



Charity FAQs: Public benefit

What is public benefit?

Public benefit is the legal requirement that every organisation, set up for one or more charitable aims, must be able to demonstrate that its aims are for the public benefit if it is to be recognised, and registered, as a charity.

Until the implementation of the Charities Act 2006, the public benefit requirement was implicit and it was assumed that if a charity was registered, then it was operating for the public benefit. The 2006 Act made the requirement explicit. New charities now have to set out how they meet the public benefit test as part of the application process and will not be registered if the Charity Commission is not satisfied that the charity will provide sufficient public benefit. Existing charities will need to consider how they meet the requirement and, if required, change the way they operate to ensure they do.

How is public benefit assessed?

Charity Commission guidance sets out two key principles, both of which have to be met:

Principle 1: There must be an identifiable benefit or benefits

- Benefits must be clear, i.e. they must be capable of being recognised, identified or described but they do not need to be capable of being quantified or measured. Emotional benefits are valid.
- Benefits must be related to the aims, i.e. they must flow from the aims and not be incidental. It is thus important that a charity is clear about what its aims are.
- Benefits must be balanced against detriment or harm, i.e. there must be a net overall benefit. There must be real evidence of detriment or harm and the existence of some may not preclude the aim being for the public benefit – it's a question of balance.

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

- Beneficiaries must be appropriate to the aims. The actual number of potential beneficiaries at any point can be small in number, but should not be negligible. Future, as well as current, beneficiaries can be considered. The important point is that the constituency is large enough and anyone within the constituency is eligible to be considered.
- Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted. Restrictions can be imposed if a charity does not have the resources to meet the need of all potential beneficiaries, but restrictions must be legitimate, proportionate, rational and justifiable.
- People in poverty must not be excluded from the opportunity to benefit. Whatever other restrictions are reasonable applied, charities in all cases must ensure that people in poverty are not excluded from the opportunity to benefit.
- Private benefit must be incidental to delivering the charity's aims and directly contribute to achieving the aims or a by-product of carrying out those aims. Generally, this means that the private benefit follows some action taken with the intention of furthering the aims and the private benefit is reasonable in the circumstances.



What does this mean for trustees?

Trustees now have statutory duties in respect of public benefit to:

- ensure they carry out the charity's aims for the public benefit
- have regard to guidance published by the Charity Commission
- report on the charity's public benefit in the Trustees' Annual Report for all accounting periods beginning on or after **1 April 2008**.

How can trustees ensure that they meet these duties?

- When setting aims and objectives, and deciding on activities, trustees need to explicitly ensure that the activities fall within these aims and are delivered for the public benefit. Trustees should record the basis on which they came to this conclusion and set benchmarks for how this will be measured or quantified.
- When setting restrictions on access, trustees need to be sure that access is based on fair criteria.
- When setting fee levels for activities, trustees must ensure that the level of fees should not be prohibitive and concessions should be considered for the poor.
- Provide a clear explanation in the Trustees' Annual Report on how each aim has been met for the public benefit.

What are the consequences if a charity can't demonstrate that it meets the public benefit requirement?

Charities cannot decide to give up charitable status and carry on with their activities as this would, in effect, be a transfer of charitable assets to a non-charity. Trustees may be personally liable to repay any funds so transferred. Trustees need to take remedial steps. Some possibilities are:

- change the way they restrict access to benefits
- change the activities they undertake
- change the objects
- change the aims
- transfer assets to another charity or consider merging.

Charity Commission approval may be needed for some of these options and charity trustees can always seek individual guidance from the Charity Commission.

Additional guidance

Official Charity Commission guidance on public benefit can be downloaded from the Commission's website at: www.charitycommission.gov.uk/publicbenefit

This briefing note is intended for guidance only. No decisions or actions should be taken without seeking professional advice specific to your charity.

Myers Clark provides a wide range of advice and support services to charities. If you would like to discuss how we can assist you with meeting the public benefit requirements, or any other matter, please do not hesitate to contact us.