

## A summary of Charity Commission guidance on public benefit and fee charging

The Charity Commission published its guidance on Public Benefit and fee-charging on the 17 December 2008. This information sheet seeks to provide an overview for trustees on the essentials of that guidance. This guidance must be read in conjunction with our top level guidance relating to the delivery of Public Benefit by charities and the overarching principles which is available at [www.bllaw.co.uk/charityinformationsheet](http://www.bllaw.co.uk/charityinformationsheet). The issue of fee charging concerns charities of all types but there is a strong link with charities that aim to advance education.

### Introduction

- The second of the four principles underpinning the delivery of public benefit contains the following conditions:
  - where benefit is to a section of the public, the **opportunity to benefit** must not be unreasonably restricted by reason of geographic or other restrictions **or by the ability to pay fees**, and
  - people in poverty must not be excluded from the **opportunity to benefit**
- This guidance aims to explain what these restrictions mean.
- Understanding the above conditions is critical for fee-charging charities since they will be required to provide evidence of compliance or fail the public benefit test.

### Fee charging as a public benefit issue

- Where a charity charges low fees that most people can afford then the fee charging is unlikely to give rise to public benefit questions. Examples of such charities are:
  - village halls hiring rooms at modest charge
  - community centres with small entry fee
  - libraries
- Charities charging high fees (that many people cannot afford) must ensure that:
  - the benefits are not unreasonably restricted by a person's ability to pay and that
  - people in poverty are not excluded from the opportunity to benefit
  - the benefit must be material - ie significant, important, relevant and tangible, and

- related to the charity's aims - ie a legitimate means by which the charity can advance its aims
- The issue for a fee-charging charity is the effect that charging fees has on the opportunity to benefit and whether or not there is sufficient opportunity to benefit (for people who cannot afford the full fees charged).
- The Commission will consider the following issues when assessing a fee charging charity's benefit to the public:
  - whether the levels at which fees are set have the effect of preventing people who are unable to pay the fees from benefitting from the services or facilities
  - 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
  - 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
- **Opportunity to benefit** means that people who cannot afford fees must not be excluded from benefit and the opportunity must be genuine and meaningful.
- Remote, minimal and chance benefits will not be sufficient to meet the test.

## Opportunity to benefit

- These are at a charity's discretion and could include:
  - offering free or subsidised access
  - providing other significant opportunities to benefit
  - a combination of both
- The totality of 'opportunity' will be taken into account and sufficiency to meet the test will depend on an individual charity's circumstances (eg aims, level of fees, local need, resources available)
- 'Free or subsidised access' may be offered in the following ways:
  - offering concessions, subsidised or free places
  - offering sliding scale fees or reduced price tickets or places or offering selected services or facilities at reduced or no fees
  - drawing upon other reliable sources of funding available to beneficiaries to help meet the fees
  - providing free access to facilities, including buildings, laboratories, research facilities or workshops to other charitable or public service providers, who in turn provide free or subsidised access to the facility(ies).
- Measures designed specifically and exclusively to assist people who cannot afford fees are likely to provide greater benefit than other measures. So in the context of charitable independent schools, financial support in the form of bursaries are of more value in a public benefit test than scholarships by virtue of the targeting of need rather than academic prowess.
- 'Other significant opportunities' might include:
  - providing additional facilities or services for people who cannot afford the fees
  - offering the use of facilities, or lending equipment or staff out to other charities or groups that provide the same or similar facilities or services to people who cannot afford the fees
  - providing a similar service or facility of equivalent standard to people who cannot afford fees by working with an outside body or third party

The opportunities must meet a need and be valued.

- Where a charity charges high fees for a service or facility and that service or facility is a significant part of the charities aims (or the way in which the charity carries out its aims) the opportunities to benefit must be related to that service or facilities (and not relate to other significant opportunities).
- Where the converse is true (ie the charge for service is an insignificant part of the way in which the charity carries out its aims) then the fees charged will be less significant in the public benefit assessment.
- Where the Commission considers that the public benefit requirement is not met then it is likely to suggest ways in which the charity can meet the requirement having regard to what is possible for that particular charity.

A comprehensive list of examples of ways in which fee-charging charities with different charitable aims are set out in Annex C of the Charity Commission guidance <http://www.charitycommission.gov.uk/Annex C>

- These include:
  - independent schools
  - theatres, concert halls, art galleries (ie advancement of education and promotion of the arts)
  - hospitals (ie advancement of health/relief of sickness)
  - care homes
  - heritage or environmental protection or improvement

## Setting fees

- It is the trustees who decide whether fees should be charged and the level at which they are set.
- The trustees must consider what impact the proposed fee levels will have and who will have the opportunity to benefit.
- Where the fee levels exclude people, then the trustees must consider other ways in which the charity can provide sufficient opportunity to benefit including sourcing external funding to reduce fee levels or help pay fees.
- Charities that require a high or long-term financial commitment are likely to have to do more than charities who provide services likely to be required on an infrequent basis who are at a level the vast majority can afford.
- Charging high fees to subsidise people who cannot afford full costs can be appropriate.

## Assessing the impact of offering free or subsidised access

- The trustees must consider the impact of offering free or subsidised access to assess the level of public benefit.
- The following questions are relevant:
  - how is the free or subsidised access offered, including the terms of the application?
  - who may apply - what restrictions are there?
  - where and how widely is it advertised?
  - what does the subsidy cover - core services or additional costs that in reality the beneficiary will have to meet?
  - how long will it (the subsidy) last?

- The trustees will want to consider the practical issues around offering free or subsidised access, fundraising to finance it, cross-subsidies and external funding.
- The certainty of continued external funding (and the sourcing of alternatives in the event of withdrawal) is relevant as is the use of insurance schemes where the genuine ability of people to access services through the use of them is critical.

## Contact

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