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Dear Sir,

Registration of charities promoting homeopathic remedies - Proposed claim for judicial review

As you know, we represent the Good Thinking Society and are instructed to write to you regarding the above.

This letter is written in accordance with the Pre-Action Protocol for Judicial Review.

Our client challenges the decision of 23 June 2016 not to remove from the Register of Charities (the "Register") those organisations promoting homeopathic remedies as part of their charitable objectives.

The matters in this letter have been substantially canvassed and rehearsed in our letter to you of 17 August 2016 (the "17 August letter"). We therefore require a response to this letter by close on Friday 16 September 2016. Further, a timely response may obviate the need for issuing protective proceedings.

Details of the legal advisers dealing with this matter; their reference details; address for reply and service of court documents

Our details and reference are given on the letterhead above. This matter is dealt with by Selman Ansari, Senior Consultant in the Public Law Department (reference: 260944.5/SA).

Details of the matter being challenged

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The decision of 23 June 2016 not to remove from the Register those organisations promoting homeopathic remedies as part of their charitable objectives, communicated by the email of Jo Edwardes, Head of Policy Strategy & Projects at the Charity Commission (the “Edwardes email” and the “Commission” respectively).

The issue

As stated above; the factual background, the legal and evidential background, and, the current legal and evidential position in this matter is set out in detail in the 17 August letter and we refer you to it.

The factual and legal matrix set out in the 17 August letter elucidates the following.

- (i) The issue of the charitable registration of institutions primarily promoting homeopathy and other CAMs was raised in several complaints to the Commission and a letter to its Chief Executive, to no avail.
- (ii) The letter of 3 June 2016 from Danny Chambers MRCVS boiled the issue down thus:

“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.”

- (iii) The 3 June letter was responded to by the Commission by the Edwardes email. In that email, Ms Edwardes communicated and confirmed the Commission’s decision to refuse to revoke such charities’ charitable status (by removing them from the Register).
- (iv) This decision appeared legally problematic because of the evidential and policy basis upon which it was made, and, because section 34(1)(a) of the Charities Act 2011 (the “Act”) provides:

*“(1) The Commission **must** remove from the register—*

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

Emphasis added

As the decision in the Edwardes email did appear to be legally problematic, our client sought to clarify the position by setting out the legal and factual background, and, finally, putting questions to the Commission in the 17 August letter. It is worth repeating the questions put in the 17 August letter:

“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.

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)?”*

You responded to that letter on 30 August.

In response to question (a) above; you referred us back to the Edwardes email on whether efficacy needs to be demonstrated, and, cited paragraph B5.1 of the Commission’s Operational Guidance 304. Paragraph B5.1 provides:

“Examples of suitable evidence include;

- *peer-reviewed research (ie research scrutinised by fellow professionals) in recognised medical journals, for example The Lancet or BMJ*
- *recognition by the Department of Health or other governmental health regulatory or health provision body.*

Examples of evidence which is not sufficient to demonstrate efficacy include:

- *testimonial or anecdotal evidence (see B5.5)*
- *articles or features of a non-scientific nature promoting the method, treatment or therapy”*

The Edwardes email also stated:

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

It is our client’s contention that the very problem with homeopathic remedies being central to an organisation’s charitable purpose is that there is no evidence of efficacy which possesses quality and cogency for such remedies in any peer reviewed research in recognised medical journals such as The Lancet or British Medical Journal, or, recognition by any recognised state health authority or body. And, the evidence that is cited in support of homeopathic remedies is generally of the type which paragraph B5.1 specifically cites as being not sufficient.

You go on to state, variously:

“I should emphasise that the Commission does not lightly take decisions that a purpose which was once charitable has ceased to be so.”

“[...] when considering the status of an organisation for charity law purposes it is always necessary to consider the particular purpose of the organisation.”

“As noted above, the particular purpose of an institution which applies for registration will need to be assessed and considered to be charitable for the public benefit if the institution is to be registered as a charity. In making this assessment in respect of an institution which incorporates reference to homeopathy or homeopathic treatments in its purposes, Commission staff will refer where relevant to OG304, but will also make an assessment

of the particular purpose of the relevant institution in determining charitable status.”

You then pointed us to Section 3 of the policy paper: How the Charity Commission makes charity registration decisions. We are unsure how this paper detracts from (or adds to) the central point that if there is no evidence possessing quality and cogency of the efficacy of homeopathic remedies, it should not be the basis of an organisation’s registration as a charity.

Section 3.3 describes the step of deciding “*what the organisation’s purposes are*”. This is to be done by, in summary, looking at all the relevant information. However, Section 3.3 is clear that:

“If what could be done under a purpose (as it is expressed) includes something that isn’t charitable then it can’t be a charitable purpose, the organisation isn’t a charity and the commission can’t register it.”

In any event, Step 4 (at Section 3.4) requires a decision by the Commission that each purpose of an organisation falls within the established descriptions of charitable purposes. To take the example of the Maun Homeopathy Project and its object to “*relieve sickness and distress and protect and preserve health*”, this object clearly comes within the ‘advancement of health or the saving of lives’ purpose. Step 5 (at Section 3.5) then requires a decision by the Commission that a purpose is for the public benefit.

Public benefit should only be made out if there is evidence of efficacy possessing quality and cogency. The Commission’s reliance on its cited sources for efficacy of homeopathy is, for the reasons set out in the 17 August letter, not open to a rational decision maker and therefore unlawful. This unlawfulness infects the decision set out in the Edwardes email.

This unlawfulness is compounded by your approach to section 34. You accept that “*if s34(1)(a) is engaged in respect of a particular institution, the Commission does not have discretion as to whether or not to remove the institution from the register*”. However, you cite section 16 of the Act and suggest that the Commission is declining to apply its resources in coming to a decision as to whether section 34 is engaged in the case of charities promoting homeopathic remedies because of an application of its provisions.

Section 16(3) provides:

“In performing its functions the Commission must have regard to the need to use its resources in the most efficient, effective and economic way.”

The sub-section starts with the words *“In performing its functions...”*. Therefore, the starting point in considering the application of this section is that it does not provide any sort of exception to the carrying out of the mandatory function set out in section 34. Indeed, section 16 does not say anything about the order in which work will be carried out by the Commission, it solely refers to the efficient, effective and economic use of resource when performing its functions. It can be looked at as a duty not to be profligate when carrying out functions; it is not a licence to fail to carry out mandatory functions.

Without prejudice to the above point; even if section 16 does allow some ordering of work, you have provided no evidence as to why investigating charities promoting homeopathic remedies would be so burdensome as to justify that task not being done now or at any given point in the future. The Edwardes email suggests a task involving the review of 165,000 organisations on the Register. We responded to this point in the 17 August letter (at paragraph 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.”

The correspondence to date raises major concerns about the proper registration of organisations established in relation to the relief of serious illness and disease. This is because of both the factual and evidential position, and, the irregular and irrational nature of the Commission’s published pronouncements on this issue. This is not a frivolous, peripheral or eccentric issue; it goes to the heart of the public confidence objective (contained in section 14(1) of the Act), and, the Commission’s general function to determine whether institutions are or are not charities (contained in section 15(1)(1) of the Act).

Without prejudice to our primary position that there is no statutory basis for placing mandatory functions ‘in the queue’; if institutions are registered without any efficacious basis to the remedies they are promoting and the guidance that the Commission relies on is not cogent, this appears to be an issue which the Commission should place at the

highest priority, not the lowest. In any event, there would need to be detailed evidence to demonstrate how the section 16 duty was prejudiced by the Commission looking into homeopathic charities.

Further, even if ‘timetabling’ of the section 34 function were permitted by section 16, a timetable would require some actual timings to be effective. Your letter contains no evidence of the pressures that are preventing the Commission from considering the application of section 34, or, when it might do so. Your only concession to considering the matter is to merely state that the Commission intends to review the legal basis for the advancement of health charitable purpose “*in due course*”.

Turning to that review, you state that

“[...] in due course it is intended that we will review the legal basis for the advancement of health as a charitable purpose. This review will consider amongst other things the extent of that description of purpose under current law and what is necessary for an institution to be registered as a charity for such a purpose.”

As mentioned above, this statement is lacking a great deal of the detail necessary for it to be meaningful (both as a matter of language and legally). There is no time frame for the “*review*”, no form is given to the review, and, no plan for what happens at the conclusion of the review is set out.

Finally, in your “*Further comments*”, you refer to the complaints procedure. The 17 August letter makes clear that the complaints procedure has been engaged with to no end. Therefore, that procedure has been exhausted.

The details of the action that the proposed defendant is asked to take

The Commission is asked to:

- (i) immediately place a moratorium on registering charities whose charitable purpose is the advancement of health and which promote homeopathy until a review is completed;
- (ii) immediately remove from the Register charities whose charitable purpose is the advancement of health and which promote homeopathy on the basis that the efficacy of homeopathy has not been established in accordance with paragraph B5.1 of OG304; or,

- (iii) ask for evidence possessing quality and cogency to establish the efficacy of homeopathy that satisfies paragraph B5.1 of OG304 from charities whose charitable purpose is the advancement of health and which promote homeopathy, to make that evidence publically available for comment, and, to conclude with a published decision on whether such charities should remain on the Register.

Should the Commission undertake either of the above actions, these would only be effective as a remedy if a suitable timetable is provided for the discharge of such actions.

Alternative dispute resolution

Our client considers that there is no obvious alternative dispute resolution process that can remedy a failure to carry out the mandatory function set out in section 34 of the Act.

However, the review mentioned in your response could obviate the need to seek relief from the court. Such a review would need, as a minimum, the following features:

- (i) a determinate timescale which was not excessively long in either commencing or concluding the constituent processes of a review;
- (ii) a consultation on the evidence provided and any legal and/or policy conclusions that the Commission intended to rely on for its final decision;
- (iii) the publication of all relevant documents arising from the review, during the review and upon its conclusion; and,
- (iv) the process being capable of concluding with the Commission's de-registration of organisations in accordance with section 34 of the Act.

Yours faithfully,

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