

The Public Benefit guidance in more detail

The Charity Commission published its top level "general" guidance on the meaning of public benefit on 16 January 2008. This information sheet looks at the guidance in more detail.

The Public Benefit principles

- Public benefit has been broken down into two main principles, with a number of important factors within each principle.

Principle 1 – There must be an identifiable benefit

- It must be clear what benefits to the public arise from carrying out the charity's aims
 - Such benefits should be capable of being recognised, identified, defined or described although they do not have to be quantifiable or measurable
 - Where benefits are debatable or depend on the circumstances, evidence will need to be shown
- The benefits must be related to the aims of the charity
 - The only benefits that will be taken into account are those which arise as a result of the organisation pursuing its charitable aims
 - Where an organisation has more than one aim, each aim must be for the public benefit
 - Other 'incidental' activities will not be count towards the public benefit assessment
 - An organisation which provides significant benefits which are not related to its charitable aims may be required to widen or restate its aims or cease such activities
 - Any benefit(s) must be balanced against any detriment or harm

Principle 2 – Benefit must be to the public or a section of the public

- The beneficiaries must be appropriate to the aims of the charity
- Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted
 - By geographical or other restrictions; or
 - By ability to pay any fees charged
- People 'in poverty' must not be excluded from the opportunity to benefit
- Any private benefit must be incidental

Your beneficiaries

- Your charity's aims will either:
 - be intended to benefit the public generally; or
 - be intended to benefit a section of the public.
- The actual number of people who can benefit at any one time can be quite small, provided that anyone who qualifies as a beneficiary is eligible to be considered.

Reasonable restrictions - where the public a section of the public is to benefit, any restriction on who can benefit must be legitimate, proportionate, rational and justifiable given the nature of your charity's aims. The following guidance is given:

- restrictions based upon geographical areas (such as a village, town, city, council or country) or charitable need (for example poverty, ill-health or disability) are likely to be reasonable
- restrictions based upon personal characteristics, for example gender, race, ethnic origin, religion or sexual orientation, will only be reasonable where there is a rational link between any such restriction and the charitable aim to be carried out
- any restrictions on public access to facilities should be reasonable, appropriate in the circumstances and lawful
- where you must be a member of a charity in order to benefit, any restrictions on who may join must be reasonable and justifiable in the circumstances. However, charities must not be seen as exclusive clubs, that only a few can join. The more open, outward looking and inclusive the aims, the greater the public benefit
- where the trustees have discretion as to who may benefit, the public benefit requirement is satisfied if the exercise of the discretion is within the charity's object and those who can benefit are a 'section of the public'

Ability to pay fees - after consultation, the Commission has significantly amended its guidance on fee charging by charities. The following principles are helpful:

- charities can charge for services or facilities at above cost, provided such charges are reasonable and necessary in order to carry out the charity's aims, for example maintaining or developing the service provided
- however, where in practice charging restricts benefits to **only** those who can afford to pay the fees; this may result in the benefit not being available to a sufficient section of the public. The fact that services or facilities are provided mainly to those who can afford them does not necessarily mean that the organisation is not operating for the public benefit
- an organisation which excludes people from the opportunity to benefit because of their inability to pay any fees charged would not be operating for the public benefit. This does not mean providing some token (meaning minimal or nominal) benefit to those who are unable to pay the fees; they must be able to benefit in some material way related to the charity's aims
- people who are unable to pay the fees do not have to actually take up the benefit; they must not be excluded from the opportunity to benefit
- The Commission will consider the following four issues:
 - 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. The Commission will look not just at the level of fees but the overall financial commitment

- 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. Charities are encouraged to be positive, innovative and imaginative in considering how to maximise benefits to the public
- whether and how people who are unable to pay the fees may otherwise benefit from those services or facilities
- the nature and extent of the other benefits provided

In more detail –people in poverty must not be excluded

- Irrespective of the restrictions placed on who can benefit, your charity must not exclude **people in poverty** from the **opportunity to benefit** in some material way from each of the charity's aims. This does not mean that people in poverty actually have to benefit.
- The Commission's draft guidance referred to "people on low incomes"; this was widely criticised in consultation as a more relative and less easily understandable term.
- The guidance states that there is no absolute definition of what 'in poverty' means, although it does give three examples, including the charity law meaning of "people who are financially disadvantaged". The meaning of 'in poverty' needs to be considered in the context of your charity's aims, whom those aims are intended to benefit and where it carries out its aims (one size will not fit all).

Reporting on Public Benefit

- From 1 April 2008, your general reporting duties will include a new requirement to report on your charity's public benefit. The extent of the duty depends on the size of your charity:

Large charities – gross income in the financial year + £500,000; or income + £100,00 and aggregate value of assets + £2.8 million	Full explanation in your Trustees' Annual Report of the significant activities undertaken in order to carry out your charity's aims for the public benefit.
Small charities – gross income in financial year ≤ £500,000; or income ≤ £100,00 and aggregate value of assets ≤ £2.8 million	Brief summary in your Trustees' Annual Report of the main activities undertaken in order to carry out your charity's aims for the public benefit.

Assessing Public Benefit

- New organisations seeking charity registration will be required to explain how its aims are for the public benefit and how it proposes to carry them out as part of the registration process, The Commission may ask for supporting evidence.
- The Commission states that it will follow the principles of better regulation in assessing public benefit – proportionate, accountable, consistent, transparent and targeted.
- The Commission will use the following tool kit for assessing public benefit:
 - Public Benefit reporting by trustees in their annual reports
 - Public Benefit research studies – to be carried out starting with: charities for the relief of poverty; educational charities; religious charities; and fee-charging charities
 - work with professional and umbrella bodies to establish good practice and encourage innovation

- carrying out detailed assessment of individual charities – desk top assessments; assessments by telephone; and/or visits to charities
- Failing to report properly is likely to trigger an individual assessment and other regulatory action.

Not meeting the requirement

- Trustees of a charity cannot opt out of the charitable sector if they consider that their responsibilities to meet the public benefit requirement are too onerous.
- If charities are found not be meeting the requirement, the Commission will take appropriate action including:
 - seeking agreement with the trustees to alter their charity's objects or the way in which they carry out their aims
 - taking regulatory action to ensure that the trusts are carried out, for example removing trustees, appointing new trustees or giving directions to trustees
 - applying the assets for other similar charitable aims for the public benefit
 - if the aims were never for the public benefit and the organisation was mistakenly registered as a charity – asking the trustees to restructure the organisation; amending the aims; or removing it from the register

Contact

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