



Commission Casts Doubt on Charitable Status of Private Healthcare

The Charity Commission has decided on appeal that a company established by an NHS foundation Trust to provide private health care services was not established for exclusively charitable purposes.

The objects of Odstock Private Care Limited were to “relieve sickness and to preserve and protect the health of patients by providing and assisting in the provision of healthcare facilities and ancillary services at Salisbury District Hospital.” Salisbury NHS Foundation Trust decided to set up the separate company to undertake private work which would then invest all of its profits in the improvement of NHS services at the hospital, thereby bypassing the limits set by the regulator which prevent the Trust itself from undertaking too much private work.

Odstock received a loan from Salisbury NHS Foundation Trust to help with its establishment; and the overall arrangement between Odstock and Salisbury was approved by the Audit Commission after detailed scrutiny of the proposals.

Registration refused

However, the Charity Commission refused Odstock’s application for registration as a charity on the grounds that there was a lack of public benefit. An appeal by Odstock was rejected on the same grounds. The Charity Commission formed the view that in reality Odstock operated to benefit medical practitioners, insurance companies and the Foundation Trust; and that the effect of charging for healthcare excluded sections of society who could not afford the fees and therefore the activity could not be for the public benefit.

Odstock argued that while there would be increased services for private patients at a relatively low cost, the funds generated would benefit NHS patients by producing a cross-subsidy towards NHS care. It was not necessary to be a member of Odstock, or live in a specific area in order to benefit from its activities. Odstock also argued that medical insurance was accessible to many people (particularly in the affluent Salisbury area) so that the wider public could access their private services, even if they could not afford to pay for treatments directly.

Odstock also argued that it only used the facilities at Salisbury Hospital when they were not required for NHS patients, so no detriment to NHS patients was caused. Despite these arguments, the Charity Commission still took the view that Odstock benefited only those with the ability to pay fees.

Cross subsidy for charitable beneficiaries not enough

The Charity Commission did recognise that the surpluses generated from charging fees would be invested into the provision of NHS care. However, they did not find this sufficient benefit because Odstock charged low fees (in order to make their private services accessible) and surpluses would consequently be low. This reasoning begs the question, if Odstock had charged higher fees for their services (making them less accessible to the public), would the Charity Commission have found it to be a charity because there would be greater surpluses to be reinvested?

This decision will impact on many fee-charging bodies who have, or who are seeking charitable registration. The Charity Commission has since published guidance on the requirement that charities operate for the public benefit as well as satisfying a specific charitable purpose. This publication will help charities make decisions about their operation so that they can be sure to meet all the Charity Commission's requirements. The Charity Commission aims to publish guidance specifically for fee-charging charities from July 2008. A Consultation draft will be published in February 2008.

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