

RR14 - Promoting the efficiency and effectiveness of charities and the effective use of charitable resources for the benefit of the public

(Version 09/04)

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What is this guidance about?

1. There are many organisations that promote the efficiency and effectiveness of charities or the effective use of resources for charitable purposes. The purpose of this guidance is to provide criteria for determining when such organisations can themselves be regarded as charitable. We have considered this as part of our Review of the Register of Charities. We are very grateful to all those who contributed to the public consultation that led to this guidance.

2. We are aware that some bodies will support or resource the voluntary sector in three ways: 1) by promoting the voluntary sector as a whole (or a part of it); 2) by promoting the efficiency and effectiveness of charities; and 3) by promoting the effective use of charitable resources. However, this guidance is concerned only with the criteria for deciding whether those organisations that carry out either of the purposes listed 2) and 3) above are charitable. It is concerned with organisations that offer services or support to charities or whose activities will assist non-charitable, as well as charitable, organisations to employ their resources more effectively to achieve exclusively charitable purposes.

3. The extent to which organisations concerned with promoting the voluntary sector for the benefit of the public are charitable is considered in separate guidance **The promotion of the voluntary sector for the benefit of the public (RR13)**.

4. We have accepted for some time that organisations promoting efficiency and effectiveness in the ways set out below can, in some circumstances, be charitable. What has not been clear is the criteria defining the work of organisations in this broad area which would qualify them for charitable status and, in particular, the factors that distinguish a charitable organisation providing services to charities from a commercial business doing the same thing. This guidance therefore seeks to provide clear guidelines for deciding the charitable status of organisations wishing to promote the efficiency and effectiveness of charities and to promote the effective use of resources by charitable and non-charitable bodies for charitable purposes for the benefit of the public.

5. Organisations that offer support and services or act as a go-between, such as acting as a co-ordinating or representative body, for charities will not always be charitable. We set out in this guidance what we understand to be the current legal basis for accepting that such organisations can be charities themselves and the circumstances in which this will apply. We have considered separately the promotion of the efficiency and effectiveness of charities and the promotion of the effective use of charitable resources by charitable and non-charitable bodies, as each presents different considerations.

Background

6. As at January 2004, there were 96 registered charities with purposes that explicitly state that they are set up to promote the efficiency and effectiveness of charities. Of those, 86% were registered in the previous 10 years, suggesting increasing activity in this area. It is not known how many charities registered under other purposes are in fact carrying out activities intended to improve either the efficiency and effectiveness of other charities or the effective use of resources for charitable purposes by charitable and non-charitable bodies.

7. Registered charities in England and Wales control a total income of almost £24 billion. Administering charities is complex. Charities are often relied upon to deliver a vast range of services to the community on behalf of public bodies, such as meals on wheels, housing for those in need, and hospice care. Charities have to ensure that these services are run proficiently.

8. The importance of bodies that provide services to the voluntary sector, which includes the charitable sector, was recognised in the *“Report of the Commission on the Future of the Voluntary Sector”*, published in 1996. The report acknowledges the role of these bodies in improving the effectiveness of the voluntary sector:

*“These can provide a valuable source of advice, support, training and representation, that helps to promote and develop the effectiveness of their part of the sector.”*¹

9. This view echoes an earlier report on the future of voluntary organisations, the *“Report of the Wolfenden Committee”*, which noted their value².

10. The management and administration of charities is controlled mainly by unpaid voluntary trustees. Many trustees have no staff to support them in their role³. Trustees need to be aware of and comply with a wide range of legislation and regulation in order to run their charities. Because of this increasing complexity, a growing number of organisations are now offering support and advice to charities.

¹ “Meeting the Challenge of Change : Voluntary Action into the 21st Century” The Report of the Commission on the Future of the Voluntary Sector, NCVO 1996 (p103)

² “The Future of Voluntary Organisations” The Report of the Wolfenden Committee, The Joseph Rowntree Trust and Carnegie United Kingdom Trust 1978 (p116)

³ The “NCVO Survey of Job Roles & Salaries in the Voluntary Sector: 1997/1998” reported that less than a quarter of the general charities in the UK employ paid staff.

11. There is a vast range of services available to charities. In the commercial sector many firms, particularly solicitors and accountants, offer services specifically for charities. Charities are making greater use of information technology, media and fundraising specialists where they don't have these skills available within their organisation. In addition, more charitable organisations are offering support to other charities.

12. Also, charities are involved increasingly in providing services in conjunction with government and local authorities to help meet their overall charitable purpose. The relationship of charities with the state is considered in more depth in our guidance **Independence of Charities from the State (RR7)**. You may wish to read that guidance in conjunction with this guidance.

The Commission's approach to this purpose

13. In Annex C below we set out the legal principles underpinning both aspects of the purposes considered in this guidance. We believe that the cases outlined in Annex C give a clear indication that organisations with these purposes can, in some circumstances, be charitable. It is well established in law that a charity does not have to act directly to relieve a charitable need in order to be charitable. However there must be a link between the charity's activities and the achievement of the charitable purpose. We have accepted in principle that the provision of a facility or service focused on or directly related to, and furthering, a charitable purpose might itself be charitable.

14. In our view, both the promotion of the efficiency and effectiveness of charities and the effective use of resources to achieve charitable purposes for the benefit of the public are charitable and of benefit to society, by helping charities and non charitable organisations to make the best use of their resources to the advantage of their beneficiaries. For organisations promoting the efficiency and effectiveness of charities, we have set out the principles and criteria we use to determine their charitable nature in paragraph A1 of Annex A. For organisations promoting the effective use of resources to achieve charitable purposes, we have set out the principles we use to determine their charitable nature in paragraph B10 of Annex B.

15. We will continue to ensure that the stated objects of organisations seeking charitable status with this purpose set out clearly the methods by which they would improve the efficiency and effectiveness of charities.

16. Organisations seeking registration with the purpose of promoting the effective use of resources by charities and non-charitable bodies will have to demonstrate that any private benefit to those bodies would be incidental to the achievement of the charitable purpose.

17. Although we have not dealt with these issues in this guidance, they are considered in our guidance **RR8: The Public Character of Charity**. You might find it useful to read it in conjunction with this guidance.

ANNEX A - Promoting the efficiency and effectiveness of charities

A1. While considering a number of cases where organisations have sought charitable status on this basis, the Commissioners agreed that the promotion of the improvement of the efficiency of charities would be acceptable for registration provided that the service of a charitable provider is either:

- i. focused on the effective attainment of the objects of a particular charity or particular category or categories of charities; or
- ii. focused on supporting the efficiency and effectiveness of the administration or infrastructure of a charity or charities;

AND

- where charges are made for the provision of services, any profits must be applicable solely for the charitable purposes of the organisation; and
- the charges must be reasonable and not deter the customers who are intended to benefit; and
- any private benefit must be incidental to the pursuit of the charitable purposes; and
- the services of the organisation must be available to any charity eligible to benefit which chooses to take advantage of them.

A2. The services provided will normally benefit the recipient charities and their beneficiaries **either** because the services are specifically tailored to their needs, **or** because they are provided at a lower cost than the charities would otherwise have to pay, **or** from a combination of both factors.

A3. The following are examples of charities with this charitable purpose:

Examples of (i): effective attainment of the objects of recipient charities:

- a) Providing vehicles to enable a disaster charity to deliver its aid;
- b) Providing vehicles adapted for users of charities for people with disabilities;
- c) Providing a website facility for a particular category of charities e.g. animal welfare charities;
- d) Providing advice on furthering charitable purposes through use of design services.

Examples of (ii): supporting administration or infrastructure:

- e) An accounting service for charities which focused on the particular accounting needs of charities (and/or which was provided at a reduced cost);

- f) Giving advice on fundraising for charitable purposes;
- g) An investment management service for charities that is focused on the particular needs of charities (and/or is supplied at reduced cost);
- h) Providing accommodation and other facilities to charities, where the service was geared to the needs of charities (and/or was provided at reduced cost).

Criteria for distinguishing between charitable and commercial providers of services to charities

A4. Many organisations providing services to charities or promoting the effective use of charitable resources will charge a fee. The Commissioners considered that the criteria for distinguishing between a charitable and a commercial provider of services to charities lay not so much in the nature of the services provided as in the fact that the provider was established to benefit charities and operated for the benefit of the public.

A5. Thus a charitable provider will need to show clearly that (a) its services are needed by and restricted to charities, (b) there will be no distribution of profits, and (c) any private benefit is strictly incidental to the furtherance of the charitable purpose for the benefit of the public.

ANNEX B - The promotion of the effective use of resources for charitable purposes by charitable and non-charitable bodies for the benefit of the public.

B1. Based on the legal authorities set out in Annex C below, our view is that it is charitable to promote or improve the efficiency and effectiveness of charities. The most important element of these decisions is the connection between the activities of the particular organisation and the achievement of a charitable purpose. If it is charitable to improve the efficiency and effectiveness of charities by carrying out service providing activities, there seems to be no reason why the promotion of the effective use of resources for charitable purposes by non-charitable bodies should not also be charitable, providing certain criteria are satisfied.

B2. It would not be acceptable, in our view, for purposes to be set out as being simply for the promotion or improvement in the effectiveness of organisations that carry out charitable purposes. This would allow the organisation seeking charitable status to improve or benefit non-charitable organisations, and this would not be a charitable purpose.

B3. In this purpose, the activities of the service providing organisation must be shown to lead directly to the fulfilment of a recognised charitable purpose carried out by the recipient organisations, such as the relief of poverty or the promotion of urban and rural regeneration.

B4. For instance, an organisation would be charitable if it relieved poverty by improving the housing allocation systems of a registered social landlord which would ensure more effective use of housing stock and ensure the maximum number of

people in need being housed at any one time. In this case, the overall purpose is to relieve poverty. The means by which this may be achieved is by setting up or providing computerised systems with the registered social landlord (which may or may not be a charity but which has a charitable purpose of providing housing for people in need) and any other authority, in order to help a person in financial difficulties to find accommodation quickly and efficiently.

B5. A list of activities that may lead directly to the fulfilment of a charitable purpose could include:

- co-ordinating both existing charitable and non-charitable agencies that have a common goal of providing charitable services or relief to a particular group of people;
- liaising with, and acting as a forum for the exchange of information between, agencies working in a given field in order to identify gaps in the range of charitable services available to the groups of people they serve;
- representing a range of views to policy makers and funders;
- representing the views of the ultimate beneficiaries to policy-makers and service providers;
- providing advice and information to agencies in the field;
- providing databases or directories, provided that the database is of sufficient quality so as to fulfil a charitable purpose⁴.

B6. In the case of recipient non-charitable organisations, our view is that there must be a link between the activities being carried out by the donor organisation and the achievement of the charitable purpose for the benefit of the public. The assistance provided to and through the non-charitable agency must impact directly on its charitable activities.

B7. There must also be a way of ensuring that any private benefits to those non-charitable bodies occurring as a result of the service provided to them are incidental. In order to be charitable, an organisation must be set up to provide a benefit to the community and must be able to show that any private benefit, is and will continue to be, incidental to and a necessary part of, carrying out its charitable purposes.

B8. Deciding on whether or not a private benefit is incidental is considered in our guidance **RR8: The Public Character of Charity**.

B9. Such incidental benefit seems to be almost inescapable with non-charitable organisations receiving this service. For example, their administration might be improved resulting in increased profits. Provided however this result is an incidental

⁴ The bona fides and quality of the services listed in a database or directory must be checked and the directory must be used as a tool to fulfil a charitable purpose e.g. to find appropriate relief for a child in need.

benefit accruing alongside the ultimate purpose of helping use resources more effectively to meet the needs of the charitable beneficiaries, this would be charitable.

B10. In considering an application by an organisation providing services aimed at improving the effective use of resources for charitable purposes for the benefit of the public, we apply the following criteria:

- The organisation must set out purposes that are wholly charitable and that indicate the means by which those charitable purposes are fulfilled. This is so that we can judge whether the organisation's activities have a direct effect on the achievement of those charitable purposes. (An example would be a charity set up to help people with cancer and their families. Its purposes might be set out as "To relieve sickness by liaising with institutions and agencies that assist those affected by cancer");
- The activities of the organisation must be shown to lead directly to the fulfilment of the charitable purposes for the benefit of the public. There must be sufficient evidence supplied to demonstrate this in each case;
- Any benefits accruing to any non-charitable bodies receiving the services must be incidental to the achievement of the charitable purpose for the benefit of the public.

ANNEX C - Legal background to these charitable purposes

C1. The charitable nature of the promotion of the efficiency and effectiveness of charities and the promotion of the effective use of resources for charitable purposes by charitable and non charitable bodies, derives from the fourth head of Lord McNaghten's classification in **Income Tax Special Commissioners v Pemsel [1891] 1 A C 131** as being for purposes beneficial to the community other than the relief of poverty and the advancement of religion and education.

C2. The legal basis for the Commission's acceptance of both these purposes as charitable is the case of **Re White's Will Trusts [1951] 1 A E R 518**. This case demonstrates that an organisation can be charitable where the services it provides are directly related to, and further, an accepted charitable purpose. In this case it was held that a bequest to provide a rest home for nurses in the Royal Infirmary Sheffield was charitable because it was conducive to the work of the hospital and the immediate recipients of it; the nurses, were carrying out the charitable purpose of ministering to the relief of sickness (a recognised charitable purpose).

C3. The judge found therefore that "by virtue of the gift the work of the hospital will be enhanced in its efficiency and that makes the gift a good one." This has been taken as the basis for the acceptance of the charitable nature of the purpose of promoting the efficiency and effectiveness of charities (although the case does not restrict the recipients to charities).

C4. It is established that an organisation does not have to act directly to fulfil a charitable purpose in order to be charitable. Supporting case law can be found in the acceptance that religion can be advanced for the benefit of the public by repairing a parsonage house: **A G v Bishop of Chester [1785] 1 Bro CC 444**.

C5. In the case of **London Hospital v IRC [1976] 1 WLR 613** there was an express link in the purposes of the students' union between the social cultural and athletic activities mentioned and the student life of the college. It was considered that the union was established and existed for the sole purpose of assisting the medical college in its charitable purpose of teaching medicine by providing such outlets for the students, which were desirable if the college was to effectively perform its charitable purpose.

C6. **Re White's Will Trusts** also provides the legal basis for the Commission's acceptance that it may be charitable to promote for the benefit of the public the effective use of resources for charitable purposes of organisations, irrespective of whether they are charities. It is not known whether in that case, the Royal Infirmary, Sheffield, was itself a charity. It was the fact that it was carrying out a charitable purpose, the relief of sickness, that made the gift of a rest home charitable in that it improved the efficiency of the nurses utilising it in carrying out that charitable purpose.

C7. This principle would appear to apply mainly to service providing bodies delivering a service that fulfils the charitable purpose of the end user in a particular field, such as the relief of poverty.

C8. The crucial element in both these charitable purposes is the direct connection between the activities of the organisation providing a service, or facilities or equipment, and the fulfilment of the charitable purposes of the recipient organisations for the benefit of the public.