

CHARITY COMMISSION

DECISION OF THE COMMISSIONERS

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

The Church of Scientology (the Church) is an international organisation which promotes a belief system, doctrines and practices known as Scientology. The international headquarters of the Church are in the United States, but assets which are 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 incorporated under the Companies Acts and limited by guarantee called Church of Scientology (England and Wales) (**CoS**) to further its work in this country. In September 1996, **CoS** applied to the Commission for registration as a charity pursuant to **section 3(2) of the Charities Act 1993**. Since that date **CoS** has had a regular dialogue with the Commission about the application.

The application made by **CoS** was supported by a full legal and factual case and expert evidence. **CoS** argues that it is a body established for the charitable purpose of the advancement of religion under the third head of charity law, or, in the alternative, if not so established, that it is established for a charitable purpose which promotes the moral or spiritual welfare or improvement of the community under the fourth head of charity law. Whether under the third head or fourth head of charity law, **CoS** argues that it is established for the public benefit.

A significant element in the application made by **CoS** is that the **Commissioners** ought to have regard to the European Convention on Human Rights (**ECHR**), which is not directly applicable until the Human Rights Act 1998 (**HRA**) is in force. This is likely to be in October 2000. Once the **HRA** is implemented, it will be unlawful for the **Commissioners**, as a public authority, to act in a way incompatible with **ECHR**. This would include decisions of the **Commissioners** with regard to the registration of charities. Any common law authorities would accordingly need to be interpreted in a way consistent with **ECHR** as interpreted by case law of the European Court of Human Rights and opinions and decisions of the European Commission. Until the **HRA** is in force, the **Commissioners** are under no clear legal obligation to take into account **ECHR** in considering issues related to charitable status and accordingly the registration of charities.

The **Commissioners** however *decided* that as a matter of good practice, prudence and indirect legal obligation, they would, in considering **CoS's** application for registration as a charity, construe the relevant legal authorities, where they were ambiguous, in a way compatible with **ECHR** and would otherwise take a broad and flexible approach to the relevant legal authorities in keeping with their policy and practice concerning the recognition of new charitable purposes as set out in the *Report of the Charity Commissioners for 1985 at paras. 24-27*.

The **Commissioners** having *considered* the full legal and factual case put to them by **CoS**, and having *reviewed* the relevant law, taking into account the principles embodied in **ECHR** where appropriate, *decided* that **CoS** was not established for charitable purposes or for the public benefit and was therefore not registrable as a charity under **section 3(2) of the Charities Act 1993**.

In making that determination the **Commissioners** further *concluded* as follows:

- (1) That **CoS** is not charitable as an organisation established for the charitable purpose of the advancement of religion because, having regard to the relevant law and evidence, Scientology is not a religion for the purposes of English charity law.
- (a) The **Commissioners** *considered* that the legal authorities establishing the meaning of religion in charity law were ambiguous, but having construed such authorities in a way compatible with **ECHR** they concluded that the definition of religion was characterised by a belief in a supreme being and an expression of belief in that supreme being through worship. *Re South Place Ethical Society [1980] 1 WLR 1565, Dillon J at p. 1572 D-E.*
- (b) The **Commissioners** *decided* that the concept of a supreme being was broader than the theistic concept of a personal creator god, but otherwise it would not be proper to specify the precise nature of that concept or require it to be analogous to the deity or supreme being of any particular religion. However the **Commissioners** did not find themselves compelled to reject the concept of theism altogether nor to accept the abstract concept of the notion of a supernatural thing or principle.

The **Commissioners** *concluded* that Scientology believed in a supreme being.

- (c) The **Commissioners** *decided* that the criterion of worship would be met where the belief in a supreme being found its expression in conduct indicative of reverence or veneration for the supreme being. *R v Registrar General ex parte Segerdal [1970] 2 QB, 697 Winn LJ at p. 709A.* It was not possible to worship an ethical or philosophical ideal with reverence. *Re South Place Ethical Society, Dillon J at p. 1573A.* Worship may manifest itself in particular activities which might include acts of submission, veneration, praise, thanksgiving, prayer or intercession. *R v Registrar General ex parte Segerdal, Buckley LJ at p. 709 F-G.* The **Commissioners** having *considered* the activities of auditing and training, which Scientology regards as its worship, *concluded* that auditing is more akin to therapy or counselling and training more akin to study and that both auditing and training are not in their essence exhibitions of reverence paid to a supreme being and such Scientology practices are not worship for the purposes of charity law.

The **Commissioners** *decided* that auditing and training do not constitute worship as defined and interpreted from the legal authorities.

- (2) That **CoS** was not established for the charitable purpose of promoting the moral or spiritual welfare and improvement of the community.
- (a) The **Commissioners** *considered* that **CoS** was not analogous to the established legal authorities which governed this area of the law. *Re Scowcroft [1898] 2 Ch 638, Re Hood [1931] 1 Ch 240, Re Price [1943] Ch 422, Re South Place Ethical Society.* They *concluded* **CoS** was not analogous to the decided cases because it promoted a formal and highly structured system of belief (which it regarded as a religion), necessitating membership of or adherence to a particular organisation for access to or participation in its doctrines, practices and beliefs such that these were not generally available to the public at large. However the **Commissioners** further concluded that these legal authorities were ambiguous.

- (b) The **Commissioners** *considered* and interpreted these authorities compatibly with **ECHR** and concluded that the key aspects of the charitable purpose of promoting the moral and spiritual welfare or improvement of the community which could be discerned from these authorities was that the doctrines, beliefs and practices involved were generally accessible to the public and capable of being applied or adopted by them according to individual judgement or choice from time to time in such a way that the moral and spiritual welfare or improvement of the community might result. *Re Price, Cohen J at p. 432*. Accordingly, the **Commissioners** *concluded*, it would be possible for non-religious belief systems promoted by a membership organisation to be established for such a purpose if those criteria were satisfied.
- (c) The **Commissioners** *considered* in relation to the doctrines and practices of **CoS** whether these were so accessible and capable of such application, but concluded that because of the nature and organised practice of the beliefs of Scientology they were on balance neither so accessible nor could be so applied such that the moral and spiritual welfare or improvement of the community might result.
- (3) That **CoS** was not established for the public benefit.

In considering the legal test applied to organisations established for purposes falling within the first three heads of charity law in that they were entitled to the presumption of public benefit and the different legal test applied to the fourth head of charity law where public benefit had to be demonstrated, the **Commissioners** *considered* that such a distinction between the legal tests was consistent with **ECHR**. Public benefit was a requirement of charity and needed to be established in every case. Public benefit was therefore considered on a case by case basis. Under the first three heads of charity, it had been established that public benefit was presumed to exist although in individual cases it may need to be proved if there was evidence to the contrary. For the fourth head of charity, public benefit needed to be established although there were cases where it may be self evident and need not be proved.

The **Commissioners** *considered* whether if **CoS** had been established for the charitable purpose of advancing religion, it was also established for the public benefit.

The **Commissioners** *considered* the presumption of public benefit applicable to organisations established for the advancement of religion. They concluded that, as in the case of all organisations established for charitable purposes, public benefit had to be present in fact for an organisation established for the advancement of religion to be charitable. *Coats v Gilmour CA [1948] Ch 340, Lord Greene MR at p. 344*. They further *considered* that in the case of such organisations, the presumption may be rebutted by evidence indicating public benefit may not be present and such evidence was not confined to evidence suggesting that the organisation was adverse to religion or subversive of morality. *Coats v Gilmour, C.A., Lord Greene MR at p. 345, In re Hetherington, decd. [1990] Ch 1, Sir Nicholas Browne-Wilkinson V.C. at p. 12 D-G*.

The **Commissioners** *decided* that in the case of **CoS**, the relative newness of Scientology and the judicial and public concerns which had been expressed about its beliefs and practices, led them to conclude that it should not be entitled to the presumption of public benefit. Accordingly, it was for **CoS** to demonstrate that it was established for the public benefit.

The **Commissioners** *considered* the legal test of public benefit to be applied to organisations established for the advancement of religion. They *concluded* that where the practice of 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. *In re Hetherington, decd., Sir Nicholas Browne-Wilkinson V.C. at p. 12 D-G, Coats v Gilmour CA, Lord Evershed at p. 357.* The **Commissioners** considered that this test must be applied to the core practices of such an organisation and not to incidental activities or other activities which may already be regarded as charitable.

After reviewing the practices of auditing and training, considered by **CoS** to be the central features of the practice of Scientology, the **Commissioners** *considered* that these are in fact conducted in private and not in public and that in their very nature are private rather than public activities such that no legally recognised benefit could be said to be conferred on the public. It could not be concluded that the benefits of the practice of Scientology extended beyond the participants. Accordingly public benefit was not established.

The **Commissioners** went on to *consider* whether, if **CoS** had been established for a charitable purpose of promoting the moral or spiritual welfare or improvement of the community, it was also established for the public benefit. The **Commissioners** *considered* that it was for **CoS** to establish public benefit as this was a purpose falling within the fourth head of charity law. The **Commissioners** considered the relevant legal test of public benefit to be applied to organisations established under the fourth head of charity. The **Commissioners** concluded that the test was that the whole tendency of charity in the legal sense under the fourth head is towards tangible and objective benefits but that in the case of an intangible benefit that at least approval by the common understanding of enlightened opinion for the time being would be necessary before an intangible benefit could be taken to constitute sufficient benefit to the community. *National Anti Vivisection Society v IRC [1948] AC 31, Lord Wright at p. 49.* The **Commissioners** *considered* that in the case of the purpose of promoting the moral or spiritual welfare or improvement of the community, and thus of **CoS**, the issue was one of intangible benefit and that in relation to intangible benefit the **Commissioners** *considered* the legal test to refer to a common consensus of opinion amongst people who were fair minded and free from prejudice or bias.

The **Commissioners** *considered* the core practices of Scientology, namely auditing and training, and *concluded* that the private conduct and nature of these practices together with their general lack of accessibility meant that the benefits were of a personal as opposed to a public nature. Accordingly, following the legal test referred to above, public benefit had not been established.

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