

Supporting guidance for charity trustees

The 'public' and 'benefit' elements

Collective Life saving Citizenship Amateur sport
Health Culture Religion
Environmental protection Arts Equality
Community development Heritage
Diversity Public School
Trustees Sports Relief of poverty Need
Racial harmony Committee Benefit Society
Conflict resolution Faith
Governors Not-for profit Elements
Charity Relief of poverty Human rights
Cross-community Reconciliation

Our vision

The Commission's vision is to deliver, in partnership with other key stakeholders in the charitable sector:

'A dynamic and well governed charities sector in which the public has confidence, underpinned by the Commission's effective delivery of its regulatory and advisory role.'

Our values

The Commission aspires to be respected and valued in the execution of its functions and will ensure that in the performance of our role as the charity regulator for Northern Ireland we will be:

Independent: we will maintain independence in our decision making, acting without fear or favour, in the public interest.

Accountable: we will be proactive in accounting to all our stakeholders, which will include involving others on a continuous and appropriate basis and taking responsibility for our decisions.

Proportionate: our actions, procedures and culture will be proportionate to the burden of regulation on charities of different sizes, to the degree of risk involved and to the potential impact within the resources available to us.

Impartial: we will exercise our powers and discretion in a way which is non-partisan and even-handed.

Transparent: we will communicate with and listen to our stakeholders and will be clear about our actions, intentions and expectations.

Consistent: we will act consistently in our decision making.

Equality and accessibility

The Charity Commission for Northern Ireland is totally committed to equality and diversity in all that we do.

We intend to make all of our guidance available to all stakeholders. We will aim to meet all accessibility needs and offer other languages and formats for this guidance, for example Braille or audio or meet any other requirements needed in line with the Commission's Equality Scheme.

If you have any accessibility requirements please contact us.



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Section 1: What is the benefit element?

1.1 What are benefits?

Definition

There are different types of benefit that a charity may provide:

- direct benefits: these are the benefits that **beneficiaries** receive through the charity carrying out its purpose (for example patients benefiting from attending a charitable hospital);
- indirect benefits: these are benefits that are received in ways other than through the charity carrying out its main purpose (for example a charity which assists nurses through funding or accommodation will indirectly benefit the patients who are cared for by those nurses);
- wider benefits: these are benefits which the community at large receives as a result of the charity's **purposes** (for example the benefits to society from having a healthier population). Wider benefits are only relevant to public benefit where they relate to the charity's purposes.

Benefits may look very different depending on what the charity is set up to achieve.

Examples

Different sorts of benefits that might result from a **charitable purpose** include:

- individuals becoming well as a result of receiving medical care;
- enhanced knowledge and understanding of young people through receiving an education;
- the relief of people in poverty through grants, clothing or food;
- enhanced public understanding of history through access being granted to a historic building;
- improved community life through sports and recreation facilities being maintained so that they can be used by a local community;
- people gaining inner happiness by caring for injured or abandoned animals;
- an important landmark being preserved for the enjoyment of future generations;
- encouraging people, through worship in church, to behave better.

1.2 Are the benefits related to the charity's purposes?

We will only assess benefits which relate specifically to the charity's **purposes** when considering the public benefit of a charity.

It is therefore very important that trustees have a clear understanding of the charity's purposes.

Where a charity's work gives rise to significant benefits that are not related to its purposes, this may indicate that the charity is carrying out **activities** that fall outside its purposes.

This might result in us:

- suggesting that the charity reviews its **governing document**; or
- asking the **charity trustees** to stop those activities which are not in line with its purposes.

Incidental benefits

Sometimes there may be **incidental** benefits that result from a charity achieving their **charitable purposes**. For example, a charity whose **purposes** are to relieve poverty may have a number of volunteers. The volunteers may find their lives enriched by the **activities** they are carrying out.

This is a benefit not related to the charitable purposes and, while worthwhile, will not be taken into account when assessing the charity's public benefit.

1.3 Do the benefits outweigh any detriment or harm?

Carrying out a particular purpose may be of some benefit to the public but, in achieving that benefit, there may also be some **detrimental or harmful** effects.

The existence of detriment or harm does not necessarily mean that the purpose is not charitable. However, the benefits should outweigh any detriment or harm. Whilst activity need not be illegal for it to be detrimental, any illegal activity will most certainly be detrimental.

An organisation cannot be a charity where there is clear evidence of more detriment or harm than benefit from carrying out its **purposes**.

For example, it may be considered that providing a car for a person with a disability means that there would be an adverse harmful effect on the environment. However, it could be argued that the benefit of providing transport and independence to those who would not otherwise have had it outweighs the detriment to the environment.

Examples

Examples of possible detriment or harm resulting from a charity's purposes include anything that:

- risks health and safety;
- risks children or other vulnerable people;
- is damaging to the environment;
- is dangerous, such as a dangerous sport;
- encourages violence or hatred towards others;
- unlawfully **restricts** a person's freedom.

1.4 Are the benefits clear?

Clear benefits are those that can be:

- recognised;
- identified;
- defined; and,
- described.

For a charity's purpose to satisfy the benefit element of public benefit, the benefits must be clear.

Some benefits are clearer, more measurable and easier to identify than others. For example, it is easy to identify the benefits of carrying out a purpose to relieve poverty where the objective is to improve a person or group's financial circumstances.

Other benefits are more difficult to measure, but are still clear:

- the sense of well-being from appreciating a beautiful landscape;
- a sense of inspiration from appreciating the performing arts;
- improved behaviour as a result of being involved in a public act of worship;
- the public feeling positive when sick animals are cared for.

Section 2: What is the public element?

2.1 How do you know your intended beneficiaries?

Your charity's intended **beneficiaries** are the people who can benefit from your **charitable purposes**. Anyone who could benefit is a potential beneficiary.

For a charity's purposes to satisfy the public element of public benefit, the potential beneficiaries must be:

- the general public; or
- a **sufficient section** of the general public.

All purposes must meet the public element of public benefit however there are limited exceptions for **charities** whose purpose is to relieve poverty.

When deciding who potential beneficiaries are and who they should be, trustees can include members of future generations. For example, promoting sustainability of the planet for future generations. However, this should not come at the expense of people today.

2.2 What is a sufficient section of the public?

This depends on the **charitable purpose**. For some **purposes**, the benefit will be to the public generally. For others, a section of the public will be sufficient. For example:

- a charity providing a local community centre need only benefit people living in the particular community;
- a medical research charity need only benefit the sufferers of a particular disease.

There is no set minimum number of people who have to benefit from a charity's purpose in order for it to be for the public benefit. The actual number of people who benefit at any one time can actually be quite small, as long as anyone who could qualify for benefit is eligible. For example:

- a charitable care home may offer only a small number of rooms as long as anyone who is eligible to apply can be considered for those limited places;
- a charity set up to support sufferers of a very rare illness may only benefit a few people (the small number affected), however this is fine provided that anyone who suffers from the illness can potentially benefit.

A charity cannot be set up to benefit a named individual or individuals. However, a charity can be named after a specific individual, for example a founder or beneficiary.

A '**sufficient section** of the public' includes but is not limited to people who:

- are connected by a particular charitable need or social circumstance;
- share an occupation;
- share a geographical **restriction**;
- share a common characteristic or disadvantage, for example:
 - children and young people;
 - elderly people;
 - people with a disability;
 - people with a particular disease or medical condition;
 - people in poverty.

2.3 What are restrictions and when are they justified?

Restrictions

Depending on circumstances, it may be possible for a charity to **restrict** the benefit it provides. This part of the guidance explains restrictions that **charities** might place on who they benefit.

Where benefit is restricted, in order to determine if the restriction is justified, the **charity trustees** must consider:

- the **purposes** of their organisation;
- why the restriction is there;
- the need of the **beneficiaries**;
- the resources available to the organisation.

Restrictions are only justified if the method justifies the end benefit, or is the only and best way of achieving that benefit.

Types of restrictions

When benefit from a **charitable purpose** is **restricted**, the restriction must be justified.

Restrictions may be:

- incorporated into your charity's **purposes**, for example where a charity's purpose is to support women who have been victims of domestic abuse; or
- operational, for example where a charity's trustees decide, for economic reasons, that they can only provide a service in a specific geographical area. This type of restriction can be reviewed by trustees as resources increase or decrease.

Areas of restrictions

The following section provides some practical examples of areas where **charities** may **restrict** their benefits. For each area, there are examples of both purpose and operational restrictions.

The areas are:

- geographical restrictions;
- need restrictions;
- **personal characteristics** restrictions;
- access to facilities;
- membership restrictions;
- charging.

Geographical restrictions

A geographical area may be local, national or international as long as it is an identifiable area.

The geographical area of benefit does not have to be in Northern Ireland. A charity can be set up in Northern Ireland, but its **beneficiaries** can live elsewhere, for example in a less economically developed country.

Purpose examples:

- relieving poverty in an area of particular social deprivation;
- providing education to children in a particular catchment area.

Operational examples:

- limiting the provision of 'meals on wheels' to older people in a particular city because the organisation does not yet have the funds to extend the service throughout the county;
- a school's admissions policy might give preference to children living within its locality.

Need restrictions

A charity may **restrict** benefits to people who share a particular need.

Purpose examples:

- Provision of accommodation to those in need of it by reason of poverty.
- Provision of healthcare to persons in need of it in consequence of suffering from a particular disease.

Operational examples:

- A charity for the relief of those in need by reason of disability might focus on assisting people with a particular form of disability.
- A charity for the advancement of education might advance that purpose by operating a school for children with special educational needs.

Personal characteristics restrictions

A charity may sometimes **restrict** the benefits to people who have particular **personal characteristics**. Personal characteristics include:

- age;
- disability;
- gender;
- marital status;
- religion;
- political opinion;
- ethnicity;
- sexual orientation;
- having dependants such as children;
- employment status;
- personal connections such as a family relationship or association with a particular employer.

Purposes examples:

- tuition in the English language for people from minority ethnic communities;
- improved mental health through the provision of therapy for older people.

Operational examples:

- placing a **restriction** on children who can use a play park based on age due to health and safety regulations;
- an educational charity might operate a school for boys only, or for girls only, or for children between 11 and 18 years of age only.

Access to facilities restrictions

If a charity runs a facility for the public benefit, any **restrictions** on public access must be justified in the circumstances.

Restrictions might include:

- who can access the facility;
- what can be accessed; and
- when it can be accessed.

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

For example, where appropriate, trustees must have regard to the provisions of the equality law regarding the provision of physical access to buildings for people with disabilities.

Purposes examples:

- providing safety and security at a refuge to women who have been victims of abuse;
- advancing education through a youth club that is only open after school hours.

Operational examples:

- limiting the opening hours of a heritage site in order to prevent wear and tear to the site;
- providing a care home which, due to the size of the building, can only accommodate a certain number of people.

Membership restrictions

A charity can deliver its benefits through a membership structure. In some cases, people have to be members of a charity in order to benefit. In other cases, benefits extend beyond the membership.

A club supported by its members for the purpose of providing benefits to themselves is not for the public benefit and cannot be a charity. The benefits here are **private** in nature, rather than public. For example, a fee charging tennis club which **restricts** its membership, and limits benefits to those members.

Trustees cannot adopt an arbitrary method of implementing a membership policy so as to ensure, for example, that the membership does not contain people that might oppose their views.

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

Where people do not have to be members to benefit, then 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. However, the wider public may benefit from:

- learned articles published by the society;
- the application of the knowledge to relieve sickness gained by a medical professional from being a member of a professional body or learned society.

Purposes examples:

- advancing religion through the provision of a Sunday school club which is open to members of a particular religion;
- a professional body or learned society whose purpose is to advance science may restrict membership to members of a particular profession or to people who have certain academic qualifications.

Operational examples:

- Where practical reasons, such as limited space, dictate a limit on membership numbers it would be reasonable to have a waiting list and allocate new memberships as they become available;
- Limiting membership of a university society to members of the university.

Charging

Charities can charge a fee for the services or facilities they offer. They usually do this because:

- the services or facilities they provide are expensive;
- they need to charge in order to operate.

Nature of the charge

A charge can range from something small or one-off such as small entry fees to attend events at a community centre or the annual membership of a scouting group, up to a large annual fee for moving into a residential care home.

Case law tells us that a charity's **purposes** cannot **restrict** its benefits in a way that excludes the poor. This includes people of **modest means**, not just the very poorest in society.

It is the duty of trustees to run their charity so that its purposes provide a public benefit. This is not possible if the poor are excluded from benefiting.

Making provision for people who cannot afford high fees or charges

If a charity charges high fees, trustees must make some provision for people who cannot afford them in order to be operating for the public benefit. This provision must be related to the charity's purpose, for example in the case of a school, to advance education, and must be more than 'tokenistic'.

A recent tribunal case in England and Wales found that it is up to trustees to justify and decide what provisions they should make, but examples include:

- offering reduced fees or other financial support;
- extending benefits to people other than those who can afford the fees or charges;
- out of school educational **activities** for pupils from local, non fee-charging schools.

Examples of provision for people who cannot afford high fees or charges

The following are simply examples of how a charity which has to charge a high fee might make provision for the poor, or for people who cannot afford the full fees.

Examples include:

- universities offering means tested bursaries or other types of assisted places;
- fee-charging schools sharing educational or sports facilities with non fee-charging schools;
- art galleries or theatres offering concessionary tickets;
- a care home inviting local people who are elderly and in need, but living in their own homes, to join the residents for meals or recreational **activities**;
- conservation charities offering reduced membership fees or providing free publications.

Restrictions on purposes:

- it is unlikely that the purposes set out in a charity's **governing document** would refer to the charging of fees, but it might include a power to do so.

Operational restrictions:

- limiting access to a stately home to people who have paid an entry fee in order to maintain the building;
- charging a weekly subscription for a junior sports club in order to pay for the services of a coach.

2.4 What about equality legislation?

All organisations, including **charities**, are subject to equality legislation. The Equality Commission cites the main equality laws in Northern Ireland as being the following:

- Equal Pay Act (Northern Ireland) 1970 (as amended)
- Sex Discrimination (Northern Ireland) Order 1976 (as amended)
- Disability Discrimination Act 1995 (as amended)
- Race Relations (Northern Ireland) Order 1997 (as amended)
- Fair Employment and Treatment (Northern Ireland) Order 1998 (as amended)
- Northern Ireland Act 1998
- Equality (Disability, etc.) (Northern Ireland) Order 2000
- Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003
- Special Educational Needs and Disability (Northern Ireland) Order 2005
- Disability Discrimination (Northern Ireland) Order 2006
- Employment Equality (Age) Regulations (Northern Ireland) 2006
- The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006

The Northern Ireland Act 1998 makes it illegal for public authorities (some of whom are charities) to discriminate against people on account of the following nine characteristics:

- age;
- having or not having a disability;
- gender;
- marital status;
- religion;
- political opinion;
- ethnicity;
- sexual orientation;
- having or not having dependents.

Charities must have due regard to these laws in carrying out their **charitable purposes**.

Exceptions for charities

There are some exceptions to these pieces of legislation for **charities**. A charity is allowed to limit its benefits to people who share one of these nine characteristics, for example only women, or only people of a certain age, if:

- the **restriction** is linked to the charity's purpose;
- the charity's purpose is to tackle a particular disadvantage faced by people who share one of these characteristics;
- the restriction is aimed at achieving a legitimate aim in a fair, balanced and proportionate way.

For example, it may be reasonable to restrict **beneficiaries** on the grounds of gender where the charity's purpose is to:

- protect victims of gender-related violence; or,
- promote gender equality.

It is the responsibility of charity's trustees to show that, in the context of its **purposes** and circumstances, any restriction is connected to the purposes in a way that is legitimate, proportionate and rational.

For example, a refuge for victims of domestic violence could restrict entry to female victims only, or to male victims only.

2.5 What do we mean by incidental benefits?

For a charity's **purposes** to satisfy the public element of public benefit, benefits to people who are not the intended **beneficiaries** must be no more than **incidental**. This is because a charity's purposes must be for public, rather than **private benefit**.

To be properly regarded as an incidental benefit the benefit should normally be significantly less valuable than the main charitable benefit provided to the beneficiaries.

Benefits to people who are not the charity's intended beneficiaries are incidental when they:

- contribute towards achieving the charity's purposes; and/or,
- are a necessary result or by-product of carrying out the purposes.

Examples include:

- paying charity employees for example the manager of a charity shop;
- paying professional veterinary fees for the treatment of animals at an animal sanctuary;
- local businesses benefiting from increased trade as a result of a charity undertaking projects to regenerate the area;
- payments to suppliers of goods and services;
- payment of subsistence, accommodation and other living expenses to religious leaders;
- an artist whose work is featured by a charity advancing an appreciation of the arts may benefit from having their profile raised;

- local health boards or trusts may make savings by contracting **charities** to carry out work for them.

Above all, **charity trustees** must ensure that any benefits to people other than their intended beneficiaries are:

- a result of carrying out their charity's purposes;
- for the public benefit and not for private benefit.

An example of a private benefit is where a charitable concert hall allocates seats to trustees for events at no cost, however the trustees sell those seats and benefit financially.

Benefits to trustees

Trustees cannot receive any benefit from their charity in return for any service they provide to it, unless:

- there is an express clause within their **governing document** which permits the payment of trustees;
- it is permitted by statute; or
- we give them express authority to do so.

This does not, of course, include reasonable out of pocket expenses which are not viewed as 'benefits'.

Trustees should not be subject to any conflict between their duties to their charity and their personal interests. Trustees have to disclose any benefits they receive in the charity's accounts.

Benefits to trustees include those which come to them through their relationship with a **connected person** who receives a benefit from the charity, other than as a beneficiary. For example, as an employee or as a provider of goods and services.

Useful publications

Statutory guidance on public benefit

The prevention or relief of poverty supporting guidance

The advancement of education supporting guidance

The advancement of religion supporting guidance

The advancement of health or the saving of lives supporting guidance

The advancement of citizenship or community development supporting guidance

The advancement of the arts, culture, heritage or science supporting guidance

The advancement of amateur sport supporting guidance

The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity supporting guidance

The advancement of environmental protection or improvement supporting guidance

The relief of those in need supporting guidance

The advancement of animal welfare supporting guidance

Any other purposes supporting guidance

Glossary

Frequently asked questions (FAQs)

For more information on all of our work please see the Charity Commission website:

www.charitycommissionni.org.uk

Our preferred method of contact is email:

admin@charitycommissionni.org.uk

The Charity Commission for Northern Ireland (CCNI) is the new regulator of charities in Northern Ireland, a non-departmental public body sponsored by the Department for Social Development.

Our aims

- the Commission aims to develop a regulatory framework in which the public have confidence and in which charities can grow and flourish, clear in the knowledge of their rights and responsibilities;

And

- manage the establishment of the organisation to a statutory non-departmental public body following the full implementation of the **Charities Act (Northern Ireland) 2008**.

Further information about our activities is available from:

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