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BRIEFING PAPER

Public Benefit Guidance

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Under the Charities Act 2006 it is now a requirement for ALL charities to demonstrate that their activities and purposes meet the public benefit test. This means that the Charity Commission may need to consider the potential consequences of an organisation carrying out a particular purpose. This is a complex area and the Charity Commission has published its draft public benefit guidance.

The Charity Commission has identified four principles which show whether an organisation provides benefit to the public. These are:

1. There must be identifiable benefit

- a. A charity must be clear about what benefits its activities provide to the public
- b. Depending on how the charity is set up the nature of the benefits may look very different
- c. Charities can provide different benefits to the public but must not fulfil a political purpose
- d. Benefits must be weighed against any detriment (disbenefits) or harm

2. The benefit must be to the public, or to a section of the public

- a. Who the "public" is made up of will depend on the charity's purposes
- b. It is not a matter of numbers. The "public" can include groups, communities, society or humanity. It can include geographical, social or economic communities and is not just restricted to the UK
- c. Benefit may be to sections of the public (rather than the public at large) where restricting the benefit in this way is relevant to the charity's purposes

3. People on low incomes must be able to benefit

- a. The term "people on low incomes" is not defined
- b. In England and Wales for example, it would typically include households living on less than 60% of the average income (both before and after housing costs are taken into account) and people living on or below the level of income support
- c. It does not generally include people who have a low income and lots of assets
- d. Charities can charge for their services but where the charges effectively exclude people on low incomes from benefit, either because they cannot afford or do not have access to other funding to pay the fees, this is likely to affect public benefit

4. **Any private benefit must be incidental**

- a. Private benefit occurs when an individual or organisation gains from receiving a benefit. In some cases this may be charitable and in some cases not
- b. Charities can provide private benefits where benefits directly contribute towards achieving the charities purposes and/or are incidental to carrying out these purposes
- c. A charity's public benefit must outweigh any private benefit

The Charity Commission suggests that Charities should ask themselves the following questions in order to assess the public benefit they provide:

1. What benefit(s) does your organisation provide?
2. How do those benefits help fulfil your organisation's purpose(s)?
3. Who is your organisation primarily set up to benefit?
4. Does your organisation provide wider benefits to the community or society generally? If so, how?
5. What criteria does your organisation use to select beneficiaries? Is anyone excluded from being a beneficiary? If so who and why?
6. Does your organisation have a membership where someone must be a member to benefit? If so, is it open to anyone to join? If not, who can join and why?
7. Does your organisation provide facilities for, or services to, the public? If so, what, if any restrictions are there on what people can have access to or who can have access?
8. Does your organisation charge for its services? If so, how are charges set? Is everyone charged the full rate?
9. How are people on low incomes able to benefit from your organisation?
10. Does anyone receive private benefits from your organisation? If so, what benefits do they receive? How do those benefits contribute towards achieving your organisation's purposes and/or to what extent are they incidental?

The Charity Commission has also published "Citizens' Standards on Public Benefit" and these are:

1. Responding to need

- a. Responding to need is seen as the essence of charitable activity
- b. Charities should benefit particular groups in society such as the poor, sick, elderly or disabled
- c. Charities are also seen as able to help fill gaps in state provided services
- d. In terms of how many people should benefit – the public feels that it is legitimate for a charity to benefit a small number of people if those people are in great need. However, if the benefits are less obvious or more subtle and are not responding to great need, then a greater number of people should benefit

2. Enhancing lives

- a. Charities should strive to make an improvement to society and, in so doing benefit as many people as possible
- b. Charities should seek to enhance people's lives by providing obvious benefits to their beneficiaries as well as subtle benefits to the wider community
- c. Charities are seen to enhance lives by allowing people to volunteer and get involved with charitable activities

3. Education and development

- a. Education here covers the broadest possible terms
- b. There are several aspects to the education charities can provide, including personal improvement and the edification of beneficiaries/volunteers
- c. Charities are expected to share their specific knowledge and skills with beneficiaries, volunteers and the wider public. The public welcomes the opportunity for charities to develop public understanding of their charitable cause

4. Fostering a sense of community

- a. Charities are seen as caring about others and tackling problems in society
- b. They help create awareness of social problems and inequalities and reach out to the community
- c. People believe that charities should promote social cohesion through their activities and should also be socially inclusive as possible and engage the wider community – especially charities that cater for particular religious or cultural groups

5. Consideration for future generations

- a. Charities are believed to act as guardians of heritage, cultural practice and the positive, cohesive structures of society
- b. Charities that consider the knock-on effects of their activities for future generations provide greater benefit than those that focus only on the present

To help charities meet the requirements of the Public Benefit test, the Charity Commission has identified two key principles:

1. There must be an identifiable benefit or benefits
 - a. It must be clear what the benefits are
 - b. The benefits must be related to the aims (objects and activities)
 - c. Benefits must be balanced against any detriment or harm

2. Benefits must be to the public, or a section of the public
 - a. The beneficiaries must be appropriate to the aims
 - b. Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted:
 - i. by geographical or other restrictions or
 - ii. by ability to pay any fees charged
 - c. People in poverty must not be excluded from the opportunity to benefit
 - d. Any private benefit must be incidental

Questions to help assess public benefit:

What are the benefits that arise from your Charity's aims?

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?

Who are the intended beneficiaries of the Charity?

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?

Does anyone receive any private benefits from the Charity, other than as a beneficiary? If so, what benefits do they receive? Are those benefits incidental?

Based on information taken from the Charity Commission's "Consultation on Draft Public Benefit Guidance" – August 2007 and Annex to the Application Guidance Notes – April 2008.

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