

Our ref: 260944.5
Date: 17 August 2016

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William Shawcross
Chairman
Charity Commission
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Dear Sir,

Registration of charities promoting homeopathic remedies

Introduction

1. We represent the Good Thinking Society and are instructed to write to you regarding the above.
2. On 3 June 2016, Danny Chambers MRCVS and a number of other high standing health professionals wrote to you (the “**3 June letter**”) in your capacity as Chair of the Charity Commission (the “**Commission**”). The 3 June letter is appended to this letter. However, its thrust was set out in its opening paragraph:

“A recent investigation by clinical scientist Les Rose has highlighted a number of disproven treatments promoted by organisations that are charities registered with the Charity Commission, including charities that discourage vaccination, encourage the use of homeopathic remedies for serious conditions, and promote ‘energy healing’. In promoting disproven treatments, these charities - including the Vaccination Awareness Network, Maun Homeopathy Project, Gentle Touch Healing, and the Keys College of Radionics - do not operate for the benefit public and therefore should have their charitable status revoked.”

3. In this letter we focus on the registration of homeopathic charities by the Commission, set out the factual background, the legal and evidential background, the current legal and evidential position, put some questions to the Commission, and, ask for a response within 14 days. Similar issues to those raised herein may arise with

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respect to other complementary and alternative therapies (“CAMs”), but we consider it sensible to focus solely on homeopathy for the time being in order to narrow the issues that require consideration in the first instance.

4. We should make clear that this is not a letter in accordance with the Pre-action Protocol for Judicial Review. It is a letter setting out a factual and legal matrix which appears to raise a number of serious questions and asking the Commission to clarify its position. However, we would note that the position adopted by the Commission in response to this letter may be subject to judicial review, at which time, our client will comply with the Pre-action Protocol for Judicial Review.

The factual background

5. The 3 June letter is the culmination of a number of attempts to engage the Commission with the issue of the charitable registration of institutions primarily promoting homeopathy and other CAMs.
6. As an example of the issues, it is worth focussing on the Maun Homeopathy Project (“MHP”, charity number 1109958), cited in the 3 June letter, and highlighting some of the claims it makes about its services. The objects of the MHP are:

“To relieve sickness and distress and protect and preserve health, particularly but not exclusively of the people of Maun, Botswana and surrounding areas, who are suffering from HIV and AIDS and the trauma of rape by the provision of homeopathic health care with the object of improving their conditions of life and their physical and emotional wellbeing.”

7. The MHP’s website is at: <http://www.homeopathybotswana.com/>. On its website, MHP describes its services as complementary to the conventional medical services provided to sufferers. Under the heading “Why homeopathy?”, the following is stated:

“Homeopathy is a holistic system of medicine which has been used by millions of people throughout the world for over 200 years. It is based on treating the individual with highly diluted substances given mainly in tablet form which trigger the body’s natural healing.

It is a natural and safe medicine which treats the person not the disease, so for our patients in Maun living with HIV and AIDS it is a supportive intervention, not a cure. It can be used safely alongside conventional medicines and will not interfere with their actions.

During a homeopathic consultation time is taken to listen to the patients' physical and emotional symptoms. The homeopath tries to find out what is individual about the patient in order to find the right remedies to prescribe in order to promote wellness.

Homeopaths can help heal grief and despair, and can support those who have been bereaved or overburdened with the care of others.

For those who have been traumatised by rape or sexual assault, homeopaths can help to heal the immediate physical injury and shock, as well as the fear, shame and distress."

8. Prior to the 3 June letter, in July 2014, Mr Les Rose submitted complaints to the Commission regarding three homeopathy charities: Homeopathy In Africa (charity number 1125981), Homeopathy Action Trust (charity number 328537) and Homeopathy: Medicine For The 21st Century (charity number 1124711). These complaints were rejected on the basis that the Commission could not assess the efficacy of the treatments. Despite this inability to assess efficacy, the Sixth Report of the House of Lords' Science and Technology Committee (the "**HL Report**") was cited in support of a presumption of efficacy.
9. On 24 October 2014, Mr Rose followed these rejections up with a letter to the Chief Executive of the Commission, Paula Sussex regarding, in short, the logical inadequacies in the Commission's responses to Mr Rose (the letter is appended). No reply was received by Mr Rose.
10. In February 2015, Mr Rose's MP, John Glen referred the Commission to the Parliamentary and Health Services Ombudsman (the "**PHSO**") at Mr Rose's request and on the basis that no satisfactory and/or considered response was being received from the Commission regarding the registration as charities of potentially uncharitable organisations. The PHSO wrote to Mr Rose on 27 July 2015 to say that they would respond to him but, to date, have not responded in any substantive manner.

11. Subsequently, Mr Rose has made a number of further complaints regarding the registration of homeopathy and other CAMs charities. All have been rejected by the Commission.
12. The 3 June letter was responded to by the Commission on 23 June 2016 in an email from Jo Edwardes, Head of Policy Strategy & Projects. That email is appended to this letter. However, we highlight some key statements made by Ms Edwardes:

“The position regarding an organisation which applies to register as a charity which is set up with a purpose to advance health by means of complementary or alternative medicine is that it must be able to demonstrate that the purpose satisfies the benefit aspect of the public benefit requirement. To do that, the organisation must be able to show (and provide evidence if necessary) that the complementary or alternative medicine in question is capable of advancing health.

The onus is on the organisation seeking to register as a charity, to prove, on the balance of probabilities, that the particular complementary or alternative therapy or treatment it advances will tend to promote health. This means that there is an empirical, scientific evidence base for the claims made in relation to the complementary or alternative medicine in question.

We are not prescriptive about the evidence to be provided to us, but it should possess quality and cogency.”

“In recent years, our guidance for staff on assessing the public benefit of purposes to advance health by means of complementary or alternative medicine placed some reliance upon the 2000 House of Lords report. That report included homeopathy in its Group 1 list of therapies. Whilst the 2000 House of Lords Report was a helpful guide in considering evidence of the likely health benefits of different complementary or alternative therapies or treatments, we do recognise that developments in medical research since 2000, including a subsequent 2010 report on homeopathy, impact upon this.

In our revised guidance for staff we say, “The efficacy of homeopathy was called into question in 2010 when Parliamentary and media coverage suggested that the claimed health benefits are unfounded and that there is no evidence that its benefits exceed a placebo effect. However, there has been no subsequent Parliamentary or legislative

determination which has changed recognition of its efficacy. Our current position is to regard homeopathy as a method for which we need little or no further supporting evidence of efficacy so long as trustees' claims for it are in line with its recognised benefits."

"As is the case for many charities already on the register, it may be that consideration of an application to register a similar charity today might be taken on the basis of different evidence, such as on the basis of new medical or scientific research which has since been carried out, or due to changes in social or economic circumstances. What was once considered charitable yesterday, may no longer be considered charitable today, and vice versa. That is how charity law develops over the years." (Emphasis added)

"As I am sure you will appreciate, the Commission does not have sufficient resource to continuously review the 165,000 charities on the register to see whether the basis on which they were considered charitable at the time they were registered still holds good today."

The legal and evidential background

The Charities Act 2011

13. The relevant part of section 1(1) of the Charities Act 2011 (the "Act") defines a charity as an institution which is established for charitable purposes only.
14. Section 2(1) of the Act provides that:

"For the purposes of the law of England and Wales, a charitable purpose is a purpose which—

 - (a) falls within section 3(1), and*
 - (b) is for the public benefit (see section 4)."*
15. Section 3(1) of the Act sets out descriptions of purposes. Section 3(1)(d) sets out the purpose: *"the advancement of health or the saving of lives"*.
16. Section 4(1) and (2) of the Act provide:

"(1) In this Act "the public benefit requirement" means the requirement in section 2(1)(b) that a purpose falling within section 3(1) must be for the public benefit if it is to be a charitable purpose.

(2) In determining whether the public benefit requirement is satisfied in relation to any purpose falling within section 3(1), it is not to be presumed that a purpose of a particular description is for the public benefit.”

17. This being the legal framework for considering the registration of a charity is confirmed and summarised (as part of an institution’s application to be registered as a Charitable Incorporated Organisation, a “CIO”) at paragraphs 9 and 10 of the recent decision of the First-Tier Tribunal (the “Tribunal”) in **Bishop v The Charity Commission** 2016 WL 03947469.

18. In paragraph 9, the Tribunal held:

“Where an application for charity registration is also an application for the constitution of a CIO under s. 207 of the Act, the Charity Commission must refuse the application if it is not satisfied that the CIO would be a charity at the time it would be registered (s. 208 of the Act).” (Emphasis from the original)

19. Section 208 of the Act is drafted in similar mandatory terms to section 34(1)(a) of the Act, which provides:

“(1) The Commission must remove from the register–

(a) any institution which it no longer considers is a charity”

The Commission’s Guidance on Charitable Purposes and relevant Charity Commission decisions

20. The Commission’s Guidance on Charitable Purposes (the “**Guidance**”) provides, in relation to the advancement of health or the saving of lives (paragraph 6):

“The advancement of health includes the prevention or relief of sickness, disease or human suffering, as well as the promotion of health. It includes conventional methods as well as complementary, alternative or holistic methods which are concerned with healing mind, body and spirit in the alleviation of symptoms and the cure of illness. To be charitable there needs to be sufficient evidence of the efficacy of the method to be used. Assessing the efficacy of different therapies will depend upon what benefits are claimed for it (ie whether it is diagnostic, curative, therapeutic and/or palliative) and whether it is offered as a complement to conventional medicine or as an alternative.

Each case is considered on its merits but the House of Lords Report on complementary and alternative medicine provides a useful guide.” (Emphasis added)

21. Paragraph 6 of the Guidance ends with the citation of a number of decisions of the Commission on registration under the advancement of health purpose. One of these decisions is *NFSH Charitable Trust Limited* (the “**NFSH Decision**”). In the NFSH Decision the taxonomy of CAMs provided in the HL Report was adopted by the Commissioners. At paragraph 6.9 of the NFSH Decision, it is stated that:

“[t]he Commissioners concluded that those therapies that fall within Group 1 probably fall within the category of “well-known” therapies in its 1975 policy and it is unlikely that any further evidence of efficacy is needed before accepting these therapies are efficacious in the relief of illness.”

Homeopathy is in Group 1 of the HL Report taxonomy.

22. At paragraphs 6.10 and 6.11 of the NFSH Decision, there is discussion regarding Group 2 disciplines (Complementary Therapies). Paragraph 6.11 states:

“The Commissioners concluded that it may be relevant in considering whether any particular therapy has a benefit to the public to consider whether the therapy is provided as an alternative to conventional medicine or whether it is provided as complementary to it. The risk of public harm for complementary treatment is likely to be less as it is delivered alongside conventional medicine and people receiving healing will be aware of the conventional treatment options they have.”

23. The Guidance also cites the decision regarding Living in Radiance (the “**LiR Decision**”). The LiR Decision cites the NFSH Decision in the following manner (at paragraph 6.2):

“The Commissioners’ noted that there was a general acceptance that meditation may be capable of advancing health. However no evidence was submitted by LiR regarding the efficacy of The Radiance Technique in relation to the advancement of health. In the NFSH Charitable Trust Decision, the Commissioners concluded that some proof of efficacy would be required before accepting that a particular therapy was capable of relieving illness or advancing health for the public benefit and the

Commissioners' view was that the personal testimonies of the benefits to individuals arising from The Radiance Technique in themselves would not be sufficient to conclude that efficacy."

The House of Lords Report

24. The HL Report makes no conclusions about the efficacy of any of the disciplines that it examined (including homeopathy). The HL Report states, at paragraph 4.2:

"The conclusions from research into the efficacy of the various CAMs are outside the remit of this report."

However, the HL Report goes on to state, at paragraph 4.13:

"In the case of homeopathy, although it is covered by a separate Act of Parliament, we were not able to find any totally convincing evidence of its efficacy."

The Charity Commission's internal guidance

25. Finally, the Commission's internal guidance, OG304 (the "**Internal Guidance**") provides (and is reflected in Ms Edwardes' response):

"F7 Is homeopathy still accepted as being able to deliver benefits related to an aim of promotion of health or the relief of sickness?"

Yes. The efficacy of homeopathy was called into question in 2010 when Parliamentary and media coverage suggested that the claimed health benefits are unfounded and that there is no evidence that its benefits exceed a placebo effect. However, there has been no subsequent Parliamentary or legislative determination which has changed recognition of its efficacy. Our current position is to regard homeopathy as a method for which we need little or no further supporting evidence of efficacy so long as the trustees' claims for it are in line with its recognised benefits."

The current legal and evidential position

26. Given the legal background set out above, in order to be capable of registration as a charity, an institution must have a charitable purpose which is for the public benefit.
27. The advancement, promotion or use of homeopathy would *prima facie* fall within the statutory charitable purpose of the advancement of health as the claimed purpose of homeopathy is to aid health.
28. There is then a question about what evidence of efficacy is required to confirm that homeopathy properly falls within the advancing health purpose and whether, therefore, homeopathy can truly be the subject of a charitable purpose. As Section 4(2) makes clear, there is no presumption of public benefit (and therefore of charitable purpose) solely by a purpose coming within one of the description of purposes listed in section 3(1).
29. The Commission's statements on the matter are inconsistent, but can, in any event, no longer be maintained. The Guidance requires sufficient evidence of the efficacy of the method to be used in order for a method to qualify as a charitable purpose. The NFSH Decision appears to provide that any therapy falling within the HL Report's Group 1 would not require any further evidence of efficacy. The LiR Decision appears to interpret the NFSH Decision as, in fact, requiring some proof of efficacy. Jo Edwardes response of 23 June states that little or no further evidence of efficacy was required in the case of homeopathy, subject to trustees' claims being in line with a charity's "*recognised benefits*".
30. Running throughout the Commission's various statements on whether homeopathy can be the subject of a charitable purpose is almost complete reliance on the supposed conclusions on efficacy made in the HL Report. However, the HL Report explicitly states that (i) conclusions from research into efficacy were outside its remit, and, (ii) notwithstanding the jurisdictional carve out, the Committee was not able to find any totally convincing evidence of the efficacy of homeopathy.
31. Moreover, the subsequent House of Commons Science and Technology Committee "Evidence Check on Homeopathy (published on 22 February 2010), which did explicitly consider the efficacy of homeopathy concluded (*inter alia*) that "*the systematic reviews and meta analyses conclusively demonstrate that homeopathic products perform no better than placebos*" and that "[t]here has been enough testing of homeopathy and plenty of evidence showing that it is not efficacious."

32. This factual background appears to bring into question any reliance the Commission has placed, or places, on the efficacy of homeopathy being made out in the HL Report.
33. Indeed, it is unclear if any cogent evidence has been provided (by an applicant, a registrant or a third party or institution) for the efficacy of homeopathy as a method.
34. If there is no cogent evidence on efficacy, then homeopathy cannot be the subject of the advancement of health charitable purpose.
35. Even if that is not right and homeopathy can (for some reason) be the subject of the advancement of health charitable purpose, there is at the very least *prima facie* evidence that the efficacy of homeopathy is in doubt. Indeed, our client considers that there is clear and convincing evidence that homeopathy is not efficacious (beyond the placebo effects) in any circumstances, as was concluded by the House of Commons Science and Technology Committee. Therefore, it appears incumbent upon the Commission to investigate whether there is public benefit in any advancement of homeopathy.
36. Ms Edwardes' response also suggests that there may be charities on the register that no longer have charitable purposes. Section 34 of the Act seems to be clear that there is no discretion in deciding whether to remove such institutions from the register, it is a mandatory obligation.
37. There is clearly some force in Ms Edwardes' point that a continuous review of 165,000 charities on the register is not possible. However, (i) that is not the number of homeopathic charities on the register, and, (ii) this is a specific matter that is being brought to the attention of the Commission and that relates to a limited number of charities. In the absence of a discretion, it does not appear open to the Commission to say that this is a matter that must be a declared strategic priority in order for the Commission to decide to act.
38. With regard to the example of the MHP; it can be seen from the description quoted above at paragraph 7, that, whilst it is stated that the intervention is not a cure and can be used safely alongside conventional medicine, the claims about the intervention are substantial. The words "heal" and "healing" are used, including claims regarding the healing of physical injury arising from rape or sexual assault. Physical symptoms, as well as emotional ones, are listened to "*in order to find the right remedies*". A claim to find the "*right remedies*" is either tantamount to claiming to have a

cure, or, at best, the difference between such a claim and the claim actually made is nugatory.

39. Further, the medical intervention proposed by the MHP is aimed at persons suffering from a terminal and incurable infection and disease. Therefore, if the efficacy of the homeopathic method is not made out, such intervention could potentially be highly damaging. This is particularly so in the context of those suffering from a disease such as AIDS where life expectancy amongst the afflicted is significantly affected by the management of satellite ailments. Therefore, the reality is that homeopathy represents a therapy that an AIDS sufferer may reasonably believe will extend his or her life expectancy. Thus bringing a claim of effective management of the satellite ailments of AIDS will have a very similar impact to claiming to be a cure for AIDS.
40. Also, given that healing is claimed, an AIDS sufferer may reasonably believe that homeopathy is not complementary to conventional medicine but an effective alternative. We are not aware of homeopathy treatments that could be offered for the treatment of AIDS or its satellite ailments in the UK, and it is therefore surprising that such treatments should be allowed to be promoted in Botswana by a UK charity.
41. In any event, even a therapy that claims to be complementary but has no efficacy also cannot be the subject of a charitable purpose. An analogous situation can be found in the Cancer Act 1939 which restricts the public advertising of cancer remedies. Its prohibition refers to any "*offer to treat any person for cancer, or to prescribe any remedy therefor, or to give any advice in connection with the treatment*". It is not confined to any offer solely to cure cancer, as it is recognised that any claim to alleviate the effects of cancer is highly powerful. It cannot be right that charitable funds are used for such powerful purposes where the efficacy of those purposes is nil, negligible or cannot be proven by conventionally accepted means.
42. The high level of potential damage, by itself, means that a presumption of efficacy cannot be relied upon and would suggest that a far greater degree of scrutiny is urgently required to ensure that an institution with a true charitable purpose remains registered as a charity.
43. Finally, it should be noted that the LiR Decision contained a refusal to register for a therapeutic method (and not one which was claimed to be curative) where the applicants could not demonstrate efficacy.

Questions

44. In light of the above, we would invite the Commission to review the Guidance in respect of homeopathy and to commence a review of whether charities seeking to promote homeopathy continue properly to be charities, beginning with those identified by Mr Rose.
45. We would also be grateful for a response to the following questions:
- (a) Where a particular method is claimed by an institution to be the subject of its charitable purpose, does the efficacy of that method need to be demonstrated to the Commission? If so, please provide examples of how efficacy might be established by an applicant for registration (or a registrant required to justify its registration).
 - (b) Is it the view of the Commission that the HL Report means that the efficacy of homeopathy (for the purposes of charity law) is demonstrated conclusively?
 - (c) If the HL Report has not demonstrated the efficacy of homeopathy conclusively, has it, in the Commission's view, created a rebuttable presumption? If so, please provide examples of rebuttal evidence that may dislodge such a presumption. If there is no presumption, please explain how a charity promoting homeopathy would be expected to establish that homeopathy was efficacious.
 - (d) Does the Commission have discretion in investigating and removing from the register institutions that are suspected or demonstrated not to have a charitable purpose (including where there is no public benefit)?
46. Whilst this is not a letter before action, your response may constitute a challengeable public law decision or confirm ongoing breaches of public law that could be subject to judicial review. You will be aware that there are time limits associated with the bringing of action in relation to such breaches. We therefore request that you respond promptly and, in any event, no later than 14 days from the date of this letter.

Yours faithfully,

Bindmans LLP

Bindmans LLP