

# Reporting public benefit

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Please ask questions as we go along

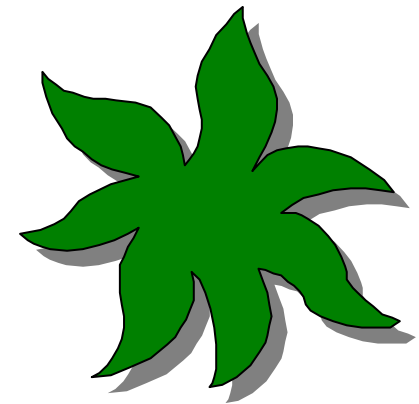


**With time afterwards for discussion**

# What has changed?

**The presumption that a charity which advances religion or education or relieves poverty is for the public benefit has been removed**

**Such charities must now meet the public benefit requirement**



# Resume by way of introduction (1)

**Public Benefit** an ancient concept

There are now 13 heads of charity in (England & Wales) – the Scottish list is slightly different !

A charity's purposes:

- Must fall within one of these heads; *and*
- **Must be for the *Public Benefit*** in order to be charitable

Nothing charitable ceased to be so and nothing previously not charitable became so upon Charities Act 2006 coming into force

# Resume by way of introduction (2)

By careful drafting existing case law on *Public Benefit* has been preserved.

Parliament has not defined *Public Benefit* (ie what does it actually mean ?) in favour of:

- Charity Commission (for England & Wales)
- Charity Tribunal
- Courts

New duty to report *Public Benefit* in the Trustees' Annual Report

# Charities Act 2006

## **Heads of Charity (England & Wales)**

Poverty

Education

Religion

Health or saving lives

Citizenship or community development / Arts, culture, heritage or science

# Charities Act 2006

## **Heads of Charity (England & Wales) continued**

Amateur sport

Human rights, conflict resolution or reconciliation

Environment protection or improvement

Relief of those in need

Animal welfare / Efficiency of the Armed Forces of The Crown

Other Charitable purposes

# *Public Benefit* – what is it ? - Guidance

The Charity Commission is charged under the Act with:

- promoting awareness and understanding of the *Public Benefit* requirements; and
- issuing guidance on *Public Benefit* to which Trustees must have regard

The Guidance issued 2008 - two key principles of *Public Benefit*

**Principle 1** - there must be identifiable *benefit(s)*

**Principle 2** – benefit must be to the *public* or section thereof

Subsidiary guidance issued December 2008

# Public benefit

- **What does this mean for religious charities?**
- **What does the religious sector-specific guidance say?**



# Public Benefit – Guidance – Religion (1)

Compared with the draft guidance:

- charities for advancement of religion may relieve poverty and provide education without necessarily having these activities included as separate aims in the objects – an important understanding; such activities can be used to demonstrate provision of **Public Benefit** by such charities in advancement of religion
- promoters of only particular *tenets* of a religion are now viewed more sympathetically as long as provision of **Public Benefit** does not fail and regard is had to the wider *tenets*
- requirement for a *moral* or *ethical* code has been replaced by the more flexible terminology of a *framework*

# *Public Benefit* – Guidance – Religion (2)

Compared with the draft guidance (cont):

- proselytising is an accepted means of advancing believe in a religion providing harm is not caused & thus be capable of being considered for *Public Benefit*
- the requirement that only social welfare work carried out as a result of an obligation should be considered to qualify as advancing religion has been removed
- a religion's activities must be related to its aims
- charities operating internationally will no longer be required to consider whether their activities would adversely affect UK diplomatic or economic interests

# Duty to report public benefit

**What is this?**

**What does it look like in practice?**

**See Dorsetshire Drugs Advice Centre Example Accounts from the Charity Commission and my note**



# *Public Benefit* – Guidance Duties & Reporting (1)

## Trustees *Public Benefit* duties:

- ensure carry out charity's purposes for *Public Benefit*
- have regards to guidance published by the Charity Commission from time to time
- report on their charity's *Public Benefit* in their Trustee's Annual Report

# *Public Benefit* – Guidance Duties & Reporting (2)

Overall **Reporting** requirement: Annual Trustees Report must include a:

- report of those activities undertaken by a charity to further its charitable purposes for the ***Public Benefit***
- statement by the charity trustees as to whether they have complied with their duty in section 4 of the Charities Act 2006 to have due regard to ***Public Benefit*** guidance published by the Charity Commission.

**Detail required** depends on size of charity in question

# *Public Benefit – Guidance Duties & Reporting (3)*

## **Reporting (cont):**

**Larger charities** need to report addressing their remarks to each of the effectively 7 criteria used for considering **Public Benefit**

**Larger charities** are those above the audit threshold:

- gross annual income over £500k or
- gross income exceeds £100,000 and total assets exceed £2.8m

Refer to example on CC website ***Dorsetshire Drugs Advice Centre***

# *Public Benefit* - Implications

CC will assess whether:

- purposes for organisations applying to register as charities are for the ***Public Benefit***

and

- charities already registered continue to meet the ***Public Benefit*** requirement

# *Public Benefit* - Implications

## How will this be done ?

The Charity Commission states that it will:

- carry out research studies on the extent to which differing charities are meeting requirements;
- work with representative professional and umbrella bodies and users;
- assess some charities in detail (inadequate reporting of *Public Benefit* aspects in Trustees Reports could lead to CC assessment, enquiry and regulatory action);

CC's decisions will be influenced by current social and economic conditions.

# *Public Benefit* - Implications

## **Working with individual charities**

The Charity Commission states that it will:

- advise Trustees of what needs to change to meet the ***Public Benefit*** requirements;
- give clear reasons and advice on what happens next where it is not possible to meet the requirements;
- take reasonable account of time and resources needed to effect necessary change which is not expected to be overnight.

# *Public Benefit - Decisions*

## **Contesting decisions**

There are three steps/stages:

- request review of a decision using CC's internal decision review procedures;
- appeal to Charity Tribunal;
- the Courts.

## **Ultimate sanction**

Removal from Register ! With implications for funds, assets and so on.

# *Public Benefit* - Implications

The bottom line is the question of individual charitable status

but remember

the Government's assurance that it was merely updating charity descriptions (nothing currently charitable would necessarily fall and nothing not charitable would so become) and that relevant *Case Law* has been preserved.

# *Public Benefit* - Conclusions

**Guidance** issued by CC.

- general guidance
- sub-sector guidance re:
  - the **Prevention and Relief of Poverty**
  - the **Advancement of Religion**
  - the **Advancement of Education**
  - **Fee-charging**

## *Public Benefit – Conclusions (cont)*

We should now (if we have not already done so):

- review arrangements with clients in relation to their awareness and understanding of the guidance as it affects their charity and the personal obligations of Trustees
- ensure that clients review and consider their Objects and Activities
- ensure that appropriate legal advice is taken as may be required

# *Public Benefit* – Conclusions (cont)

We should now (if we have not already done so):

- consider treatment of non beneficial activities (therefore not charitable) relative to taxation status and effect on the financial statements
- check reporting compliance re *Public Benefit* in Trustees Report in due course;

**Note:** for larger charities where the onus is greater, this should not be left to the last minute but addressed in detail early on in the year under review

# Final thoughts

**How do we avoid 'boiler plate' disclosure?**

# Final thoughts

**To what extent should disclosure change year on year?**

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