

PUBLIC BENEFIT

It has always been a requirement of charity law that charities must operate for the public benefit. Thus the beneficiaries of a charity cannot be, for example, simply one's own family and friends but must be, or be capable of being, the public at large or a section of it, chosen on rational grounds appropriate to the benefit in question. As for that benefit, before the Charities Act 2006, religious and educational bodies and those devoted to the relief of poverty and suffering were presumed to be beneficial to the public. This was fairly uncontroversial in the second two cases, but perhaps less so for religion.

This presumption has now been abolished. All charities must now demonstrate the ways in which they will provide public benefit in carrying out their charitable purposes.

The Charity Commission is particularly concerned about any factors which may exclude any significant section of the public, for example, by reason of gender, residence or age, but in the most sensitive cases because of poverty. Thus independent schools and private hospitals or homes from which the majority of the public is, in effect, excluded because of the level of fees charged, are especially controversial. This is also, of course, a matter of political debate especially as expensive and potentially exclusive organisations may enjoy the same tax breaks that come with charitable status as, say, a shelter for the victims of domestic violence in a deprived part of the country.

It is, however, clear that the benefit to the public in question must be a benefit which is a direct result of the charity's activities as a charity and not indirect or incidental benefit which may happen to accrue. Thus the fact that independent schools save the exchequer (and thus the public) the expense of educating a significant number of pupils is not a ground for arguing that they provide public benefit. If that saving is, in fact, a benefit to the public, it is indirect and incidental

to the running of a school. Equally, the planting of trees and the availability of sports facilities for adults (it would be otherwise for children) are not public benefits when provided by a school. These were all examples of benefit given, unsuccessfully, by the two schools which failed, or only just passed, the recent Charity Commission assessments of twelve fee-charging charities.

The charities chosen for that assessment were four religious bodies, five independent schools and three nursing homes. Of these, two schools and one nursing home were judged to have failed the test.

THE RELIGIOUS CHARITIES

The assessment of the religious charities confirmed suspicions that despite political opposition to the inclusion of religion as a charitable object during the debate over the 2006 Charities' Act, the Charity Commission's basic position is still that religion is assumed to be beneficial, i.e. that worship, prayer and meditation are good for you.



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Of course, religion must be promoted in a non-exclusive way but given that most religions are, to some extent, proselytizing or at least open to converts, the “public” element is not normally hard to satisfy.

The four religious bodies chosen were: United Christian Broadcasters Limited, which publishes and broadcasts the Christian message through literature and TV and radio; the Church Mission Society, which supports evangelical missions throughout the world as well as supporting educational projects and the relief of poverty; the London Sri Muragan Temple, a Hindu temple; and the Tara Mahayana Buddhist Centre, which provides courses and retreats to teach and practice Buddhism in the Mahayana tradition. All these charities made a charge for some of their services but all were modest and usually waived if they caused hardship, and the Charity Commission clearly had no difficulty in finding that the fees charged did not have any adverse affect on the public’s access to the benefits provided.

THE RESIDENTIAL CARE HOMES

Of the three residential care homes, one was found not to have charitable objects at all (it was really only an hotel) and of the remaining two, the Cornwall Old People’s Housing Society passed and the Penylan House Jewish Retirement and Nursing Home, failed the Charity Commission’s assessment. In both cases, many residents’ fees were paid in part by the local authorities which gave means tested help. The real question was how the margin of extra fees could be met which at Cornwall amounted to between £150-£180 per week and at Penylan from £200-£300 per week, which in both cases was clearly beyond the means of many potential beneficiaries. Cornwall admitted residents on the basis of need alone and then looked at how the fees might be paid. If the local authority or third parties were not able to pay the full fee, it was reduced to the local authority’s contribution alone and this happened in about 9% of cases. At Penylan the top-up was considerably higher and the home expected it to be found by the resident’s family or other third parties. In fact, the extra was remitted in whole in two cases and partially in thirteen others, but the home did not advertise this assistance.

THE SCHOOLS

Two schools failed the assessment. St Anselm’s School has approximately 240 pupils, with fees ranging from £6,600 per annum to £17,300 per annum for boarders. The school advertised bursaries of up to a maximum of 90% of its fees although only two bursaries had actually been awarded and their value as a percentage of the school’s fee income was less than 1%. Even the remaining 10% of fees at this level was, of course, a prohibitive cost for many families. Other benefits, such as grants from a hardship fund and scholarships of up to 10% of fees were given, and other local schools and children were permitted to use some of the school’s facilities. The Charity Commission considered that this was not enough. In particular, the school needed to increase access in a way that was targeted at those unable to afford even the discounted fees. The Governors of the school were already taking steps to address some of these questions, but the Charity Commission ruled that their intention to address the problem must be confirmed within three months and a detailed plan, to be agreed with the Charity Commission, provided within a further nine months.

Highfield Priory School has approximately 230 nursery and primary pupils and fees for the main school were £5,795 per annum. The school provided no means-tested bursaries, although it did allow certain use of its facilities by other local schools. The school stated that its policy was to keep the fees as low as possible in order to reduce the financial restrictions on access. Nevertheless the Charity Commission found that the totality of benefits provided for those unable to afford the fees was not sufficient and did not ensure the inclusion of people in poverty. Again, the Charity Commission required the Governors to confirm within three months that they intended to address the points arising and to provide a plan for action within a further nine months.



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By contrast, other schools were found to be doing enough to meet the public benefit test and make their education sufficiently widely available. Pangbourne College in Berkshire, for example, provided a small number of 100% bursaries and a larger number of minor bursaries and hardship awards, which extended to 24% of the student body. The total value of all these means-tested bursaries and hardship awards represented just under 10% of the school's gross fee income.

Manchester Grammar School also gave significant financial assistance including one hundred and twenty 100% bursaries (8% of the pupils) and bursaries in total amounted to 14% of the gross fee income. In addition to this generous financial provision, Manchester Grammar also provided extensive help and collaboration with local state schools and schools overseas, making its facilities and the expertise of its staff available widely. This received special commendation from the Charity Commission.

"EMERGING FINDINGS FOR CHARITY TRUSTEES"

Having completed the assessments, the Commission published a review, subtitled 'Emerging findings for Charity Trustees'. One of the main points of this review concerns the necessity for public benefit to be benefit connected with the charity's objects and not indirect or incidental benefit. This is mentioned above but the review also emphasises a corollary of this. Manchester Grammar School was rightly praised for having taken the public benefit requirement as a challenge to bring its considerable resources, expertise and experience to serve education mainly in and around Manchester, but also internationally. Its achievement is impressive and an example to other charities, although it must be admitted not all are as well endowed in facilities, funds and reputation to do this. This is a point also noted by the Charity Commission which refuses to lay down any rules or parameters for financial help. The cases are considered in each particular circumstances and provide general, not precise, guidance.

For further information, please contact:

[Julian Washington on 020 7863 8572 or julian.washington@forsters.co.uk](mailto:julian.washington@forsters.co.uk) or
[Andrew Penny on 020 7863 8522 or andrew.penny@forsters.co.uk](mailto:andrew.penny@forsters.co.uk)

The review also emphasised the need for trustees to have a concerted policy on public benefit and, in particular, that help is to be given to potential beneficiaries who cannot afford the fees charged. This needs to be consistent and budgeted and not merely ad hoc and unpredictable. Most importantly, the public benefit requirement in this area cannot be properly met unless the help available on fees is clearly and extensively advertised among potential beneficiaries.

This briefing offers general guidance only. It reflects the law as at November 2009. The circumstances of each case vary and this article should not be relied upon in place of specific legal advice.