

Charities and Public Benefit

Summary Guidance for Charity Trustees

Introduction

All charities must have charitable purposes or 'aims' that are for the public benefit. This is known as the 'public benefit requirement'. Although all charities already have to meet this requirement, the Charities Act 2006 highlights it by explicitly including public benefit in the definition of a charitable purpose. We expect these changes to take effect from 1 April 2008. From that point, all organisations wishing to be recognised as charities must demonstrate, explicitly, that their aims are for the public benefit. Previously the law presumed this to be the case for charities that advance education, or religion or relieve poverty. The Charity Commission has to ensure all charities meet the public benefit requirement and provide guidance on what the requirement means. Charity trustees will be required to have regard to the Commission's public benefit guidance and to report on their charity's public benefit.

This summary covers the key principles of our general guidance to charities about public benefit. The full version of this guidance can be found on our website at www.charitycommission.gov.uk under 'About charities' and hard copies are available by calling **Charity Commission Direct** on **0845 300 0218**

Charitable Purposes

Charitable purposes (or aims) are those that fall within the various descriptions of charitable purposes in the Charities Act 2006, set out below, and any new charitable purposes that might be recognised in the future.

- a) the prevention or relief of poverty;
- b) the advancement of education;
- c) the advancement of religion;
- d) the advancement of health or the saving of lives;
- e) the advancement of citizenship or community development;
- f) the advancement of the arts, culture, heritage or science;
- g) the advancement of amateur sport;
- h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- i) the advancement of environmental protection or improvement;
- j) the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- k) the advancement of animal welfare;
- l) the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services;
- m) other purposes currently recognised as charitable and any new charitable purposes which are similar to another charitable purpose.

You can find out more about charitable purposes in our *Commentary on the Descriptions of Charitable Purposes in the Charities Act* on our website.

Public Benefit

There are two key principles of public benefit and, within each principle there are some important factors that must be considered in all cases. These are:

Principle 1: There must be an identifiable benefit or benefits

- Principle 1a It must be clear what the benefits are
- Principle 1b The benefits must be related to the aims
- Principle 1c Benefits must be balanced against any detriment or harm

Principle 2: Benefit must be to the public, or section of the public

- Principle 2a The beneficiaries must be appropriate to the aims
- Principle 2b Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted:
 - by geographical or other restrictions; ~~or~~
 - ~~by ability to pay any fees charged~~

This text has been withdrawn following the recent decision of the Upper Tribunal about the Commission's guidance on public benefit and fee-charging in relation to educational charities. This part of the guidance no longer forms part of our statutory guidance on public benefit to which charity trustees must have regard when carrying out any powers or duties to which the guidance is relevant. We are now in the process of revising our guidance about what trustees must now have regard to in relation to fee charging charities. In the meantime, details regarding the Upper Tribunal's judgment and interim advice for trustees can be found on our website

- Principle 2c People in poverty must not be excluded from the opportunity to benefit
- Principle 2d Any private benefits must be incidental

The principles of public benefit apply to all charities, whatever their aims. Each charity must be able to demonstrate that its aims are for the public benefit. Public benefit decisions are about whether an individual organisation is a charity and not about whether particular types of charity or groups of charities, as a whole, are for the public benefit.

Principles of Public Benefit

Principle 1: There must be an identifiable benefit or benefits

Principle 1a: It must be clear what the benefits are

It must be clear what benefits to the public arise from carrying out a charity's aims. Examples of different sorts of benefit include providing housing for the homeless or giving medical care to the sick. It should be possible to identify and describe the benefits provided but that doesn't mean they must be able to be quantified or measured; non-quantifiable benefits will be taken in account as long as it is clear what they are.

Most benefits are self evident but sometimes we may need evidence depending on the type of benefit provided. Sometimes benefit can be shown by a consensus of objective and informed opinion. In some cases we may ask for evidence of independent, expert opinion from someone suitably qualified. It will usually be for the organisation's trustees to provide evidence that their organisation's aims are for the public benefit but we may sometimes need to check evidence from other sources.

Principle 1b: The benefits must be related to the aims

Benefits must be related to the charity's aims, so benefits which arise from the charity's work that are not related to its aims will not be taken into account. Where a charity has more than one aim, each of those aims has to meet the public benefit requirement; it will not be enough if only some do.

Principle 1: There must be an identifiable benefit or benefits

Principle 1c: Benefits must be balanced against any detriment or harm

Finally, benefits must be balanced against any detriment or harm which arises. Examples of detriment or harm could include something that is damaging to the environment or mental or physical health or encourages hatred towards others. In judging whether this detriment occurs, we would need to see real evidence; we will not just assume it. Where there is more detriment than benefit, or where the organisation has aims that are illegal or is a sham, it would not be charitable.

Principle 2: Benefit must be to the public, or section of the public

Principle 2a: The beneficiaries must be appropriate to the aims

While this sounds like a statement of the obvious, who constitutes the 'public' or 'a section of the public' varies according to the charitable aims. Sometimes a charity's aims are intended to benefit the public generally, sometimes a specific section of it. Who benefits, and how, will depend on the organisation's aims. Considering who the charity's aims are mainly intended to benefit is important when deciding whether the public benefit requirement is met.

It is not a simple matter of numbers, but the number of people who can potentially benefit must not be insignificant. The 'class' of people who can benefit must be sufficiently large or open given the charitable aim being carried out. The actual number of people who can benefit at any one time can be quite small as long as anyone who could qualify for the benefit is eligible. So, for example, it is fine to offer only a small number of rooms in a care home as long as anyone who is eligible to apply can be considered for those limited places.

It is important that the opportunity to benefit is not unreasonably restricted given the nature of the charity's aims and the resources it has. If the benefit is to a 'section of the public', rather than the public generally, then the restrictions must be reasonable and relevant to the charity's aims. If they are not, this will affect public benefit.

Principle 2b: Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted:

- by geographical or other restrictions; ~~or~~
- ~~by ability to pay any fees charged~~

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Ways in which restrictions might apply to the 'class' of people who can benefit include geographical restrictions, those involving charitable need, such as poverty, age or ill-health, and those involving personal characteristics, such as gender, race or religion for example. We will consider the circumstances in each case when deciding whether that restriction is reasonable. At the extreme, charities must not be seen as 'exclusive clubs' that only a few can join. So, where the aims of a charity are more closed, inward-looking and exclusive, greater justification for the restriction may need to be provided.

Many different sorts of charities can, and do, charge for their services or facilities. Charities can charge fees that more than cover the cost of those services or facilities, provided that the charges are reasonable and necessary to carry out the charity's aims, for example, in maintaining or developing the service provided. However, where, in practice, the charging restricts the benefits only to people who can afford to pay the fees charged, this may result in the benefits not being available to a sufficient section of the public.

Principle 2: Benefit must be to the public, or section of the public

Principle 2c: People in poverty must not be excluded from the opportunity to benefit

The fact that the services will be charged for and therefore provided **mainly** to people who can afford to pay does not necessarily mean the organisation's aims are not for the public benefit. However, if an organisation's aims excluded people from the opportunity to benefit because they could not pay the fees, then its aims would not be for the public benefit. In particular, people in poverty must not be excluded from the **opportunity** to benefit. So it would not, for example, be enough to reduce very high fees slightly to enable more 'middle income' people to benefit, if people in poverty were still excluded from the opportunity to benefit.

In general, the lower the fees that are charged, the greater the opportunity there is likely to be for most people to have the opportunity to benefit. But where the fees charged are, of necessity perhaps, very high, then trustees of those charities will have to think about other ways in which people who cannot afford those fees can benefit in some material way related to their charity's aims. This does not mean charities have to offer services for free, or offer concessions on fees, although clearly that would help. There could be other ways of benefiting people who cannot afford the fees in a way that is related to the aims. For example, one way of doing this might be an independent school working in partnership with a local state school, or an arts charity might broadcast concerts or operatic performances via TV or radio to a wider audience. What matters is that people unable to pay are not excluded from the opportunity to benefit.

Principle 2d: Any private benefits must be incidental

Where people or organisations benefit from a charity, other than as a beneficiary, then those sorts of 'private' benefits must be incidental, which means they are a necessary result, or by-product, of carrying out the charity's aims. Where private benefits are more than incidental this might mean the organisation is set up for private, rather than public, benefit and so might not be charitable.

Reporting on your charity's public benefit

Charity trustees have a new duty to report in their Trustees' Annual Report on their charity's public benefit. The level of detail you will need to provide in your public benefit report will depend on whether your charity is above or below the audit threshold. For charities with accounting periods ending on or after 1 April 2009, an audit is required when a charity's gross income in the year exceeds £500,000, or where income exceeds £250,000 and the aggregate value of its assets exceeds £3.26 million. For financial years beginning on or after 1 April 2008, but ending before 1 April 2009, the same gross income threshold applies but with a lower assets threshold of £2.8m applying when gross income exceeds £100,000. Most charities already explain their activities in their Trustees' Annual Report and so this information now needs to be set in the context of the charity's aims to show how in practice the aims have been carried out for the public benefit.

Trustees will also need to confirm that they have had regard to our public benefit guidance where relevant.

For smaller charities, below the audit threshold, trustees are required to include a brief summary in their Trustees' Annual Report of the main activities undertaken in order to carry out the charity's aims for the public benefit. Trustees can, of course, provide fuller public benefit statements if they wish.

For larger charities, above the audit threshold, trustees are required to provide a fuller explanation in their Trustees' Annual Report of the significant activities undertaken in order to carry out the charity's aims for the public benefit, as well as their aims and strategies. They are required to explain the charity's achievements, measured by reference to the charity's aims and to the objectives set by the trustees. It is up to the charity's trustees to decide how much detail they want to provide to clearly illustrate what their charity has done in the reporting year to meet the requirement; the Commission will not be prescriptive about the number of words or pages needed. But a charity that said nothing on public benefit in its Trustees' Annual Report, or produced only the briefest statement with no detail, would be in breach of the public benefit reporting requirement.

Assessing public benefit

The Charity Commission will assess whether the aims of all organisations applying to register as charities are for the public benefit. Charities that are already registered have to continue to meet the public benefit requirement. We will do this by carrying out research studies on the extent to which different types of charity are meeting the requirement and by working with representative professional and umbrella bodies and with users of those charities.

In some cases we may need to carry out detailed assessment of individual charities. Where that needs to happen we will advise the trustees on what needs to change in order to meet the public benefit requirement, and give clear reasons and advice on what happens next where it is not possible for the organisation to meet the requirement. No charity will be expected to make changes overnight and we will take reasonable account of how much time and resources might be needed by a charity that needs to make changes in order to meet the requirement. A charity or anyone affected by one of our public benefit decisions, that disagrees with it, may ask the Commission to review the decision under our internal review procedures. Guidance on those procedures is on our website. Alternatively, or after a fresh decision has been made in a decision review, a decision can be challenged in the Tribunal if they are a person entitled to appeal and the decision falls within the schedule of decisions that can be challenged in that way or, if not, potentially by way of judicial review to the Administrative Court. Details of how to contact the Tribunal can be found on our website. However, by working constructively with charity trustees and undertaking extensive public consultation on our public benefit guidance, we would hope such circumstances would be rare.

For more information go to www.charitycommission.gov.uk/publicbenefit/default.asp