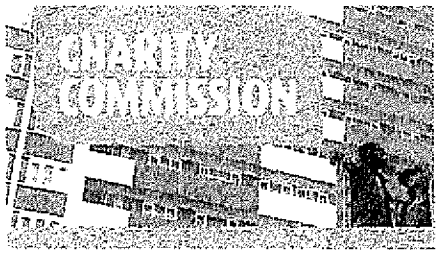
From the Chief Legal Adviser and Head of Legal Services



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Your Ref: JAS/HMA
Our Ref: 01820012

Date: 7 June 2012

Dear Julian,

Preston Down Trust- application for registration as a charity

Please accept my apologies for the delay in providing you with a substantive response. Thank you for your continued patience and that of your clients while we have been giving careful consideration to the application and whether to proceed by way of a reference to the Tribunal to seek clarity on the law relating to public benefit and the advancement of religion in the context of the application for registration of the Preston Down Trust.

We have been assisted by the decisions of the Upper Tribunal Tax and Chancery Chamber *UKUT 421 (TCC)* and *FTC/84/2011* which have clarified the law on public benefit in particular contexts, including the operation of the presumption prior to the Charities Act 2006 (the 2006 Act) and the changes introduced by that Act in relation to public benefit. However, the decisions do not provide a comprehensive statement of the public benefit requirement and recognise that this may differ markedly between different types of charitable purposes. Neither deals directly and substantively with the law relating to public benefit for the advancement of religion.

Whilst there are some matters which remain uncertain and could be usefully clarified by a reference to the Tribunal, we have decided not to proceed with a reference as we do not consider it is appropriate to widen this issue beyond the current application. Although there is a point of law that requires clarification in respect of the removal of the presumption of public benefit, the question of whether that test is in fact met in the case of the Preston Down Trust will turn on the doctrines and practices of this particular religious persuasion in the context of the Trust and the provisions of the Charities Act 2011 and pre and post law on the issue. A reference may not in itself clarify the law in this respect beyond the particular facts of the case.

Consequently, the Commission has decided to approach this matter more directly.

As a matter of law, we are not able to satisfy ourselves and conclusively determine that Preston Down Trust is established for exclusively charitable purposes for public benefit and suitable for registration as a charity.

We are unconvinced that the decision in *Holmes v Attorney General (The Times, 12 February 1981)* can still be regarded as a precedent for determining the charitable status of the Brethren meeting halls so that the matter is beyond doubt. We must determine the application for charitable status consistent with the law as it stands following the 2006 Act and have considered that decision in light of the changes introduced by that Act and the subsequent references referred to.

We think it is clear from the Upper Tribunal Tax and Chancery Chamber decision *UKUT 421 (TCC)* that in so far as there was a presumption of public benefit, which was removed by section 3(2) of the 2006 Act (now section 4(2) of the Charities Act 2011), this related to the benefit aspect of public benefit and not the public aspect i.e. the extent to which a purpose has to be beneficial. This decision makes it clear that there is no presumption that religion generally or at any more specific level is for the public benefit, even in the case of Christianity or the Church of England (paragraph 85). The suggestion that some purposes to include the advancement of religion had a quality of being beneficial to the public which was sufficient to make it charitable was not agreed. It confirms that evidence must be brought in every case about the public benefit which a particular purpose achieves in the context of the particular institution unless that is considered to be so clear and obvious that no evidence needs to be adduced.

The judgment confirms that where there is a precedent confirming charitable status prior to the 2006 Act it is necessary to consider firstly what the case decided and whether it had specifically addressed the public benefit in either or both of the two senses and secondly whether there are any distinctions. If the decision turned on a presumption it cannot be relied upon as that is what section 3(2) precludes. In that case the precedent effect is abrogated. If the decision did not turn on a presumption but it was assumed that the object was for the public benefit or the issue was not debated at all it may not be a legally binding precedent (paragraphs 91-92). New evidence might mean the precedent could be departed from (paragraph 90).

It is still perhaps unclear how far the removal of the presumption impacts on the following relevant principles distilled from the case law prior to the 2006 Act and there may be doubts about the extent to which the presumption was determinative in these cases. In summary the common law pre 2006 indicated the following principles:

i) The benefit of religion is not simply for the benefit of the adherents of the particular religion, it has to extend to the public *(National Anti-Vivisection Society v IRC [1948] AC 31, Neville Estates Ltd v Madden [1962] Ch 832, Holmes v AG)*

ii) Where the practice of a 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 *(Re Hetherington [1990] Ch 1, Coats v Gilmour [1948] Ch 340)*

iii) The benefit has to be one which both demonstrable and is legally recognisable *(Gilmour v Coats [1949] AC 426)*

iv) The celebration of a religious right 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 *(Re Hetherington)*

v) The celebration of a religious rite in private does not confer public benefit because any benefit of prayer or example is incapable of proof in the legal sense and any edification is limited to a private not public class of those present *(Gilmour v Coats, Yeap Cheah Neo v Ong Cheng Neo (1875) LR 6 PC 381, Hoare v Hoare [1886] 56 LT 147)*

vi) The law stands equal between religions, any religion is better than none, the court is not required to consider the worth/value of any religion unless it is clearly subversive to religion or morality *(Thornton v Howe [1862] 26 JP 774)*

vii) Where only the adherents of a particular religion may attend the religious rites this will not be considered a private class where the adherents are free to mix with the community and the benefit of the religion as bestowed on them by example will edify and improve the community (on the facts of *Neville Estates Ltd v Madden)*

viii) Where there is limited public access to religious services and limited social engagement in the community with an element of public proselytising this is not considered as being advancing religion to a private class and therefore acceptable for public benefit purposes (on the facts of *Holmes v AG)*

It is considered that the principles set out in iv), vi), vii) and viii) may well be affected by the removal of the presumption.

The extent to which the presumption operated in the decision in *Holmes v AG* is open to debate. Walton J held that on the evidence (which was not contested) that the limited access to religious services by the public and the attempts at public proselytisation led him to conclude that *"it was quite impossible on the evidence to come to the conclusion that there was a lack of public benefit under this possible head".* He confirmed, *"I am not concerned to evaluate the precise amount of public benefit."* This latter statement was based on the legal authorities that once established as a trust for the advancement of religion, the court draws no distinction between one religion and another, nor between one sect and another, in terms of weighing up the value of the doctrines of religious belief, except in a case where the beliefs and doctrines promoted are adverse to the very foundations of religion and are subversive of all morality *(Thornton v Howe).* This appears to emanate from the existence of a presumption which suggests the decision may turn on a presumption or at least largely influenced by the existence of a presumption. The strength of the legal authority in *Thornton v Howe* may be in serious doubt following the changes introduced by the 2006 Act. Furthermore, Walton J was mainly concerned with accessibility to the public of the teachings under the law as it was then understood as opposed to the content of those teachings, so that the principle tenet of the religion, the doctrine of separation and its consequential impact on the followers and the public was not considered in the context of the case.

We are aware that Preston Down Trust provides a meeting hall with a notice board identifying it as a public place of worship with contact details and that is consistent with an agreed protocol with the Valuation office in order to qualify for rate relief. We question whether this is sufficient to demonstrate meaningful access to participate in public worship as opposed to simply providing an opportunity without wider advertising of service times and opening hours. We also have concerns about the lack of public access to participation in one of the key religious services provided by Preston Down Trust, that of Holy Communion.

The beneficial impact of the Preston Down Trust is perhaps more limited that other Christian organisations as the adherents limit their engagement with the wider public, arising as a consequence of the doctrines of their religion. It raises a concern as to whether Preston Down Trust is established primarily for the benefit of its followers or adherents. The extent to which Preston Down Trust encourages followers or adherents to conduct themselves in the wider community to put the values held by the religion into practice in such a way as to lead to the moral or spiritual welfare or improvement of society is uncertain. The evidence is relation to any beneficial impact on the wider public is perhaps marginal and insufficient to satisfy us as to the benefit to the community.

Like the court we must balance the benefit and disadvantage in all cases where detriment is alleged. We are aware of some public criticism, which we have discussed with the applicants, in connection with (1) the disciplinary practices of shutting up and withdrawal and (2) the effects of the doctrine and practice of separation on family, social and working life. We ought to make it clear that we do not have any evidence before us at this time to demonstrate disadvantage which may serve to negate public benefit.

What to do if you think our decision is wrong

This is the final decision of the Commission. As the decision has been made at a senior level within the Commission we do not consider it appropriate to engage in a decision review process.
If you think our decision is wrong, you may wish to challenge the decision in the First-tier Tribunal (Charity). You may find it helpful to visit the Tribunal's website for more information about time limits, form of notice of appeal and how to make an application:

http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/charity/appeals.htm

There are time limits to making an application to the Tribunal. Your application to the Tribunal should be made within 42 days of the date on which the notice of our decision was sent to you. If you are not the subject of the decision you have 42 days from the date when the decision was published. In both cases weekends and bank holidays are included in the 42 days.
Further details about the First-tier Tribunal (Charity) can be found on our website at:

http://www.charity-commission.gov.uk/Library/about_us/decision_review.pdf

We are sorry to give a disappointing reply.

Yours,

Kenneth Dibble
Chief Legal Adviser
Head of Legal Services