

Charity Commission decide independent healthcare provider is not charitable

In a recent decision released by the Charity Commission, Odstock Private Care, an independent health provider, was deemed not to be an organisation established exclusively for charitable purposes and could, therefore, not be entered on the Central Registrar of Charities. By providing care for a fee, their services were not available to all the public and therefore not charitable.

Odstock Private Care Limited¹ works in conjunction with the Salisbury NHS Foundation Trust undertaking to provide private healthcare at Salisbury District Hospital. Odstock enters into agreements with patients for the provision of private healthcare and contracts with the Foundation Trust for the provision of staffed facilities so that treatment can be carried out. It was noted by the Charity Commission that the “arrangements between Salisbury NHS Foundation Trust and Odstock had been subjected to detailed review by the Audit Commission and found to be fully in accordance with the legal powers of the Foundation Trust; and ... met the requirements laid down in the *Health and Social Care Act 2003*... ”.² It was noted that Odstock operated on very low margins and that any surplus made would be directed back to Salisbury Hospital for their NHS services. The company argued that their services were available to the

public at large and their aim was to provide low cost private treatment for patients. In arguing this position and in particular that their services did not exclude those on a low income, they raised four specific points.

Firstly they noted that Salisbury was an affluent area and that their charges “..are lower than other local private providers.”³ As a consequence they felt that people on low incomes in Salisbury could access their services. Secondly, and as noted above, as the surpluses made would be directed back into the NHS, that would directly benefit the public in the Salisbury area. Thirdly as they provided treatment on a private basis there would be a reduction in NHS waiting lists, which would have a positive knock-on effect to local NHS patients. Finally, they indicated that insurance was available to poorer patients and as such their services could be accessed by those on a low income.

The Charity Commission considered these and other arguments made by Odstock but indicated at paragraph 18 of their Decision that :

“...a charity has to have purposes which are exclusively charitable for the public benefit. If an organisation cannot be shown to have objects which are exclusively charitable for the public benefit, then the Commission is not able to register it as a charity. Whether an

¹ Charity Commission - Review Decision made on the application for registration of Odstock Private Care Limited - dated 27th September 2007

²Ibid, Paragraph 9.

³ Ibid, para. 14a.

organisation's purposes are apt to operate for the public benefit is a question of fact to be decided on the evidence".

The Commission went on to indicate that "the public" includes the whole range from those living in poverty to those who were well off. They did not accept that the tariffs levied by Odstock were affordable by everyone and noted that they ranged from £661 for a colonoscopy to £8,063 for a knee replacement.⁴

They were not persuaded by the argument that the surpluses would be directed back into the NHS as it was clear that these funds would be minimal due to the very low margins on which the company ran. The Commission did not accept that in this case the private provision of healthcare would have an indirect benefit for the public such as reducing NHS waiting lists. The Commission

were also clear that without evidence to the contrary, private health insurance was not affordable by poor people.

In a press release from the Commission, Andrew Hind (Chief Executive) noted that "This decision isn't unique to hospitals looking to meet an increased demand for the private use of their facilities by setting up a charity - any organisation looking to register as a charity has to exist for the public benefit.

Providing healthcare facilities can obviously be charitable, but not if those benefits are only available to those who have the means to pay, and not others."

The Commission's clarity on the need for a tangible public benefit is welcomed. The decision in full can be found at their website: www.charitycommission.gov.uk.

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⁴ Ibid, para 20