

# Business Helpsheet

## What is meant by public benefit?

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**It is a requirement that charities should be established and continue in existence for the public benefit. From March 2009 charities will need to confirm in their Trustees' Report that they are in fact providing a public benefit.**

This is not a new concept and has been established as a result of case law over a number of years. However, this has come into focus for a number of reasons:

- Many charities previously established for the advancement of religion or education or the relief of poverty were previously automatically presumed to be for the public benefit. This presumption has been removed by the Charities Act 2006 and these charities now need to demonstrate their benefit along with all other charities.
- There is now a legal requirement to report each year in the Trustees' Annual Report ("TAR") that the Trustees have taken into account the Charity Commission guidance on Public Benefit. The TAR will also need to illustrate how in practice a Public Benefit has been achieved.
- The Charity Commission has selected public benefit as the way in which they will evaluate the activities of charities and determine their eligibility for charitable status. A series of pilots are being undertaken into fee-charging charities, for instance.
- The concept is becoming much more codified and The Charity Commission is issuing publications to give guidance to trustees. This includes sector-specific guidance, for example, for fee-charging, educational and religious charities among others.

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If it is this important, what is meant by "public benefit"?

There are two main principles to public benefit. These are much as one would expect:

1. There must be an identifiable benefit or benefits
2. Benefit must be to the public, or a section of the public

The real questions therefore are what exactly is meant by "benefit" and what is meant by "public"? Taking these each in turn:

### 1. There must be an identifiable benefit or benefits

There are a number of separate issues:-

#### a) It must be clear what the benefits are

The Trustees should ensure that the charity is actually making a positive contribution. Just continuing what the charity has always done is not sufficient and there must be some benefits. It is not necessary for the benefits to be measurable but they must be identifiable and capable of being explained.

**b) The benefits must be related to the aims**

Any charity is set up for particular charitable purposes and should only act within those aims and the benefits must be in accordance with this. Only the benefits that arise from the stated aims of the charity will be taken into account by the Charity Commission in determining if the charity exists for the benefit of the public.

**c) Benefits must be balanced against any detriment or harm**

The Trustees need to consider whether there are any aspects of their operation that could be construed as being detrimental or harmful to the public generally. No specific negative comment is required but if there are any such aspects, they and the measures that have been taken to reduce the risk need to be reported.

The Charity Commission quote as an example, providing cars for disabled drivers. This contributes to global warming but this is minimal compared to the benefits.

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

**a) The beneficiaries must be appropriate to the aims**

The number and type of beneficiaries must be appropriate to the aims of the charity. Charity Commission guidance cites the case of a local village hall whose aim is to benefit people living in a particular area. The beneficiaries are likely to be limited to those living in the village both now and in the future. This would be appropriate to the aims of the charity.

It is important however that the number of people who can benefit both now and in the future is not negligible. This principle is therefore expanded to consider situations where the benefit to the public could be seen to be restricted.

**b) Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted by:**

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

**c) People in poverty must not be excluded from the opportunity to benefit**

Sections b) and c) can to a certain extent be taken together as ability to pay fees is by far the most common bar stopping people from accessing the services of charities.

Many fee-charging charities have in the past benefited from a presumption of public benefit but now that this has been removed, all charities need to demonstrate that they comply with the rules. In particular, they need to show that any fees they charge do not restrict their benefits to those that can afford

to pay for them, thus unduly restricting the section of the public that can benefit, and exclude those in “poverty”.

This can be done in a number of ways. Offering discounted or free services is perhaps the obvious but not the only route and alternatives could be providing facilities or services (e.g. a private school providing specialist teaching to the state sector, or a fee-charging hospital providing facilities free to the NHS). However this is provided, it must be consistent with the charity’s objectives and cannot be “tokenistic”. Trustees need to consider whether they are effectively excluding a section of the public by charging fees (or in any other way) and whether this can be justified. If not, they may need to change the way in which they carry out the charity’s activities to widen access.

There is no definition of “poverty” and this will depend on the context in which the charity is operating. It will be different for charities in the UK than those operating in India, for example.

The Charity Commission is currently reviewing the activities of a number of fee-charging charities and further guidance will be provided once this process is complete.

Other restrictions on benefits (say restricting access to either men or women, or to particular racial, religious or geographical groupings) are permissible as long as these are in line with the objects and are reasonable. If the proposed class of beneficiaries is too small, there could be a danger that it does not form a sufficiently large sector of the community to qualify for charitable status.

#### **d) Any private benefits must be incidental**

The aim of a charity must be to provide benefits to the intended beneficiaries and any “private benefit” must only be provided as a by-product of that process. An example of incidental private benefits would be appropriate salaries paid to employees of the charity to help it achieve its aims.

In particular, trustees can only benefit in restricted circumstances where permitted by the governing document or Charity Commission permission.

#### **What do Trustees need to do to comply with the new rules?**

This is the most important change in charity law and practice for a number of years. Although it presents particular problems to fee-charging charities, all charity trustees need to take this seriously. There are implications for all charities not least in the way in which they present their activities.

Particular issues are as follows:

1. Trustees need to make themselves aware of the Charity Guidance on Public Benefit applicable to their charity. They will need to confirm in the Annual Report each year that they have done so. The guidelines can be found on the Charity Commission website:

<http://www.charity-commission.gov.uk/publicbenefit/publicbenefit.asp>

There is a separate guidance applying the general principles to various charitable sectors.

It is not essential to follow the guidance to the letter but Trustees will need to justify any departures.

2. Having reviewed the guidance, Trustees then need to ensure that they are providing a public benefit as defined, and continue to do so. This is not a once-and-for-all exercise but needs to be revisited periodically (for larger charities, ideally annually) to make sure the charity continues to fulfil the purposes for which it is established. This could be viewed as a valuable opportunity to ensure the charity thinks about what it is trying to achieve rather than just continuing with what it has always done.
3. If, having considered the situation, Trustees believe they may not be achieving a public benefit urgent attention needs to be given to ensure this is rectified, either by changing its activities or, in the situation that public needs are perceived to have changed, obtain Charity Commission permission to change their objects.
4. The Trustees Annual Report needs to be drafted in such a way that it makes clear how the charity have achieved a public benefit.

The process of evaluating the charity's activities and drafting the report is the subject of a separate Helpsheet.

We would recommend that Trustees minute their discussions under points 1 to 3, so that if queried it is clear what the thought processes are. If appropriate, a separate working group of the Trustees could be established to research the situation and report back to the main board.

This is a brief summary taken from the Charity Commission guidance but Trustees will need to make themselves aware of the Charity Commission guidance.