

## Finance and Resources Committee – 10 February 2010

### Charitable status and the Health Professions Council

#### Executive summary and recommendations

##### **Introduction**

At the meeting of the Finance and Resources Committee on 17 November 2009, the Executive were requested to identify the advantages and disadvantages if the Health Professions Council (HPC) were to become a charity.

The Charity Commission for England and Wales has established two principles in establishing a charity. Firstly, all charities must be for public benefit, and secondly, the charity must provide a charitable purpose as set out in the Charities Act.

Guidance published by the Charity Commission has been included as a background paper and the Committee's attention is drawn to paragraph C2 on page 4 "What are charitable purposes" and paragraph E2 on page 10 Principle 1a "It must be clear what the benefits are".

The Health Professions Order 2001 has been carefully reviewed and the Charity Commission's principles applied to our legislation. However no benefits can be identified that would meet the public benefit test of the Charities Act.

##### Advantages and Disadvantages

If the HPC was to successfully gain charitable status, a number of advantages and disadvantages would result. The more substantive ones are as follows:

##### Annual report and annual return

A charity must prepare its Annual Report and Accounts in line with the Charity Commission. The return is more onerous for charities with an income greater than one million pounds.

##### Council tax

Charities may obtain a reduction in the amount of rates they pay on property.

Date	Ver.	Dept/Cmte	Doc Type	Title	Status	Int. Aud.
2010-01-22	a	CER	PPR	Charitable status and the HPC	Final	Public
					DD: None	RD: None

### Property transaction

Charities may obtain a reduction in tax relating to the sale of their property.

### Reserve policy

The reserve policy of a charity may be different from HPC's existing arrangements.

### Trustees

To maximise resources being directed to the charity benefits, many charities do not remunerate their trustees.

### UK National Statistics

The Office of UK National Statistics would classify HPC as being in the private sector if it became a charity as opposed to the public sector.

### Conclusion

The law and accounting requirements relating to charities are complex and the preceding paragraphs are a top level summary. If further investigation is required, it is recommended that we seek specialist legal and accounting advice on the issue. It is worth noting that both the Nursing and Midwifery Council (NMC) and the General Medical Council (GMC) are registered charities.

### **Decision**

The Committee is asked to agree the following: instruct the Executive to either investigate the issue further or take no further action.

### **Background information**

Web page from the NMC.

The Charity Commission for England and Wales – Charities and Public Benefit.

### **Resource implications**

Not investigated.

### **Financial implications**

Not investigated in detail.

### **Appendices**

None.

### **Date of paper**

22 January 2010



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## The NMC's charity status

The NMC became a charity in 2002, after registering with the Charity Commission in 2002 and with the Office of the Scottish Charity Regulator in 2007.

This decision was made in order to ensure correct use of the funds left behind by our predecessor, the United Kingdom Central Council for Nursing, Midwifery and Health Visiting (UKCC).

### Charitable status

Charitable status requires that all funds received are used for a specific purpose and that this purpose is purely for public benefit alone.

In the NMC's case, this is the regulation of nurses and midwives, in order to safeguard the health and wellbeing of the public.

Being a registered charity also allows for certain financial benefits, including tax advantages.

The General Medical Council (GMC) is another example of a healthcare regulator holding charitable status.

### Registered charity details

The Nursing & Midwifery Council is a registered charity in England and Wales with its registered office at 23 Portland Place, London W1B 1PZ and registered charity number 1091434.

The Nursing & Midwifery Council is a registered charity in Scotland, charity number SC038362

### Further information

[Charity Commission website](#)

[Office of the Scottish Charity Regulator website](#)

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# The Charity Commission for England and Wales

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## Charities and Public Benefit

(January 2008)

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Guidance from the Charity Commission about public benefit and what charity trustees should consider in order to show that their charity's aims are for the public benefit.

### A. Foreword

A message from the Chair and Chief Executive of the Charity Commission to charity trustees and anyone thinking of setting up a new charity.

#### Dear Reader,

Perhaps more than any other sector of society, charities can command public trust. Charities are fortunate to be in this position and we, as their regulator, have a responsibility to ensure that this trust is maintained and even, if possible, increased. It is important for civil society that this trust is not taken for granted, but is actively valued, earned and continually renewed.

Charities are more than 'a good thing' and, as their supporters recognise, are special. Not all organisations can be charities. To be a charity is a mixture of what you are, what you do and how you do it. The core characteristic is public benefit. Whilst the charitable sector is enormous and very diverse, the aims of each and every charity, whatever their size, must be for public benefit. Public benefit is therefore central to the work of all charities.

In 2006, Parliament passed new legislation for charities which, amongst other provisions, highlighted the requirement for all charities' aims to be, demonstrably, for the public benefit. Although the term 'public benefit' has never been defined as such, it has gathered a particular meaning in law. The Charity Commission is required to prepare, and consult on, guidance on public benefit, to which charity trustees must have regard. Every charity, therefore, has to consider this guidance and respond appropriately in its work and its reporting to the public through the Charity Commission.

The Charity Commission has distilled the key principles of public benefit from the relevant case-law and set them out in this guidance so that trustees can ensure, and report on, their charity's public benefit. We conducted extensive public consultation to help ensure that the guidance makes this complicated subject as

correct and clear as it can be. We are very grateful to everyone who contributed.

There is a kind of covenant that charities have with society: charities bring public benefit and, in their turn, are accorded high levels of trust and confidence and the benefits of charitable status. These mutual benefits are considerable: charities receive significant tax advantages; they can access funds which others – even other voluntary organisations – cannot; volunteers and donors give, respectively, time and money. Society is enriched immeasurably by the activities of charities.

Being a charity is not the same as being an organisation that does 'good things'. Charity has an outward, inclusive nature: it is not inward-looking, for private benefit. Only organisations with aims that are charitable for public benefit are accorded the charity label. This guidance is a green light for charities to continue their innovative and unique role at the heart of our society while ensuring that the public can see what charities are doing under that banner and with their support.

<b>Dame Suzi Leather</b> Chair	<b>Andrew Hind</b> Chief Executive
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## B. Introduction

### B1. What is this guidance about?

This is the Charity Commission's statutory guidance on public benefit.

The purpose of this guidance is to:

- explain the requirement that, to be a charity in England and Wales, an organisation must have charitable aims that are for the public benefit;
- raise awareness and understanding of that public benefit requirement amongst the public and the charitable sector;
- explain how the public benefit requirement operates in practice; and
- explain the new requirement for charity trustees to report on public benefit.

This guidance deals with public benefit in general terms. It reflects recent changes in the law on public benefit arising from the Charities Act 2006. This guidance has been prepared following extensive public consultation.

Separate guidance that explains the legal underpinning for the principles of public benefit set out in this guidance can be found in [Analysis of the law underpinning Charities and Public Benefit \(PDF\)](#) on our website.

We will publish supplementary guidance, after further consultation, about how the public benefit requirement applies specifically to different kinds of charity.

### B2 'Must' and 'should': what we mean

In this booklet, where we use 'must', we mean it is a specific legal or regulatory requirement affecting trustees or a charity. Trustees must comply with these requirements. To help you easily identify those sections that

contain a legal or regulatory requirement we have used the  symbol next to that section.

We use 'should' for items we regard as minimum good practice, but for which there is no specific legal requirement. Trustees should follow the good practice guidance unless there is a good reason not to.

### B3 Using this booklet

Section **C** of this booklet provides a summary of the key points to note about the public benefit requirement.

Section **D** will tell you about the Charity Commission's role in ensuring that all charities have charitable aims that are for the public benefit.

Sections **E** and **F** will tell you about the principles of public benefit that are contained in the existing case law. These are the principles that charities have to meet in order to show that their aims are for the public benefit.

Section **G** will tell you about the new statutory requirement for charity trustees to report on their charity's public benefit in their Trustees' Annual Report.

Section **H** will tell you about what the Charity Commission will do to assess the public benefit of individual charities.

Section **I** will tell you about the many resources that charity trustees can use to help them make sure their charity meets the public benefit requirement and where they can find further information.

## **B4. Some technical terms used**

The following terms are used throughout this booklet, and should be interpreted as having the specific meanings given below.

**The Charities Act:** the Charities Act 1993 as amended by the Charities Act 2006.

**Activities:** we use this term when talking about what organisations do in order to carry out their aims.

**Aims:** in this guidance we use this term to mean the purposes of an individual organisation. It is important to be able to distinguish clearly between an individual organisation's purposes and charitable purposes in general. We have therefore used the term 'aims' as shorthand for the purposes of an individual charity or organisation applying for registration as a charity.

**Audit threshold:** under the Charities Act, for financial years 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.

**Beneficiary or Beneficiaries:** the people an organisation's aims are intended to benefit.

**Governing document:** a legal document setting out a charity's aims and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, will, conveyance, Royal Charter, Scheme of the Charity Commission, or other formal document.

**Larger charities:** charities above the audit threshold.

**Objects:** an organisation's aims (or purposes) are usually expressed in the 'objects clause' of its governing document. However, not all charities have a governing document with an objects clause, and sometimes the objects clause does not adequately or fully express the organisation's aims. There is therefore a distinction between an organisation's aims and the words that appear in its objects clause.

**Private benefits:** in this guidance we have used the term 'private benefits' to mean any benefits that a person or organisation receives other than as a beneficiary of a charity. It does not, therefore, include the sorts of personal benefits people might receive as a beneficiary, such as receiving an education, or medical treatment, or a charitable grant for example.

**Public benefit reporting requirement:** this means the statutory requirement for charity trustees to report in their Trustees' Annual Report on their charity's public benefit.

**Purpose(s) and charitable purpose(s):** in this guidance we use the term 'purposes' when referring to the descriptions of purposes listed in the Charities Act. These describe broad areas of potentially charitable activity but there is no automatic presumption that an organisation with a stated aim or object that falls within one of the descriptions of purposes is charitable. To be a 'charitable purpose' it must be for the public benefit. This has to be demonstrated in each case.

**Smaller charities:** charities below the audit threshold.

**SORP:** the Statement of Recommended Practice, issued in March 2005 which sets out the recommended practice for the purpose of preparing the Trustees' Annual Report and for preparing the accounts on an accruals basis. The accounting recommendations of the SORP do not apply to non-company charities preparing receipts and payments accounts.

**Statutory guidance on public benefit:** this is the guidance on public benefit that the Charity Commission is required to produce under section 4 of the Charities Act.

**The Charity Tribunal:** the Charity Tribunal, established by the Charities Act, is the first level of appeal against legal decisions of the Charity Commission.

**The public generally:** the public in general; the rest of the public not covered by a defined class of beneficiaries.

**Trustees:** the people who serve on the governing body of a charity. They may be known as trustees, directors, board members, governors or committee members. Charity trustees are responsible for the general control and management of the administration of a charity.

## B5. Previous guidance

This publication replaces previous guidance on public benefit contained in our booklet, **The Public Character of Charity (RR8)**.

## C. Summary

### L

#### C1. What is 'public benefit'?

'Public benefit' is the legal requirement that every organisation set up for one or more charitable aims must be able to demonstrate that its aims are for the **public benefit** if it is to be recognised, and registered, as a charity in England and Wales.

This is known as 'the public benefit requirement'.

### L

#### C2. What are charitable purposes?

'Charitable purposes' are those that fall within the descriptions of charitable purposes set out in the Charities Act and that are for the public benefit.

New charitable purposes may be recognised in the future, by the Charity Commission or the Charity Tribunal or the courts, as charity law continues to develop.

It is a requirement that a charity has aims that fall within, or are analogous to, these descriptions of charitable purposes.

**The Charities Act sets out the following descriptions of charitable purposes:**

- 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.

Further guidance on charitable purposes can be found in our [Commentary on the Descriptions of](#)

[Charitable Purposes in the Charities Act](#) on our website.



### **C3. What are the principles of public benefit?**

There are two key principles both of which must be met in order to show that an organisation's aims are for the public benefit. 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 (see section [E2](#))

Principle 1b The benefits must be related to the aims (see section [E3](#))

Principle 1c Benefits must be balanced against any detriment or harm (see section [E4](#))

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

Principle 2a The beneficiaries must be appropriate to the aims (see section [F2](#))

Principle 2b Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted: (see section [F3](#))

- by geographical or other restrictions (see sections [F4 – F9](#)) or
- by ability to pay any fees charged (see section [F10](#))

Principle 2c People in poverty must not be excluded from the opportunity to benefit (see section [F11](#))

Principle 2d Any private benefits must be incidental (see section [F12](#))

What the courts have regarded as being for the public benefit has changed over time, as society's needs and circumstances have changed. In the same way, we (and the Charity Tribunal and the courts) will continue to consider the principles of public benefit in the context of current social and economic conditions. Guidance on what this means can be found in section [D6](#).



### **C4. Charity trustees' public benefit duties**

Charity trustees must:

- ensure that they carry out their charity's aims for the public benefit;
- have regard to guidance we publish on public benefit (when they exercise any powers or duties where that may be relevant); and
- report on their charity's public benefit in their Trustees' Annual Report.

Charity trustees are not legally required to follow this guidance but they must have regard to it when it is relevant for their charity. That means they should be able to show that:

- they are aware of the guidance;
- in making a decision where the guidance is relevant, they have taken it into account; and
- if they have decided to depart from the guidance, they have good reasons for doing so.

Although our guidance does not constitute the law on public benefit, it is a guide to what the law says on public benefit and how we interpret and apply that law. Trustees, and their advisers, should therefore be familiar with, and understand, our public benefit guidance. They should understand what is required for their charity to meet the public benefit requirement and how to avoid taking decisions that might adversely affect their charity's public benefit. It is also important for trustees to understand the criteria we will use to assess whether or not they are carrying out their charity's aims in a way that meets the public benefit requirement. Guidance on the Charity Commission's assessment of public benefit, and the criteria we will use for this, can be found in section [H](#).

Charity trustees have a new duty to regularly report in their Trustees' Annual Report on how they are carrying out their charity's aims for the public benefit. Sections [G3](#) and [G4](#) explain the reporting requirement for different sized charities.

Charity trustees must be aware of, and fulfil, their statutory duties with regard to public benefit and public

benefit reporting.

We are happy to provide help, guidance and support to trustees to assist them in carrying out their duties.

## D. The Charity Commission and public benefit



### D1. The Charities Act and public benefit

Under the Charities Act, 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 organisations that advance education or religion or relieve poverty. Apart from that, the current law on public benefit, which is based on decisions that have been made by the courts and the Charity Commission over the years, is the same.

The Charities Act does not contain any new definition of public benefit or suggest what charities should do to show that their aims are for the public benefit. The Charity Commission, as the independent regulator for charities in England and Wales, is responsible for explaining the public benefit requirement and applying it.

The public benefit requirement is not a new requirement for charities. Charities already have to have aims that are for the public benefit, including those with aims that were previously presumed to be for the public benefit. However, the Charities Act highlights this requirement by explicitly including public benefit in the definition of a charitable purpose.

The Charities Act also:

- gives the Charity Commission a new public benefit objective 'to promote awareness and understanding of the operation of the public benefit requirement';
- requires the Charity Commission to publish guidance to help meet its public benefit objective and carry out what consultation it considers appropriate before issuing that guidance; and
- explicitly requires charity trustees to have regard to the Charity Commission's guidance on public benefit.

This renewed emphasis on public benefit provides charities with a positive opportunity to demonstrate the benefits they bring to society.

### D2. What is the legal standing of the Charity Commission's public benefit guidance?

The Charity Commission's public benefit guidance is guidance on what the law says on public benefit. It does not create new public benefit law. Nor does it create a new legal definition of public benefit.

Our guidance sets out a framework of factors to consider when assessing public benefit based on the principles of public benefit contained in existing case law.

We have expressed the principles of public benefit as legal requirements, as we believe they are required by existing case law. But we recognise that this guidance is, of necessity, a summary of the underlying law, rather than a detailed statement of the law with all the fine distinctions that can apply in diverse, individual cases.

### D3. What is the Charity Commission's role in assessing public benefit?

The Charity Commission's role in assessing public benefit is about deciding whether a particular organisation is or is not a charity.

It is not about assessing whether a particular group of charities, or a section of the charitable sector as a whole, is for the public benefit.

When making decisions about whether or not an organisation is a charity, we consider three things:

- **Aims** – what the organisation's aims are, whether those aims are charitable and whether the aims are fully and accurately reflected in the organisation's stated objects

- **Benefit** – there must be an identifiable benefit or benefits
- **Public** – benefit must be to the public or a section of the public

If an organisation fails to meet the legal requirements of any one or more of those areas, it cannot be a charity.

The Charity Commission takes decisions about charitable status and public benefit in the same way as the new Charity Tribunal or the courts would. That means we make a judgment, based on available evidence, about whether the aims of a particular organisation, taken in the context of the circumstances in which it carries out its work, are charitable for the public benefit.

There is no 'one-size-fits-all' benchmark, against which we judge the public benefit of the aims of an individual organisation. We consider each case on its own merits.

#### **D4. When can the Charity Commission consider an organisation's activities when deciding if its aims are charitable for the public benefit?**

The public benefit requirement means that, to be a charity, an organisation must be able to demonstrate that it is set up for charitable aims that are, and will be carried out for, the public benefit. It is a requirement that applies to each of an organisation's aims.

When considering whether an organisation's aims are for the public benefit, the Charity Commission may consider the organisation's activities in order to:

- clarify what its aims are (ie to understand the meaning and scope of the words used in its objects);
- decide whether those aims are charitable (ie that the aims fall within, or are analogous to, the descriptions of charitable purposes in the Charities Act); and
- ensure that the aims are, will, or may, be carried out for the public benefit.

In the case of an organisation applying to register as a charity, we can consider relevant factual background information, such as asking for evidence of its activities, or proposed activities, in order to decide whether or not its aims are charitable for the public benefit. Where we are not satisfied that is the case, we may refuse registration, or we may ask the applicant to amend their organisation's objects or activities before we can proceed with registration.

Assessing whether an existing registered charity's aims are being carried out for the public benefit is not simply a case of considering the words in its objects in isolation. It is about ensuring that its aims, as they are understood and applied by the trustees, on the basis of evidence where that is needed, are in fact carried out for the public benefit. After all, no one can benefit from a charity, however well its objects are expressed, unless the charity takes action to carry out those objects.

With existing registered charities, we will consider activities to determine whether they fall within the charity's stated charitable objects. Where we are not satisfied that is the case, we may seek agreement with the trustees that they alter their objects or the way in which they carry out their aims. In some cases:

- we may decide the trustees are acting in breach of trust. If so, we will take any necessary regulatory action that may be needed to ensure that the trusts are complied with (such as giving directions to, or appointing new, trustees);
- we may decide that it is not possible for the organisation's aims to be carried out in a way that is for the public benefit. If so, we may need to ensure that the charity's assets will be applied in future for other similar charitable aims that will be for the public benefit; or
- we may decide that the aims were never in fact for the public benefit and that the organisation was mistakenly registered as a charity. If so, we will either ask the trustees to restructure the organisation, or restate its objects so that they are for the public benefit, or we may remove it from the register.

The extent to which we can consider an organisation's activities when assessing whether its aims are for the public benefit is considered in more detail in our [Analysis of the law underpinning Charities and Public Benefit \(PDF\)](#).



#### **D5. How can the Charity Commission's decisions on public benefit be challenged?**

If a charity's trustees, or a person applying to register an organisation as a charity, or other person who is affected by our decision, disagrees with a decision we have taken about an organisation's public benefit, they should first discuss this with us using our internal decision review procedures. Guidance on those procedures is on our website.

If, after this process, that person remains dissatisfied, they can appeal to the Charity Tribunal. The Charity Tribunal's role is to make judgments about the legality of the Commission's actions in exercising its statutory powers to regulate charities. If the Charity Tribunal disagrees with the Commission's decision, it may decide to quash the decision and to replace it with its own decision. Alternatively, it may direct the Commission to take the decision again, following the correct process. In considering appeals, the Charity Tribunal will consider the matter and look at any additional evidence that may have come to light.

The Charity Tribunal can award costs in certain circumstances but it will not be able to award compensation. The Charity Tribunal does not consider complaints about the Commission's general conduct and service, which will continue to be dealt with through the route of the Commission's existing complaints procedures. This allows for appeal to an independent complaints reviewer (the final stage of our complaints procedure).

An organisation can appeal to the High Court against a decision of the Charity Tribunal provided it has first obtained permission from the Charity Tribunal or, if refused by the Charity Tribunal, from the High Court. Appeals against Charity Tribunal decisions may only be brought to the High Court on the grounds that the Charity Tribunal has made a mistake in law (for example how it has interpreted the law) and not because it has made a mistake as to facts. It will not usually be appropriate to present fresh evidence to the High Court.

## **D6. The Charity Commission's approach to applying and interpreting the law in the light of changing social and economic conditions**

Our approach to decisions about what is charitable, and what is or is not for the public benefit, will be influenced by what is relevant and appropriate for current social and economic conditions.

What the courts have regarded as being charitable and for the public benefit has changed and developed as society's needs and circumstances have changed. Those changes have been influenced by (among other things) social and economic conditions, by increasing knowledge and understanding and by changes in social values.

This means that ideas about what are charitable purposes for the public benefit can change over time.

In many cases, changing social and economic conditions have influenced a decision to recognise a new charitable purpose.

**For example, in recent years changing social and economic conditions have influenced our decisions to recognise the following as charitable purposes:**

- **the promotion of urban and rural regeneration;**
- **the promotion of community capacity building;**
- **the promotion of equality and diversity;**
- **the promotion of religious harmony;**
- **conservation of the environment; and**
- **the promotion of sustainable development.**

In some cases, it has led to our recognising a new way to carry out an old charitable purpose.

**For example, we registered as a charity a cyber café, providing a computer and internet access facility for a deprived community as a recreational facility and local amenity and as a way of advancing their education.**

Although less common, there have also been occasions where conditions and ideas in society have changed with the result that something that was once regarded as a charitable purpose for the public benefit, is no longer.

**For example, for a long time in the earlier part of the 20th century, the supply of cigarettes to sick people in hospital was regarded as charitable. During the First World War, major charities, in carrying out such a charitable aim, would provide cigarettes as 'useful sedatives for sick or wounded men'.**

**Later in the century, several general 'hospital comforts funds' raised money to equip hospitals and their patients with newspapers, easy chairs, curtains and cigarettes. Today, we would not regard the provision of cigarettes to hospital patients as being charitable for the public benefit. Any apparent benefits from the cigarettes acting as a sedative would be more than outweighed by the very real and considerable detriment caused to the patients and others by cigarette smoke.**

This is a much less common occurrence because the courts have taken the view that only a radical change of social and economic circumstances, supported by sufficient evidence, would justify deciding that something previously accepted as charitable is no longer charitable.

More commonly, in the case of charitable objects that may be worded in an 'old-fashioned' way, or that relate to social conditions from a bygone age, we will find a way to update them so that they can have relevance for modern day living.

**For example, we might agree to alter the objects of a charity concerned with the provision of marriage portions for poor maids in a particular locality to the relief of poverty of women in that area.**

This does not mean that we would regard anything that is seen as 'old' or 'old-fashioned' as necessarily 'bad' or 'wrong', nor does it just mean recognising as charitable things that are popular today.

**For example, it is not within the Charity Commission's remit to look into traditional, long-held religious beliefs or to seek to modernise them.**

It means ensuring that what charities do remains beneficial today and not assuming that something is beneficial simply because it may have been regarded as beneficial years ago.

## **D7. How will the Charity Commission assess social and economic conditions?**

How we assess social and economic conditions depends upon what is relevant for the particular charitable purpose or particular charity's aims that we are considering.

In most cases, we will use an evidence-based approach to help us decide what the social and economic conditions are in relation to the charitable aims that are to be carried out.

**For example, we might ask a charity or applicant to provide evidence regarding indicators of social deprivation, local demographics and census results, government or sector reports or surveys, etc. Or, where available, we might in some circumstances draw on our own research studies.**

Different sorts of evidence might be needed depending upon whether we are:

- assessing the overall benefit of carrying out a particular purpose (in order to decide whether we can recognise a new charitable purpose for example), where the evidence needed may be of a general nature; or
- assessing the benefit of a particular charitable aim being carried out by a particular charity in a particular way or in a particular locality, where the evidence needed will be specific to the individual organisation.

## **D8. When considering what is for the public benefit, to what extent can the Charity Commission take public opinion into account?**

Public opinion cannot decide what is or is not charitable or for the public benefit.

Charitable status is not decided on the basis of popularity. Public opinion can be deeply divided on an issue and public attitudes about particular issues can change over time. Charities are often innovative and pioneering. They may be concerned with matters the merits of which have yet to be proven, or which the general public has yet to appreciate or recognise as having value. Charities are sometimes engaged in controversial matters about which there may be divided and strongly-held public views. Or they may work in areas, or use particular methods, that are not popular but are nevertheless valuable.

Sometimes, different charities can legitimately hold opposing views about a particular issue, and yet both can still benefit the public.

**For example, charities concerned with the promotion of animal welfare and charities concerned with the promotion of health or relief of sickness may put forward opposing arguments regarding the use of animal experimentation in medical research. Both may have aims that are charitable for the public benefit, but in different ways.**

Therefore, in order to decide whether or not a particular charitable purpose or a particular charity's aims are for the public benefit, it is for the Charity Commission, or the Charity Tribunal or the courts, to be satisfied that it is for the public benefit, whether or not the public, or indeed other charities, agree that is the case.

However, where public benefit is not obvious, the Charity Commission, and the Charity Tribunal and the courts, can have regard to public opinion in so far as it is appropriate. In such cases, the general approach taken by the courts has been to look for evidence of public benefit.

**For example, public opinion might be relevant when considering whether there is a public benefit in the general appreciation of a beautiful landscape or building.**

For certain kinds of benefit, this may include taking into account a general consensus of objective and informed opinion, although that opinion alone would not decide the matter.

Decisions about public benefit reflect ordinary life, taking into account generally accepted views on the nature and usefulness of what an organisation aims to achieve and its public benefit. Public attitudes and opinion can be a useful factor to be taken into account in helping us to understand current social and economic conditions. This, in turn, can enable us to shape the legal understanding of what is charitable in a way that is relevant for today's society.

## The Principles of Public Benefit

The following sections explain the principles of the public benefit requirement

### E. Principle 1: There must be an identifiable benefit or benefits



#### E1. Important factors to consider

The following are important factors to consider when deciding whether an organisation's aims meet the 'benefit' principle of the public benefit requirement:

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



#### E2. 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.

Different charitable aims will involve different sorts of benefits.

**Examples of different sorts of benefits include:**

- giving grants or clothing or food to people in poverty;
- giving medical care to people who are sick;
- giving an education;
- giving public access to an historic building;
- providing housing to homeless people;
- providing people with facilities for sport and recreation;
- preserving an endangered species;
- conserving the environment;
- caring for sick, injured or homeless animals;

- promoting artistic or literary appreciation;
- preserving the nation's historic buildings or landmarks;
- preserving a beautiful landscape;
- promoting the efficiency of other charities.

In assessing the public benefit of an individual organisation we are concerned only with the benefits that arise from that organisation carrying out its particular aims. The fact that it may be argued there are benefits to the public generally from specific types of charity carrying out particular charitable purposes does not mean that those benefits can simply be claimed by any organisation having those charitable purposes in its objects.

**For example, there is undoubtedly an overall benefit to society from having charities that undertake cancer research. But that general benefit cannot necessarily be claimed by every organisation undertaking that sort of research. What matters is what research the particular organisation is doing, how it does it and what it does with the results.**

**A cancer research charity that undertakes properly conducted research into finding a cure or new treatment for a particular form of cancer, and that publishes the useful results of that research from which others can learn, will provide significant benefits to the public.**

**But, whatever overall benefit there is to society from cancer research in general, that benefit would count for very little in assessing the public benefit of an organisation conducting cancer research if the methods it used were not scientifically rigorous for example.**

The benefits to the public should be capable of being recognised, identified, defined or described but that does not mean that they also have to be capable of being quantified or measured.

**For example, the benefits of an appreciation of a beautiful landscape, or of viewing works of art or the performing arts, spiritual contemplation, or the positive feelings we have when we help sick animals, can still be identified and experienced even though they are not touched or seen and cannot be quantified or measured.**

Benefits that can be quantified and measured may be easier to identify, but we also take non-quantifiable benefits into consideration, provided it is clear what the benefits are. The benefits may or may not be physically experienced. Indeed, some benefits can seem quite remote or difficult to quantify, such as the benefits to the public generally from conserving the environment.

In some cases an organisation's aims may be so clearly beneficial to the public that there will be no need for the organisation to provide evidence to demonstrate that there is a benefit.

**For example, providing emergency aid to the victims of a natural disaster would not normally require special evidence to show that it is beneficial.**

In other cases, the element of benefit to the public may be more debatable, or may depend on the circumstances, and will need to be shown by evidence.

**For example, it may be necessary to show the architectural or historical merit of a building that is to be preserved, or the artistic merit of an art collection, where that is not obvious.**

The nature of any evidence would depend upon the nature of the benefit. In some cases we may ask for evidence of independent, expert opinion from someone qualified in a particular field. In some cases, we may take a general consensus of objective and informed opinion into consideration. It will usually be for an organisation's founders or trustees to provide evidence which shows that their organisation's aims are for the public benefit. In some cases, we may also seek evidence from others outside the organisation where that is necessary to either confirm or refute the evidence provided by the organisation.

In considering whether a benefit is clear, the courts have taken the view that they are not in a position to judge whether or not a political purpose is for the public benefit. Nor, by analogy, is the Charity Commission or the Charity Tribunal. A 'political purpose' means any purpose directed at furthering the interests of any political party; or securing, or opposing, any change in the law or in the policy or decisions of central government or local authorities, whether in this country or abroad. This means that a political purpose cannot meet the public benefit requirement and so cannot be a charitable purpose. However, charities do have a great deal of freedom and flexibility to undertake political activities and campaigning as a way of carrying out their charitable aims.

Further guidance on this can be found in our separate guidance on [Campaigning and Political Activities by Charities \(CC9\)](#).



### **E3. Principle 1b The benefits must be related to the aims**

All charities must act within their charitable aims. In assessing public benefit we will take into account any benefits that arise from carrying out those aims.

The Charities Act provides that, to be a charity, an organisation must have charitable aims only and that, for an aim to be charitable, it must be for the public benefit. This means that, when assessing whether an organisation meets the public benefit requirement, the benefits that are relevant for us to take into consideration are those that arise as a result of the organisation pursuing its charitable aims.

Where an organisation has more than one aim, each of those aims must be for the public benefit. The public benefit shown by one or more of its aims cannot be used to 'off-set' any lack of public benefit of its other aims.

**For example, an arts charity promotes the arts by staging high class operatic performances in a building which is of historic and architectural importance. It has two aims. The first aim is to advance the art of opera. The second is to preserve an important national building. It would not be sufficient, for example, if the second aim was for the public benefit but not the first.**

The nature of the benefit may look very different depending on what the charity is set up to achieve. Although every charity must have aims that are for the public benefit, the law does not adopt the same practical measures to assess public benefit in every type of case. This means that the ways in which the public benefits can differ for different charitable aims.

**For example, the public benefit of conserving an endangered species is very different from the public benefit of relieving poverty, which in turn is very different from the public benefit of advancing education or religion.**

Some charities carry out incidental activities that are not related to achieving their charitable aims. Such activities may be permitted, on the basis that they are a small or incidental part of what the charity does, but any benefit arising from such activities would not count towards any public benefit assessment of the charity's aims.

**For example, an amateur sport charity might take a collection for the victims of a disaster. This may be a permitted incidental activity. But the public benefit arising from the relief of need of the disaster victims does not have a sufficient connection with their charitable aim of advancing amateur sport to count in the public benefit assessment of that aim.**

Sometimes benefits arise from what a charity does that are accidental or unplanned and that are not related to its aims.

**For example, a charity concerned with the preservation of a particular historical building provides a skating rink in the courtyard to attract visitors and enhance their appreciation of the neighbouring building. The enhanced appreciation of the building and its surroundings will count towards the public benefit assessment. However, the health benefits some people may derive from the physical exercise of skating will not count in the public benefit assessment because it does not have sufficient connection with the building preservation aims of the charity.**

Benefits to the public that are not related to an organisation's aims cannot be used as a way of demonstrating that the aims are for the public benefit. They are not therefore taken into account when assessing public benefit.

For this reason, it is important for organisations to be able to identify what they believe is covered by their aims, as set out in their stated objects, and articulate that clearly. This is so that we (or the Charity Tribunal or the courts) can make informed decisions about whether the scope of those aims is charitable, and which benefits are related to those aims. Where an organisation's work gives rise to significant benefits that we consider are unrelated to its aims, as expressed in its stated objects, this may indicate that:

- the organisation's objects do not adequately reflect its aims or the full range of its activities; or

- the organisation is carrying out activities that fall outside its stated objects and which may indicate it is acting in breach of its trusts.

This might result in either our:

- asking the charity trustees to widen, or restate, the organisation's objects to better reflect its aims, the benefits of which would then count in a public benefit assessment;
- asking the charity trustees to stop those activities that are not in accordance with its aims, where it is clearly inappropriate for such activities to continue; or
- allowing the activities to continue, where that is appropriate, but explaining that the benefits of such activities will not count in any public benefit assessment of the charity.



#### **E4. Principle 1c Benefits must be balanced against any detriment or harm**

'Benefit' means the overall or net benefit to the public. It is not simply a question of showing that some benefit may result.

The achievement of a particular aim may be of some benefit to the public but, in achieving that benefit, may also have detrimental or harmful effects. In assessing the public benefit of individual organisations, we will consider any evidence of significant detrimental or harmful effects of that organisation carrying out its aims in its particular circumstances. There would need to be some real evidence of detriment or harm; it cannot just be supposed.

The existence of detriment or harm does not necessarily mean that the organisation cannot be charitable. It is a question of balancing the benefits against the detriment or harm.

If the detrimental or harmful consequences are greater than the benefits, the overall result is that the organisation would not be charitable.

**Examples of things that might be evidenced to be detrimental or harmful might include:**

- something that is damaging to the environment;
- something that is dangerous or damaging to mental or physical health;
- something that encourages or promotes violence or hatred towards others;
- unlawfully restricting a person's freedom.

No organisation that has aims that are illegal, or that intentionally deceives or misrepresents its aims and so is a sham, can be a charity. Where that sort of detriment or harm is present then there is no balancing to be done as, notwithstanding any benefits that might arise from carrying out the organisation's aims, it cannot be recognised as charitable.

As with the consideration of benefits, we are concerned only with the detriment or harm that arises from the particular organisation carrying out its particular aims. The fact that it may be argued there is detriment or harm to the public generally from certain types of charity carrying out particular charitable purposes does not mean that the detriment or harm actually exists. Or, if it does exist, that it necessarily applies to any organisation having those charitable purposes in its objects.

Where the benefits are overwhelming, the existence of some inconsequential detriment would not affect public benefit.

**For example, it might be argued that the provision of motorised transport for people with a disability has some harmful effect on the environment. But, in general, the benefits of giving mobility to people with a disability are considerably greater than any consequential harmful effects on the environment. We might encourage the charity to consider ways of minimising any harmful environmental effects. But, unless the transport were grossly polluting of the environment for some reason (in which case it is unlikely to be roadworthy anyway), we would consider the benefits to outweigh the harm.**

Conversely, where there may be some benefit but the harm is considerable enough to negate the benefits, public benefit would be affected.

For example, we recognise that there are risks involved in playing any sport. But some dangerous or 'extreme' sports involve risks that go far beyond the usual risks associated with energetic physical exercise. If an organisation is concerned with promoting participation in such a sport, we would consider what steps the organisation takes to minimise the dangers to personal safety and reduce the risks of injury to a minimum. If insufficient steps were taken to minimise the risks, then whatever health benefits there might be from the physical exercise of participating in the sport would be greatly outweighed by the dangers to physical health.

## F. Principle 2: Benefit must be to the public, or a section of the public

### L

#### F1. Important factors to consider

The following are important factors to consider when deciding whether an organisation's aims meet the 'public' principle of the public benefit requirement:

Principle 2a The beneficiaries must be appropriate to the aims (see section [F2](#))

Principle 2b Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted (see section [F3](#))

- by geographical or other restrictions (see sections [F4 – F9](#)) or
- by ability to pay any fees charged (see section [F10](#))

Principle 2c People in poverty must not be excluded from the opportunity to benefit (see section [F11](#))

Principle 2d Any private benefits must be incidental (see section [F12](#))

### L

#### F2. Principle 2a The beneficiaries must be appropriate to the aims

Who constitutes 'the public, or a section of the public' for any organisation is based on those whom the organisation's aims are primarily intended to benefit.

Sometimes the aims are intended to benefit the public generally and sometimes a section of the public. Who benefits, and in what way, will vary depending on the organisation's aims.

**For example, in the case of a charity providing a local village hall or community centre, the aims might be intended to benefit people living in a particular town or village. In the case of a medical research charity, the aims might be intended to benefit the sufferers of a particular disease. In the case of a charity concerned with conserving an endangered species, the aims might be intended to benefit humanity.**

Who constitutes 'the public, or a section of the public' is not a simple matter of numbers, but the number of people who can potentially benefit (now or in the future) must not be negligible. What is important is who could benefit, as well as who is benefiting. The class of people who can benefit must be a public class. In general, the public class must be sufficiently large or open in nature given the charitable aim that is to be carried out. The actual number of people who can benefit at one time can be quite small provided that anyone who qualifies as a beneficiary is eligible to be considered. A charity is for the public benefit if the benefits it offers are made widely available, even though in practice only a few people from time to time are able to benefit.

**For example, a charity with a legitimately small number of beneficiaries might be one that offers only a small number of places for the services it provides, such as a small number of available rooms in an almshouse or care home. What is important is that anyone who is eligible to apply can be considered for those places.**

'The public, or a section of the public' can include members of future generations as well as today's generation. However, in general, benefiting future generations should not come entirely at the expense of today's. There is a balance to be struck between providing for future generations and benefiting people today.

**For example, in order to ensure the sustainability of the planet for future generations, it may be**

**necessary for today's generation to make certain lifestyle changes or accommodate short-term restrictions or limitations in order to secure longer-term environmental benefits for the future. Similarly, it may be necessary to restrict or deny access to an important archaeological site or conservation area to today's generation in order to preserve it for the future. But equally, the benefit, for example, of providing for the relief of hunger of future generations needs to be balanced against the need to provide for people who are starving today.**

If the aims are intended to benefit the general public then that clearly constitutes a public class of people. Where the aims are intended to benefit a section of the public, the people who can benefit must be a sufficiently 'public' class of people for it to be said that the aims are for the 'public' benefit. That means making sure that the opportunity for people to benefit is not unreasonably restricted given the nature of the charitable aims to be carried out and the resources available to the organisation.

If the class of people whom the aims are intended to benefit is unreasonably restricted then they are not 'a section of the public'. Where that is the case, the organisation would have to widen the class of people who can benefit, or it would not meet the public benefit requirement.

Sections **F3 – F10** below explain in more detail what factors are relevant when considering whether or not the opportunity for people to benefit is reasonably or unreasonably restricted.

### **F3. Principle 2b Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted**

Where benefit is not to the public generally, it can be to a 'section of the public' where restricting benefit in that way is reasonable and relevant to the charitable aims. Public benefit will be affected where the restrictions are unreasonable.

The starting point for a charity usually would be to provide as much benefit as possible, given the nature of its aims and what resources it has. In general, the greater the individual need of the beneficiaries, or the more limited the resources available to the charity, the greater the justification there will be for narrowing the number of people who can benefit.

To be a charity, where the beneficiaries are a 'section of the public', any restrictions on who can benefit must be 'reasonable'. That means the restrictions are legitimate, proportionate, rational and justifiable given the nature of the organisation's charitable aims. It is not charitable to restrict who can benefit by reference to criteria that are unrelated to the charitable aims to be carried out.

A restriction on who can have the opportunity to benefit may be reasonable:

- where the class of people who can benefit is sufficiently wide or open in nature (given the charitable aims to be carried out and the resources available to the charity) to constitute a sufficient section of the public; or
- because the class of people whom the aims are intended to benefit have a particular charitable need which justifies restricting the benefits to them.

It is implicit that society, or the public generally, benefits from any charity that benefits a section of the public. But the existence of those wider benefits to the public does not mean that restricting who can benefit is necessarily reasonable because of those wider benefits. The restriction must be reasonable and, if it is, then it is accepted that society as a whole benefits by helping that section of society.

The benefits of some charitable aims extend beyond geographical boundaries or other restrictions. In some cases, the nature of the charitable object is such that it would not be appropriate to restrict the benefits to a section of the public.

**For example, preserving an endangered species or publishing research on a new cure for a particular disease are the sorts of charitable aims that are intended to benefit everyone.**

There are a number of different ways in which the class of people who can have the opportunity to benefit might be restricted.

In some cases the restrictions are evident from the way in which the objects are worded (see sections **F4** -

F6).

For example:

- geographical restrictions – where the beneficiaries are defined on the basis of where they live (see section F4);
- restrictions based on charitable need – where the beneficiaries are defined on the basis of some common need, such as poverty, age, ill-health, disability, social or economic circumstance, etc (see section F5);
- restrictions based on personal characteristics – where the beneficiaries are defined by reference to their gender, race, religion, sexual orientation, or other defining characteristic (see section F6).

In some cases, the restrictions may not be evident from the way in which the objects are worded, but they exist in practice (see sections F7 – F10).

For example:

- restrictions on access to facilities – where there are limitations placed on who can have access, what can be accessed or degree of access (see section F7);
- restrictions based on eligibility for membership – where the benefits are delivered through membership (see section F8);
- restrictions based on trustees' discretion – where the benefits are restricted to a particular group of people purely on the basis of the exercise of the trustees' discretion (see section F9);
- restrictions based on ability to pay any fees charged – where the charging of fees has the effect in practice of restricting benefit only to those who can afford to pay the fees charged (see section F10).

Even though such restrictions may not appear in the wording of the objects, they are still relevant in deciding whether or not the organisation's aims will, or may be, carried out for the public benefit.

At the extreme, charities should not be seen as 'exclusive clubs' that only a few can join, since the 'public' benefit from that is very limited. In general, the more open, outward-looking and inclusive the aims, the greater the 'public' benefit. So, where the aims of a charity are more closed, inward-looking and exclusive, greater justification for the restriction may be needed in order to show that there is still sufficient 'public' benefit.

#### F4. Geographical restrictions

In many cases, the aims are intended to benefit people living in a particular geographical area.

It is generally reasonable for a charity's aims to be intended to benefit people living in a particular geographical area, such as a village, town, city, county or country. Restricting benefit to people living in a particular street, or a few named houses, is likely to be too small an area to be considered a 'section of the public'. In some cases, restricting benefit to a ward or parish may be acceptable; it depends on the charity's aims. Also, in addition to the geographical restrictions, it may or may not be appropriate to place further restrictions on who can benefit.

**For example, in a case involving a recreational organisation, the courts considered the hypothetical example of the provision of a bridge for the benefit of Methodists in a particular area. The courts took the view that such a restriction would not be reasonable because the benefit would be confined to too narrow a class of people. Methodists in the area would have no special need of a bridge that other people in the area did not also have. Thus there would be no justification for restricting the benefit in that way.**

Where the aims are intended to benefit people who are defined by reference to geographical areas then those areas should be defined clearly. The geographical areas do not have to be in England and Wales. An organisation can be a charity that is set up and registered in England and Wales whose beneficiaries are entirely outside that area.

Charities can operate locally, nationally or internationally.

## F5. Restrictions based on charitable need

In some cases the aims are intended to benefit people who are defined on the basis of some common charitable need, such as poverty, age, ill-health, disability, or other social or economic circumstance.

A 'section of the public' can mean social or economic communities, ie people who are connected by a particular charitable need or social circumstance or share a common disadvantage.

For example:

- children and young people;
- elderly people;
- people with a disability;
- people with a particular disease or medical condition;
- people in poverty;
- people whose work is regarded as vital to an area – sometimes known as 'keyworkers'.

Restricting benefits to such a group can usually be said to be reasonable because they have a charitable need that is being relieved or addressed.

## F6. Restrictions based on personal characteristics

In some cases the aims are intended to benefit people who are defined by reference to some personal characteristic, such as their gender, race, ethnic origin, religion, sexual orientation, or other defining characteristic.

Restricting benefits to people defined in this way may or may not be considered reasonable. It depends upon the charitable aims that are to be carried out.

**For example, restricting benefits to men or women only would be reasonable in the case of an organisation that is concerned with men's or women's health issues, as the class of beneficiaries is clearly linked with the charitable aim. However, restricting benefits in such a way would not be reasonable in the case of an organisation that is concerned with providing a village hall or community centre, which should be a general facility for use by all the local inhabitants regardless of their gender.**

The need to have a rational link between any restriction on who can benefit and the charitable aim to be carried out has been underlined recently by developments in discrimination law. There are currently exceptions for charities from the general law that prohibits discrimination in the provision of services on the grounds of gender, race, sexual orientation and disability. This is because charities can legitimately restrict their beneficiaries where that is relevant to their charitable aims. However, in order to comply with the EU Gender Directive, there are proposals to limit the exception for charities in the **Sex Discrimination Act 1975** to circumstances where a legitimate aim is being pursued or a particular disadvantage is being addressed.

**For example, it may be reasonable to limit the beneficiaries on the grounds of gender where that involves protection of victims of sex-related violence, the promotion of gender equality or for reasons of privacy or decency.**

The EU Gender Directive does not apply to education. This means it can be charitable to have a single sex educational charity, such as a single sex school.

Where the beneficiaries are defined by some personal characteristic, what we have to consider in each case is:

- why is the restriction there; and
- why is the restriction reasonable in the context of the charitable aims to be carried out (such as what special need of the service or facility do those people have)?

As a general rule, the beneficiaries must not be defined by a personal connection, such as family relationship or common employer. However, there is an exception to this general rule for charities concerned with the relief of poverty. This is because the courts have accepted that there is such a public element inherent in the relief of poverty that even a very narrowly defined group of people in poverty could constitute a 'section of the

public'.

**For example, 'poor relations' trusts (that are concerned with the relief of poverty of people with a particular family connection) and employee benevolent funds (that are concerned with the relief of poverty of people who are connected by a common employer) can be charitable.**

The courts have not accepted that defining the beneficiaries by reference to family or employer connections is reasonable for organisations that are not concerned with the relief of poverty.

When defining who can benefit, charity trustees must also have regard to other effects of discrimination legislation.

**For example, although beneficiaries can be defined by reference to race, nationality, ethnic or national origin, the Race Relations Act 1976 prevents charities from defining their beneficiaries by skin colour. Where a charity defines its beneficiaries by reference to their skin colour in its objects, the effect of the Race Relations Act is that the objects are treated as if that reference were omitted.**

**So, a charity with objects that read "for the benefit of black women in financial need" would be treated as having objects "for the benefit of women in financial need".**

## **F7. Restrictions on access to facilities**

In some cases, there are limitations placed on who can have access to facilities provided by a charity, what can be accessed or the degree of access that people can have.

Where an organisation's aims are concerned with providing or maintaining particular facilities for the public benefit, any restrictions on public access (such as limited opening hours or limitations on what areas people have physical access to) should be reasonable and appropriate in the circumstances. In such cases, the degree of public access (however that is provided) must be sufficient overall for the organisation's aims to be carried out for the public benefit.

Charity trustees must also ensure that they comply with the law regarding access to facilities.

**For example, where appropriate, trustees must have regard to the provisions of the Disability Discrimination Act 1995 & 2005 regarding the provision of physical access to buildings for people with disabilities.**

## **F8. Restrictions based on eligibility for membership**

In some cases, the benefits of an organisation's aims are delivered through a membership structure.

Some charities have a membership structure under which the members are also the charity's beneficiaries. In this case, any restrictions placed on who may join as a member should be reasonable and justifiable in the circumstances if the public benefit of the organisation is not to be affected.

**For example, where a person has to be a member in order to benefit, a membership system that required potential members to be proposed and seconded by existing members may lack the necessary 'public' element; being primarily a private members' club.**

However, access to membership may, in certain circumstances, be properly limited where this is linked to the charity's aims.

**For example, membership (and therefore the beneficiaries) might be limited:**

- to people living in a particular geographical area;
- where a particular membership structure is appropriate for the better provision of benefits (provided that all those who might benefit can apply to join and there are objective criteria for deciding membership);
- where practical reasons (such as limited space) dictate a limit upon membership numbers, such as where there is limited access to recreational facilities for health and safety reasons. (In such cases it is reasonable to have a waiting list for membership provided the next available membership is offered on a 'first come, first served' basis.)

In the case of some membership charities, membership is not the way in which people benefit from the charity. Where that is the case, a restricted membership is not relevant when considering public benefit.

**For example, in the case of a professional body or learned society, membership may be restricted to members of a particular profession or to people who have certain academic qualifications. Where people are able to benefit from learned articles published by the society for example, or from the application of the knowledge gained by the professional from being a member of the professional body, the restriction on membership does not affect public benefit since membership is not the only, or main, means by which people generally can benefit.**

### **F9. Restrictions based on trustees' discretion**

In some cases, the trustees of a particular organisation may wish to restrict the benefits to a particular group of people purely on the basis of the exercise of their discretion.

Founders and trustees may have some discretion in deciding who to benefit. Where the exercise of that discretion is allowable within the charity's stated objects, and where the people who will have the opportunity to benefit constitute a 'section of the public', then such a restriction can be said to be reasonable.

**For example, it would be reasonable for the trustees of a general grant-making charity concerned about rising levels of child poverty to choose to benefit, in particular, people in poverty.**

However, if the effect of exercising that discretion is that the people who can have the opportunity to benefit do not constitute a 'section of the public', or the restriction cannot be said to be reasonable (because it is not related to the charitable aims or any particular charitable need for example), then the trustees would have to exercise their discretion in a different way or the organisation would not be charitable.

### **F10. Restrictions based on ability to pay any fees charged**

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

**Examples of charities that may charge their users for access to their services and facilities include:**

- **educational organisations (such as schools and universities);**
- **private hospitals;**
- **care homes;**
- **recreational charities (such as sports or leisure centres, recreation grounds or village halls) that charge for hire of facilities;**
- **artistic, preservation and conservation charities (such as theatres, museums and stately homes) that charge entry to view performances, exhibits, land or properties;**
- **charities that charge for membership (whether annual, seasonal or daily); and**
- **charities that charge for publications.**

Charging fees should not be confused with other forms of financial contribution to charities, such as those made to religious charities, whose core beliefs may involve a financial contribution from followers, in the form, say, of tithes. Generally, if benefit is not dependent upon the payment of a financial contribution then this will not affect public benefit. However, public benefit might be affected in circumstances where the financial contribution is used in practice (if not officially) as a way of restricting who can join or benefit - for example if there is significant pressure placed upon beneficiaries to make a substantial financial contribution regardless of their financial means.

In considering the extent to which charging by a charity might affect its ability to meet the public principle of the public benefit requirement, the following broad principles apply:

- in deciding whether an organisation has aims that are for the 'public' benefit, different types of benefits to the intended beneficiaries are taken into account;
- the fact that the charitable facilities or services will be charged for, and will be provided **mainly** to

people who can afford to pay the charges, does not necessarily mean that the organisation does not have aims that are for the public benefit; however,

- an organisation that excluded people from the **opportunity** to benefit because of their inability to pay any fees charged would not have aims that are for the public benefit.

In assessing the overall public benefit provided by a fee-charging charity we will take into account the totality of the benefits arising from carrying out its aims. However, where the people the aims are intended to benefit are not a sufficient section of the public, the organisation's aims will not be for the public benefit.

'Not excluding' people who are unable to pay the fees from the opportunity to benefit does not mean providing some sort of 'token' benefit to such people. It should be more than minimal or nominal benefit and does not include benefit that occurs merely by chance. But neither does it mean there have to be no financial barriers to accessing benefits.

Therefore, where charities do charge fees, people who are unable to pay those fees must, nevertheless, be able to benefit in some material way related to the charity's aims. This does not mean that charities have to offer services for free. Nor does it mean that people who are unable to pay the fees must actually benefit, in the sense that they choose to take up the benefit. They must not be excluded from the opportunity to benefit, whether or not they actually do so.

When considering the effect of any charges we will take account of:

- the nature of the particular charitable aim (and the law that applies to it);
- the level of fees charged;
- the particular circumstances of the organisation; and
- the social and economic conditions under which it carries out its work.

The ways in which people who are unable to pay the charges might benefit will vary depending upon the aims and the circumstances of each organisation. Provided it can be shown that those people have the opportunity to benefit in a material way related to the charity's aims, it will, in general terms, be a matter for the trustees to decide what methods they will use to ensure and show that their charity's aims are for public benefit.

**For example, in the case of an arts charity that charges fees, it might provide a range of benefits including:**

- **giving the public access to a high standard of artistic work;**
- **providing free or subsidised seats at performances to people who cannot afford to pay the full fees charged (such as providing concessions for students, pensioners and the unwaged or to school parties) and arranging TV and radio broadcasts of performances to reach a wider audience;**
- **providing arts educational material on the internet;**
- **supporting arts groups and providing specialist training in the arts of singing, music, drama, dance etc;**
- **providing arts spaces, working in collaboration with Arts Councils, developing craft and technical skills and working with members of minority ethnic communities; and**
- **preserving the arts for the benefit of future generations.**

In cases where fees are charged for services or facilities, we will consider the following issues:

- |    |   |
|----|---|
| 1. | Whether the levels at which fees are set have the effect of preventing people who are unable to pay the fees from benefiting from the services or facilities. |
| 2. | If this is the case, whether it is possible to show that people who are unable to pay the fees are not excluded from the opportunity to benefit.              |
| 3. | Whether and how people who are unable to pay the fees may otherwise benefit from those services or facilities.  |
| 4. | The nature and extent of the other benefits provided.   |

These issues are explained in more detail below.

## **1. Whether the levels at which fees are set have the effect of preventing people who are unable to pay the fees from benefiting from the services or facilities**

This will clearly depend upon the level of fees charged and the service provided. The number of people who cannot benefit from the charity's services or facilities will vary in direct relation to the level of fees charged.

For example, if the fees charged are £20,000 to attend a vocational training course there are likely to be a substantial number of people who are excluded from the opportunity to benefit from that training because they are unable to pay those fees. However, if the fees charged are 50 pence to gain entry to a community centre's facilities, or some small subscription to join a local group that uses the community centre, then those who might be unable to afford those fees, and might therefore be excluded from the opportunity to benefit, are likely to be few in number.

The nature of the service and the frequency or regularity with which such a service is likely to be used or needed, and the consequent financial commitment likely to be required by beneficiaries, are also factors to be taken into account when considering fee levels.

For example, educating a child at a particular school usually requires a commitment of some years. Education is not something that can just be provided for a few weeks a year or just every now and then. Similarly, long-term medical or residential care requires a continuing financial commitment. However, attending an operatic or theatre performance, or visiting an historic building for example, can be done on a more irregular basis from time to time in accordance with a person's preference and financial means. Even then, there is still a question regarding the affordability of ticket prices and the effect they have on a person's opportunity to benefit. For example, most people would have the opportunity to benefit from a trip to the theatre where ticket prices are around £10. But ticket prices of around £100 are less affordable for many people and so would make it more difficult for them to have the opportunity to benefit, other than on a very infrequent basis.

## **2. If this is the case, whether it is possible to show that people who are unable to pay the fees are not excluded from the opportunity to benefit**

Where people are unable to benefit from a charity because they cannot afford to pay the fees charged for its services, there must be other material ways or opportunities, related to the aims, available to them to benefit.

Fee-charging charities are encouraged to be positive, innovative and imaginative in considering how to maximise the benefits they can offer to the public and, in particular, to people who cannot afford to pay the fees charged.

**Examples of ways in which organisations might provide benefits to people who are unable to pay the fees include:**

- providing concessions, subsidised or free places. For example, in the case of schools, by offering bursaries or assisted places, or, in the case of theatres or concert halls, by offering concessionary tickets;
- the existence of accessible insurance or other benefit schemes, for example, medical insurance schemes. This would depend, though, on the cost of such schemes and what sorts of services people are entitled to receive under them;
- the existence of other reliable sources of funding that are specifically made available to beneficiaries, or to which beneficiaries have some entitlement to access, to help meet the costs of any fees charged. Such as a funding arrangement between an independent school and a separate, but linked, grant-making body, or funding offered by a local authority to pay for a place in a care home;
- providing wider access to charitable facilities or services. Some charities may provide additional facilities or services for people who would otherwise be excluded because they are unable to pay the fees. Some charities may lend equipment or staff out to other charities or groups that provide the same facilities or services to people who are unable to pay the fees. For example, a charitable independent school allowing a state-maintained school to use its educational facilities;
- the educational benefits to state school pupils who are able to attend certain lessons or other educational events at independent schools;
- the educational benefits to pupils in state schools arising from collaboration and partnerships between state schools and independent schools;
- the benefits of free access to specialised medical equipment not available in the local NHS hospital, or through a number of beds in the charitable hospital being made freely available to

**NHS patients;**

- the increased appreciation of literary or artistic performances gained by people who are unable to pay the fees who are able to attend musical concerts or theatre performances through concessionary tickets;
- in addition to offering concessions on ticket prices, a local theatre might also have an exhibition space for local people to view works of art and an amateur dramatic society that local people can join; and
- providing medical training to nurses or doctors at an NHS hospital which benefits the non-fee-paying patients at that hospital.

**3. Whether and how people who are unable to pay the fees may otherwise benefit from those services or facilities**

This is likely to vary from charity to charity and for different charitable aims. It may be necessary to look in some detail at whatever arrangements are available to enable people who are unable to pay the fees to benefit. By way of illustration, in the examples above, the discount on the price of the concert tickets may mean the amount payable still prevents some people from going to a concert. A charge might be made for the medical insurance or it might only provide cover limited to certain treatment or requires additional or top up fees before the policy holder could obtain treatment. A school might charge the other educational charity or state school for use of the facilities. All of these arrangements will affect the extent to which we can take them into account and how much weight they have.

**4. The nature and extent of the other benefits provided**

This may include considering how far the type of service or facility provided is one for which there is a public need, and how far the service or facility provided contributes towards meeting that need.

**For example, a hospital not run by the NHS may provide specialised scanning equipment that is not available in the local NHS hospital. Or an elderly person in a charitable residential care home might be provided with respite care for a longer period than he or she would have received from a local authority care home.**

Additional weight may be given to the value of the benefits of providing a specialised service, such as a school or hospital that addresses a specific need.

**For example, additional weight may be given to the value of the benefits of providing for the additional educational needs of pupils with dyslexia or providing specialised treatment to patients with a particular form of cancer. However, a school that benefits only more affluent dyslexic pupils or a hospital that benefits only wealthy cancer patients would not be charitable.**

Wider, more remote, benefits to the public generally cannot be used to 'off-set' any lack of benefits to a sufficient 'section of the public'.

**For example, there is the general value charities provide to society from their altruistic outlook and there would be a gap in society if charities did not exist to provide the services and facilities they do.**

The existence of those wider benefits, that apply to all charities, cannot be used to justify a restriction on who can have the opportunity to benefit. The beneficiaries must constitute a sufficient section of the public in their own right, notwithstanding any wider benefits to the public generally. It would not be sufficient, therefore, if the only benefits available to people who are unable to pay the fees are wider benefits such as those which, it can be argued, the public in general receives where a service provided by a charity relieves public funds.

Charities for which fee-charging may be an issue may be interested in our supplementary guidance, **Public Benefit and Fee-charging**, which provides more detailed guidance on how this public benefit principle applies to charities that charge fees, and in our other sub-sector guidance when published.

**F11. Principle 2c People in poverty must not be excluded from the opportunity to benefit**

Whatever restrictions there are on who can benefit, charities must in all cases ensure that people in poverty are not excluded from the opportunity to benefit from each of their aims. In practice this is most likely to be an issue for high fee-charging charities, but it is something that all charities should consider. This does not mean,

in effect, introducing an element of relieving poverty into all charitable aims. It is not the case that people in poverty actually have to benefit. Or, that charitable aims have to be limited or confined to people in poverty, although the founders of charities can choose to do that if they wish. It merely means that people in poverty must not be excluded from the **opportunity** to benefit.

Although 'poverty' can sometimes be interpreted to mean people who are financially and/or socially disadvantaged, the legal meaning of poverty in charity law means people who are financially disadvantaged. The Oxford English Dictionary defines 'poor' as **'of a person or people; having few, or no, material possessions; lacking the means to procure the comforts or necessities of life, or to live at a standard considered comfortable or normal in society; needy, necessitous, indigent, destitute'**. Whilst this is not an absolute definition of what 'people in poverty' might mean, it does reflect well the circumstances of people regarded in charity law terms as being 'poor'.

The meaning of 'people in poverty' in individual cases will be considered in the context of the organisation's aims, whom those aims are intended to benefit and where it carries out its aims.

**For example, for a charity carrying out its aims in the poorest areas in developing countries, 'people in poverty' might typically mean people who lack even the most basic essentials to sustain life, such as adequate clean water, food and shelter. But, for a charity carrying out its aims in England and Wales for example, 'people in poverty' might typically mean households living on less than 60% of average income or people living on or below the level of 'income support'. However, even then, 'poverty' is a relative term that may be interpreted differently depending upon the organisation's aims.**

The context and aims of each organisation are therefore all important in deciding who 'people in poverty' are and whether those people are excluded from the opportunity to benefit.

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### F12. Principle 2d Any private benefits must be incidental

'Private benefits' are benefits that people, or organisations, may receive other than as a beneficiary.

When assessing whether there are private benefits, we are not concerned with the benefits that anyone receives because they are a beneficiary of a charity. By this we mean reasonable benefits to people or organisations that further the charity's aims, such as the benefits of receiving an education, or medical treatment, or a charitable grant.

Charities can provide private benefits to people other than their beneficiaries so long as those benefits are incidental.

Private benefits will be incidental if it can be shown that they directly contribute towards achieving the charity's aims and/or are a necessary result or by-product of carrying out those aims.

In general, a private benefit is a necessary result, or by-product, of carrying out a charity's aims if:

- it follows from some action that is taken, and is only taken, with the intention of, furthering the charity's aims; and
- the amount of private benefit is reasonable in the circumstances.

**The following are examples of incidental private benefits:**

**An example of a private benefit that directly contributes towards achieving a charity's aims would be paying professional veterinary fees for the treatment of animals at a charitable animal sanctuary.**

**An example of a private benefit that is a necessary result of carrying out a charity's aims would be where local businesses benefit from increased trade as a result of a charity undertaking projects to regenerate the area.**

Charity trustees must put the interests of their charity first. The law states that trustees cannot receive any benefit from their charity in return for any service they provide to it, unless they have legal authority to do so. Trustees should not be subject to any conflict between their duties to their charity trust and their personal interests, unless the possibility of personal benefit which gives rise to that conflict is transparent. Transparency is achieved by requiring explicit authority for the benefit, and by ensuring any potential conflict

of interest is managed properly and openly. For further information see [The Essential Trustee: what you need to know \(CC3\)](#) and [Payment of Charity Trustees \(CC11\)](#). These are available to download from our website or from Charity Commission Direct.

Where people benefit from a charity through a membership structure that is not unreasonably restricted, then the private benefits to the members are benefits they receive as a beneficiary, and so are regarded as a necessary result of carrying out the charitable aims. However, an organisation that is supported by its members for the purpose of providing benefits for themselves cannot usually be a charity. It is a question of degree. Does the organisation exist primarily for the advantage of its members? Or has the membership structure been adopted solely as an effective way of delivering charitable benefits, or to make administration easier?

## Meeting the Public Benefit Requirement

The following sections provide guidance on reporting on and assessing the public benefit of charities

### G. Reporting on public benefit



#### G1. The general reporting duty of charity trustees

Charity trustees have an existing legal duty to report the following in their Trustees' Annual Report:

- a summary of the objects of the charity; and
- a summary of the main activities and achievements of the charity in relation to its objects.

In the case of larger charities the reporting requirements are expanded to include:

- a review of the significant activities undertaken;
- details of aims and objectives;
- details of strategies adopted and activities undertaken to achieve those aims and objectives; and
- details of the achievements by reference to the aims and objectives set.



#### G2. The requirement to report on public benefit

From early in 2008, charity trustees' general reporting duties will include a new requirement to report on their charity's public benefit.

In 2007, the Office of the Third Sector published proposals to amend the legal requirements for charity reporting and invited comments on the proposals. Subject to any changes following the consultation, Regulations to make the amendments will be laid before Parliament in early 2008. The new requirements are expected to be brought into force in late March 2008.

The existing reporting duties already require charities to explain their activities and achievements. The proposed changes build on these existing requirements, focusing the report so that the reader can see more clearly how the aims of the charity are carried out, through the activities undertaken, for the public benefit.

We recognise that there is a need to balance a general desire for greater transparency and accountability by charities about their public benefit, against commitments to reduce the administrative burdens on charities. There is not, therefore, a 'one size fits all' approach to public benefit reporting. The requirement is consistent with the established principle that charities subject to audit should be asked for more detailed information than those not subject to audit. We do not anticipate that the new requirements will significantly change the structure of the Trustees' Annual Report and indeed we recognise that most charities are already providing information about their activities and how their achievements contribute to their aims.

When planning their charity's activities, charity trustees must have regard to the Commission's guidance on public benefit. The proposed changes will also require them to confirm in their Trustees' Annual Report that they have had regard to the guidance.

The details of the new requirement are set out in sections **G3** and **G4** below.



### **G3. The public benefit reporting requirement for smaller charities**

Charity trustees of smaller charities will be 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.

The summary need not be detailed and, for most charities, it should not significantly affect the existing structure of their Trustees' Annual Report. Trustees of smaller charities simply need to continue to explain their charity's activities and achievements during the year, but set them in the context of the charity's aims to explain how they have been carried out for the public benefit.

All charities must confirm that the trustees have paid due regard to our guidance on public benefit in deciding what activities the charity should undertake.

Within that general framework, it is for charity trustees to decide how best to report on their charity's public benefit, based upon what they consider to be proportionate and appropriate in their particular charity's circumstances. They can voluntarily provide more detailed public benefit reports if they wish.

As we develop our guidance on the public benefit of specific charity sub-sectors, we will explore with charities in that sub-sector, and those with an interest in them, the best way for them to report activities and demonstrate that the aims of the charity are carried out for the public benefit. We will also seek examples of good reporting practice as models to help other similar charities.

Regardless of the amount of detail contained in the Trustees' Annual Report on activities, where we think there is a risk that the aims of a charity in this income bracket, or the way in which the aims are being carried out, does not meet the public benefit requirement, we will undertake a public benefit assessment, where we consider that is proportionate and appropriate.



### **G4. The public benefit reporting requirement for larger charities**

For trustees of larger charities, the public benefit reporting requirement is the same as for smaller charities, except they 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.

For most trustees of larger charities, the new requirements should not significantly affect the existing structure of their Trustees' Annual Report. Providing information in the context of their charity's aims, will enable the reader to better understand how in practice the trustees are setting strategies and carrying out their charity's aims for the public benefit.

### **G5. How charity trustees meet the public benefit reporting requirement**

It is for charity trustees to decide how much they think is appropriate, given their charity's circumstances, and in how much detail, they wish to convey what their charity has done in the reporting year to meet the public benefit requirement.

We do not intend to specify a minimum or maximum number of words, paragraphs, or pages for this purpose. However, a charity that said nothing on public benefit in its Trustees' Annual Report, or that produced only the briefest explanations of their activities, with no detail at all, would be in breach of this reporting requirement.

Many charity trustees already produce detailed Trustees' Annual Reports on what they have done in the year to carry out their charity's aims, and the impact of that work on their beneficiaries and the wider public. For them very little additional work, cost, or effort, is likely to be needed to re-focus those reports in the context of public benefit.

Public benefit is an integral part of what every charity does and so we see it as something to be integrated into any overall report of the charity's activities and performance during the year. The report simply needs to be styled in such a way that the reader can ascertain how, through the activities and achievements of the

charity, the aims of the charity are carried out for the public benefit.

## **G6. The importance of reporting on public benefit**

Public benefit reporting should not just be seen as a statutory duty that trustees have to meet and that we regulate. It is also a report to the charity's stakeholders – its funders, its beneficiaries and anyone interested in the charity. We will not therefore be the only ones judging how a charity carries out its aims for the public benefit.

Charity trustees are therefore encouraged to take advantage of the public benefit reporting requirement as a way of raising public awareness of their charity's public benefit, and demonstrating that their charity's aims continue to be, and are carried out, for the public benefit.

Most charity trustees will already be meeting the public benefit requirement, but may be doing so without specifically understanding how or why, and are unlikely to be reporting on it. The new public benefit reporting requirement, and the new statutory duty for trustees to have regard to our guidance on public benefit when planning activities, will mean that charity trustees will have to consider collectively what meeting the public benefit requirement means.

Any organisation has to be set up for one or more charitable aims, and must be able to demonstrate that its aims are for the public benefit, if it is to be recognised as a charity. Being recognised as a charity brings with it a number of financial and practical benefits.

**For example:**

- **people are more likely to offer time, energy or money to a registered charity;**
- **many grant-makers only give to charities;**
- **charities do not normally have to pay income/corporation tax (in the case of some types of income), capital gains tax, or stamp duty, and gifts to charities are free of inheritance tax;**
- **charities pay no more than 20% of normal business rates on the buildings that they use and occupy to further their charitable aims; and**
- **charities registered with the Charity Commission have the benefit of a charity registration number and the badge/brand of charity, for fundraising purposes, and can maximise the financial benefit through Gift Aid arrangements.**

There has been growing public demand in recent years for greater transparency and accountability by charities, reflected for example in changes to reporting and accounting requirements for charities.

**For example:**

- **a new Statement of Recommended Practice: Accounting and Reporting for Charities (SORP) that recommends a new approach to the presentation of the Trustees' Annual Report, stressing the reporting of activities and performance against a charity's objectives;**
- **the introduction of a new Summary Information Return (SIR) for charities with an annual income of over £1 million, that requires trustees to report on the impact of their activities, and the publication of completed SIRs on our website; and**
- **the online publication on our website of an increasing number of charities' scanned accounts and our Accounts aren't optional and File Early campaigns to encourage more charities to file accounts and Annual Returns on time.**

Public benefit reporting should be seen as an important aspect of a charity's transparency and accountability, and of promoting public trust and confidence in the charity. This will help the public to appreciate just how much they benefit from charities in return for the benefits charities receive from their charitable status.

## **G7. The public benefit reporting requirement v the public benefit requirement**

There is a difference between charity trustees not meeting the public benefit reporting requirement and a charity not meeting the public benefit requirement.

Failure to meet the public benefit requirement means that the organisation would not be charitable.

Failure to meet the public benefit reporting requirement means that the charity trustees are failing in their

statutory duty but it does not necessarily mean that the organisation is not a charity.

A charity's trustees could produce a very detailed report showing facts and figures about its various activities, who has benefited and how, and yet still fail to meet the public benefit requirement. Conversely, a charity's trustees may fail to produce an adequate public benefit report, but in practice the charity may be clearly meeting the public benefit requirement.

However, we would consider persistent failure by charity trustees to meet the public benefit reporting requirement, or an unconvincing public benefit report, a cause for concern. We will, therefore, take failure to report into consideration when deciding where we will focus our resources in carrying out detailed public benefit assessments of existing charities.

## G8. Questions to help assess public benefit

The Charity Commission (and, ultimately, the Charity Tribunal or the courts) has the responsibility under the Charities Act of deciding whether an organisation has charitable aims that meet the public benefit requirement and is therefore charitable. However, charity trustees and their professional advisers may find the following questions useful as a way of self-assessing their charity's public benefit, and to provide information that will help us to assess whether or not an organisation's aims are for the public benefit.

### Principle 1: There must be an identifiable benefit or benefits

1. What are the benefits that arise from your organisation's aims?
2. Is there any detriment or harm that, in your view, might arise from carrying out your organisation's aims? Are you aware of any widespread views among others that such detriment or harm might arise?

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

3. Who do your organisation's aims intend to benefit?
4. If the benefit is to a section of the public, how are the beneficiaries defined or what restrictions are there on who can have the opportunity to benefit?
  - **For geographical restrictions:** what is the geographical area that defines who can benefit?
  - **For restrictions based on charitable need:** what is the charitable need shared by the beneficiaries that is being relieved or addressed?
  - **For restrictions based on personal characteristics:** what defining characteristics are used to decide who benefits? How do those characteristics relate to the charitable aims?
  - **For restrictions based on access to facilities:** are there restrictions on what is available for access, or on who can have access, or limited opening times?
  - **For restrictions based on eligibility for membership:** does someone have to be a member to benefit? If so, is it open to anyone interested to join? If not, who can join and how?
  - **For restrictions based on trustees' discretion:** what criteria will the trustees use to decide who can benefit? What is the justification for that restriction?
  - **For restrictions based on ability to pay any fees charged:** what does your organisation charge for its services or facilities? How are charges set? Is everyone charged the full rate? What opportunities do people who cannot afford to pay those fees have to benefit from your organisation's aims? How do people in poverty have the opportunity to benefit?
5. Does anyone receive any private benefits from your organisation, other than as a beneficiary? If so, what benefits do they receive? Are those benefits incidental?

## H. The Charity Commission's assessment of public benefit

### H1. Our approach to public benefit assessment

Following the courts' approach, our decisions about what is or is not charitable are informed by the underlying case law on charity and public benefit and developed in the context of changing social and economic conditions.

The current law provides a basis for taking decisions on public benefit but it draws on a limited number of cases. The charity sector is diverse. Charities have a wide range of charitable aims and seek to achieve them through very many different routes. The law on public benefit applies differently in respect of different charitable purposes. Applying principles drawn from a small number of cases involving particular charities

and situations will involve difficult judgments and interpretations of the law to be made by the Charity Commission.



## H2. Assessing the public benefit of new charities

Every organisation entered on the Register of Charities must show positively that it has charitable aims that are, and are carried out, for the public benefit.

When an organisation applies for registration as a charity, we will ask it to explain how its aims are for the public benefit and how it proposes to carry out its aims. In some cases, we may ask the organisation to provide supporting evidence.

We will use the information an organisation provides on its registration application form to decide if its aims are charitable and for the public benefit. In most cases this will be obvious.

Assessing public benefit for applications from organisations using well-known charitable objects and using an approved governing document is likely to be relatively straightforward.

Where it is not straightforward, (for example where the organisation's aims are relatively new or have some unusual feature) we will assess the information carefully against the principles outlined in this guidance.

Where necessary, we will clarify with the applicants what the organisation's aims are and whether those aims are for the public benefit.

Where the aims of an organisation applying for registration do not meet the public benefit requirement, we may, where appropriate, provide advice about how to alter its aims, or restructure its objects, or alter the way it will carry out its aims, to enable it to meet the requirement. Where an organisation cannot demonstrate that its aims are, or will be carried out, for the public benefit, then it cannot be registered as a charity.



## H3. Assessing the public benefit of existing charities

A charity must continue to meet the public benefit requirement throughout its life.

Once registered, charity trustees need to ensure that they continue to carry out their charity's aims for the public benefit. Charities do not have the right to opt out of the charitable sector if they consider their responsibilities to meet the public benefit requirement are too demanding.

In developing our approach to public benefit assessments we will follow the principles of better regulation – proportionate, accountable, consistent, transparent and targeted. Any actions we take will be proportionate, fair and reasonable, taking account of the issues, the risk involved to the charity and its beneficiaries and the capacity of the charity to comply. We will only ask for information that we need. We also wish to avoid duplication and are committed as an organisation to reducing the administrative burden on charities.

Charities cover a diverse range of charitable aims. Whilst every charity must have charitable aims that are for the public benefit, the law does not adopt the same practical measures to assess public benefit in every type of case.

This means that charities with different charitable aims can meet the public benefit requirement in different ways.

In order to provide clear information about how the public benefit requirement is met by different groups of charities, we will issue guidance about what public benefit means for different types of charity.

We have set out below the various ways in which we will assess the public benefit of existing charities. The actions are not necessarily sequential, and may run concurrently. The action we take will also depend upon the nature of the charity, or charitable sub-sector. We will refine and develop our approach in the light of experience and feedback.

**For example, whilst working with charities and their professional and umbrella bodies to help develop our public benefit guidance for specific charity sub-sectors, we may gather information about the extent to which charities in that sub-sector are meeting the public benefit requirement. Or, we may**

**identify examples of how such charities might report on their public benefit. Or, we may undertake pilot assessments, on a voluntary basis, of the public benefit of individual charities in that sub-sector.**

Examples of the information we will use, and actions we will take, to assess the public benefit of individual charities are set out below:

#### **Public benefit reporting by charities**

The information provided in the Trustees' Annual Reports about public benefit will be a useful first step in showing whether a charity's aims are, and are being carried out, for the public benefit.

#### **Carrying out public benefit research studies**

We will carry out research studies showing the extent to which different types of charity are fulfilling the public benefit requirement.

The feedback we obtain from our public consultations on public benefit, and the findings of our research studies, will help to provide more detailed information about how different sorts of charities can meet the public benefit requirement. This, in turn, will help to inform our public benefit assessments of charities.

When deciding which groups of charities to look at first we will take account of areas where the law has changed, such as the removal of the presumption of public benefit, or public interest.

**For example, the law has changed in relation to the public benefit of poverty, educational and religious charities, that previously benefited from a presumption of public benefit. There is also significant public interest in the public benefit of educational institutions and hospitals and other charities that charge high fees.**

As the regulator of charities we have a great deal of experience and information about charities that we will be able to draw on when carrying out these research studies.

#### **Working with professional and umbrella bodies**

We will discuss the issue of public benefit with charities that form part of a particular charity sub-sector, with representative professional and umbrella bodies and with users and potential users of those charities. Where appropriate we will commission more wide-ranging research on how the aims of particular charities are for the public benefit.

We will encourage charities to be innovative in finding new and better ways to meet the public benefit requirement and to encourage the spread of good practice. We aim to stimulate this process by establishing with different parts of the charity sector what is good practice in meeting the public benefit requirement, publicising this and enabling individual charities, where appropriate, to compare themselves with others. This would enable independent boards of trustees working in similar areas to share ideas about how they, and other charities, are achieving results. The improvement efforts that are already being made by many would be showcased more explicitly and we could monitor progress of what has been achieved.

In addition to publishing our sub-sector guidance, we could encourage professional and sub-sector bodies to publish composite reports highlighting the performance of particular charities, showcasing good practice and sector 'norms'. There may also be circumstances where we will produce these.

#### **Detailed assessments of individual charities**

We will use the information we gather from the activities mentioned above to help inform how we select individual charities for detailed public benefit assessment and how we make those assessments.

**For example, we might carry out detailed public benefit assessments on charities:**

- **affected by a change in the law (eg those that no longer benefit from a presumption of public benefit);**
- **about which public benefit concerns were raised during the debate on the Charities Bill (such as fee-charging charities);**
- **where changing social conditions have an impact on the ability of those charities to demonstrate that their aims continue to be for the public benefit;**
- **that either persistently fail to meet the public benefit reporting requirement, or whose public benefit reports indicate difficulties in meeting the public benefit requirement; or**
- **selected on the basis of a random sample.**

We will ask the trustees of individual registered charities, selected for detailed public benefit assessment based on the criteria set out above, to provide a more detailed explanation of how they consider their charity meets the public benefit requirement.

**For example, this might include high fee-charging charities that may have difficulty in demonstrating benefit to people who are unable to afford their fees. Or, charities where there is a high degree of private benefit, where it may be difficult to show that the private benefit is merely incidental.**

We might undertake these detailed assessments by:

- a desk top assessment (assessing the information that we already hold about the charity where that is sufficient for us to be able to make an assessment);
- an assessment by telephone (discussing the charity's public benefit with one of its trustees or member of its staff in order to clarify or supplement information we already hold); or
- a visit to the charity (in order to discuss the charity's public benefit in more depth with its trustees and/or staff where that is necessary and the most effective way of conducting the assessment).

No two charities are exactly the same, so our detailed public benefit assessments will consider each case on its own merits, taking into consideration issues of risk and proportionality and the particular circumstances of the individual charity. Public benefit is such an essential component of what constitutes a charity that it will feature in wider dimensions of the Commission's work also. Public benefit might arise as an issue for consideration as part of, for example, our registration, compliance, or advice work, as well as part of any random sampling or special initiative to examine the public benefit of particular types of charity.

We will publish the results of our public benefit assessments in the form of a general composite report summarising the outcomes of those assessments. We will also publish any key decisions of the Commission on individual cases where that would clarify or enhance our public benefit guidance.

#### **H4. Criteria for assessing public benefit**

When assessing the public benefit of an individual organisation we will consider the following criteria:

- what the organisation's aims are, whether those aims are charitable and whether the aims are fully and accurately reflected in its stated objects;
- whether each of the aims are for the public benefit and whether they will, or may be, carried out for the public benefit, taking into consideration the particular circumstances of the organisation;
- the context within which the aims will be carried out, including what is relevant and appropriate for current social and economic conditions;
- what identifiable benefits arise from the organisation carrying out each of its aims, having regard to any available evidence;
- whether there is any detriment or harm that might arise from the particular organisation carrying out its aims;
- who the organisation's aims are intended to benefit, and whether the beneficiaries are the public generally or a section of the public;
- where the beneficiaries are a section of the public, whether any restrictions on who can benefit are reasonable in relation to the organisation's charitable aims;
- where fees are charged for the organisation's services or facilities, whether the effect of those fees is to restrict benefit only to those who can afford to pay the fees, or whether there are other opportunities for those people to benefit in some material way that is related to the organisation's aims;
- whether people in poverty are excluded from the opportunity to benefit; and
- whether there are any private benefits to individuals or organisations (other than benefits people receive as a beneficiary) that arise from the organisation carrying out its aims and whether those private benefits are incidental.

#### **H5. Working with charities that are not meeting the public benefit requirement**

Where individual charities are not meeting the public benefit requirement we will take further action where necessary.

Where charities are not meeting the public benefit requirement we may seek agreement with the trustees that they alter their objects or the way in which they carry out their aims. In some cases:

- we may decide the trustees are acting in breach of trust. If so, we will take any necessary regulatory

- action that may be needed to ensure that the trusts are complied with (such as giving directions to, or appointing new, trustees); or
- we may decide that it is not possible for the organisation's aims to be carried out in a way that is for the public benefit. If so, we may need to ensure that the charity's assets will be applied in future for other similar charitable aims that will be for the public benefit; or
  - we may decide that the aims were never in fact for the public benefit and that the organisation was mistakenly registered as a charity. If so, we will either ask the trustees to restructure the organisation, or restate its objects so that they are for the public benefit, or we may remove it from the register.

It is not possible to be more specific about what action we might take in individual cases. This is because our approach will be informed by the results of our future work highlighting the ways in which charities with particular aims can meet the public benefit requirement in current social and economic circumstances. It will also depend upon the powers an individual charity has in its governing document to address the issues itself.

It is important to stress that we will be carrying out a great deal of discussion and consultation about how it is to be expected that particular types of charity meet the public benefit requirement. This will inform our more detailed decisions on the public benefit of particular charities on the register. No charity will be expected to make changes to their objects, or the way they carry out their aims, overnight. We will take reasonable account of how much time and resources might be needed by a charity in its particular circumstances to make any necessary changes in order to meet the public benefit requirement. Similarly, we will not take any regulatory action without having first discussed the matter fully with the trustees and their advisers.

## H6. Appeals against our public benefit decisions

If trustees, or other persons affected, are unhappy with one of our decisions regarding a charity's public benefit, they can appeal.

Appeals against our public benefit decisions, such as refusing registration or requiring a charity to amend its objects, should be made first of all under our internal decision review system. Once our internal decision review system has been completed, if they still disagree with the decision, they can make a further appeal against our decision to the Charity Tribunal and, ultimately, to the courts.

However, by seeking to work constructively with charity trustees and by undertaking extensive public consultation on our public benefit guidance, we would hope such circumstances would be rare.

## I. Further information and advice

### I1. Sources of information

There are many resources that charity trustees and their advisers can use to help them understand whether their charity is meeting the public benefit requirement.

You can find details of sources of information on the home page of our website [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk).

### I2. Key Charity Commission publications

We produce a wide range of publications and website guidance giving information and advice to charity trustees and the general public on issues relating to charity law, regulation and best practice.

The full list of **publications** is on our website and in **Charity Commission Publications (CC1)**, but the list below is a selection based on the issues covered in this guidance. Following further public consultation, we will publish on our website supplementary guidance on the public benefit of specific charity sub-sectors.

#### Charity Commission publications:

**Recognising New Charitable Purposes (RR1a)**  
**The Essential Trustee: What you need to know (CC3)**  
**Charities for the Relief of Financial Hardship (CC4)**  
**Campaigning and Political Activities by Charities (CC9)**  
**Payment of Charity Trustees (CC11)**  
**Registering a Charity (CC21)**

**Website publications:**

**Charities and Public Benefit: Summary Guidance for Charity Trustees**  
**Analysis of the law underpinning Charities and Public Benefit (PDF)**  
**Commentary on the Descriptions of Charitable Purposes in the Charities Act**

To obtain copies of these, or any of our publications, you can:

- view and print them from our website [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)
- order during opening hours (Monday to Friday 08:00 – 20:00 and 09:00 – 13:00 Saturdays) by telephoning us on 0845 300 0218 (or 0845 300 0219 typetalk for hearing or speech impaired callers); or
- write to Charity Commission Direct, PO Box 1227, Liverpool, L69 3UG

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