - (8) the eighth dynamic is the urge to exist as infinity, which also may be identified as the supreme being or god.
- The goal of Scientology is to help an individual survive to the greatest level across all dynamics from the self (the first dynamic) and ultimately to the supreme being (the eighth dynamic). Through the application of Scientology principles and practices an individual is able to increase his ability to improve survival across the dynamics. As he becomes more capable and more aware, he expands from the first

into the outer dynamics, and he becomes more able to control and influence all dynamics to better himself and all mankind.

- **CoS** has no specific doctrine concerning god, although Scientology does affirm the existence of a supreme being. The practice of Scientology is to bring an individual to a new state where he can reach his own conclusions concerning the nature of the supreme being. As a person becomes more aware through the practice of Scientology, however, he attains his own certainty of every dynamic and, as he moves from the seventh (spiritual) dynamic to the eighth, he comes to his own awareness of infinity and god. He also understands his own relationship to eternal salvation as a spiritual being. Salvation in Scientology is attained through **personal** spiritual enlightenment.

In relation to Scientology practices the **Commissioners** noted that the core practices of Scientology were auditing and training and that:

- Scientologists increase their spiritual awareness, and expand across the eight dynamics, by participating in **auditing**, which is one of the two central 'religious' practices of the Scientology faith. It is delivered by an **auditor**, from the Latin, 'one who listens'. Auditing involves a series of gradient steps that Hubbard developed to address past painful experiences - both in this, and in prior, lifetimes - which, while below a person's level of awareness, collectively cause all the fears and psychosomatic illnesses that he currently suffers. Through auditing one can uncover these unknown past experiences and erase their harmful effects, thereby increasing one's awareness and capability across all dynamics. This also directly results in a spiritual transformation: the individual reaches a certainty that he is in fact a spiritual being that has lived and will live through countless lifetimes.
- In auditing a 'religious' artefact called an E-meter is used to enable the auditor and the individual receiving the auditing to locate areas of the past which can then be addressed in auditing. It is not a lie detector and by itself it does nothing. It is only used by a trained minister and is essential to auditing; that is its only application.
- The second central 'religious' practice consists of **training** - the intensive study of Scientology Scripture. Training derives its greatest significance from the fact that through training one learns to become an auditor.
- The broad path the Scientologist follows through auditing and the study of Scientology materials is known as **The Bridge**. The Bridge embodies a route across a chasm between man's present state and vastly higher levels of awareness. It is comprised of gradient steps so that gains are incremental, predictable and apparent. There are two sides to this Bridge: on one side, by receiving auditing, one reaches the highest states of awareness as a spiritual being; on the other, one studies the axioms and principles of Scientology and learns to become an auditor, ultimately advancing to the highest levels of auditor skill. The freedom available through Scientology requires passage along both these paths. For while one becomes free through auditing, this must be augmented by knowledge of how to stay free.

The **Commissioners** noted that access to the core practices of auditing and training are normally prepaid by those members wishing to participate in them. These payments are referred to as requested donations and account for a substantial proportion of the revenues of the Church of Scientology. The extent of participation

in these practices is a matter which Church of Scientology fundraising staff discuss with members in personal consultation. Although requested donations are the normal method of obtaining access to participation in these practices, the **Commissioners** understood that auditing and training were available without a donation in certain circumstances. The **Commissioners** noted that organised donations are an established feature of some religions.

The **Commissioners** also noted:

- the creeds and codes of Scientology:
  - The Creed of the Church of Scientology
  - The Auditor's Code
  - The Code of Honor
  - The Code of a Scientologist
  - The Supervisor's Code
  - The Credo of a True Group Member
  - The Credo of a Good and Skilled Manager

- The ceremonies of Scientology:

Individual churches of Scientology conduct numerous 'religious' services, including naming ceremonies for the newborn, wedding and funeral services and weekly Sunday services. These services are open to those of any denomination.

- The symbols and apparel of Scientology

Scientology 'religious' symbols and artefacts are protected by Religious Technology Centre, a California non-profit corporation which owns them and the rights to use them. Members of the Sea Organisation wear naval uniform. Ministers officiate wearing apparel which resembles traditional Anglican vestments.

#### **4. *Relevance to the application of the European Convention on Human Rights (ECHR)***

The **Commissioners** noted that in support of their application for registration as a charity CoS relied upon international law arguments concerning the right to freedom of thought, conscience and religion encompassed in **Article 9 ECHR**; and the right not to be discriminated against on account of thought, conscience and religion - **Article 9** taken with **Article 14 ECHR**.

The **Commissioners** noted that the **ECHR** is to be incorporated into English law under the **Human Rights Act 1998 (HRA)**. That Act is likely to be fully implemented in the UK on 2<sup>nd</sup> October 2000<sup>2</sup>. Under **section 6 of the HRA** it will be unlawful for a public authority to act in a way which is incompatible with **ECHR** rights. The Commission will be a "public authority" for the purposes of the **HRA s6(3)**. Once the **HRA** is implemented it will therefore be unlawful for the Commission to act in a way incompatible with **ECHR** rights. This would include its decisions with regard to the registration of charities where any common law authorities would need to be interpreted in a way compatible with such rights as interpreted by case law of the

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<sup>2</sup> Latest government announcement.

European Court of Human Rights and opinions and decisions of the European Commission.<sup>3</sup>

The **Commissioners** noted that while the **ECHR** is not part of English law at present there is no obligation on the courts and therefore the **Commissioners** to take **ECHR** into account in considering issues of charitable status. The **Commissioners** noted the general rule that in the absence of implementation in domestic law, international law in general and international agreements in particular are not binding within the UK legal system – **Rayner (Mincing Lane) Ltd v Department of Trade [1990] 2 AC 418**, and that no public authority is required as a matter of law to exercise its discretion in a way necessarily consistent with the **ECHR** – **R v Secretary of State for the Home Department ex parte Brind [1991] 1 AC 696**.<sup>4</sup> This basic position has been confirmed in **R v DPP ex parte Kebilene QBD [1999] 3 WLR 175 (CA), 972 (HL)**. It is also clear, that while **ECHR** may be referred to, there is currently no strict legal obligation to have regard to the terms of **ECHR** when addressing issues of common law, even where these issues are uncertain, **Derbyshire County Council v Times Newspapers Limited [1993] 2 WLR 449**.

However, the courts are prepared to consider the international obligations of the United Kingdom where there is ambiguity in statutory language: **Salomon v Commissioners of Customs and Excise [1967] 2 QB 116**. In **R v Radio Authority ex parte Bull [1995] 4 All ER 481**, this general principle was applied in the specific context of the **ECHR**.

Whilst it seemed clear to the **Commissioners** from the case law that where statutory provisions were ambiguous reference may be made to the **ECHR** so as to interpret the relevant statutes consistently with the **ECHR**, the extent to which there is any similar legal obligation in relation to the common law, and the extent to which a public authority may be obliged to act consistently with **ECHR** generally prior to implementation of the **HRA** was unclear<sup>5</sup>.

The **Commissioners** considered that it would be prudent to take account of the fact that where an application for registration is dealt with pre **HRA** and subsequently subject to an appeal under **section 4(3) Charities Act 1993**, the appeal would be likely to reach court after the **HRA** had been brought into effect, when the court would be obliged to deal with the matter consistently with **ECHR**, and to ensure that all case law is interpreted compatibly with **ECHR** principles. In addition, given the lack of clarity in English law about the extent to which a public authority may already be obliged to exercise its functions in a way taking account of the **HRA** being in force in the near future (**R v DPP ex parte Kebilene**), the **Commissioners** regarded it as prudent to seek to act consistently with **ECHR** in advance of implementation of the **HRA** where they were free to do so to the extent that **ECHR** may be relevant to the registration of charities.

The **Commissioners** considered that good administrative practice would suggest that applications for registration pre and post **HRA** should be dealt with consistently. It would not be good practice to consider applications received pre-implementation

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<sup>3</sup> Section 2 HRA

<sup>4</sup> In that case the House of Lords unanimously held that the Home Secretary did not need to act consistently with **ECHR** in the exercise of a power he enjoyed under both statute and the BBC's Charter to control the content of television and radio transmissions.

<sup>5</sup> **R v DPP Ex parte Kebilene (QBD [1999] 3 WLR 175 (CA), 972 (HL))**

without any reference to **ECHR** considerations, but to apply such considerations to applications received post implementation. To do so could result in similar applications being dealt with differently simply on the basis of the date on which they were received and considered.

Further it seemed to the **Commissioners** that they may already be under an indirect legal obligation to take account of **ECHR** principles, given that once the **HRA** is brought fully into force, there will be an element of retrospectivity which will benefit individuals who are able to demonstrate that they were victims of human rights violations before the **HRA** was in force. Essentially the combined effect of section **22(4)** and section **7(1)(b)** of the **HRA** seemed to the **Commissioners** to be that where a public authority brings or initiates legal proceedings after implementation of the **HRA**, the persons who are the defendants in such proceedings would be able to rely upon their **ECHR** rights in the action which follows. The **Commissioners** were for example able to envisage a situation in which an association may seek to resist proceedings for recovery of taxation on the basis that the refusal to register it as a charity had infringed its **ECHR** rights.

The **Commissioners** concluded that as a matter of prudence, good practice and indirect legal obligation any discretion which the **Commissioners** may have in applying the existing law should be exercised in accordance with and not contrary to the principles of the **ECHR** where those principles might be relevant to the registration of charities. Such discretion might arise for example where the provisions of the common law were ambiguous, or where English cases or other legal authorities (for example case law from other jurisdictions) were not binding on the Commission, but of persuasive value.

*The **Commissioners** then proceeded to consider the potential relevance of **ECHR** to CoS's application for registration as a charity.*

The relevant articles of **ECHR**

The **Commissioners** considered the relevant articles of **ECHR** to be

- **Article 9** taken on its own (right to freedom of thought, conscience and religion); and
- **Article 9** taken together with **Article 14** (right to enjoyment of **ECHR** rights free from discrimination).

### **Article 9**

**Article 9(1)** provides that:

*“everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom either alone or in community with others and in public or private to manifest his religion or belief, in worship, teaching, practice and observance.”*



**Article 9** includes the right to manifest one's belief in worship, teaching, practice and observance and therefore includes in principle the right to convince other people, for example through "teaching"<sup>6</sup>.

The **Commissioners** considered that the protection offered by **Article 9(1)** extends to the whole range of individual beliefs *including* both religious and other belief systems. Both organisations which, in charity law terms, would appear to promote the moral or spiritual welfare or improvement of the community (a fourth head purpose), and those which promote religion (a third head purpose), would in the **Commissioners** view therefore fall within the protection of **Article 9(1)**.

The **Commissioners** noted that **Article 9(1)** may be qualified in terms of the provision of **Article 9(2)**. Any limitation of the freedom protected by **Article 9(1)** may be justified on the grounds set out in **Article 9(2)**.

**Article 9(2)** provides that:

*"Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights or freedoms of others."*

#### **Article 9 and Article 14 together**

**Article 14** provides that:

*"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status"*

The **Commissioners** noted that **Article 14** is not an independent right to non-discrimination but may be used in conjunction with another article. The other article relied upon does not necessarily have to be breached by the alleged discriminatory act, rather the act has to fall within the ambit or scope of a right protected by the **ECHR**. Therefore, it was in the **Commissioners'** view arguable that the registration of charities which advance religion, and the exclusion of other beliefs for example, is potentially within the ambit of **Article 9** (right to freedom of thought, conscience and religion).

Not all discrimination will be in breach of **Article 14**. An action or distinction will not be discriminatory if it has an objective and reasonable justification ie it is:

- made in pursuant of a legitimate aim; or
- there is a reasonable relationship of proportionality between the means employed and the aims sought to be realised.<sup>7</sup>

*The **Commissioners** analysed the extent to which **Article 9**, and **Articles 9 and 14** together may potentially apply to applications for registration of organisations*

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<sup>6</sup> Kokkinakis v Greece (1993) 17 EHRR 397

<sup>7</sup> Tsirlis and Kouloumpas v Greece (1997) 25 EHRR 198 at paragraph 116

*established for the advancement of religion or to promote the moral or spiritual welfare or improvement of the community.*

## **Article 9**

The **Commissioners** noted that **Article 9** is principally concerned with protecting the manifestation of a person's religion or belief. To recognise or not recognise charitable status by registration did not in the **Commissioners** view appear to interfere with the manifestation of a person's belief. Although in certain circumstances an organisation is declined registration and the benefits of charitable status<sup>8</sup> are not bestowed, the **Article 9** freedoms did not in the **Commissioners'** view seem to be restricted by this. In the cases which have come before the European Court the impairment of the **Article 9** freedom has been much clearer<sup>9</sup> and it seemed to the **Commissioners** that it could be argued that **Article 9** is not breached when for a particular belief system the State declines to confer a privilege.

Nevertheless, the **Commissioners** noted that it may be **possible** to argue that the decision to decline to register an institution as a charity amounts to a limitation of **Article 9(1)** freedoms. **Article 9** protects the right to manifest one's religion or belief "in worship, teaching, practice and observance". The European Court has said that this includes the right to convince one's neighbours through teaching, without which the "freedom to change religion or belief" protected by **Article 9** would be redundant.<sup>10</sup> The **Commissioners** considered that it is possible that both the European Court and the English courts would regard the fiscal benefits which flow from charity registration as relevant to an organisation's ability to teach and pass on its beliefs. A court could conclude that to decline registration of a charity impairs **Article 9** freedoms as it limits the organisation's ability to manifest its beliefs through teaching and "evangelising" activities.

The **Commissioners** further noted that any limitation of an **Article 9** freedom which might arise can be justified on the basis of **Article 9(2)**.

In that context the **Commissioners** noted that the registration power of the Commission is "prescribed by law"<sup>11</sup> and that the recognition of charitable purposes

<sup>8</sup>

These benefits are identified as common law, statutory and fiscal

- The potential for being established in perpetuity; a lesser need for certainty than is required for private trusts; protection by the Crown; the ability to be the beneficiary of an existing charity with comparable objects.
- Protection from failure of the charity's purposes and administrative difficulties through the scheme making jurisdiction of the courts and the Charity Commission; protection from the effects of misconduct or maladministration by staff or trustees through Charity Commission's investigative and remedial powers; to be advised on trustees' duties, interpretation of governing document and guidance on charity law and good practice from the Charity Commission; protection of official sanction by the Charity Commission's order for transactions expedient in the charity's interest; protection of charity's assets through a requirement that charity proceedings require consent of the Charity Commission or of the High Court; routine monitoring and review of registered charities by the Charity Commission.
- Tax relief on voluntary and investment income and capital gains; tax relief on the profits of primary purpose trading; relief from non domestic rates for land and buildings used for charitable purposes; relief available to those who give to charity.

<sup>9</sup>

Manoussakis v Greece (1996) 23 EHRR 387; Kokkinakis v Greece supra and Christian Association of Jehovah's Witnesses v Bulgaria (1997) 24 EHRR (C.D.) 52

<sup>10</sup>

Kokkinakis v Greece supra

<sup>11</sup>

It has a duty to keep a register of charities and power to do so provided by s.3 Charities Act 1993.

has developed through the case law, by a reasonable predictable and incremental change.

The **Commissioners** noted that States are allowed a certain amount of scope for deciding what limitations upon **ECHR** rights are necessary in a democratic society (the “margin of appreciation”) in their particular context, subject to certain guiding principles apparent from the European cases in particular:

- the need to secure true religious pluralism as an inherent feature of the notion of a democratic society.<sup>12</sup>
- that the measures taken at a national level must be justified in principle and be proportionate.<sup>13</sup>
- that the state has no discretion to determine whether religious beliefs or the means used to express them are legitimate<sup>14</sup>.

In the light of the possibility of the potential for **ECHR** to apply and of these principles, the **Commissioners** considered that where they were free to do so (predominately where the English legal authorities were ambiguous) they would seek to interpret the relevant authorities consistently with **ECHR**.

#### *Articles 9 and 14 together*

In relation to a charge of discrimination under **Articles 9** and **14** together, the **Commissioners** noted the possibility of an argument that a religious or other belief system might be discriminated against if declined the charitable status afforded to others. They also noted that the law is clear that a distinction or difference in treatment within the ambit of an **ECHR** right will be discriminatory if it has “no objective and reasonable justification”.<sup>15</sup>

Given the potential application of **Articles 9** and **14** taken together, the relevant English case law concerning charitable status should in the **Commissioners** view, where ambiguous, be interpreted in a way compatible with **ECHR**.

The **Commissioners** went on to note the distinction between the tests of public benefit under the third and fourth heads of charity.<sup>16</sup> It is presumed (although evidence may rebut the presumption) that a religious organisation is beneficial to the public. A belief system which seeks to be charitable under the fourth head must show that it is for the public benefit in a way recognised by charity law.<sup>17</sup> The **Commissioners** noted that the different tests of public benefit were “prescribed by law” and that there did not seem to be any ambiguity in the cases concerning the test of public benefit in charity law, which the **Commissioners** considered was an entirely flexible rule applied to individual cases to establish the public benefit which is a requirement of all organisations which profess to be charitable.

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<sup>12</sup> Manoussakis v Greece supra paragraph 44

<sup>13</sup> supra

<sup>14</sup> supra

<sup>15</sup> Tsirlis & Kouloumpas v Greece, supra; Belgian Linguistic Case (1968) (No 2) 1 EHRR 252 paras 9-10

<sup>16</sup> National Anti-Vivisection Society v IRC [1948] AC 31

<sup>17</sup> Re Price [1943] Ch 42; Re Hood [1931] 1 Ch 240

## *Conclusion*

In these circumstances and in the light of the potential impact of **ECHR** once the **HRA** is in force they decided to consider the application by applying the English legal authorities as they have traditionally been interpreted and understood unless these authorities were ambiguous. In those circumstances (ie of ambiguity in the decided cases) the **Commissioners** would exercise their discretion so as to construe those decided cases in a way complying with **ECHR** principles and otherwise in a generous and constructive manner consistent with the Commission's approach to determining the charitability of novel purposes. Where it was concluded that such an approach should be adopted, **CoS**'s application and relevant legal authorities would be considered in that manner.

### **5. *The Commissioners' approach to determining CoS's application***

The **Commissioners** approached the question of **CoS**'s registration as a charity by considering first whether it is established for a charitable purpose recognised in English law, and secondly by addressing the question of whether **CoS** is established for the public benefit. In relation to the first issue, the charitable purpose, the **Commissioners** considered whether **CoS** is established for the advancement of religion or in the alternative whether it was established for the promotion of the moral or spiritual welfare or improvement of the community.

### **6. *Whether CoS is established for the charitable purpose of advancing religion.***

#### *The legal framework*

The **Commissioners** noted that English charity law has developed empirically, within the context of the traditional Western monotheistic religions, although it has long embraced monotheistic religions other than Christianity and Judaism<sup>18</sup>. Within that context, the following general principles are firmly established:

- (i) Trusts for the advancement of religion take effect as charities without assessment by the court of the worth or value of the beliefs in question, unless the tenets of a particular sect inculcate doctrines adverse to the very foundations of all religion and/or subversive of all morality<sup>19</sup>.
- (ii) The law does not prefer one religion to another<sup>20</sup> and as between religions the law stands neutral, but it assumes that any religion is at least likely to be better than none<sup>21</sup>.
- (iii) In deciding whether a gift is for the advancement of religion, the court does not concern itself with the truth of the religion, a matter which is not susceptible of proof. This does not mean that the court will recognise as a religion everything that chooses to call itself a religion. But when once the religion is recognised by the court as a religion, the beneficial nature of a gift for its advancement will prima facie be assumed.<sup>22</sup>

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<sup>18</sup> Bowman v. Secular Society [1917] AC 406

<sup>19</sup> Thornton v. Howe (1862) 31 Beav 14; Re Watson [1973] 1 WLR 1472

<sup>20</sup> Thornton v. Howe, supra; Gilmour v. Coats [1949] AC 426

<sup>21</sup> Neville Estates v. Madden [1962] Ch. 832

<sup>22</sup> Re Coats' Trusts, Coats v Gilmour [1948] Ch 340 (CA) @ 346 and 347 Lord Greene MR

- (iv) In addition, in order to be charitable, the trust must not only be for the advancement of religion, it must also be of public benefit. This is a question of fact which must be answered by the court in the same manner as any other question of fact, ie by means of evidence cognizable by the court.<sup>23</sup> In the absence of evidence to the contrary, public benefit is presumed.

Given these judicial principles, the **Commissioners** found it understandable that the English courts have resisted closely defining what it is that makes some belief systems religious and others not. However, the **Commissioners** accepted that there are some characteristics of religion which can be discerned from the legal authorities:-

1. Belief in a god or a deity or supreme being – **R v Registrar General ex parte Segerdal (Lord Denning)**.<sup>24</sup>
2. Reverence and recognition of the dominant power and control of any entity or being outside their own body and life (i.e. outside the body and life of the follower of that religion) - **Segerdal (Winn L J)**.<sup>25</sup>
3. Two of the essential attributes of religion are faith and worship: faith in a god and worship of that god - **South Place Ethical Society (Dillon J)**.<sup>26</sup> The **Commissioners** noted that Hubert Picarda QC writes that religion involves not merely faith of a particular kind, but also worship, and states that the essential ingredient of worship is found in the definition of Webster’s New International dictionary which defines religion as “service and adoration of God or a god as expressed in a form of worship.”<sup>27</sup>
4. A trust for the purpose of any kind of monotheistic theism would be a good charitable trust - **Bowman v Secular Society**<sup>28</sup> (**Lord Parker of Waddington**)
5. Worship must have at least some of the following characteristics: submission to the object worshipped, veneration of that object, praise, thanksgiving, prayer or intercession - **Segerdal (Buckley LJ)**.<sup>29</sup>
6. It would not seem to be possible to worship in this way (ie with reverence) a mere ethical or philosophical ideal - **South Place Ethical Society (Dillon J)**<sup>30</sup>
7. Promotion of religion includes “the observances that serve to promote and manifest it.” - **Keren Kayemeth Le Jisroel v IRC (Lord Hanworth MR)**.<sup>31</sup>
8. There must be a promotion of the religion, meaning “the promotion of spiritual teaching in a wide sense, and the maintenance of the doctrines on which it rests, and the observances that serve to promote and manifest it.” - **Keren Kayemeth Le Jisroel v IRC (Lord Hanworth MR)**. This would include

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<sup>23</sup> Re Coats’ Trusts supra @ 347

<sup>24</sup> R v Registrar General ex parte Segerdal [1970] 2 QB 697

<sup>25</sup> R v Registrar General ex parte Segerdal supra

<sup>26</sup> [1980] 1 WLR 1565 at 1572D-E

<sup>27</sup> “The Law and Practice relating to Charities” by Hubert Picarda, 2<sup>nd</sup> Ed. page 64 (3<sup>rd</sup> Ed. page 74).

<sup>28</sup> [1917] AC 406 at 448 - 450

<sup>29</sup> supra page 709 F-G

<sup>30</sup> supra page 1573A

<sup>31</sup> [1931] 2 KB 465, 477 (affd. [1932] AC 650)

observance of particular common standards, practices or codes of conduct as stipulated in particular scriptures or teachings.<sup>32</sup>

9. To advance religion means “to promote it, to spread the message ever wider among mankind; to take some positive steps to sustain and increase religious belief and these things are done in a variety of ways which may be comprehensively described as pastoral and missionary” - **United Grand Lodge v Holborn BC**<sup>33</sup> (**Donovan J**).
10. Promotion of religion includes a missionary element or other charitable work through which the beliefs of the religion are advanced - **United Grand Lodge v Holborn BC** (**Donovan J**).
11. Public benefit is a necessary element in religious trusts as it is in other charitable trusts - **Coats v Gilmour**<sup>34</sup> (**Lord Greene MR**).

Having *considered* these characteristics, the **Commissioners** concluded that the definition of a religion in English charity law was characterised by a belief in a supreme being and an expression of that belief through worship. The cases also make clear that there must be advancement or promotion of the religion.

*CoS’s argument that CoS is established to advance religion.*

The **Commissioners** noted the arguments put forward by **CoS** that **CoS** is established for the advancement of religion, the religion in question being Scientology. In particular they considered that the relevant arguments could be summarised as follows:

- (1) That neither **Segerdal** nor **South Place Ethical Society** is binding or persuasive authority as to the criteria of a “religion” in English charity law:
- (2) That belief in a god or gods is not an essential characteristic of religion and a set of beliefs can constitute a religion if it affirms the existence of the spiritual or supernatural even though it does not recognise a supreme being or god, for the following reasons:
  - The views of theologians and leading scholars in comparative religion as to the meaning of “religion”: in particular sets of beliefs widely recognised as religions do not affirm the existence of a supreme being;
  - Decisions of courts abroad that non-theistic beliefs may constitute a religion;
  - The general principles of international law and the European Convention on Human Rights;
  - The adverse consequences of confining “religion” to theistic beliefs.
- (3) Alternatively, if belief in a god and worship are essential characteristics of religion, that either:
  - Scientology possesses those characteristics, or

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<sup>32</sup> The Church of the New Faith v Commissioner for Payroll Tax, supra, which is a persuasive authority being an Australian case, also supported this notion.

<sup>33</sup> [1957] 1 WLR 1080

<sup>34</sup> Re Coats’s trusts, Coats v Gilmour [1948] Ch 340 at 344 (Court of Appeal)

- Scientology should be recognised as an exception
- (4) That the Charity Commission has accepted that it must act constructively and imaginatively<sup>35</sup> when reviewing its own past decisions and those of the courts, and it is therefore appropriate in this case for the Commission to adopt “a generous as opposed to a restrictive view”<sup>36</sup>

The **Commissioners** considered these arguments in the light of the English legal authorities.

The **Commissioners** noted that the **Segerdal** and **South Place Ethical Society** cases in particular, referring to the requirement of a god or deity have traditionally been regarded as decisive of the principle that theism (belief in a god) is a necessary criterion of religion for the purposes of charity law. Both cases suggest that religion in charity law is characterised by

- faith in the personal, creator god of the traditional monotheistic religions, having existence outside the body and life of the votary, and
- worship of that deity in the form of formalised expressions of supplication, veneration, praise and intercession, as traditionally practised in monotheistic religions.

Against those criteria, the **Commissioners** noted that Scientology claims to acknowledge a supreme being which may have created the world. This supreme being (“infinity”, the Eighth dynamic, the “allness of all”), is according to the expert opinion submitted by **CoS** in support of its application, a thoroughly impersonal abstract conception, more analogous to eastern enlightenment and realisation, which Scientologists recognise as the ultimate ground of being but of which they are reluctant to claim complete understanding.<sup>37</sup>

Whilst the **Commissioners** noted that **CoS**’s application stated that Scientology acknowledges a supreme being, the **Commissioners** concluded that the supreme being did not appear to be of the kind indicated by the decided cases.

The **Commissioners** also noted **CoS**’s submission that the activities of auditing and training constitute its worship, this argument being supported by the expert opinion submitted by **CoS**. However, the **Commissioners** were unable to accept that the practices of auditing and training were akin to or comparable with the acts of worship indicated by the English cases – praise, veneration, prayer, thanksgiving, intercession, submission to the object worshipped.

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<sup>35</sup> The Report of the Charity Commissioners 1985 paras. 24-25

<sup>36</sup> The Report of the Charity Commissioners 1985 supra

<sup>37</sup> for example the Opinion of Dr Wilson (Paras 8.07, 11.03(a) and 8.11); and of Dr Bryant (section IV.7.c-IV.7.d)

*Ambiguity in the English legal authorities*

However, the **Commissioners** noted that the English legal authorities concerning the concept of religion in English charity law might not be entirely clear and unambiguous and may be of persuasive value rather than binding authority.

*Analysis of English legal authorities concerning the definition of ‘religion’ in English charity law.*

The **Commissioners** therefore considered the extent to which ambiguity existed in the English legal authorities and reviewed these as follows.

**(i) Segerdal (Court of Appeal)**

The case of **Segerdal** was not concerned with charity law but it did concern a Church of Scientology chapel. The issue in **Segerdal** was not whether Scientology was a religion for the purposes of charity law. The question, rather, was whether a Church of Scientology chapel was a “place of meeting for religious worship” within the meaning of the Places of Worship Registration Act 1855. The court did not decide whether a non-theistic set of beliefs can constitute a religion for the purposes of charity law or whether Scientology is a religion for such purposes (Winn LJ expressly stated that he was not concerned to decide “whether Scientology is or is not a religion”); it merely interpreted “place of religious worship” for the purposes of the Act as meaning “a place where people come together to do reverence with prayer, humility and thanksgiving to a Supreme Being”, Lord Denning MR concluding: “I am sure that would be the meaning attached by those who framed this legislation of 1855”.

Accordingly, the Church of Scientology’s chapel did not (and still would not) qualify for registration as a place of worship under the Places of Worship Registration Act 1855.

The **Commissioners** considered that interpreted in a charity law context, the decision is not binding authority as to the criteria of a “religion” in charity law. The dicta of the judges are of persuasive value, and arguably strongly so, because the court did consider the question of the nature of religious worship, although it did not consider the nature of the Scientology practices of auditing and training (which **CoS** argues constitutes the worship of Scientologists), that not being a matter before the court.

**(ii) Bowman v Secular Society (House of Lords)**<sup>38</sup>

This concerned the validity of a gift to the Secular Society, one of whose objects was to promote the principle that “human conduct should be based upon natural knowledge and not upon supernatural belief, and that human welfare in this world is the proper end of all thought”.

The issue was whether this object denied Christianity and, if so, thereby involved the criminal offence of blasphemy; if so, the gift to the Society would not be enforceable.

There was some consideration of a side issue of whether the gift, if given to the Society as trustee for the purposes set out in that object, would be charitable. Lord

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<sup>38</sup>

[1917] AC 406



Parker of Waddington said “It is not a religious trust, for it relegates religion to a region in which it is to have no influence on human conduct”.<sup>39</sup>

The **Commissioners** considered that the dicta here in relation to charity law were therefore neutral in relation to the characteristics or nature of religion.

(iii) **South Place Ethical Society** ( High Court)<sup>40</sup>

This case did concern charity law and religion. The issue before the court was whether the Society, which professed a belief in “ethical principles” that is, “the belief in the excellence of truth, love and beauty, but not belief in anything supernatural”, was a religion or otherwise charitable.

Dillon J began by referring to the **Bowman** case and the **United Grand Lodge** case in which the court had held, without defining the term religion to exclude non-theistic beliefs, that the organisations in question were not established for the advancement of religion, In relation to **Bowman v Secular Society**,<sup>41</sup> Dillon J said:

“That comment [in **Bowman**] seems to me to be equally applicable to the objects of the society in the present case... Lord Parker of Waddington has used the word [religion] ‘in its natural and accustomed sense’”.

In relation to the second case,<sup>42</sup> in which Donovan J, after commenting that freemasonry held out certain characteristics including reverence, honesty, compassion, loyalty, temperance, benevolence and chastity, said –

“Admirable though these objects are it seems to us impossible to say that they add up to the advancement of religion”.<sup>43</sup>

Dillon J considered that the society had not made out a case to be charitable on the grounds that its objects were for the advancement of religion.

The **Commissioners** considered that it may not have been necessary to the decision of the case to go on, as the judge did, to define “religion” with particularity, by reference to criteria of a god and worship of that god, nor necessarily to interpolate into charity law for that purpose, as he did, the decision in **Segerdal**.

However, given that this judgement was concerned with charitable status and religion, the **Commissioners** concluded that they would be able to give the statement due weight in considering the characteristics of a religion for the purposes of charity law.

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<sup>39</sup> Idem, at 445

<sup>40</sup> [1980] 1 WLR 1565

<sup>41</sup> **Bowman v Secular Society** [1917] AC 406

<sup>42</sup> **United Grand Lodge of Ancient Free and Accepted Masons of England v. Holborn Borough Council** [1957] 1 WLR 1080

<sup>43</sup> Idem, at 1090

(iv) **Keren Kayemeth Le Jisroel v IRC** (Court of Appeal)<sup>44</sup>

The **Keren Kayemeth** case was decided by the Court of Appeal in 1931. It was concerned with the charitable status of a company with objects to acquire land in Palestine, Syria and other countries for the purposes of settling Jews there. It had been argued that such a purpose might be religious because it is a religious purpose of the Jewish community to return to the Holy Land. The Court found that the company was not charitable and, in fact, there was very little discussion about the purported religious purpose. Lord Hanworth MR said:<sup>45</sup>

“Turning now to the problem whether either of the four characteristics [of charity] can be found in the Association, it is sufficient to say that as to “religion” I agree with the observations with Rowlatt J on that head. The promotion of religion means the promotion of spiritual teaching in a wide sense, and the maintenance of the doctrines on which it rests, and the observances that serve to promote and manifest it – not merely a foundation or cause to which it can be related. Religion as such finds no place in the Memorandum of the Association.”

It was apparent to the **Commissioners** from the full context of this paragraph in the judgement that Lord Hanworth did not mean to give a definition of religion but was concerned with what the *promotion of religion* means. In effect, all that Lord Hanworth was saying was that promoting an organisation which is related to a religion (in this case Judaism) is not the same as promoting a religion. It was not an issue at all whether Judaism was a religion.

Lord Hanworth’s comments could not, in the **Commissioners’** view, be taken as providing a definition of religion which is binding. They could, though, be regarded as a proper indicator of the meaning of the *promotion of religion*.

(v) **United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council** (Court of Appeal)<sup>46</sup>

In this case the United Grand Lodge claimed to be entitled to rating relief on the basis that the organisation’s objects were “charitable or otherwise concerned with the advancement of religion” within the meaning of section 8(1)(a) of the Rating and Valuation (Misc. Provisions) Act 1955.

Donovan J commented that the organisation urged freemasons to be reverent, honest, compassionate, loyal, temperate, benevolent and chaste; but he found that this did not amount to the advancement of religion.

The court went on *per curiam*<sup>47</sup> to identify what is meant by the *advancement of religion* (as opposed to defining religion itself) - to promote it by spreading its message ever wider by pastoral and missionary means.

The **Commissioners** agreed that they would be able to rely on this case as identifying the ways in which a religion may be advanced.

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<sup>44</sup> [1931] 2KB 465

<sup>45</sup> supra page 477

<sup>46</sup> [1957] 1 WLR 1080

<sup>47</sup> statements given per curiam indicate that they have been decided on by the court and have authority as such.

(vi) **Coats v Gilmour** (Court of Appeal and House of Lords)<sup>48</sup>

This case directly concerned religious charitable trusts and public benefit in relation to a closed order of nuns. The Court of Appeal judgements contain a more detailed analysis of the nature of public benefit enuring from a religious trust. Although the case was appealed to the House of Lords, the Lords did not disturb the findings of the Court of Appeal.

The judgements here are therefore binding on the **Commissioners** in considering public benefit and religious charities.

*Conclusion*

The **Commissioners** concluded that the English legal authorities are neither clear nor unambiguous as to the definition of religion in English charity law, and at best the cases are of persuasive value with the result that a positive and constructive approach and one which conforms to **ECHR** principles, to identifying what is a religion in charity law could and should be adopted.

In order to interpret the decided English cases in a manner which is both constructive and consistent with **ECHR** principles, the **Commissioners** considered that they could properly take account of how the question of what is “a religion” has been addressed elsewhere. In particular the **Commissioners** considered that they may take account of:

- Court decisions in other jurisdictions, principally Australia, the USA and India although it was noted that these cases were of *persuasive value* only for the Commission, and to a lesser degree than the English cases.
- Expert Opinion– submitted by **CoS** from scholars expert in the study of religion (principally from Dr Wilson, Dr Bryant and Dr Kliever).
- Indications of whether the public at large would view a belief system as a religion including decisions of other ‘public bodies’, and the common English meanings of religion and worship, as found, for example, in the English dictionaries.<sup>49</sup>

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<sup>48</sup> [1948] Ch 340 & [1949] AC 426

<sup>49</sup> CoS has yet to be accepted by the Home Office Immigration and Nationality Directorate of the religion for the purposes of the immigration rules.

CoS has been recognised as an acceptable religious advertiser on British television by the ITC (*R v ITC ex parte New Era Publications Aps and Church of Scientology Religious Education College* [1996] (unreported) CO/227/96). This case did not reach court (except for the determination of costs). There is no formal “ruling” available; the ITC’s decision is reflected in the form of a press release dated 24 April 1996. The ITC advertising rules on “religious advertising” apply to advertising bodies with objects of a religious nature or which is directed towards a religious end and are also applicable to “advertising having a similar connection to systems of belief or philosophies of life which do not involve the recognition of a deity but can reasonably be regarded as equivalent or alternative to those which do”. It is not known whether CoS was regarded as a religion or belief system in this connection.

The Ministry of Defence has confirmed by letter to CoS that Scientology is “an officially recognised religion in the Royal Navy”.

The Commissioners noted that having regard to the way in which other English bodies had determined whether or not a belief system is religious would not provide them with indicators as to how to determine whether a belief system is religious for the purposes of charity law. However, the decisions of other bodies may provide evidence as to whether the public at large would view the belief

## *Belief in a supreme being*

The **Commissioners** considered how the question of a belief in a supreme being was addressed both in the opinions of experts, by the foreign legal authorities and in common definitions of religion

### *Expert opinion*

All three of the major experts relied upon by **CoS** conclude that Scientology believes in a supreme being, although the place and nature of that being is not the same as that of God in Christianity or Judaism for example. The place of the supreme being in Scientology is dealt with at section 8.11 and 11.03a of the Opinion of Dr Wilson. Dr Wilson writes that “Scientology does acknowledge a Supreme Being, but conceives of that entity as something which cannot be easily apprehended and with which communication, at this stage of human enlightenment, is a rare thing”. Section IV.7C-IV.7D of the Opinion of Dr Bryant<sup>50</sup> and section 13 and 33 of the Opinion of Dr Kliever<sup>51</sup> in particular, also concern Scientology’s belief in a Supreme Being.

### *Foreign Legal Authorities*

The **Commissioners** noted that foreign courts have taken a broad approach to the question of a supreme being. In **The Church of the New Faith v the Commissioner for Payroll Tax** supra, a case on appeal to the High Court of Australia two of the five Judges indicated that religion had two essential criteria - belief in a “supernatural being or thing or principle” and conduct giving effect to that belief. Two other judges concluded that a single formula could not determine whether a set of beliefs constituted a religion. However, they identified various indicia for answering that question as follows: - that the ideas in question reflect the ultimate concerns of human existence; an element of comprehensiveness; forms and ceremonies. The one remaining judge in that case appears to have taken the view that “any body which claims to be religious and offers a way to find meaning and purpose in life, is religious”. It seems that only two of the judges there adopted what could broadly be described as a ‘theistic’ approach, referring to the criterion of a ‘supernatural being, thing or principle’.

**The Indian Courts** have concluded that religion is not *necessarily theistic*<sup>52</sup>, but undoubtedly has as its basis a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being.

In **Fellowship of Humanity v County of Alameda** the California State Court of Appeal holding that facilities used by humanist groups for weekly meetings qualified as

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system as a religion. Further, reference to the dictionary definitions may further provide an indication of what is commonly understood by the terms ‘religion’ and ‘worship’ in the English language.

<sup>50</sup> “The Eighth Dynamic is “the urge toward existence as Infinity”, or what others call “a Supreme Being or Creator”.

<sup>51</sup> “Scientology’s Eighth Dynamic affirms a spiritual context of life that radically transcends the empirical self and the physical universe. Scientologists are reluctant to claim complete technological control and philosophical understanding of this highest level of spirituality” and @ section33 “though the Church of Scientology resolutely affirms the existence of God, it has no dogma concerning the nature of God. For the most part... they think of God less as a personal Being who commands personal devotion and obedience than as a spiritual force that invites individual exploration and discovery...”

<sup>52</sup> The Commissioner Hindu Religious Endowment Madras v Sri Lakshmindra Thirtha Swamiar Of Sri Shirur Mutt (1954) – Indian Supreme Court [1954] SCR 1005

a place of worship for property tax exemption purposes identified four characteristics of religion, the first being “a belief not necessarily referring to supernatural power”.<sup>53</sup>

### *Common definitions*

The Shorter Oxford English Dictionary indicates that religion means “belief in or sensing of some superhuman controlling power or powers entitled to obedience, reverence and worship, or in a system defining a code of living, especially as a means to achieve spiritual or material improvement; acceptance of such belief (especially if represented by an organised church) as the standard of spiritual and practical life; the expression of this in worship.”

### *Conclusion*

In taking account of, and looking at the English cases in the light of, these sources, the **Commissioners** concluded that belief in a supreme being remains a necessary characteristic of religion for the purposes of English charity law. It would not, however, in their view, be proper to specify the nature of that supreme being or to require it to be analogous to the deity or supreme being of a particular religion.

However, the **Commissioners** did not find it necessary to conclude that the requirement of a supreme being is no longer necessary at all to the concept of religion in English charity law – the **Commissioners** did not find themselves compelled to reject “theism” altogether (as in the Indian case), nor to dilute the concept to the extent of the Australian case<sup>54</sup> (so as to refer to belief in a ‘supernatural... principle’; for example).

### *Worship*

In relation to the question of worship it was apparent to the **Commissioners** from the papers submitted to them by **CoS** that auditing and training are regarded as worship in Scientology. The **Commissioners** noted the nature of these “core religious services”, a detailed description of which were found in the text book “What is Scientology?” supplied by **CoS**.<sup>55</sup> It was clear that these activities (auditing and training) form the essential religious activities of Scientology – for example the “Enrolment Form for religious services of Scientology at Saint Hill in Sussex” [the Enrolment Form] states that “the core religious services of the Scientology religion are auditing and training”.

**Auditing** is described as a very unique form of personal counselling<sup>56</sup> which helps an individual look at his own existence and improves his ability to confront what and where he is, and is conducted at auditing sessions during which an auditor<sup>57</sup> audits an individual. Auditing uses exact sets of questions asked or directions given by an auditor to help an individual find out things about himself and improve his condition and locate areas of spiritual distress and travail. Auditing is assisted by use of an E-

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<sup>53</sup> 153 Cal. App. 2d 673, 315 P.2d 394 (1957) The other three characteristics were - a cult involving a gregarious association openly expressing the belief; a system of moral practice resulting from adherence to the belief; an organisation within the cult designed to observe the tenets of the belief  
<sup>54</sup> Church of the New Faith supra

<sup>55</sup> At pages 80ff and 88ff.

<sup>56</sup> The Commissioners noted that it is described as such by Scientologists on the Video Presentation to the Charity Commission, and also item 3 Enrolment Form.

<sup>57</sup> person trained and qualified in applying auditing to individuals for their betterment. Pg. 80 “What is Scientology?”

meter. As a result of auditing an individual discovers things about himself and his life, a realisation which results in a higher degree of awareness and a greater ability to succeed. Auditing sessions are conducted “in a quiet comfortable place where it will not be disturbed”. Those present are the auditor and person being audited with an E-meter set up for the auditor’s use.

**Training** in Scientology involves the study of the works of L Ron Hubbard, listening to his recorded lectures and drilling of the principles of application. Training sessions are supervised by a course supervisor who moves from student to student monitoring progress, and a course administrator who provides any needed materials. There is no formal teaching. Training is based solely upon study of the course materials and works of Mr Hubbard. Check sheets set out the sequence of study and the practical application drills to be followed. The materials of a Scientology course consist of books, other publications, films and recorded lectures by L Ron Hubbard. The Scientology course is said to be solely for the benefit of the student, whose own advancement in knowledge determines progress. Completion of a course is marked by the award of a certificate signifying attainment of a particular level of knowledge or skill.

The **Commissioners** noted that participation in both auditing and training is generally, although not exclusively, dependant upon payment of what was described to the **Commissioners** by **CoS** as “a requested donation”. In this respect it was also noted that the Enrolment Form refers to “requested donations with respect to... participation in auditing and religious services”, and that it set out a procedure for seeking a refund if dissatisfied with the results of the service, provided the individual relinquishes membership of **CoS**. Thereafter it appears that the individual is no longer qualified to receive further auditing and training.<sup>58</sup> However, the **Commissioners** noted that impecuniosity is not according to **CoS**, a bar to an individual’s progress in Scientology, there being other ways in which an individual can participate in auditing and training without making monetary contributions. They also noted that payment in respect of participation in auditing and training is said by **CoS** to be necessary because these are labour intensive activities from **CoS**’s point of view requiring a large number of trained auditors and supervisors.

The **Commissioners** then turned to the question of how the concept of worship had been addressed elsewhere particularly in expert opinion, foreign legal authorities and in common definitions, as follows:

#### *Expert opinions*

The central practices of Scientology – auditing and training – constitute religious worship in the three main expert opinions relied upon by **CoS**, in particular the Opinion of Dr Kliever p.19 section 34-42; the Opinion of Dr Byrant, Section V pages 22-27; the Opinion of Dr Wilson Ch8 p59-70.

Dr Wilson, for example states that the definition of worship should not be confined to the assumptions of one specific tradition and that the forms traditional to Christianity do not exhaust all the various modes in which worship can occur. He argues that the universal aim of worship is to establish a rapport between the individual and the supernatural ultimate (being, object, law, principle, dimension, ground of being, or concern) in whatever way that ultimate is conceived by the religious body to which the

individual belongs, with a view to his ultimate attainment of salvation or enlightenment – section 8.06 of Dr Wilson’s Opinion. He writes that the essence of Scientology is understanding through communication which is through auditing - private communication by the individual with his past; and training - communication with the fundamental truths and grounds of existence. In Scientology communication with spiritual reality is sought and ultimately achieved through auditing and training which thus constitute worship.

#### *Foreign legal authorities*

In **Fellowship of Humanity v County of Alameda**<sup>59</sup> the California State Court of Appeal (in holding that facilities used by Humanist groups at their weekly meetings qualified as a place of worship for property tax redemption purposes) indicated that any lawful means of formally observing the tenets of the cult (defined as a gregarious association openly expressing the beliefs in question) constituted “worship”.

In **Church of the New Faith v Commissioner for Payroll Tax** the High Court of Australia in adopting a two-fold test to religion chose not to identify ‘worship’ as one of the two characteristics of religion. Rather, the second limb of the Court’s test refers to “the acceptance of canons of conduct in order to give effect to that belief [in a supernatural being, thing or principle – the first limb of the test] provided that the canons of conduct do not offend against the ordinary laws.” However the **Commissioners** noted that the decision itself in that case seemed to turn upon whether the group of Scientologists involved were genuine in their belief, rather than upon any objective criteria identifying an organisation as “religious”.

#### *Common Definitions:*

The **Commissioners** agreed that *dictionary definition of “worship”* may provide an indication of how the public generally would understand that term, and noted that the Shorter Oxford English Dictionary defines worship as “acknowledgement of worth, homage; respectful recognition or honour shown to a person or thing; religious reverence, adoration or homage paid to a being of higher regard or treated as supernatural or divine; the expression of this in acts, ritual, ceremony or prayer, especially of a public or formal nature; veneration or devotion similar to religious homage shown to a person or principle.”

Reverence is defined there as “deep respect or veneration especially on account of the object’s sacred or exalted character” and veneration as “a feeling of deep respect or reverence for a person or thing. The action or act of showing this.”<sup>60</sup>

The **Commissioners** indicated that it is perhaps significant that Hubert Picarda QC<sup>61</sup> refers to the requirement of “worship as the manifestation of faith”. He states that there must be an expression of faith and refers to the definition of religion in Webster’s New International Dictionary – “Service and adoration of God or a god as expressed in the form of worship”.

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<sup>59</sup> 153 Cal.App.2d673,315P.2d394(1957)

<sup>60</sup> Other definitions are:- “reverence: to regard or treat with reverence, respect, honour or veneration: honour or respect felt or manifested, deference paid or expressed” and “veneration: a feeling of respect mingled with awe excited by the dignity, wisdom, superiority of a person, by sacredness of character, their consecrated state; the act of admiring humbly and respectfully” – Webster’s 3<sup>rd</sup> New International Dictionary.

<sup>61</sup> ‘The Law and Practice Relating to Charities’ H Picarda 2<sup>nd</sup> Ed. p. 64 (3<sup>rd</sup> Ed. p. 74).

## Conclusion

In approaching the question of worship the **Commissioners** recognised that the advancement of religion is regarded as a distinct (third) head of charity law accepted (on the basis of experience) as conferring public benefit subject to evidence to the contrary. There was therefore a need to maintain clear criteria to differentiate those purposes falling within the third head and those which did not. The **Commissioners** considered that the concept of worship had the potential to provide such clear and objective criteria. The **Commissioners** considered it proper that the distinction in English charity law between religious and non-religious belief systems be maintained. At the same time the **Commissioners** noted the need to avoid discrimination between religions.

Approaching the concept of worship in the light of these considerations the **Commissioners** identified in the English legal authorities a concept of worship which exhibited defining characteristics of reverence and recognition of a supreme being outside the body and life of the follower of the religion- **ex parte Segerdal**. Further in **South Place Ethical Society**, the court indicated that it did not seem possible to worship an ethical or philosophical ideal “with reverence”. The identifying feature of worship in English charity law appeared therefore to be that of reverence for or veneration of a supreme being. The **Commissioners** further noted that the dictionary definitions indicate that worship is characterised by reverence and veneration.

The **Commissioners** thus concluded that the English legal authorities indicated that the criterion of worship would be met where belief in a supreme being found its expression in conduct indicative of reverence or veneration for that supreme being. The **Commissioners** noted and welcomed the fact that the concept of worship so understood, distilled from the decided English cases was reflected in the common English definition of the word “worship”. The **Commissioners** also noted that the concept of worship so understood provided objective criteria by which worship can be identified for the purposes of recognising an organisation to be charitable as advancing religion and so falling within a distinct third head of English charity, at the same time as being sufficiently broad to allow recognition of a range of belief systems commonly recognised as religions.

In reaching this conclusion the **Commissioners** did not feel themselves constrained to adopt either an understanding of “worship” as put forward in the expert opinions submitted by **CoS**, nor to adopt the approach taken in the foreign legal authorities. To adopt the approach of the expert Dr Wilson for example would in the **Commissioners’** view effectively mean redefining worship as “the means by which communication with spiritual reality is sought and ultimately achieved”. Alternatively following the foreign legal authorities “worship” could be redefined as for example “any lawful means of formally observing the tenets of the religion” - **Fellowship of Humanity v County of Alameda**; or as “canons of conduct giving effect to the belief in question” - **Church of the New Faith v Commissioner for Payroll Tax**. The **Commissioners** concluded that it was not appropriate to adopt either of these approaches since to do so would mean redefining the concept of “worship” as a criterion of religion in English charity law, so as to give to the term “worship” a meaning different from that suggested by the English legal authorities, and one which the word does not, in ordinary English, naturally bear.

*The Commissioners approach applied to Scientology*



### *Belief in a Supreme Being*

The **Commissioners** concluded that it could be accepted that Scientology claims to profess belief in a supreme being. The nature of this being is not fully developed but it is not similar to the god of the Judeo Christian tradition, for example. The **Commissioners** noted that different religions have different understandings of what is meant by the term “supreme being”, further, the nature of that being, and the extent to which differing religions exhibit a developed theology also varies. However, since it is clear that English law does not enquire into the nature, worth or value of religious beliefs<sup>62</sup>, nor concern itself with the truth of the religious beliefs in question<sup>63</sup>, the **Commissioners** concluded it to be sufficient for the purposes of English charity law that Scientology professes a belief in a supreme being.

### *Worship*

The **Commissioners** concluded that auditing appears in essence very much akin to counselling, conducted on a one to one basis, in private, and addressed to the needs of the individual receiving auditing. Scientologists themselves describe auditing as counselling (for example in the video presentation to the Charity **Commissioners** for England and Wales). On the whole they do not appear to describe auditing in terms of worship.

The **Commissioners** further concluded that training in Scientology, involving the detailed study of the works of L Ron Hubbard, according to particular set formulae or methods of study, similarly lacks the elements of reverence or veneration necessary if it is to constitute worship. Scientology training appears more like an educational activity (the acquisition of knowledge and practical skills in the application of Scientology theory and technology) than a religious activity or worship in the sense identified by the **Commissioners**.

The **Commissioners** noted that it was a feature of auditing and training that it is normal practice (although not exclusively so) to require payment in advance, these payments being referred to as “requested donations” by CoS, as a prerequisite for participation in these activities. This practice was noted but the **Commissioners** did not consider it to have an impact upon whether the activities of auditing and training themselves constituted worship in English charity law.

Having considered the core religious services of Scientology, namely auditing and training which CoS submits constitutes worship, the **Commissioners** concluded that they could not find, in auditing and training whether taken separately or together, the reverence and veneration for a supreme being which they considered is necessary to constitute worship in English charity law.

The **Commissioners** therefore concluded that Scientology is not a religion for the purposes of English charity law, and that CoS is not charitable as being established for the charitable purpose of the advancement of religion.

### *Whether CoS promotes and advances Scientology*

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<sup>62</sup> Thornton v Howe supra

<sup>63</sup> Gilmour v Coats supra

Turning to the question of whether **CoS** promotes and advances Scientology – it was noted that this question was now hypothetical, the **Commissioners** having concluded that Scientology was not a religion in English charity law. However, **CoS** had supplied argument and evidence that it did promote and advance Scientology and the **Commissioners** considered this, although it was not strictly necessary to do so in view of the conclusion that Scientology was not a religion. The **Commissioners** accepted that on the basis of the evidence put to them by **CoS**, the organisation did promote and advance Scientology as its system of belief, seeking to spread its message ever wider and exhibiting a missionary element in a manner identified by the relevant legal authorities. The **Commissioners** noted that it was not necessary in reaching this conclusion to consider the extent to which **CoS** is engaged in activities which may in themselves be charitable in their own right whether pursued by **CoS** or some other body, for example activities which may be charitable as relieving poverty or other need, or advancing education.

7. *Whether CoS is established for the purpose of promoting the moral or spiritual welfare or improvement of the community*

The **Commissioners** considered whether **CoS** is established for the purpose of promoting the moral or spiritual welfare or improvement of the community under the fourth head of charity law.

**CoS** argue that if Scientology is not a religion, then the advancement of Scientology is nevertheless charitable under the fourth head of charity<sup>64</sup> by analogy with decided cases where the institutions concerned were established for the moral or spiritual welfare or improvement of the community. The **Commissioners** therefore considered whether **CoS** is in fact established under the fourth head as promoting the moral or spiritual welfare or improvement of the community, being a purpose which is beneficial to the community, and already recognised in charity law.

The **Commissioners** indicated that it would be necessary for them to consider firstly the legal basis upon which the promotion of the moral or spiritual welfare or improvement of the community is regarded as a charitable purpose as set out in the cases of **Re Scowcroft**, **Re Hood**, **Re Price** and **Re South Place Ethical Society**; secondly whether Scientology is analogous to those cases and if so thirdly whether the test of public benefit under the fourth head has been satisfied.

The **Commissioners** noted that it is clear from the case law<sup>65</sup> that it may be charitable under the fourth head of charity to promote the moral or spiritual welfare or improvement of the community.

The **Commissioners** noted that in order to decide whether a novel purpose is charitable under the fourth head of charity, the courts and the Commission will consider whether the purpose is analogous to those found in the Preamble to the Statute of Elizabeth or to a purpose already found to be charitable by the courts or the Commission. The Commission has publicly stated its approach to determining such

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<sup>64</sup> under the classification of charities by Lord MacNaghten in *Income Tax Special Purposes, Commissioners v Pemsel* [1891] AC 531 ‘other purposes beneficial to the community not falling under any of the preceding heads’

<sup>65</sup> *Re Scowcroft* [1898] 2 Ch 638, *Re Hood* [1931] 1 Ch 240, *Re Price* [1943] Ch 422, *Re South Place Ethical Society* supra

cases in its Annual Report of 1985<sup>66</sup> and will act constructively and imaginatively in seeking an analogy, its general approach being to favour charity.<sup>67</sup>

In addition, public benefit must be shown to flow from the activities of the particular organisation in question. Tangible or objective benefits are generally required but intangible benefits are acceptable<sup>68</sup>. Those benefits must also be available to the public at large or to a sufficiently important section of the public.<sup>69</sup>

*CoS's arguments that it is established for such a purpose*

The **Commissioners** took note of **CoS's** arguments in support of its application for registration as a charity under this head that Scientology regards itself as a religion whose principal concern is "to lead man to salvation"<sup>70</sup>, but which is also concerned with human wellbeing. Scientology makes clear that its long term goal is the benefit of all mankind – by promoting its spiritual practices it seeks to eliminate destructive and hostile tendencies amongst men.<sup>71</sup> The teachings of Scientology are translated into practical activity by its adherents (aimed at achieving Scientology's stated aim<sup>72</sup>), for example in the field of rehabilitation of drug addicts and criminals.

Dr Wilson (one of the experts in the study of religion relied upon by **CoS**) concludes that the teachings and intentions embraced in Scientology "do not materially differ from those in most other religious organisations, namely the moral and spiritual improvement of mankind and the creation of a safer and happier society"<sup>73</sup>. In consequence **CoS** argues that there are clear parallels between the aims of the teachings of Scientology and the teachings of Rudolf Steiner considered in the case of **Re Price**. It is argued by **CoS** that Scientology's teachings are all directed towards the promotion of moral or spiritual welfare or improvement of the community.

**CoS** argues that many of Mr Hubbard's teachings are already recognised as charitable and applied by existing charities. For example Mr Hubbard's teachings on drug abuse, how drugs and toxic residues impede spiritual improvement and about how to rid people of the adverse long term effect of drugs have general application in the field of drug rehabilitation, and are used particularly by the drug rehabilitation charity Narconon. Mr Hubbard's methods developed to assist people in religious study are, it is argued, taught and used by educational charities both in this country and around the world. It is argued that other teachings based on the Scientology belief that moral and ethical living are necessary for true happiness and spiritual growth have been used in courses and to rehabilitate criminals by charities here and abroad. **CoS** therefore conclude that a large part of the teachings which promote moral, mental and spiritual improvement within Scientology are already recognised as charitable in purpose and taught and used by existing charities.

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<sup>66</sup> AR 1985 Pages 11 & 12 paras 24-27.

<sup>67</sup> AR 1985 para 27

<sup>68</sup> If such benefits would be regarded as valuable 'by the common understanding of enlightened opinion' -- National Anti-Vivisection Society v IRC [1948] AC 31.

<sup>69</sup> Verge v Sommerville [1924] AC496

<sup>70</sup> Opinion of Dr Bryan Wilson October 1997 "Scientology and the Public Benefit"

<sup>71</sup> Opinion of Dr Bryan Wilson October 1997 supra

<sup>72</sup> "A civilisation without insanity, without criminals and without war, where the able can prosper and honest beings can have rights, and where Man is free to rise to greater heights, are the aims of Scientology" L. Ron Hubbard – 'The Aims of Scientology'

<sup>73</sup> Opinion of Bryan Wilson October 1997 supra

## *Examination of the legal authorities*

The **Commissioners** considered the relevant decided English cases and noted that the promotion of the moral or spiritual welfare or improvement of the community as a charitable purpose has developed over the course of several cases decided by the courts. The most recent case is **Re South Place Ethical Society** where the court considered that the Society in question was analogous to the three cases which had gone before - **Re Scowcroft; Re Hood; Re Price**.

It was clear to the **Commissioners** that the promotion of the moral or spiritual welfare or improvement of the community is a recognised category of charity falling within the fourth head of Lord MacNaghten's classification<sup>74</sup>, and they considered whether **CoS** was established for a purpose analogous to those found in the case law.

**Re Scowcroft** and **Re Hood** were both cases concerned with the promotion of temperance primarily as a means of advancing Christian principles, but also on its own account. On the facts, the **Commissioners** found little analogy between those cases and **CoS**.

The **Commissioners** considered that the cases of **Re Price** and **Re South Place Ethical Society** however, might provide a basis for an analogy. **Re Price** was concerned with advancing the teachings of Rudolf Steiner and these may have some similarity in their nature with the teachings of L Ron Hubbard promoted by **CoS**. Steiner taught, amongst a range of other things, a theory of knowledge and a method of mental and moral discipline and the application of this to a wide range of studies (eg to religion and education generally). L Ron Hubbard developed Scientology as the Science of Knowledge which, once learnt by a student of Scientology can be applied to many aspects of life.

However, there seemed to the **Commissioners** to be a *fundamental* difference between the case of **Re Price** and that of **CoS**.

The Steiner teachings were a broad range of teachings which included "a method of mental and moral discipline designed to train the imaginative, creative and devotional faculties of the mind...". However, these did not constitute a formal system of doctrines, practices and beliefs and the Society in **Re Price** was not concerned with advancing a belief system whether religious or secular. Steiner's principles were of general application to different aspects of life ("in other books and lectures Steiner taught and developed the application of [his theory of] knowledge to religion and education generally".)<sup>75</sup>

It seemed to the **Commissioners** that **CoS** on the other hand is concerned with advancing a set of doctrines, practices and beliefs which constitute a highly structured and formal belief system, which its practitioners regard as a religion. Its adherents share beliefs which are unique to Scientology. Further it is necessary to receive Scientology services – principally auditing and training – in order to apply Scientology doctrines and practices to life. Progress across the Eight Dynamics is achieved through auditing with a trained Scientology auditor and participation in training. This necessitates membership of a particular organisation because of the need to engage in auditing and training - the Scientology services available through **CoS**. It was not

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<sup>74</sup> Income Tax Special Purposes Commissioners v Pemsel, supra

<sup>75</sup> Re Price supra @ p. 431

therefore clear to the **Commissioners** that the doctrines, practices and beliefs of Scientology can be accepted and applied by the public at large as a broad philosophy for living their daily lives or as a way of achieving spiritual awareness. Nor was it clear that the public does so accept and apply those doctrines, practices and beliefs.

For similar reasons **CoS** is distinguishable in the **Commissioners'** view from the case of **Re South Place Ethical Society**. That Society was, as the Judge said, concerned with rational thought. A member of the public could share the views propounded by the Society and live by them (or not) from time to time as he might choose, because they were general views. An individual did not have to be a member of the South Place Ethical Society in order to understand or adopt the philosophy and principles that it advanced. Further the Society was not advancing a religion or other belief system.

In conclusion, the institutions found to be charitable in the **Re Price** and **South Place Ethical Society** cases were disseminating ideas which were broadly philosophical and which were generally accessible to and could be applied within the community and which could be adopted freely from time to time, according to individual choice or judgement, by members of the public at large.

In neither the **Re Price** nor the **South Place Ethical Society** cases was a belief system promulgated, nor was membership of the organisation concerned necessary for an individual to follow the principles of Steiner or those promulgated by the South Place Ethical Society.

**CoS** on the other hand was, in the **Commissioners'** opinion distinct from these two cases because it regards itself as promoting a religion, and unarguably promotes a formal belief system (whether accepted as religious or not). Its doctrines, practices and beliefs are not such as to be available generally to the public at large as they may choose from time to time. Rather, the nature of Scientology's doctrines, practices and beliefs is such that they constitute a highly structured system and such that membership of the organisation is necessary for participation.

The **Commissioners** did not find Scientology to be strictly analogous to the cases previously decided by the Court.

#### *Ambiguity in the English legal authorities*

However, the **Commissioners** noted that the English legal authorities concerning the moral or spiritual welfare or improvement of the community might not be entirely clear and unambiguous and may be of persuasive value rather than binding authority.

#### *Analysis of English legal authorities concerning the moral or spiritual welfare or improvement of the community.*

The **Commissioners** therefore considered the extent to which ambiguity existed in the relevant legal authorities and reviewed these as follows:

##### **(i) Re Scowcroft**

In this case a vicar left by will a building used as a village hall and reading room "to be maintained for the furtherance of Conservative principles and religious and mental improvement and to be kept free of intoxicants and dancing".

The judge, Stirling J, found that the true reading was that it was either a gift for the furtherance of Conservative principles in such a way as to further religious and mental principles or it was a gift for the furtherance of religious and mental improvement in accordance with Conservative principles. In either case, the furtherance of religious and mental improvement was found to be an essential part of the gift. Stirling J held that therefore it was a gift for that purpose and a good charitable gift. He thought that the limitation of having to combine that gift with the advancement of Conservative principles did not defeat its charitable status.

The **Commissioners** noted that the judgement has been criticised for finding that the reference to Conservative principles did not prevent the gift from being charitable but there seems to have been little challenge to the proposition that furthering mental and religious improvement is a good charitable purpose. The judgement gives scant justification for this, though the judge said that this construction of the gift was aided by the direction that the building is to be kept free from intoxicants and dancing.

The **Commissioners** concluded that **Re Scowcroft** gives no reasons for the basis of mental or religious improvement as a charitable purpose.

## (ii) **Re Hood**

In this case, a testator expressed his belief that “the remedy for all the unrest and disorders of the body politic will be found in the application of Christian principles to all human relationships” and that drink was preventing the effective application of Christian principles. His gift was therefore to be used to spread Christian principles and to take steps to extinguish the drink traffic. It was being argued that these were two separate objects and that the second - concerning drink traffic - was not charitable. The court therefore had to consider whether promoting temperance was a charitable purpose.

Lord Hanworth MR concluded that this meant the advancement of Christian principles *by* the extinguishment of drink traffic. But after that, he went on to say *obiter* that “It will not be necessary for the present purposes, but I should have no hesitation in saying that ..... the object of reducing intemperance .. is also beneficial to society at large...” .

Lawrence LJ thought that the second object could either be a means of furthering the first or could be an object in its own right. He said that the second object was charitable in any case: “temperance itself is undoubtedly a charitable object. It comes within the fourth class...because many people regard temperance as contributing to the moral improvement of mankind.”

Romer LJ agreed that promoting temperance was charitable for the reasons given by the other judges and he referred to **Re Scowcroft** as providing a basis upon which to construe the gift.

None of the judges examined the reasoning behind the **Re Scowcroft** decision in any detail in relation to the moral or spiritual welfare or improvement of the community as a charitable purpose. Rather, it was used as a basis for construing the **Re Hood** gift as a charitable one.

The **Commissioners** concluded that the **Re Hood** case is therefore of little value in understanding the principles behind mental and moral improvement as a charitable purpose.

**(iii) Re Price**

This case concerned the trust of a fund which was left by will to the Anthroposophical Society of Great Britain. The Society was carrying on the teachings of Dr Rudolf Steiner, whose writings ranged from philosophy and religion through sociology, natural science, medicine, architecture, music and other arts. There was evidence to the effect that the teachings were:

“directed to the extension of knowledge of the spiritual in man and in the universe generally and of the interaction of the spiritual and the physical. He sought to show both how this knowledge could be acquired and how it could be applied for the benefit of man in a wide range of activities....He expounded a theory of knowledge....Steiner taught a method of mental and moral discipline designed to train the imaginative, creative and devotional faculties of the mind and so to develop the faculties of spiritual intuition and perception. This teaching is to be found in such a book as Steiner’s “Knowledge of Higher Worlds and its Attainment”.

“In other books and lectures Steiner taught and developed the application of this knowledge to religion and education generally.”

The evidence before the Court was not challenged and the judge held that the gift to the Society was a valid one because the terms of the gift were not so uncertain that the Court could not take over the administration of the gift if that became necessary. The judge found that the gift did not tend to a perpetuity. Having decided this, he went on to say that it was not strictly necessary for him to decide whether it was charitable but he nevertheless went on to do so because the charitable nature of the gift had been argued before him. Nevertheless what the judge then had to say on the charitable status of the trust was *obiter dicta*.

Cohen J’s views on the charity of the Steiner gift being directed towards the moral or spiritual welfare or improvement of the community were as follows:

“I agree ... that (a) On the evidence the teachings of Rudolf Steiner are directed to the mental or moral improvement of man; (b) that provided this teaching is not *contra bonos mores* the court is not concerned to decide whether it will result in mental or moral improvement of anyone, but only whether on the evidence before the court it may have that result”.

Cohen J then referred to what was said by Romilly MR in **Thornton v Howe** on the question of religious trusts to the effect that provided a sect did not have doctrines adverse to religion or subversive of morality the court would draw no distinction between one religion or another or enquire into the worth or value of religion.<sup>76</sup> He

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“In this respect, I am of the opinion that the court makes no distinction between one sort of religion and another. They are equally bequests which are included in the general term of charitable bequests. Neither does the court, in this respect, make any distinction between one sect and another. It may be that the tenets of a particular sect inculcate doctrines adverse to the very foundations of all religion and subversive of all morality. In such a case, if it should arise, the court will not assist the execution of the bequest but will declare it void; but the character of the bequest would not be altered by this

then said: “What is said there of religion would apply also I think to philosophy” and he went on to say the Steiner gift would be charitable.

However, it was not clear to the **Commissioners** why Cohen J thought it appropriate to apply the **Thornton v Howe** principles concerning religion to philosophy or promotion of moral or spiritual welfare or improvement; he gave no explanation.

The judgement of Cohen J is in the **Commissioners’** view unclear on the following grounds:

- a) What was said about the charitability of the gift was strictly *obiter*.<sup>77</sup>
- b) The principles which the judge applied had previous judicial authority only in relation to religion and charity law. Applying the same principles to a different head of charity, where a different test of public benefit arises,<sup>78</sup> may not be justified.

The **Commissioners** concluded that **Re Price** does not provide a comprehensive rationale underpinning the moral or spiritual welfare or improvement of the community as a charitable purpose.

#### (iv) **Re South Place Ethical Society**

The court decided that the Society concerned was not charitable by way of advancing religion but that it was charitable by way of advancing education or, alternatively, by analogy with **Re Price**, **Re Hood**, and **Re Scowcroft**, it was charitable under the fourth head as promoting the moral or spiritual welfare or improvement of the community.

The Society had as its object “the study and dissemination of ethical principles and the cultivation of a rational religious sentiment.” Dillon J noted that the members were sincere people of the highest integrity, who were not atheists but were agnostic about the existence of God. Dillon J said the following of the Society’s activities:

“The objects refer to the dissemination as well as the study of ethical principles, and I should briefly mention the activities of the society.

It holds Sunday meetings, which are open to the public. At these meetings lectures are given, often by visiting lecturers, who may be persons of very considerable distinction, on subjects of serious and mainly intellectual interest, and the lectures are followed by discussions. There are other lectures on special occasions, such as the Conway Memorial Lectures, in memory of Moncure Conway. These are also open to the public. The society publishes a monthly magazine called the Ethical Record, which is available to the public, and others of its lectures are published and widely disseminated. In addition, in

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circumstance. The general immoral tendency would make it void whether it was to be paid out of pure personality or out of real estate. But if the tendency were not immoral, and although the court might consider the opinions to be propagated foolish or even devoid of foundation, it would not on that account declare it void or take it out of the class of legacies which are included in the general terms charitable bequests.”

<sup>77</sup> Picarda, *The Law and Practice of Charities* 2<sup>nd</sup> Ed. Pg 149

<sup>78</sup> Under the advancement of religion head, public benefit is presumed although the presumption may be rebutted on the evidence. Under the fourth head, public benefit must be demonstrated.



pursuit of the ideal of beauty and the appreciation of it, since the turn of the century, chamber music concerts have been given on Sunday nights in winter, first at the South Place chapel, and, since 1930, in the Conway Hall. These are open to the public. Performers of high repute and quality take part and the performances at these concerts are regarded by music experts as of a very high standard indeed. There are also, and not unexpectedly, social activities, which are broadly similar to the social activities of the congregation of a parish church, but these social activities are, in my judgement, ancillary to the other activities of the society. At the highest it can be said that they serve, as with the parish church, to further the esprit de corps of the congregation, and this in turn helps to further the cultivation of the rational religious sentiment.”

Dillon J said of the objects:<sup>79</sup>

“I turn therefore to the objects of this society, as set out in its rules. The first part of the objects is the study and dissemination of ethical principles. Dissemination, I think, includes dissemination of the fruits of the study, and I have no doubt that that part of the objects satisfies the criterion of charity as being for the advancement of education. The second part, the cultivation of a rational religious sentiment, is considerably more difficult. As I have already said, I do not think that the cultivation is limited to cultivation of the requisite sentiment in the members of the society and in no one else. In the context the society is outward looking, and the cultivation would extend to all members of the public whom the society’s teachings may reach. The sentiment or state of mind is to be rational, that is to say founded in reason. As I see it, a sentiment or attitude of mind founded in reason can only be cultivated or encouraged to grow by educational methods, including music, and the development of the appreciation of music by performance of high quality. The difficulty in this part of the society’s objects lies in expressing a very lofty and possibly unattainable ideal in a very few words, and the difficulty is compounded by the choice of the word ‘religious’, which, while giving the flavour of what is in mind, is not in my view used in its correct sense. Despite this, however, I do not see that the court would have any difficulty in controlling the administration of the society’s assets.”

On the evidence before him, therefore, Dillon J was satisfied that the Society’s activities - whether lectures, musical performances or otherwise - were of a very high calibre and he referred on several occasions to the “rationality” of the sentiment which the Society wished to advance. It seems to be for these reasons that he found the gift to the Society to be for charitable educational purposes, saying that the authorities show that the courts have construed the term “educational” widely.

Having so decided, there was no need for the judge to provide an alternative means by which the gift to the Society could be held to be charitable. Nevertheless, Dillon J did so, identifying the available analogies of **Re Price**, **Re Hood**, and **Re Scowcroft**, and concluding by reference to them that the gift to the Society would be charitable within the fourth head as well. Unfortunately, Dillon J did not examine the reasoning behind the previously decided cases or offer any explanation as to why the circumstances of the Society should be analogous to them.

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<sup>79</sup>

[1980] 1 WLR Pg 1565

The **Commissioners** concluded that whilst the **South Place Ethical Society** case is cited by the text books<sup>80</sup> as laying to rest any doubt that promotion of the moral or spiritual welfare or improvement of the community is a charitable purpose, Dillon J's comments may nevertheless be *obiter dicta* and, since the judge gave no reason for his alternative view of the objects, the decision is actually of limited value in determining the charitable status of institutions which may be established for that purpose.

The **Commissioners** noted that the development by court decisions of the promotion of the moral or spiritual welfare or improvement of the community as a charitable purpose seems to have come about with little judicial explanation as to the reasoning or principles involved. It seems to have arisen because the court has attempted to find a way to justify the cases before them as charitable. In fact, the only real reasoning for this purpose occurred in **Re Price** where the judge simply adopted the principles involved under another head of charity, although without explaining why he did so.

The **Commissioners** agreed that the cases about the charitability of this purpose are ambiguous. There are no clear principles about what constitutes moral or spiritual welfare or improvement, and a distinct lack of judicial reasoning about the basis upon which this purpose is regarded as charitable. They also noted that they had used the moral or spiritual welfare or improvement analogy on several occasions (eg **Public Concern at Work**<sup>81</sup> and **Promotion of Racial Harmony**<sup>82</sup>) in order to apply the law in changing social and economic circumstances, having identified a benefit to the public of a kind that is charitable by analogy with the spirit and intendment of the preamble<sup>83</sup> and previously decided cases. It is difficult to draw an analogy between **CoS** and those cases decided by the Commission but it is clear that the Commission has regarded the concept of moral or spiritual welfare or improvement as a flexible basis upon which a wide range of purposes beneficial to the public may by analogy be recognised as charitable, particularly where it was apparent that the benefit flowing from the organisations' purposes and activities is readily and easily accessible to the public and likely to achieve such a purpose.

The **Commissioners** noted that a traditional interpretation of the decided cases suggests that only those sets of principles which do not constitute a formal system of belief, which may be adopted by the public at large according to individual choice and which do not necessitate membership of a particular organisation for their application by individuals could potentially be charitable by analogy with the cases on moral or spiritual welfare or improvement. However, given the ambiguity in the decided cases and the lack of judicial explanation or reasoning as to the principles involved in the development of the courts decisions concerning the moral or spiritual welfare or improvement of the community as a charitable purpose, the **Commissioners** accepted that the cases should be construed broadly and flexibly in a way that is compatible with **ECHR** principles.

### *Conclusion*

Adopting such an approach to the legal authorities the **Commissioners** concluded that the following features would not defeat charitable status:

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<sup>80</sup> H Picarda *The Law and Practice Relating to Charities* 2<sup>nd</sup> Ed. Pg. 149 (3<sup>rd</sup> Ed. Pg. 164) and Tudor *Charities* 8<sup>th</sup> Ed. Pgs 115-117

<sup>81</sup> Decisions of the Charity Commission Vol 2 pages 5 to 10

<sup>82</sup> Report of the Charity Commissioners 1983 paras 15 to 20

<sup>83</sup> The Statute of Elizabeth I, 43 Eliz I,c4

- The fact that an organisation promoted a belief system;
- The fact that this belief system was not a religion in terms of English charity law;
- The fact that membership of or adherence to a particular organisation which promoted the belief system was necessary.

Such legal authorities as there are suggest that the key aspects of a purpose of promoting the moral or spiritual welfare or improvement of the community would be that the doctrines, beliefs and practices of the organisation are accessible to the public and capable of being applied by members of the public according to individual judgement or choice from time to time in such a way that the moral or spiritual welfare or improvement of the community may result.<sup>84</sup>

It would therefore still be necessary to consider the extent to which Scientology beliefs and practices exhibited those key aspects.

#### *Applied to Scientology*

The **Commissioners** considered whether the doctrines and practices of **CoS** were accessible to the public and capable of being applied by members of the public according to individual judgement and choice such that such a charitable purpose might result. A number of factors indicated that this may be so, a number suggested they could not. An analogy with previously decided cases could be found in that:

- Scientology principles are arguably available to the public. Scientology has its own publishing house which publishes L Ron Hubbard's works. Tape recordings of his lectures are available and Scientology resources are placed in public libraries.
- Scientology promotes a moral code particularly through the "Way to Happiness" campaign. Scientology publishes a booklet called "The Way to Happiness" described as "the first moral code based wholly on common sense" and which "is entirely non-religious in nature"<sup>85</sup> Scientology claims that the Way to Happiness contains 21 separate precepts each constituting a rule for living with relevance for anyone. The booklet is provided to interested people and distributed, according to **CoS**, to youth groups, schools, clubs, social service agencies, military organisations, etc.<sup>86</sup>
- In addition **CoS** argues that it is established for the moral or spiritual welfare or improvement of the community because Scientology's principle concern is "to

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<sup>84</sup> Cohen J in *In Re Price* at p. 432 – provided the teaching is not contra bonos mores, the Court is not concerned to decide whether it *will* result in the mental or moral improvement of anyone but only whether on the evidence before the Court it *may* have that result.

Dillon J in *In re South Place Ethical Society* at p. 1576 G... I do not think that the cultivation is limited to cultivation of the requisite sentiment in the members of the society and in no one else. In the context the society is outward looking, and the cultivation would extend to all members of the public whom the society's teachings may reach.

<sup>85</sup> What is Scientology, p. 340

<sup>86</sup> It was not clear to the Commissioners to what extent CoS itself promulgates the Way to Happiness campaign in this country. In any event this is not a central practice of CoS (it is not auditing and training) and the extent to which the code may tend to the moral or spiritual welfare or improvement is not in the Commissioners view easily established.

lead man to salvation” and that in addition it is concerned with human wellbeing – its long-term goal being the benefit of all mankind.

- **CoS**’s argument that many Scientology teachings are actually applied in other areas for example teachings on drug abuse and the use of Scientology principles in fields of drug rehabilitation; education; and the rehabilitation of criminals may indicate that Scientology principles are accessible to the public generally and of more general application.

However, other features indicated a lack of any analogy:

- Not all Scientology material is publicly available. The **Commissioners** understood that the “higher-level” materials are regarded as confidential and available only to those who have progressed a considerable way in Scientology.<sup>87</sup> In addition, much Scientology material, including basic texts such as “What is Scientology” normally is paid for.
- The resources of Scientology are specialist in nature. Scientology has its own terminology, which is arguably not easily understood by the ordinary reader. For example a glossary of terms is supplied in the “What is Scientology” book.
- Formal participation in auditing is said to be necessary both to progress in and to a proper understanding of Scientology. That is to say that an individual generally needs to have access to a qualified auditor in order to be able to participate in and benefit from Scientology.
- Similarly participation in Scientology training, the other core practice by which Scientology is advanced, requires participation in training courses and access to specialist materials and to a course supervisor and course administrator.
- Access to both auditing and training is gained predominantly only upon payment of the relevant requested donation.

Balancing those factors indicating an analogy and those suggesting that none may be found, the **Commissioners** emphasised that the principal activities of **CoS** are the auditing and training of individuals. Whilst there is an argument that the principles of Scientology may be accessible to the public at large for example through the availability of Scientology literature and potentially through the apparent use of Scientology and its techniques in other fields, the **Commissioners** did not find those arguments convincing. Rather on balance the factors indicating that Scientology is not accessible to or applicable by the public generally in a way that may be capable of resulting in the mental and moral improvement of the community carried greater weight.

Accordingly, and although the courts and **Commissioners** are concerned only to establish whether the advancement of Scientology *may* result in the mental and moral improvement of mankind, there were insufficient arguments that this may be the case when **CoS** is compared with the promotion of temperance, the application of the

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<sup>87</sup> The Commissioners noted that Dr Wilson states that there is nothing unusual in a religion restricting access to its more detailed teachings to those who are particularly committed to or advanced in understanding of the belief system, and distinguishing those materials from the basic materials available.

teaching of Rudolf Steiner (for example to education), and the ethical aspirations<sup>88</sup> expressed by the South Place Ethical Society. The **Commissioners** were satisfied that it had not been demonstrated to them that **CoS** would be likely to promote the moral or spiritual improvement of the community, such that **CoS** was not charitable under this head of charity law.

8. *Whether CoS is established for the public benefit.*

The **Commissioners** noted that in the light of their conclusion that **CoS** is charitable under neither the third nor fourth head of charity, the question of whether **CoS** is established for the public benefit did not strictly arise. However, the question of public benefit had been fully argued by the applicants and the **Commissioners** therefore considered it appropriate to consider those arguments and form a view upon whether **CoS**, if otherwise charitable, was established for the public benefit.

*Public benefit in charity law*

The **Commissioners** noted that the essential criteria relating to public benefit were as follows:

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<sup>88</sup> These being “the belief that the object of human existence was the discovery of truth by reason and not by revelation by supernatural power, and a belief in the excellence of truth, love and beauty as opposed to belief in any supernatural power and the cultivation of a rational religious sentiment, the word religious being used in a sense eschewing all supernatural belief.”

1. Public benefit is an essential element of charity law.

The general rule is that a purpose on its face expressed in charitable form is not charitable unless it is also directed to the public benefit.<sup>89</sup> There are two aspects to this: there must be a benefit and it must be a benefit to the public<sup>90</sup>. In deciding whether a particular purpose is charitable, the court has always applied this overriding test of public benefit. However, the nature of the test varies between the first three heads of charity and the fourth head<sup>91</sup>; and may vary between heads of charity<sup>92</sup> and over time<sup>93</sup>

2. Under the first three heads public benefit is presumed. However, this presumption may be readily rebutted – and if it is, public benefit must be proved<sup>91+94</sup>.
3. Under the fourth head of charity public benefit must be proven - **National Anti-Vivisection Society v IRC**.<sup>95</sup> This may not be a difficult task if the benefit is self evident. In general the benefit to the public under the fourth head should be a tangible one, although an intangible benefit may suffice if there is “approval by the common understanding of enlightened opinion for the time being” that there is benefit to the public.<sup>96</sup>

The **Commissioners** noted the difference between the tests of public benefit between the third and fourth heads of charity.

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<sup>89</sup> Oppenheim v Tobacco Securities Trust [1951] AC 297; AG v National Provincial Bank [1924] AC 262

<sup>90</sup> H. Picarda The Law and Practice relating to Charities 2<sup>nd</sup> Ed. at Pg. 16 (3<sup>rd</sup> Ed. Pg. 20)

<sup>91</sup> The question of public benefit was considered by the House of Lords in National Anti-Vivisection Society v IRC [1948] AC 31, where Lord Simmonds said that “if the purpose is one within one of the heads of charity forming the first three classes, the court will easily conclude that it is a charitable purpose, still their remains the overriding question: is it pro bono publico?... when a purpose appears broadly to fall within one of the familiar categories of charity, the court will assume it to be for the benefit of the community and therefore charitable, unless the contrary is shown.”

<sup>92</sup> In Gilmour v Coats [1949] AC 426 at page 449 Lord Simmonds said “that it would not be surprising to find that, while in every category of legal charity some element of public benefit must be present, the courts... have accepted one standard in regard to those gifts which are alleged to be for the advancement of education and another for those which are alleged to be for the advancement of religion and it may be yet another in regard to the relief of poverty”.

<sup>93</sup> In 1895 the Court of Appeal upheld an anti-vivisection trust in Re Foveaux [1895] 2 Ch 501 but in National Anti-Vivisection Society v IRC (supra) (decided in 1948) the House of Lords denied that antivivisection was a charitable purpose. In that case Lord Wright said that the test of public benefit may vary from generation to generation for example “eleemosynary trusts may, as economic ideas and conditions and ideas of social service change, cease to be regarded as being for the benefit of the community”.

<sup>94</sup> This is clear again from National Anti-vivisection Society v IRC supra where Lord Wright said at page 42 that “a trust for the advancement of learning or education may fail to secure a place as charities, if it seems that the learning or education is not of public value”. In the same case Lord Simonds said at page 69 that “if today, a testator made a bequest for the relief of the poor, and required that it should be carried out in one way only, and the court was satisfied by evidence that that way was injurious to the community, I should say that it was not a charitable gift though three hundred years ago the court might upon different evidence, or in the absence of any evidence, have come to a different conclusion.”

<sup>95</sup> supra

<sup>96</sup> In National Anti-Vivisection Society v IRC supra, Lord Wright said at p. 49 that:

“I think the whole tendency of the concept of charity in a legal sense under the fourth head is towards tangible and objective benefits, and at least, that approval by the common understanding of enlightened opinion for the time being, is necessary before an intangible benefit can be taken to constitute a sufficient benefit to the community to justify admission of the object into the fourth class.”

The **Commissioners** concluded that the requirement of public benefit is an essential element in determining what is and what is not charitable. Whilst the law in this area is clear and unambiguous, the **Commissioners** nevertheless considered it appropriate to consider the question of public benefit in the light of **ECHR** principles, on the basis that the **HRA** is likely to come into force next year, and as a result the Commission should now begin to have regard to **ECHR** principles. To the extent that **Articles 9**, and **9 & 14** together, are applicable, the different tests of public benefit for religious and non religious organisations are in the **Commissioners** view compatible with **ECHR** principles. In particular:

*Article 9 – freedom of thought, conscience and religion*

In the **Commissioners** view the different tests of public benefit are “prescribed by law”<sup>97</sup>, so satisfying the first requirement of **Article 9(2)** and are justified as being necessary in a democratic society in pursuit of one of the legitimate aims identified in **Article 9(2)** – “for the protection of the rights and freedom of others”. The different treatment is justified because English law is concerned with protecting and encouraging the concept of charity, the central characteristic of which is public benefit. Declining registration of those organisations which do not exhibit the characteristics of charity protects the position of those which do fulfil the criteria, and ensures that tax relief is available only to those organisations which are of public benefit of a charitable kind, and is a means of ensuring that those organisations exempted from tax are those which provide benefit to the public in some way (ie through their charitable purpose and activities).

*Article 9 and Article 14 – prohibition of discrimination*

In addition, the difference in the tests of public benefit is in the **Commissioners’** view both objective and reasonable and does not fall foul of **Articles 9** and **14** taken together. That is because the test of public benefit acts as a filter by which the charitable and non-charitable organisations are distinguished. An essential element of charity is its public dimension. It is rational to state that where this element is lacking, an organisation will not be charitable. This applies to all organisations seeking acceptance as being charitable. The legal presumption of public benefit under the first three heads of charity is based on the accepted certainty established in case law based on experience that these purposes will lead to public benefit unless there is evidence to the contrary. Whereas this is not so for the broad category of fourth head purposes.

*Conclusion*

The **Commissioners** noted that the relevant legal authorities on this point were clear and there was no ambiguity. Nevertheless, they considered that the fact that the public benefit test varies between heads will not compromise **ECHR** principles provided that the application of the test to individual cases falling within the different heads of charity is rationally based on the need to establish public benefit in the individual case under consideration. Under the first three heads of charity public benefit is recognised as established and self evident and therefore it need not be demonstrated unless any doubt arises. Under the fourth head it must be proved because such purposes are novel and public benefit needs be made out to justify charitable status. However, there may be cases where it is self evident.

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<sup>97</sup> National Anti-Vivisection Society v IRC supra

Consequently, the public benefit test, although differing between different heads of charity, is an entirely flexible rule applied by the Courts (and the Commission) to individual cases to establish the public benefit which is a requirement of all organisations which profess to be charitable.

## Conclusion

### **The presumption of public benefit and the advancement of religion as a charitable purpose.**

The **Commissioners** considered the legal basis for the presumption of public benefit in relation to religious organisations.

A bequest for a religious institution or for religious purposes is prima facie a gift for a charitable purpose unless the contrary is shown<sup>98</sup>. It is also clear that in the case of the third head of charity public benefit is presumed unless the contrary is shown – **National Anti-Vivisection Society v IRC**<sup>99</sup>.

The presumption arises because the law assumes it is good for man to have and to practise a religion and because a religion can be regarded as beneficial without it being necessary to assume that all its beliefs are true<sup>100</sup>. However, it is also clear that benefit to the public must actually be present as a matter of fact<sup>101</sup> if a gift for the advancement of religion is to be charitable - *public* benefit is as necessary an element in a religious as in other charitable trusts. **Coats v Gilmour Lord Greene MR.**<sup>102</sup>

However, the presumption may be rebutted in individual cases.

The **Commissioners** concluded that the presumption may be rebutted in a number of circumstances (including, but not limited to, those identified in **Re Watson** [1973] 1 WLR 1472 per Plowman J at page 1482<sup>103</sup>). The **Commissioners** would take a wide view of the question of public benefit and would take into account a number of factors in this connection. These would include whether there was evidence that the organisation's purposes were adverse to religion, were subversive of morality, failed to confer recognisable charitable benefits, focused too narrowly upon its adherents or extended to too limited a beneficial class.

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<sup>98</sup> In *Re Wright* [1891] 2 Ch 41; *Re Ward* [1941] 1 Ch 308

<sup>99</sup> *Supra* per Lord Simonds and Lord Wright

<sup>100</sup> *Gilmour v Coats* [1949] AC 426 per Lord Reid at page 459

<sup>101</sup> When the question is of whether a particular gift for the advancement of religion satisfies the requirement of public benefit a question of fact arises which must be answered by the court... by means of evidence cognisable by the court. *Gilmour v Coats* [1948] Ch 340 C.A. Lord Greene MR at page 347

<sup>102</sup> *Supra* at page 344

<sup>103</sup> It was suggested in that case that the presumption of public benefit may be rebutted only by evidence that the doctrines promulgated by the organisation in question are "adverse to the very foundations of all religion and subversive of all morality" – *Re Watson* per Plowman J at page 1482, allegedly following the decision in *Thornton v Howe* (1862) 31 Beav 14. However the Commission has concluded that it is not bound to rely upon *Re Watson* and the interpretation of *Thornton v Howe* there. The statements in *Thornton v Howe* were made in the context of whether it was appropriate for the court to consider whether the religion in question had any intrinsic value and was not about the wider question of public benefit generally.



Those factors were in the **Commissioners'** view not exhaustive, and the **Commissioners** confirmed that it was therefore their practice to take a broad approach to the question of whether public benefit may be presumed to be present in the case of a religious organisation seeking registration as a charity.

This approach finds support in dicta of Lord Greene MR in **Coats v Gilmour** who specifically disagreed with the argument that in order to displace the prima facie assumption [of public benefit] it must be shown that the gift is detrimental to the community. Lord Greene MR commented that “the contrary of beneficial to the public” is not “detrimental to the public” but “non-beneficial to the public”. A gift could be beneficial and may tend to the advancement of religion but if it appeared that the benefit was private and not public, the gift would fail to be a valid charitable gift.<sup>104</sup> This appears to be the approach taken by the court in **In re Hetherington decd.**<sup>105</sup>.

#### *Consideration of CoS's arguments in relation to the presumption of public benefit*

The **Commissioners** noted CoS's argument that it was entitled to the presumption of public benefit enjoyed by religious charities because CoS operates for a religious purpose which does not limit the ambit of the church's religious activities in any way and that these are freely accessible to members of the public. CoS argues that the issue of lack of public benefit, for example, as in **Gilmour v Coats**<sup>106</sup> does not therefore arise. Further the presumption of public benefit is confirmed by the actual religious teaching of Scientology in particular the aim of enabling an individual to attain religious salvation through personal spiritual enlightenment. This is particularly so because an individual's progress across the eight dynamics requires the individual to strive and increase spiritual awareness as a member of a community such that Scientology is “by its very nature an outward looking, community embracing religious philosophy”. CoS argues that its services are unquestionably religious and hence the presumption of public benefit is applicable.

#### *Whether presumption of public benefit rebutted in the case of CoS*

The **Commissioners** then went on to consider whether the presumption of public benefit was rebutted in the case of CoS. The **Commissioners** identified a number of factors which indicated that the presumption was in fact rebutted.

#### *A new 'religion'*

The **Commissioners** noted firstly that Scientology is a new belief system seeking recognition as a religion. In that context the **Commissioners** noted that the presumption of public benefit has arisen historically, in the context of established religions which on the whole conform to a particular pattern involving a theistic belief and a worshipping practice. Scientology did not in the **Commissioners'** view neatly fit that model. The Scientology movement is newly established. Scientology emerged in 1950 with the publication of L Ron Hubbard's book “Dianetics: the Modern Science of

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<sup>104</sup> [1948] Ch 340 Lord Greene MR at page 345

<sup>105</sup> [1990] Ch 1. Sir Nicholas Browne-Wilkinson V.C at p. 12 “a trust for the advancement of education, the relief of poverty or the advancement of religion is prima facie charitable and assumed to be for the public benefit (citing National Anti-Vivisection Society v IRC). This assumption of public benefit can be rebutted by showing that in fact the particular trust in question cannot operate so as to confer a legally recognised benefit upon the public as in Gilmour v Coats”.

<sup>106</sup> supra

Mental Health” and was at first described as a philosophy.<sup>107</sup> In about 1954 practitioners of Scientology began to regard and describe it as a religion, establishing the first Church of Scientology In Los Angeles. However it seemed to the **Commissioners** that Scientology does not consistently describe itself as a religion<sup>108</sup> and it was not self-evident that Scientology institutions are “religious institutions”.

Further, Scientology seemed to the **Commissioners** very different in form from other existing religions and is not simply an offshoot of another recognised religion. The fact that something is new rather than centuries old does not necessarily render a new organisation less beneficial than one derived from antiquity. However, in the case of a new belief system and a new organisation there is little basis upon which the **Commissioners** could form any judgement of whether the organisation and the belief system promoted through its activities is likely to be beneficial to the community or not, nor to presume that public benefit flows from the purposes and work of the organisation.

It appeared to the **Commissioners** that the essential “religious practices” (auditing and training) of Scientology were not easily recognisable as religious in the way that word is ordinarily understood. The auditing carried out by Scientology appears akin to counselling and seems therapeutic rather than religious in nature. It is acknowledged as and described as counselling by Scientologists themselves and is focused upon the needs of individual adherents to Scientology. These factors indicated to the **Commissioners** that it may be questionable whether **CoS**’s activities actually confer recognisable benefit on a sufficiently broad beneficial class. The **Commissioners** will therefore need to be satisfied that **CoS**’s core activities are beneficial to the public generally.

The **Commissioners** considered that a further distinguishing characteristic from established religions is that Scientology’s normal practices require prepayment in the form of requested donations for participation in its central practices of auditing and training. Although organised donations are a feature of some religions, it was not clear that such donations extended to access to the core or central religious practices of such religions. It is a feature which suggested to the **Commissioners** a possible marked difference to established religions and which might suggest that to the extent that Scientology might otherwise be regarded as a religion, public benefit should be demonstrated.

#### *Public concern*

Secondly the **Commissioners** noted a degree of public concern about Scientology generally and about registration of **CoS** as a charity in particular. They considered it not insignificant in this context that the Commission had received a number of unsolicited objections, about Scientology generally and to the registration of **CoS** as a charity in particular. Whilst the truth of the claims made in these letters was not susceptible to proof, on their face they indicated a concern in some sectors of the public about the practices of Scientology.

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<sup>107</sup> page 49 “What is Scientology”

<sup>108</sup> “What is Scientology” introductory pages - “Scientology is an applied religious philosophy” (Foreword page xii) of the introduction to that book entitled Chapter 1 “Introduction to the Scientology Religion”; the front page of the Scientology website describes Scientology as “an applied religious philosophy”. Some of its promotional literature is expressed in entirely non religious terms, whilst other literature does refer to the spiritual or ‘religious’.

The **Commissioners** also noted that there has been coverage of Scientology organisations and activities generally in the press. A proportion of that coverage had been adverse. The **Commissioners** noted that whilst the accuracy of press coverage may be questionable, that coverage, (across the spectrum of newspapers), did at least indicate general concern about Scientology in the public domain, such concern indicating at least that it is not clear that Scientology confers recognisable benefit upon the public.

#### *Judicial concern*

Thirdly the **Commissioners** were aware that there had been concern about Scientology expressed judicially. There had been a not insignificant degree of judicial comment upon Scientology, principally abroad but also in this country. Some of this comment had been unfavourable. The **Commissioners** considered that few of the cases considered the nature and activities of Scientology itself or the practices of the Church of Scientology and that where those matters were considered they may not have been fully argued nor evidence about Scientology and the Church made fully available to the court.

The **Commissioners** considered that they could not wholly disregard any adverse comment when they were considering whether the presumption of public benefit should be concluded in favour of **CoS** for the purposes of the application.

The **Commissioners** therefore concluded that even were **CoS** otherwise charitable as established for the advancement of religion, the presumption of public benefit would be rebutted such that the **Commissioners** should consider whether **CoS** demonstrated public benefit in fact.

#### *The legal test of public benefit under the third head of charity*

The **Commissioners** noted that it is clear (from the dicta of Lord Greene MR in **Coats v Gilmour**<sup>109</sup>) that the burden is upon the religious organisation in question to demonstrate both its impact upon the community and that the impact is beneficial, if public benefit is to be demonstrated.

Some clear principles emerge from the decided cases:

- a gift for the advancement of religion must be beneficial to the public (or a sufficient section of the public)<sup>110</sup> and not simply for the benefit of the adherents of the particular religion themselves<sup>111</sup>.
- It is settled law that the question whether a particular gift satisfies the requirement of public benefit must be determined by the court and the opinion of the donor or testator is irrelevant<sup>112</sup>.
- The court must decide whether or not there is a benefit to the community in the light of evidence of a kind cognisable by the court<sup>113</sup>

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<sup>109</sup> supra

<sup>110</sup> National Anti-Vivisection Society v IRC supra per Lord Simmons

<sup>111</sup> Holmes v Attorney General The Times February 12<sup>th</sup> 1981

<sup>112</sup> Re Hummeltenberg [1923] 1 Ch 237 and National Anti-Vivisection Society v IRC supra

<sup>113</sup> Gilmour v Coats supra

The presence or absence of the necessary element of public benefit has also been considered in a number of cases. The essential distinguishing feature seems to be whether or not the practice of the religion is essentially public. The case **In re Hetherington decd. [1990] Ch. 1** focused on the question of public benefit in relation to religion. In that case the Judge summarised the principles established by the legal authorities. In concluding that a gift for the celebration of masses (assumed to be in public) was charitable he drew upon cases concerning a variety of religious practices and concluded as follows:

1. A trust for the advancement of education, the relief of poverty or the advancement of religion is charitable and assumed to be for the public benefit. The assumption can be rebutted by showing that in fact the particular trust in question cannot operate so as to confer a legally recognised benefit on the public – as in **Gilmour v Coats**;
2. The celebration of a religious rite in public does confer sufficient public benefit because of the edifying and improving effect of such celebration on the members of the public who attend; and
3. The celebration of a religious rite in private does not contain the necessary element of public benefit since any benefit of prayer or example is incapable of proof in the legal sense and any element of edification is limited to a private not public class of those present at the celebration. Following **Gilmour v Coats**<sup>114</sup>, **Yeap Cheah Neo v Ong Cheng Neo**<sup>115</sup> and **Hoare v Hoare**<sup>116</sup>; and
4. Where there is a gift for a religious purpose which could be carried out in a way which is beneficial to the public (ie by public masses) but could also be carried out in a way which would not have a sufficient element of public element (ie by private masses) the gift is to be construed as a gift to be carried out by methods that are charitable, all non charitable methods being excluded.

It is clear from **In re Hetherington decd.**<sup>117</sup> and the cases cited there that it is the public nature of the religious practice which is essential to the gift being charitable.

The **Commissioners** concluded that the decided cases indicated that where the practice of the religion is essentially private or is limited to a private class of individuals not extending to the public generally, the element of public benefit will not be established.<sup>118</sup>

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<sup>114</sup> supra

<sup>115</sup> [1875] LR 6PC 381

<sup>116</sup> [1886] 56 LT 147

<sup>117</sup> supra

<sup>118</sup> In re Hetherington decd., supra Coats v Gilmour [1948] Ch 340 Lord Evershed at page 357.

### *The legal test of public benefit under the fourth head*

The **Commissioners** turned next to the legal test of public benefit under the fourth head of charity and considered the test to be that set out by Lord Wright in **National Anti-Vivisection Society v IRC**.<sup>119</sup> Lord Wright said that:

“I think the whole tendency of the concept of charity in a legal sense under the fourth head is towards tangible and objective benefits, and at least, that approval by the common understanding of enlightened opinion for the time being, is necessary before an intangible benefit can be taken to constitute a sufficient benefit to the community to justify admission of the object into the fourth class.”.

It seemed to the **Commissioners** that the benefit that arises from the moral or spiritual welfare or improvement of the community is likely to be an intangible rather than a tangible one. The **Commissioners** considered the test in respect of an intangible benefit to mean a common consensus of opinion amongst people who were fair minded and free from prejudice or bias.

The **Commissioners** considered in particular whether the representations which it had received about Scientology generally and **CoS** in particular, both favourable and unfavourable amounted to such “common understanding” and concluded that they did not. The representations were not easily substantiated and in effect represented opposing ends of the spectrum of opinion about **CoS** or Scientology generally.

The **Commissioners** further indicated that a key factor in assessing whether the test in that case was met (ie whether there was a common understanding of enlightened opinion that public benefit flowed from the advancement of Scientology by **CoS**), was the extent to which the core practices of Scientology were readily accessible by the public generally.

Accordingly, the **Commissioners** would need to consider whether there was approval by the common understanding of enlightened opinion that pursuit of Scientology doctrines and practices is beneficial to the community such that **CoS** may be regarded as charitable under the fourth head.

#### *Consideration of CoS’s arguments as to public benefit under the fourth head of charity*

The **Commissioners** noted **CoS**’s arguments in this respect. One interpretation of **CoS**’s legal arguments was to the effect that public benefit under the fourth head of charity does not have to be *proved*, but that it is only necessary to *show* that the organisation’s activities *may* have that result.

The **Commissioners** considered **CoS**’s argument apparently based upon **Berry v St Marylebone Corporation [1959] Ch 406** concerning the Theosophical Society in England seeking relief from paying rates under section 8 of the Ratings and Valuation (Miscellaneous Provisions) Act 1955. The **Commissioners** noted that **CoS** appeared to rely on dicta of Romer LJ in that case as support for the proposition that public benefit under the fourth head of charity need not be proven but should only be shown.

The **Commissioners** did not accept this argument, as it was not clear to them that the

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<sup>119</sup> supra at page 49

case cited - **Berry v St Marylebone Corporation** - was authority for this proposition, rather it seemed to the **Commissioners** that it was authority for the proposition that it was necessary to show that the purpose (in that case the advancement of religion) may be likely to be advanced. This they had considered above (footnote 84). In any event the case related specifically to the requirements of section 8 of the Ratings and Valuation (Miscellaneous Provisions) Act 1955 and was not a discussion about charitable status such that the judge's comments were not directly applicable to charity law.

In relation to the question of public benefit it seemed clear to the **Commissioners** from the dicta of Lord Wright in **National Anti-vivisection Society v IRC** that public benefit must positively be shown under the fourth head of charity. Lord Wright's comments in that case that the whole tendency of the concept of charity under the fourth head is towards tangible and objective benefits, seemed to the **Commissioners** to indicate quite clearly that the benefits must be identifiable and demonstrable, and that a common consensus of approval is necessary before an intangible benefit can be regarded as sufficient to satisfy the requirement of public benefit.

***Whether CoS is established for the public benefit, whether under the third or fourth heads of charity***

The **Commissioners** next sought to address the question of whether **CoS** had shown itself to be established for the public benefit. The **Commissioners** considered the considerable volume of evidence supplied by **CoS** in support of its arguments that **CoS** was established for the public benefit whether under the third or fourth heads of charity because

- Individual churches of Scientology conduct numerous religious services freely accessible by members of the public.
- **CoS** sufficiently benefits the public through extensive charitable and public benefit programmes including anti drug campaigns, eradicating illiteracy, disaster relief and raising public morality.
- The Company (**CoS**) is limited by guarantee and its members make no profit.
- It is of the essence of Scientology “like most other religions” to seek to make itself available to all.
- Many of Mr Hubbard’s teachings are already recognised as charitable and applied by existing registered charities.
- The Scientology movement engages in other activities which could potentially give rise to public benefit eg volunteer and relief programmes; rituals and practices such as “assists” (described as a form of healing); work in the field of criminal rehabilitation; observance of a moral code by individual Scientologists and promulgation of that moral code through the “ Way to Happiness Foundation”.

The **Commissioners** *considered* that the evidence and arguments supplied by **CoS** may indicate ways in which Scientology organisations, and individual Scientologists, seek to benefit the wider community. They noted that in terms of English charity law some of that work may potentially be charitable in its own right, albeit not as promoting the moral or spiritual welfare or improvement of the community nor as

advancing religion.<sup>120</sup> However, the **Commissioners** noted that the evidence and argument put to them by **CoS** did not address the central question of whether the advancement of Scientology (whether as a religion or as a non-religious belief system) confers recognisable benefit upon the public in English charity law. **CoS** states that its principal activities are auditing and training and that it is through these core activities that Scientology is advanced. In the **Commissioners** view it therefore had to be demonstrated that the advancement of Scientology through auditing and training is beneficial to the public. The **Commissioners** considered that it is to the central activities of auditing and training that the question of public benefit should be addressed.

The **Commissioners** went on to consider whether it was demonstrated that public benefit flowed from the core practices of Scientology. The **Commissioners** again noted that the test of public benefit was slightly different in relation to the third and fourth heads of charity. In relation to the third head the decided cases indicated that the public or private nature of the “religious practice” of the organisation in question was central to determining the presence or absence of public benefit. In relation to the purpose of promoting the moral or spiritual welfare or improvement of the community under the fourth head of charity the legal test was that set out by Lord Wright in the **National Vivisection Society v IRC** case.

*In relation to the test of public benefit for the advancement of religion the Commissioners concluded that*

**(1) *The central “religious” practices of Scientology are conducted in private and not in public.***

The “religious practices” of Scientology are auditing and training. Scientologists regard these as worship. Auditing is conducted in private on a one to one basis. It appears akin to a form of counselling and is described by Scientologists as such.<sup>121</sup> Training is essentially a private activity requiring the study of specialist material and access to specialist trainers. Whilst members of the public may sign up for a course of auditing and training, generally upon payment of the appropriate requested donation, these activities are not carried out “in public”. Further, progression beyond introductory or initial levels of auditing and training necessitated membership of the Church.

Attendance at a session of auditing or training by members of the public generally does not appear to be a possibility. The **Commissioners** found it difficult therefore to see how any edifying and improving effects upon the public generally might flow from the “religious” practices of Scientology.

In relation to the fourth proposition in **In re Hetherington decd.**, there was no suggestion that auditing and training could be carried out in a way that was public rather than private. It did not seem possible to construe auditing and training as religious rites which could be conducted in public rather than in private such as to render them charitable.

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<sup>120</sup> much Scientology activity appeared to the Commissioners to be in the fields of education and what might broadly be termed ‘relief in need’

<sup>121</sup> Video presentation “The Church of Scientology at Saint Hill – A Special presentation to the Charity Commission of England and Wales”.

(2) *Auditing and training are in their nature private rather than public activities*

The **Commissioners** considered that even if a member of the public could attend an auditing and/or training session other than as a participant but rather as an observer, these Scientology services are by their very nature directed to the particular individual receiving them. Auditing appears akin to a form of counselling and is described by Scientologists who receive it as “counselling”. It is directed to the private needs of the individual receiving it. The **Commissioners** found it difficult to see how the public could be edified or otherwise benefited by attending and observing at such a session.

Both the above factors – that Scientology services are conducted in private, and are in their nature private being directed to the needs of the private individual in receipt of them seemed to the **Commissioners** to indicate that these actual activities are of a private rather than a public kind. In any event it seemed to the **Commissioners** that any benefit to the public that may flow from auditing and training is incapable of proof, any edification or improving effect being limited to the private individual engaging in the auditing or training. Accordingly, the **Commissioners** concluded that these activities conferred no legally recognised benefit on the public.

*In addition* the **Commissioners** noted that the apparent dependence of participation in those activities upon payment of the requested donation referred to by **CoS** strengthened their perception that these activities were of a private rather than a public kind. Whilst **CoS** states that there are ways in which adherents can and do participate in auditing and training without making any form of monetary contribution, so that a lack of financial means is no bar to a member’s progress in Scientology, access to auditing and training through requested donations is the norm. The **Commissioners** noted that the fact that a practice existed of requesting and making these payments strengthened the **Commissioners** in their perception that the activities were of a private rather than a public kind.

The **Commissioners** further noted that in its published and promotional literature, including the book “What is Scientology?”, Scientology on balance presented its benefits in private rather than public terms.

In addition the **Commissioners** noted that a not insignificant number of individual Scientologists described the benefits of Scientology in private and personal terms this being borne out both by a number of the statements printed in Scientology’s published literature and by a significant proportion of the letters of support for **CoS** received from individual Scientologists.

The fact that Scientology describes its benefits in private rather than public terms in its published and promotional literature, and that individual Scientologists described the benefits of Scientology to them in private and personal terms confirmed the **Commissioners** conclusion that **CoS** is not established for the public benefit.



*In relation to the test of public benefit under the fourth head of charity law for the moral or spiritual welfare or improvement of the community the **Commissioners** concluded that:*

The question of accessibility by the public was key to the existence of public benefit. As indicated above, the **Commissioners** had already concluded that the central practices of Scientology (auditing and training) were conducted in private rather than in public, and were in their nature private rather than public activities. In addition there was the practice of requesting donations in advance of receipt of those services. This led the **Commissioners** to conclude that the restricted access to those practices meant that any benefit flowing from Scientology as advanced by **CoS** is of a private rather than a public kind. In addition the description of the benefits of Scientology, both in Scientology published and promotional literature and by individual Scientologists, as already acknowledged by the **Commissioners**, confirmed them in this conclusion.

The **Commissioners** concluded that it could not be said that **CoS** had demonstrated that it was established for the public benefit so as to satisfy the legal test of public benefit of a charitable purpose for the advancement of religion or for the moral or spiritual welfare or improvement of the community.

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