

THE REVIEW OF THE
REGISTER OF CHARITIES

The Promotion of Human Rights

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The Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public confidence and trust. Most charities must register with the Commission, although some special types of charity do not have to register. There are some 180,000 registered charities in England and Wales. In Scotland the framework is different, and the Commission does not regulate Scottish charities.

The Commission provides a wide range of advice and guidance to charities and their trustees, and can often help with problems. Registered charities with an annual income over £10,000 must provide annual information to the Commission. The Commission has wide powers to intervene in the affairs of a charity where things have gone wrong.

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One of the recommendations of the Strategy Unit's report 'Private Action, Public Benefit' was that the Commission's guidelines on campaigning should be revised to adopt a less cautionary, more positive approach. The Commission accepted that recommendation and has published a revised version of the leaflet CC9. At the same time, following public consultation, we have revised and clarified our guidance on the promotion of human rights as a charitable purpose. (It should be noted that the revised guidance explains that the promotion of human rights is charitable as the law stands by analogy with other charitable purposes. However, once it is enacted, the Charities Bill will provide a statutory basis for treating the promotion of human rights as charitable).

Summary

1. This guidance explains why the promotion of human rights is recognised as a charitable purpose. It also considers the various ways (including political campaigning) in which a charity may promote human rights.
2. The promotion of human rights is charitable by analogy principally with charitable purposes concerned with moral or spiritual welfare and improvement.
3. There are many ways in which a charity might seek to promote human rights, including:
 - monitoring abuses of human rights;
 - obtaining redress for the victims of human rights abuse;
 - relieving need among the victims of human rights abuse;
 - research into human rights issues;
 - educating the public about human rights;
 - providing technical advice to government and others on human rights matters;
 - contributing to the sound administration of human rights law;
 - commenting on proposed human rights legislation;
 - raising awareness of human rights issues;
 - promoting public support for human rights;
 - promoting respect for human rights by individuals and corporations;
 - international advocacy of human rights;
 - eliminating infringements of human rights.
4. The purposes of a charity must be clear, unambiguous and exclusively charitable. An organisation seeking to establish itself as a charity to promote human rights must therefore identify the code or codes of human rights which it is seeking to promote. If it will operate only in one country or region, it must identify that country or region. We recommend that it should also specify in its stated purposes the ways in which it will promote human rights. At the end of this publication we give an example of how a human rights charity with very wide purposes might draw up its object.
5. The promotion of human rights will often involve engagement with the political process and a human rights charity is able to engage in a very wide range of political activity within the parameters which are described in this guidance. Organisations set up for political purposes (or partly for political purposes) cannot be charities and we examine the extent to which this legal principle affects the scope for promoting human rights as a charitable purpose.

The promotion of human rights as a charitable purpose

6. For a purpose to be recognised as charitable, it must be shown that the purpose is (1) analogous to a purpose which has already been accepted as charitable and (2) beneficial to the community. The purpose must also be sufficiently clear for the Court (and the Commission) to be able to control and give effect to it.

Analogy with an existing charitable purpose

7. The Commissioners have decided that, when asked to draw an analogy with existing charitable purposes, they should take a constructive and imaginative approach, adapting the concept of charity to meet constantly evolving social needs.
8. Depending upon the means by which human rights are promoted, there are many existing charitable purposes which might be regarded as appropriate analogies. Given that respect for human rights is widely regarded as a moral imperative, the well-established charitable purpose of promoting the moral or spiritual welfare and improvement of the community provides a sufficient (but not the only) analogy for treating the promotion of human rights generally as charitable.
9. It is by analogy with moral improvement that we have registered as charities bodies which are concerned
 - to promote good race relations, to eliminate discrimination on grounds of race and to encourage equality of opportunity between persons of different racial groups;
 - to promote equal rights for women and for homosexuals;
 - to promote ethical standards of conduct and compliance with the law in the workplace;
 - to promote religious harmony; and
 - to promote equality and diversity.

Benefit to the community

10. Human rights are rights which:
 - are fundamental in the sense of being essential to our humanity or to our functioning as human beings;
 - accordingly have a moral dimension;
 - extend to everyone; and
 - prescribe what the State must do for us, and what it must not do (or allow others to do) to us.
11. The concept of human rights is virtually unanimously endorsed by the countries of the world (even if strict observance of these rights is intermittent). The United Nations Convention on the Rights of the Child, for example, has been ratified by 191 countries (only two countries have failed to do so). The United Kingdom government has incorporated the European Convention for the Protection of Human Rights and Fundamental Freedoms into domestic law.
12. There is an obvious public benefit in promoting human rights. For individuals whose human rights are thereby secured, the benefit is immediate and tangible. There is also a less tangible, but nonetheless significant, benefit to the whole community that arises from our perception that the fundamental rights of all members of the community are being protected. That provides sufficient benefit to the community to justify treating the promotion of human rights as a charitable purpose in its own right.

Clarity of purpose

13. There are several different codes of human rights. The most widely accepted are the Universal Declaration of Human Rights and subsequent United Nations human rights conventions and declarations. Outside the auspices of the UN, there are other international and regional codes, as well as codes which have been established by individuals and NGOs. In order to achieve the degree of certainty in the expression of its objects that is necessary for charitable status, individuals creating charities for the promotion of human rights need to specify the body of rights that they seek to promote. In practice, given the primacy of the Universal Declaration, that is likely to involve reference to the Declaration and subsequent UN-sponsored standards.
14. The purposes of a charity must be exclusively charitable. Hence an organisation established for purposes some of which are charitable and some of which are non-charitable cannot be a charity. The promotion of human rights is a broad concept which can include non-charitable purposes (especially, of course, political purposes). We therefore recommend that a human rights organisation seeking to establish itself as a charity should set out its purpose in its governing document as precisely as possible. If the organisation's purpose is very wide, we recommend that it should set out the ways in which it will promote human rights. The following paragraphs describe some of the ways (there may well be others) in which a charity might promote human rights. Each of these ways of promoting human rights is, of course, also capable of being a charitable purpose in its own right. At the end of this guidance we provide an example of a very widely-drawn object for a human rights charity.

Ways of promoting human rights

Promoting human rights at home and abroad

15. Generally, for an organisation set up to operate abroad to be a charity under the law of England and Wales, it must be the case that the objects of the organisation would be charitable according to English law if its purposes were to be carried out in England and Wales.
16. The following list of various ways in which a charity might promote human rights is not exhaustive.

Monitoring abuses of human rights

17. A charity concerned with promoting human rights may engage in monitoring and reporting breaches of a country's human rights obligations, whether those obligations arise under domestic legislation or international standards.

Obtaining redress for victims of human rights abuse

18. A human rights charity may bring pressure to bear in individual cases (including through the mobilisation of public opinion) to encourage a government to respect its own human rights legislation. A charity may provide support for attempts to obtain redress through the courts of the country concerned, whether by way of specialist legal advice and representation or by less direct means. The availability of that option will, of course, depend upon whether or not the country's legal code enables the victims of human rights abuse to obtain redress. Even if the legal code of the country in which the abuse takes place does not expressly provide redress, it may still be possible to attempt to obtain compensation or a public inquiry or an acknowledgement of responsibility. A human rights charity may also support the investigation and prosecution before international tribunals of individuals and organisations accused of human rights abuse.

Relieving need among the victims of human rights abuse

19. It is charitable to relieve needy 'prisoners of conscience' or their dependants. Assistance can include financial, educational and rehabilitational help. We have registered as charities bodies concerned with relieving the suffering and distress of individuals who have suffered human rights abuses. We have also accepted that it is charitable to provide financial assistance to victims of torture who are in financial need to enable them to obtain compensation or redress.

Research into human rights issues

20. Human rights are an appropriate subject for research. The Court has held that promoting and commissioning research into the maintenance and observation of human rights is a subject of study which is capable of adding usefully to the store of human knowledge.

Educating the public about human rights

21. Human rights is an established subject of study in schools and colleges. A human rights charity may advance education in human rights through support for such studies or through less formal types of education.

Technical advice to governments and others on human rights matters

22. A human rights charity may provide technical advice to governments, NGOs and other relevant bodies on the creation, improvement and implementation of legal, regulatory and administrative systems for the not-for-profit sector in countries abroad. A charity with appropriately-worded objects may also provide technical advice to governments and to domestic and foreign public authorities on the adoption and implementation of human rights legislation, including training for administrators in the application of that legislation.

Contributing to the sound administration of human rights law

23. A wide range of activities revolves around contributing to the sound administration of human rights law. This includes providing the essential material for the study of a country's human rights law (such as reports of judicial decisions). It also includes acquiring and passing on knowledge about what the law is at any given time, how it is developing and how it is being administered and applied

Commenting on proposed human rights legislation

24. A charity for the promotion of human rights may participate in government consultations about changes in the law. It may also recommend improvements in human rights law and provide objective comment on the adequacy of legislation to implement human rights (whether or not it is invited by government to do so). A charity can campaign for particular changes in a country's laws provided that the campaign falls within the principles discussed in paragraphs 33 to 36 below.

Raising awareness of human rights issues

25. A charity may raise awareness of human rights issues by facilitating debate and discussion. However, a charity established to promote human rights does not need to limit itself to balanced, educational activities. It can promote awareness of human rights issues by distributing material which does not present both sides of the argument but simply promotes its own point of view.

Promoting popular support for human rights

26. Cultivation of particular opinions or sentiments among the public is charitable where the reason for doing so is to promote mental or moral improvement. It is on this basis that we have accepted as charitable "the promotion of ethical standards of conduct". And on this basis promoting popular support for human rights is charitable.
27. In the last century, in the United States, the promotion of a "public sentiment that will put an end to Negro slavery" was held to be charitable. The Court took the view that the bequest would not have been charitable had it been directed towards political agitation and attempts to alter the law. In fact, however, the method specified in the gift was to apply pressure not to government, but to private individuals with a view to obtaining voluntary manumission. That purpose was charitable by analogy with a line of cases that showed that the peaceable redemption or manumission of slaves in any manner not prohibited by law was charitable.

28. In this country, the Court has accepted that the exercise of moral influence and the cultivation of public sentiment in ways which do not involve seeking to change the law or government policy can be legitimate means of pursuing recognised charitable objects.

Promoting respect for human rights by individuals and corporations

29. Although human rights are defined primarily by reference to the appropriate treatment of individuals by the State, the concept of human rights also has implications for the way that individuals treat each other. Discrimination on grounds of race or religion, for example, may be combated by legislation or by trying to influence the way in which individuals treat each other. There seems to be no reason therefore why an organisation set up to promote human rights should not encourage individuals to respect each other's human rights.

30. The absence of effective human rights legislation in a country can be exploited by individuals and corporations for their own economic advantage. It is open to a human rights charity to address this issue and to challenge such exploitation, for example by campaigning.

International advocacy of human rights

31. Promoting human rights includes advocating adoption of, and compliance with, international and regional codes of human rights, the incorporation of human rights into domestic law is a legitimate objective of a charity promoting human rights. Advocacy of this kind is conducted primarily in international fora and depends on well-researched material for its effectiveness. It extends also to contributing to international and State-sponsored conferences and seminars concerned with the adoption and implementation of human rights. A political campaign to press the government of a particular country to adopt particular human rights legislation (or particular policies) would be open to a charity provided that it fell within the principles discussed in paragraphs (33 to 36) below.

Eliminating infringements of human rights

32. A charity may seek to eliminate infringements of human rights. Some of the means that may be available for doing so have been mentioned in this guidance, such as monitoring and raising awareness of abuse, obtaining redress, and promoting respect for human rights among individuals and corporations. We have accepted that it is charitable "to procure the abolition of torture by all lawful means" and to procure the abolition of torture, extra-judicial killing and 'disappearance'. We have also registered as charities organisations concerned with the elimination of slavery, the slave trade and other forms of unlawful forced labour. Infringements of human rights of this kind are, almost by definition, contrary to the domestic law of the country in which they take place (particularly when considered in the context of its international treaty obligations) and hence trying to eliminate them will not generally involve trying to change domestic law. However, even where a country's domestic law is inconsistent with international standards, a charity may campaign for legislation or changes in government policy provided that it does so within the principles discussed below.

Political activities

33. Charities are able to engage in political campaigning in order to further their charitable purposes. Charity law draws a distinction between political purposes and political activities. An organisation which has purposes which include the promotion of human rights by seeking a change in the law, or a shift in government policy, or a reversal of a government decision has (at least in part) political purposes and cannot be a charity. However, the trustees of a charity may nonetheless use political means without jeopardising charitable status. What is important for charitable status is that political means should not be the dominant method by which the organisation will pursue its apparently charitable objects.

34. Charities are able to engage in political activities in furtherance of their charitable purposes, provided that:

- there is a reasonable expectation that the proposed activities will further the purposes of the charity to an extent justified by the resources committed; and
 - the activities will not be allowed to dominate the activities which the charity carries out in order to further its objects directly.
- 35.** The charity trustees must also have assessed any reputational and other risks and they must comply with the general law and any other regulatory requirements. Further guidance may be found in our publication CC9. (The form of object which is given by way of example at the end of this guidance contains a power to engage in political activity. Although it is not strictly necessary for a charity to have an express power of this kind, our example usefully reminds trustees of the constraints on political activity by a charity).
- 36.** The principles discussed above have general application. Their effect is that a charity for the relief of poverty abroad, for example, may campaign in favour of the adoption of human rights in a particular country if it can show that the adoption of those rights would tend to relieve poverty in that country. Inevitably, a charity concerned with promoting human rights will have considerable scope for engaging in ancillary, incidental political activities. Where a charity is concerned with relieving the victims of human rights abuse, for example, in the course of doing so it may well identify measures which might be taken by the government in question (or by other governments) to prevent that abuse. It may properly undertake ancillary political activity to that end. Provided that its political activities are not the dominant means by which it carries out its charitable objects, a human rights charity may engage in political activity which is unrelated to its other activities.

Example: object for a human rights charity

- 37.** “To promote human rights (as set out in the Universal Declaration of Human Rights and subsequent United Nations conventions and declarations) throughout the world by all or any of the following means:
- monitoring abuses of human rights;
 - obtaining redress for the victims of human rights abuse;
 - relieving need among the victims of human rights abuse;
 - research into human rights issues;
 - educating the public about human rights;
 - providing technical advice to government and others on human rights matters;
 - contributing to the sound administration of human rights law;
 - commenting on proposed human rights legislation;
 - raising awareness of human rights issues;
 - promoting public support for human rights;
 - promoting respect for human rights among individuals and corporations;
 - international advocacy of human rights;
 - eliminating infringements of human rights.

In furtherance of that object but not otherwise, the trustees shall have power

- to engage in political activity provided that the trustees are satisfied that the proposed activities will further the purposes of the charity to an extent justified by the resources committed and the activity is not the dominant means by which the charity carries out its objects;

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