

CHARITABLE PURPOSES & PUBLIC BENEFIT

Statutory guidance for applicants and
existing charities

Issued pursuant to section 13 of the Charities Act 2014



GOVERNMENT OF BERMUDA
Ministry of Home Affairs

Registry General & Charity Commissioners

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INTRODUCTION

Purpose of this guidance

This guidance is issued by the Registrar General ('pursuant to section 13 of the Charities Act 2014 (hereinafter, "the Act"). It is meant to provide members of the public with guidance as to the operation of the public benefit requirement mandated by section 5 of the Act.

Its purpose is to:

- » provide detail on the charitable descriptions of purposes which all charities must come under;
- » explain the requirement that, to be a charity in Bermuda, an organization must have charitable aims that are for the public benefit;
- » raise awareness and understanding of that public benefit requirement amongst the public and the charitable sector;
- » explain how the public benefit requirement operates in practice; and
- » explain the requirement for charity trustees to report on public benefit.

This guidance deals with public benefit in general terms. It reflects the changes made in the law brought about by the Act. Any reference to the public benefit is understood as that term for the purposes of the law relating to charities in England & Wales.

Charities in existence pre-2014

Existing bodies which were, up to the time the Act **came into force in #####**, recognised as charities under the previous charities legislation, will be entered into the register of charities under the transitional provisions of section 50 of the Act, when it is in force.

Being entered into the Register under section 50 does not imply that an organization is charitable under the 2014 Act, or that it has met the public benefit requirement. Nor does entry on the Register in future guarantee that the organization will continue to be charitable.

The Registrar along with the Charity Commissioners ("the Commissioners") will conduct a rolling review of the Charity Register to ensure that charitable organizations are appropriately registered. We have committed ourselves to ensuring that organizations that no longer meet the requirements to be a charity are struck from the Register. Given the major shift in focus brought about by the Act relating to public benefit, charities and those seeking to register have to have particular regard to the contents of this guidance.

Overview of charity law in Bermuda

Charity law in Bermuda can be briefly described as follows:

- » to be a charity an organization must
 - be subject to the charity **jurisdiction of the courts**
 - have only '**charitable purposes**' and
- » a charitable purpose is a purpose that:
 - falls within the **descriptions of purposes** in the Charities Act **and**
 - is for the **public benefit**. This is known as '**the public benefit requirement**'
- » the Registrar must issue guidance to promote **awareness** and **understanding** of the operation of the public benefit requirement
- » charity trustees have a duty to:
 - 'have **regard**' to the public benefit guidance
 - **run** their charity for the public benefit
 - **report** annually on their charity's public benefit

The remainder of this guidance will consider each of these points in more detail.

It is important to note that section 13(5) of the Act says that charity trustees must 'have regard' to the public benefit guidance (this document) 'when exercising any powers or duties to which the guidance is relevant'. This means that charity trustees should be able to show that:

- they are aware of the guidance
- they have taken it into account when making a decision to which the guidance is relevant
- if they have decided to depart from the guidance, they have good reasons for doing so

However, the public benefit guidance is not the law on public benefit. This document contains high-level general guidance, written for charity trustees, to explain what the law says on public benefit and how this law will be interpreted and applied. Decisions about public benefit in individual cases will be based on the law as it applies to the facts of the particular case, as general guidance cannot cover all the complexities of the law relating to public benefit.

The law on public benefit is contained in the Act and decisions of the courts. Section 5(3) of the Charities Act requires the Registrar along with the Commissioners to have regard to the understanding of the public benefit requirement arising under the law of England and Wales.

For more information on how decisions on charitable purposes will be made, see the appendix.

Organizations which are exempted from registration

Every organization wishing to operate in Bermuda as a charity must be registered, unless they are exempted from this by section 18 of the 2014 Act.

Alternatively, an organization is exempted from the registration requirement if it:

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- » is privately funded, does not solicit funds from the Bermuda public, does not receive funding from the Bermuda Government or from Bermuda public sources, and
- » is exempted from section 9 of the Trusts (Regulation of Trust Business) Act 2001 (in the case of a trust), has a registered office in Bermuda with (and subject to compliance by) an institution licensed by a supervisory authority within the meaning of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008.

Charities that are exempted from registration must still meet all the other requirements to be a charity, including the public benefit requirement, to be considered as charitable.

If a charity seeks to raise any funding or material support from the public when it is not registered or properly exempted, it could face penalties including de-registration as a charity. The charity and all of its officers can face criminal prosecutions.

Registering as a charity

The representatives of an organization seeking to register as a charity will need to fill out an application form and submit together with necessary documents to the Registry General, who will then place the package in front of the Charity Commissioners for their determination.

Applicants will have to demonstrate that they meet the public benefit requirement. By law, they must have regard to this statutory public benefit guidance when seeking to register their organization as a charity, which means being able to show that:

- » the trustees are aware of the guidance
- » they have taken the public benefit requirement into account when making a decision to which the guidance is relevant
- » if they have decided to depart from the guidance, should there be a good reason for doing so.

This information will enable the Registrar along with the Commissioners to better and more quickly assess whether an organization meets the public benefit requirement.

If there are no problems with an application package, the Registrar will endeavour to give a response as quickly as possible. To help expedite the application process, it is recommended that applicants read through the Registrar's guidance carefully before submitting their application, and consider using any model language provided.

The time an application takes depends on a number of factors:

- » whether the applicant has provided enough information on their charity's activities
- » how complex the applicant's charity structure is
- » if the applicant's charity purposes are unusual – for example, that a charity is not party political

When a decision has been made, the organization will be provided with one of three responses:

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Approved – Your application to register as a charity is successful, and you will be informed as to how long your charity status has been approved.

- » Charity status can be granted indefinitely or for periods of one, three or five years at a time. One year will usually be granted if the charity needs some sort of probationary period or if the nature of a charity's work is necessarily time-limited.
- » Indefinite status will only be given when requested and in special circumstances.

Deferred – Your application for charitable status is not quite ready.

- » If an application is deferred, it means the application may have merit, but there are certain questions or requests for information that have to be answered before considering the application further, or that an applicant may benefit from the services of a professional advisor or an organization such as the Centre on Philanthropy before their application will be considered
- » We reserve the right to make further inquiries if we are not satisfied with the applicant's follow-up response.
- » If the applicant fails to reply within **28** days of the deferral letter, we will deem the applicant to have abandoned their application and a fresh application will have to be submitted at a later date.

Denied – Your application is not successful, and you will be informed of the reasons why we cannot register your charity.

- » You will also have the option of appealing the decision to the Minister with responsibility for charities, or of resubmitting the application with changes.

For the stages gone through in deciding whether a purpose is charitable, please see the appendix to this guidance.

Challenging a decision

An applicant will have the option of (1) appealing the decision to the Minister responsible for charities or (2) resubmitting their application with changes.

If the applicant disagrees with any registration decision, they can appeal it to the Minister responsible for charities (though the applicant must do this within **28** days of the receipt of their review decision).

The Minister may confirm the decision, quash it and direct the registration of the charity, or ask for the decision to be considered again.

The Minister's decision can be appealed to the Supreme Court of Bermuda.

Alternatively, the applicant can resubmit their application provided they have addressed the concerns expressed. If there is no material difference between a resubmission and a previously rejected application, the resubmission will not be considered.

SUBJECT TO THE COURTS' JURISDICTION

To be a charity, an organization must be subject to the Supreme Courts' charity law jurisdiction. That means that the court must have the power to make decisions about the administration and purposes of an organization as a charity. The organization cannot be a charity in Bermuda if it is subject to another country's jurisdiction.

Where the organization's governing document does not make it clear that it falls within the Supreme Court's charity law jurisdiction, we will advise the organization as such.

The following factors can indicate that an organization falls within the Supreme Court's charity law jurisdiction:

- » the governing document adopts the law of Bermuda to govern it
- » most of the trustees live in Bermuda
- » most of the organization's property is in Bermuda
- » the organization's centre of administration is in Bermuda

In addition, an organization must be independent of outside control in a way that would prevent it being subject to the control of the Supreme Court.

CHARITABLE PURPOSES

The first step in assessing whether an organization can be a charity is to ascertain what its purposes are.

Ascertaining a charity's purposes

First an organization's purposes must be assessed. The purposes are usually set out in a single clause or paragraph at the beginning of the organization's governing document. Many governing documents and commentators use 'objects', 'aims' or 'objectives' instead. In this guidance 'purposes' should be taken to include 'objects', 'aims' or 'objectives'. These will describe and identify the purpose for which a body has been set up. They will not list the body's day-to-day activities.

What is a governing document?

The Act speaks in section 1 of "trusts" which means the provisions establishing an organization as a charity and regulating its purposes and administration, whether those provisions take effect by way of trust or not.

The term is broad and can refer to a number of concepts. What term is used depends on the legal form of the charity:

- » in the case of a company it will be its memorandum and articles
- » in the case of a trust it will be the trust deed
- » most unincorporated associations refer to a 'constitution'
- » in older charities, it may be a private Act of the Legislature

For the sake of clarity, the general term 'governing document(s)' is used unless the context requires more specific information.

It is not necessary (or even always desirable) for a governing document to use the exact phrasing from the Act to describe what a body's purposes are. Sometimes the language used may be quite different. If so, it must allow us to make a clear and direct inference, on the basis of the governing document itself, about how the purposes of the body relate to the headings in the Act.

In drawing up governing documents, a balance needs to be achieved: on the one hand purposes as set out in the governing document need to reflect the overall aims of the body specifically and accurately enough to give adequate guidance to present and future trustees, beneficiaries and donors as to the range and limits of the body's activity; on the other hand they must allow sufficient flexibility to support the development of the body's activities in line with these overall aims.

A governing document should give as exact a reflection of the purpose of the individual body as possible. For example, 'to promote and ensure the provision of services for mediation and conciliation between victims of crime and offenders' is a more exact and meaningful purpose than the broader 'to advance reconciliation and conflict resolution'.

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If the organization is to benefit a particular section of the public rather than the public as a whole, then the statement of purposes in the governing document should make this clear. The same is true if the benefits of the organization are to be otherwise restricted.

Where the statement of purposes is drafted purely in terms of intended activities, it may cause the body to fail to be charitable if it is not clear which charitable purpose is intended. This may be the case where:

- » a charitable purpose cannot be clearly and unambiguously inferred; or
- » the activity stated could equally well be undertaken for non-charitable purposes.

When this is the position the charity or applicant may be required to change the wording to make sure that the relationship to a charitable purpose is clear. Charitable purposes will appear on the Register for public reference, and if a charity wishes to change its purposes once registered, then the Registered Charity must obtain the Registrar along with the Commissioner's consent and approval before the new purpose is adopted.

A charity's activities must be in furtherance of the purposes as set out in its governing document. It is a duty of charity trustees to ensure that the charity acts in a manner which is consistent with its purposes. If it appears that the applicant's (or charity's) activities diverge significantly from its stated charitable purposes, this will be brought to the applicant or charity's attention. Furthermore, a body's governing document will itself generally require that the body's assets are used only for the purposes set out in its governing document.

It is entirely possible for a body to have more than one charitable purpose, or for the purposes set out in its governing document to be charitable under more than one of the purposes listed in the Act. For example, a body may have as its purpose 'to advance education in the arts and to promote the arts by the establishment of an art gallery in X location'. Another example is the purpose to 'assist people in any part of the world who are victims of war or natural disaster, in particular by the supply of medical aid to such persons', which could fall within the charitable purposes of the advancement of health, the saving of lives or possibly the relief of those in need by reason of other disadvantage. There is no restriction in the Act on the number of charitable purposes a body may have, but good practice suggests that the number should be limited so as to allow charity trustees to focus on a charity's main purposes.

Descriptions of purposes

Once ascertained, every charity's purposes must then be able to fall within the following descriptions of purposes provided in the Act:

- (a) the prevention or relief of poverty
- (b) the advancement of education
- (c) the advancement of religion
- (d) the advancement of health or the saving of lives
- (e) the advancement of citizenship or community development
- (f) the advancement of the arts, culture, heritage or science
- (g) the advancement of sport

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- (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
- (i) the advancement of environmental protection or improvement
- (j) the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
- (k) the advancement of animal welfare
- (l) the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services
- (m) the provision of recreational and similar facilities by virtue of section 6 of the Charities Act
- (n) any other purposes which can be recognised as charitable by analogy to, or within the spirit of, purposes falling within (a) to (l)

Each description of purpose is considered in turn. Examples of objects clauses containing charitable purposes are also included under each heading which charities can use as models for their own objects.

Prevention or relief of poverty

In the past, the courts have tended to define 'poverty' by reference to financial hardship or lack of material things but, in current social and economic circumstances, poverty includes many disadvantages and difficulties arising from, or which cause, the lack of financial or material resources.

There can be no absolute definition of what 'poverty' might mean since the problems giving rise to poverty are multi-dimensional and cumulative. It can affect individuals and whole communities. It might be experienced on a long or short-term basis.

Poverty can both create, and be created by, adverse social conditions, such as poor health and nutrition, and low achievement in education and other areas of human development.

The prevention or relief of poverty is not just about giving financial assistance to people who lack money; poverty is a more complex issue that is dependent upon the social and economic circumstances in which it arises. We recognise that many charities that are concerned with preventing or relieving poverty will do so by addressing both the causes (prevention) and the consequences (relief) of poverty.

Not everyone who is in financial hardship is necessarily poor, but it may still be charitable to relieve their financial hardship under the description of purposes relating to 'the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage

In most cases, the relief of poverty and the relief of financial hardship will be treated the same. Generally speaking, it is likely to be charitable to relieve either the poverty or the financial hardship of anyone who does not have the resources to provide them, either on a short or long-term basis, with the normal things of life which most people take for granted.

Examples of ways in which charities might relieve poverty include:

- » grants of money

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- » the provision of items (either outright or on loan) such as furniture, bedding, clothing, food, fuel, heating appliances, washing machines and fridges
- » payment for services such as essential house decorating, insulation and repairs, laundering, meals on wheels, outings and entertainment, child-minding, telephone line, taxes and utilities
- » the provision of facilities such as the supply of tools or books, payments of fees for instruction, examination or other expenses connected with vocational training, language, literacy, numerical or technical skills, travelling expenses to help the recipients to earn their living, equipment and funds for recreational pursuits or training intended to bring the quality of life of the beneficiaries to a reasonable standard.

The provision of money management and debt counselling advice are examples of the ways in which charities might help prevent poverty.

Different rules relating to public benefit

The rules relating to public benefit are explained more fully below. However, *if the purpose of a charity is to prevent or relieve poverty*, the general rule is significantly relaxed. Such charities are able to limit who can benefit from the charity by reference to:

- » their family relationship (that means their descent from one individual)
- » their employment by an employer
- » their membership of an unincorporated association

Nonetheless, a charity ***must not have a purpose which is for the benefit of named individuals***, whether or not they are poor. This is so even if the motive is to relieve poverty and the named individuals happen to be poor.

Example purposes for objects clauses for Prevention or Relief of Poverty:

- » The prevention or relief of poverty in [insert geographical area to be benefited] by providing: grants, items and services to individuals in need and/or charities, or other organizations working to prevent or relieve poverty.
- » To relieve poverty [or financial hardship] among refugees, asylum seekers, migrant workers and their dependants living in [insert geographical area to be benefited] by providing interpreting/translating/advocacy/ health/housing advice and education.
- » The prevention or relief of poverty [or financial hardship] anywhere in the world by providing or assisting in the provision of education, training, healthcare projects and all the necessary support designed to enable individuals to generate a sustainable income and be self-sufficient.
- » To prevent or relieve poverty through undertaking and supporting research into factors that contribute to poverty and the most appropriate ways to mitigate these.
- » To prevent or relieve poverty by awarding a 'fair trade mark' to products, the sale of which relieves the poverty of producers by ensuring they receive at least a fair price for their goods

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and advising such producers of the best ways in which to engage in the trading process.

- » To relieve the poverty of young people by the provision of grants to enable them to participate in healthy recreational activities that they could not otherwise afford.

Advancement of education

Charity law gives a wide meaning to education and does not limit it to education in a classroom environment.

To be a charitable aim for the public benefit, education must be capable of being 'advanced'. This means to promote, sustain and increase individual and collective knowledge and understanding of specific areas of study, skills and expertise.

Today, education includes:

- » formal education
- » community education
- » physical education and development of young people
- » training (including vocational training) and life-long learning
- » research and adding to collective knowledge and understanding of specific areas of study and expertise
- » the development of individual capabilities, competences, skills and understanding

The types of charities that are capable of advancing education include:

- » education establishments such as schools, colleges and universities
- » organizations supporting the work of education establishments, or associated with them, such as parent-teacher organizations, prize funds, standard-setting organizations, teacher training organizations, student unions, examinations boards
- » pre-schools and out-of-school education such as playgroups, Saturday schools, summer schools, homework clubs
- » organizations that support the physical education of young people such as youth sporting facilities
- » organizations providing life skills training such as the Duke of Edinburgh award schemes, and Scouts and Guides
- » research foundations and think tanks
- » learned societies such as the Royal Geographical Society
- » museums, galleries, libraries, scientific institutes
- » organizations which fund people's education
- » organizations that educate the public in a particular subject, for instance in human rights, climate change, physics, personal financial management
- » information media such as the internet, radio, television, libraries, information centres, university presses, seminars, conferences and lectures

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Example purposes for objects clauses for Advancement of Education:

- » To advance the education of the public in the subject of [insert subject to be studied]
- » To advance the education of the pupils at [the name of the school] by providing and assisting in the provision of facilities [not required to be provided by the local education authority] for education at the school.
- » For the public benefit to promote the education (including social and physical training) of people [under the age of 25 years] in [place] in such ways as the charity trustees think fit, including by:
 - awarding to such persons scholarships, maintenance allowances or grants tenable at any university, college or institution of higher or further education;
 - providing their education (including the study of music or other arts), to undertake travel in furtherance of that education or to prepare for entry to any occupation, trade or profession on leaving any educational establishment.
- » To assist in such ways as the charity trustees think fit any charity in [place] whose aims include advancing education of persons under the age of 25 years by developing their mental, physical and moral capabilities through leisure time activities.
- » For the public benefit to promote learning for pleasure by people no longer in full time employment through the continued development of their individual capabilities, competencies, skills and understanding in subjects of educational value.
- » To advance the education of the public in general (and particularly amongst scientists) on the subject of particle physics and to promote research for the public benefit in all aspects of that subject and to publish the useful results.

Advancement of religion

For the purposes of charity law, a religion is a system of belief that has certain characteristics that have been identified in case law.

When considering whether or not a system of belief constitutes a religion for the purposes of charity law, the courts have identified certain characteristics which describe a religious belief. These characteristics include:

- » belief in a god (or gods) or goddess (or goddesses), or supreme being, or divine or transcendental being or entity or spiritual principle ('supreme being or entity') which is the object or focus of the religion
- » a relationship between the believer and the supreme being or entity by showing worship of, reverence for or veneration of the supreme being or entity
- » a degree of cogency, cohesion, seriousness and importance
- » an identifiable positive, beneficial, moral or ethical framework.

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Examples of ways in which charities can advance religion include:

- » the provision of places of worship
- » raising awareness and understanding of religious beliefs and practices
- » carrying out religious devotional acts
- » carrying out missionary and outreach work

Example purposes for objects clauses for Advancement of Religion:

- » To advance the [insert basis of faith] [faith] [religion] for the benefit of the public in accordance with [the statements of belief appearing in the schedule] [the following doctrines: ...]
- » The advancement of the [insert basis of faith] religion mainly, but not exclusively, by means of broadcasting [insert basis of faith] messages of an evangelistic and teaching nature.
- » To advance the [insert basis of faith] religion in [insert area of benefit] for the benefit of the public through the holding of prayer meetings, lectures [public celebration of religious festivals] producing and/or distributing literature on [insert basis of faith] to enlighten others about the [insert basis of faith] religion.

Advancement of health or the saving of lives

The advancement of health includes the prevention or relief of sickness, disease or human suffering, as well as the promotion of health. It includes conventional methods as well as complementary, alternative or holistic methods which are concerned with healing mind, body and spirit in the alleviation of symptoms and the cure of illness.

To be charitable there needs to be sufficient evidence of the effectiveness of the method to be used. Assessing the effectiveness of different therapies will depend upon what benefits are claimed for it (i.e. whether it is diagnostic, curative, therapeutic and/or palliative) and whether it is offered as a complement to conventional medicine or as an alternative.

Each case is considered on its merits but a report produced by the Science and Technology Committee of the UK's House of Lords in 2000, provides some useful information on complementary and alternative medicine.¹

The relief of sickness extends beyond the treatment or provision of care, such as a hospital, to the provision of items, services and facilities to ease the suffering or assist the recovery of people who are sick, convalescent, disabled or infirm or to provide comforts for patients.

The saving of lives includes a range of charitable activity directed towards saving people whose lives are in danger and protecting life and property.

¹ To access the report online, please see: <http://www.parliament.the-stationery-office.co.uk/pa/ld199900/ldselect/ldsctech/123/12301.htm>

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Examples of the sorts of charities and charitable purposes falling within this description include:

- » charities that provide (conventional and/or complementary, alternative or holistic) medical treatment, care and healing, such as hospitals and healing centres, and charities supporting their work or associated with them
- » charities that provide comforts, items, services and facilities for people who are sick, convalescent, disabled or infirm
- » medical research charities
- » charities that provide services and facilities for medical practitioners, such as homes for nurses
- » charities that ensure the proper standards of medical practice
- » charities that promote activities that have a proven beneficial effect on health
- » charities that provide rescue services, such as lifeboats, mountain rescue, fire, ambulance, air ambulance and first aid services, or which assist the work of the police and rescue services for example by providing emergency radio communication at national and local disasters
- » charities set up to assist the victims of natural disasters or war
- » the provision of life saving or self-defence classes
- » the provision of blood transfusion services.

Example purposes for objects clauses for Advancement of health or the saving of lives:

- » To relieve sickness and to preserve the health of the patients of [name of surgery] at [place] by providing or assisting in the provision of equipment, facilities and services [[not normally provided by the statutory authorities] [ancillary to those provided by the doctors]].
- » (1) to promote and protect the physical and mental health of sufferers of [insert medical condition] in Bermuda through the provision of financial assistance, support, education and practical advice
(2) to advance the education of the general public in all areas relating to [insert medical condition]
- » To preserve and protect the health of patients of the [description of medical practice] by providing and assisting in the provision of facilities, support services and equipment not normally provided by the statutory authorities.
- » To advance the education of the public in health care by the provision of lectures, for and by the publication of newsletters devoted to healthcare.
- » The advancement of health through the provision of [insert services to be provided]
- » The advancement of health and the saving of lives through the provision of comforts, items, services and facilities to those in need by virtue of being sick, convalescent, disabled or infirm
- » The protection, promotion and maintenance of the health and safety of the community by ensuring proper standards in the practice of medicine.
- » The promotion of public health and the relief of sickness through the promotion and provision

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of [insert activity/services] which are aimed at relieving stress.

- » The relief of sickness and the preservation of health among people residing permanently or temporarily in [specified area of benefit].
- » To assist in the treatment and care of persons suffering from mental or physical illness of any description or in need of rehabilitation as a result of such illness, by the provision of facilities for work and recreation.
- » To preserve and protect the health of those caring for people with physical, mental or sensory impairment within the family or home by offering a respite service through the provision of community based care attendants and, at the discretion of the [Management Committee/Trustees/Directors] and in exceptional circumstances, to provide such care attendants for disabled people living alone.

Advancement of citizenship or community development

The advancement of citizenship or community development covers a broad group of charitable purposes directed towards support for social and community infrastructure which is focused on the community rather than the individual.

Examples of the sorts of charities and charitable purposes falling within this description include:

- » the promotion of civic responsibility and good citizenship, such as good citizenship award schemes, Scout and Guide groups etc.
- » the promotion of urban and rural regeneration
- » the promotion of volunteering
- » the promotion of the voluntary sector
- » promoting the efficiency and effectiveness of charities and the effective use of charitable resources
- » the promotion of community capacity building
- » the promotion of social inclusion
- » charities concerned with social investment

Example purposes for objects clauses for Advancement of citizenship or community development:

- » The promotion for the public benefit or urban or rural regeneration in areas of social and economic deprivation (and in particular [specify area]) by all or any of the following means:
 - the relief of poverty
 - the relief of unemployment
 - the advancement of education and training
 - the provision of financial assistance, technical assistance or business advice or consultancy to provide training and employment opportunities for those in financial or

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other charitable need

- the creation of training and employment opportunities
 - the provision of housing for those who are in conditions of need and the improvement of housing in the public sector or in charitable ownership
 - the maintenance, improvement or provision of public amenities
 - the preservation of buildings or sites of historic or architectural importance
 - the provision of recreational facilities for the public at large or those who by reason of a particularly charitable need, have need for such facilities
 - the protection or conservation of the environment
 - the provision of public health facilities and childcare
 - the promotion of public safety and prevention of crime
 - such other means as may from time to time be determined subject to prior written consent of the Registrar along with the Charity Commissioners of Bermuda.
- » Promoting the efficiency and effectiveness of charities by focusing on the effective attainment of the objects of a particular charity or particular category or categories of charities, or by focusing on supporting the efficiency and effectiveness of the administration or infrastructure of a charity or charities
- » The promotion of the voluntary sector for the benefit of the public by all or any of the following means:
- liaising between charities, voluntary organizations, government agencies and other groups on relevant issues;
 - providing training, conferences and seminars on subjects relevant to the efficiency of the voluntary sector;
 - identifying needs in the voluntary sector and establishing projects or policies to address them;
 - assisting in the administration of funding programmes to charities and voluntary organizations, monitoring for grants, recommending grants, assisting in applications for grants;
 - providing information to the press and the public on the operation of, or problems encountered by, the voluntary sector;
 - providing services such as legal, accountancy and management advice services to the voluntary sector;
 - providing advice and information on fund-raising techniques appropriate for voluntary organizations and charities;
 - acting as a representative of the voluntary sector in relation to government policies and legislation;
 - advising businesses on charitable giving and encouraging employees to participate in voluntary work.

For the purposes of this clause 'the voluntary sector' means registered charities and voluntary organizations established for the purpose of adding value to the community as a whole, or a

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significant part of the community, and which are not permitted by their constitution to make a profit for private distribution.

- » To develop the capacity and skills of the members of the [socially and economically] [socially] disadvantaged community of [insert place] in such a way that they are better able to identify, and help meet, their needs and to participate more fully in society
- » To promote social inclusion for the public benefit by preventing people from becoming socially excluded, relieving the need of those people who are socially excluded and assisting them to integrate into society;

For the purpose of this clause 'socially excluded' means being excluded from society, or part of society, as a result of one or more of the following factors: unemployment; financial hardship; youth or old age; ill health (physical or mental); substance abuse or dependency including alcohol or drugs; discrimination on the grounds listed under the Human Rights Act 1981; poor educational or skill attainment; relationship and family breakdown; poor housing (that is housing which does not meet basic habitable standards); crime (either as a victim of crime or as an offender rehabilitating into society).

Advancement of the arts, culture, heritage or science

'Culture' is a broad term often used in the context of advancing art or heritage.

The advancement of art covers a wide range of charitable activity including promoting various forms of art at a national/professional and local/amateur level, the provision of arts facilities and encouraging high standards of art. 'Art' includes abstract, conceptual and performance art and representational and figurative art. Charities concerned with the advancement of art, whether visual arts or the performing arts such as music, dance and theatre, need to satisfy a criterion of merit: there must be sufficient evidence that the charities and the use made of them either will educate or inspire the minds of the public whom the charity intends to serve, or at least will be capable of doing so, or that there is sufficient interest in the subject matter of the charity.

'Heritage' might be regarded as part of a country's local or national history and traditions which is passed down through successive generations. Advancing heritage includes charities for the preservation of historic land and buildings. It might also include activities concerned with preserving or maintaining a particular tradition where the benefit to the public in preserving it can be shown.

The advancement of science includes scientific research and charities connected with various learned societies and institutions.

Examples of the sorts of charities and charitable purposes falling within this description include:

- » art galleries, arts festivals and arts councils

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- » charities that promote, or encourage high standards of, the arts of drama, ballet, music, singing, literature, sculpture, painting, cinema, mime, etc., e.g. theatres, cinemas and concert halls, choirs, orchestras, music, operatic and dramatic societies
- » the promotion of crafts and craftsmanship
- » local or national history or archaeology societies
- » local arts societies
- » charities that preserve ancient sites or buildings
- » charities that preserve a specified monument, building or complex of historic/architectural importance, or the preservation of historic buildings in general, such as building preservation trusts
- » the preservation of historical traditions, such as carnivals, country/folk dancing societies, folk clubs, etc.
- » scientific research projects
- » charities connected with various learned societies and institutions, e.g. the Royal College of Surgeons, Royal College of Nursing, Royal Geographical Society

Example purposes for objects clauses for Advancement of arts, culture, heritage or science:

- » To promote culture [or a particular subset of culture] for the benefit of the public by the establishment and maintenance of a [historical society] [cultural festival] [etc.]
- » To promote [heritage][culture][science][art][or a particular subset] or advance education in [history][culture] [science][the arts] for the benefit of the public by the establishment and maintenance of a [museum] [art gallery].
- » To promote heritage by through efforts aimed at the preservation of [specified monument, building, complex, etc.]
- » To promote, or encourage high standards of, the arts of [drama, ballet, music, singing, literature, sculpture, painting, cinema, mime, etc., e.g.] by the establishment and maintenance of a [theatre, cinema and concert hall, choir, orchestra, operatic and dramatic society, etc., e.g.]
- » To promote, or encourage high standards of, the arts of [drama, ballet, music, singing, literature, sculpture, painting, cinema, mime, etc., e.g.] by all or any of the following means:
[list all possible means; common examples include providing educational support, scholarship funding, regulating standards in Bermuda, etc.]
- » To advance public knowledge in the sciences [or a particular science] through the establishment and maintenance of [a learned society / research facility].
- » To advance public knowledge in the sciences [or through a particular science] through the commission of, or the provision of financial assistance to, scientific research projects.

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Advancement of sport

The advancement of sport means the advancement of any sports, games or other activities which promote health by involving physical or mental skill or exertion.

Examples of the sorts of charities and charitable purposes falling within this description include:

- » the promotion of community participation in health recreation by providing facilities for the playing of particular sports
- » charities advancing sport at a local club e.g. local football, rugby, tennis clubs etc.
- » multisports centres
- » other organizations concerned with the promotion of a particular sport or game

The partial definition of sport in the Act is sufficiently broad enough to include non-physical activities, such as checkers or chess. An example of a registered charity advancing sport is a bridge club, which has been recognised in a decision of the English Charities Commission² as being established for exclusively charitable aims for the public benefit, namely for the advancement of amateur sport and providing recreational facilities meeting the requirements of the Recreational Charities Act 1958 (the provisions of which are subsumed into section 6 of our Charities Act).

Example purposes for objects clauses for Advancement of sport:

- » To promote, or encourage high standards of [insert sport(s)] by all or any of the following means:
[list all possible means; common examples include providing educational support, scholarship funding, regulating standards in Bermuda, etc.]
- » The promotion of community participation in healthy recreation in particular by the provision of facilities for the playing of [particular sports]
- » The promotion of community participation in healthy recreation [for the benefit of the inhabitants of x] by the provision of facilities for playing [insert sport(s)]

Advancement of human rights, conflict resolution or reconciliation or promotion of religious or racial harmony or equality and diversity

The advancement of human rights is very broad and can include the following:

- » promotion of human rights, at home or abroad
- » obtaining redress for and relieving victims of human rights abuse
- » monitoring abuses of human rights
- » eliminating infringements of human rights
- » providing research into, and educating the public about, human rights

² See Charity Commission Decision for Hitchen Bridge Club,
<http://www.charitycommission.gov.uk/media/92421/hitchindec.pdf>

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- » raising awareness of human rights issues and securing public support
- » securing the enforcement of human rights law
- » providing technical advice to the government or commenting on proposed human rights laws
- » promoting respect for human rights by individuals and corporations

The advancement of conflict resolution or reconciliation includes the resolution of international conflicts and relieving the suffering, poverty and distress arising through conflict on a national or international scale by identifying the causes of the conflict and seeking to resolve such conflict. It includes the promotion of restorative justice, where all the parties with a stake in a particular conflict or offence come together to resolve collectively how to deal with its aftermath and its implications for the future. It also includes purposes directed towards mediation, conciliation or reconciliation as between persons, organizations, authorities or groups involved or likely to become involved in dispute or inter-personal conflict.

The promotion of religious or racial harmony or equality and diversity includes a range of charitable activity directed towards actively promoting harmony and the lessening of conflict between people from differing races or religions or belief systems and eliminating discrimination and promoting diversity in society.

Examples of the sorts of charities and charitable purposes falling within this description include:

- » charities concerned with the promotion of restorative justice and other forms of conflict resolution or reconciliation
- » charities concerned with the resolution of national or international conflicts
- » mediation charities
- » charities promoting good relations between persons of different racial groups
- » charities promoting equality and diversity by the elimination of discrimination on the grounds of age, sex or sexual orientation
- » charities promoting ethical standards of conduct and compliance with the law in the workplace
- » charities enabling people of one faith to understand the religious beliefs of others.

Charities under this head have to be particularly careful not to have political purposes. The law distinguishes between having political purposes (which is not allowed) and pursuing political activities in furtherance of their charitable purposes (which is allowed). So long as the political means such charities pursue are not the dominant method by which the organization pursues its apparently charitable objects, the charity in question will be allowed. See *our later section on political purposes*.

Example purposes for objects clauses for Advancement of human rights, conflict resolution or reconciliation or promotion of religious or racial harmony or equality and diversity:

- » To promote human rights (as set out in the Universal Declaration of Human Rights and subsequent United Nations conventions and declarations) throughout the world by all or any of the following means:
 - Monitoring abuses of human rights;

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- Obtaining redress for the victims of human rights abuse;
- Relieving need among the victims of human rights abuse;
- Research into human rights issues;
- Providing technical advice to government and others on human rights matters;
- Contributing to the sound administration of human rights law;
- Commenting on proposed human rights legislation;
- Raising awareness of human rights issues;
- Promoting public support for human rights;
- Promoting respect for human rights among individuals and corporations;
- International advocacy of human rights;
- Eliminating infringements of human rights.

In furtherance of that object but not otherwise, the trustees shall have power to engage in political activity provided that the trustees are satisfied that the proposed activities will further the purposes of the charity to an extent justified by the resources committed and the activity is not the dominant means by which the charity carried out its objects.

- » The promotion of racial [or religious] harmony for the public benefit by:
 - promoting knowledge and mutual understanding between different racial [or religious] groups;
 - advancing education and raising awareness about different racial [or religious] groups to promote good relations between persons of different racial [or religious] groups;
 - working towards the elimination of discrimination on the grounds of race [or religion].

In furtherance of that object but not otherwise, the trustees shall have power to engage in political activity provided that the trustees are satisfied that the proposed activities will further the purposes of the charity to an extent justified by the resources committed and the activity is not the dominant means by which the charity carried out its objects.

- » The promotion of equality and diversity for the public benefit by [for example]:
 - the elimination of discrimination on the grounds of race, gender, disability , sexual orientation or religion;
 - advancing education and raising awareness in equality and diversity;
 - promoting activities to foster understanding between people from diverse backgrounds;
 - conducting or commissioning research on equality and diversity issues and publishing the results to the public;
 - cultivating a sentiment in favour of equality and diversity.

In furtherance of that object but not otherwise, the trustees shall have power to engage in political activity provided that the trustees are satisfied that the proposed activities will further the purposes of the charity to an extent justified by the resources committed and the activity is not the dominant means by which the charity carried out its objects.

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Advancement of environmental protection or improvement

The advancement of environmental protection and improvement includes preservation and conservation of the natural environment and the promotion of sustainable development. Conservation of the environment includes the conservation of a particular animal, bird, or other species or 'wildlife' in general: a specific plant species, habitat or area of land, including areas of natural beauty and scientific interest in flora, fauna and the environment generally. Charities concerned with environmental protection or improvement may need to produce independent expert evidence, that is authoritative and objective, to show that the particular species, land or habitat to be conserved is worthy of conservation.

Examples of the sorts of charities and charitable purposes falling within this description include:

- » charities concerned with conservation of flora, fauna or the environment generally
- » charities concerned with conservation of a particular geographical area Bermuda
- » charities concerned with conservation of a particular species
- » zoos
- » the promotion of sustainable development and biodiversity
- » the promotion of recycling and sustainable waste management
- » research projects into the use of renewable energy sources

Example purposes for objects clauses for Advancement of environmental protection or improvement:

- » The protection and preservation of the environment for the public benefit by the
 - promotion of waste reduction, re-use reclamation, recycling, use of recycled products and the use of surplus;
 - advancing the education of the public about all aspects of waste generation, waste management and waste recycling.
- » To promote sustainable development for the benefit of the public by: [include as applicable]
 - the preservation, conservation and the protection of the environment and the prudent use of resources;
 - the relief of poverty and the improvement of the conditions of life in socially and economically disadvantaged communities;
 - the promotion of sustainable means of achieving economic growth and regeneration.

To advance the education of the public in subjects relating to sustainable development and the protection, enhancement and rehabilitation of the environment and to promote study and research in such subjects provided that the useful results of such study are disseminated to the public at large.

The following definition should always be included: Sustainable development means "development which meets the needs of the present without compromising the ability of future generations to meet their own needs.

- » The relief of financial hardship by the recycling and provision of furniture, clothes and other

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household items.

- » To protect or improve the environment for the benefit of the public by the establishment and maintenance of a [zoo][aquarium][etc.]
- » To promote for the benefit of the public the conservation protection and improvement of the physical and natural environment [by promoting biological diversity]
- » To advance the education of the public in the conservation, protection and improvement of the physical and natural environment

Relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage

There are a variety of charitable purposes which are directed towards the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage. This includes relief given by the provision of accommodation and care to such persons.

Examples of the sorts of charities and charitable purposes falling within this description include:

- » charities concerned with the care, upbringing or establishment in life of children or young people, e.g. children's care homes apprenticeship, etc.
- » charities concerned with the relief of the effects of old age, such as those providing specialist advice, equipment or accommodation, drop-in centres, etc.
- » charities concerned with the relief of disability, such as those providing specialist advice, equipment or accommodation or providing access for disabled people, etc.
- » charities concerned with the provision of housing, such as almshouses or housing associations, etc.

Example purposes for objects clauses for Relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage:

- » The relief of financial hardship among people in need by reasons of [insert disadvantage] by providing such persons with [goods/services] which they could not otherwise afford through lack of means.
- » The relief of young persons in need through the provision of assistance for the construction or maintenance of [for example, a named orphanage] in Bermuda [or overseas].
- » The relief of aged persons in need through the provision of assistance for the construction or maintenance of [for example, a named senior's home] in Bermuda [or overseas].
- » The relief of financial hardship, either generally or individually, of people living in [the area of benefit] by making grants of money for providing or paying for items services or facilities
- » The relief of the sick-poor living in Bermuda either generally or individually through the provision of grants, goods or services.

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- » The relief of the physical and mental sickness of persons in need by reason of addiction to [substance], in particular by the provision of counselling and support.
- » The relief of financial hardship by the provision of free legal advice and assistance to persons who, through lack of means, would otherwise be unable to obtain such advice.
- » To relieve the mental and physical sickness of persons resident in [area of benefit] suffering from bereavement or loss by the provision of counselling and support for such persons.
- » To relieve financial hardship and sickness among persons who are caring for or nursing a person with a physical or mental disability in any place other than a publicly provided institution, and the relief of people who are chronically sick or disabled by the provision of training and advice for those responsible for their care.

Advancement of animal welfare

The advancement of animal welfare includes any purpose directed towards the prevention or suppression of cruelty to animals or the prevention or relief of suffering by animals.

The provision of sanctuary or shelter to fit and healthy animals is NOT charitable.

Examples of the sorts of charities and charitable purposes falling within this description include:

- » charities promoting kindness and to prevent or suppress cruelty to animals
- » animal sanctuaries
- » the provision of veterinary care and treatment
- » charities concerned with the care and re-homing of animals that are abandoned, mistreated or lost
- » feral animal control, e.g. neutering

Example purposes for objects clauses for Advancement of animal welfare:

- » For the benefit of the public to relieve the suffering of animals in need of care and attention and, in particular, to provide and maintain rescue homes, sanctuary, shelter or other facilities for the reception, care and treatment of such animals.
- » To promote humane behaviour towards animals by providing appropriate care, protection, treatment and security for animals which are in need of care and attention by reason of sickness, maltreatment, poor circumstances or ill usage and to educate the public in matters pertaining to animal welfare in general and the prevention of cruelty and suffering among animals.

Promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services

The armed forces exist for public defence and security. It is charitable to promote the efficiency of the armed forces of the Crown as a means of defending Bermuda. That includes ensuring that those forces

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are properly trained and equipped during times of conflict. It also includes providing facilities and benefits for the armed forces.

Similarly it is also charitable to promote the efficiency of the police, fire, rescue or ambulance services as they exist for the prevention and detection of crime, the preservation of public order and to protect the public. ('Fire and rescue services' means services provided by fire and rescue authorities under the Bermuda Fire and Rescue Services Act 1982).

Examples of the sorts of charities and charitable purposes falling within this description include:

- » increasing technical knowledge of members of the services through the provision of educational resources, competitions and prizes
- » increasing physical fitness of members of the services through the provision of sporting facilities, equipment and sporting competitions
- » providing opportunities for service personnel to gain additional experience relevant to their jobs
- » supporting messes (NCOs and Officers) and institutes (other ranks), including the provision of chattels (items of plate etc.)
- » providing and maintaining band instruments and equipment
- » promoting and strengthening bonds between allied units
- » providing memorials to commemorate the fallen or victories
- » maintaining chapels (e.g. regimental chapels in cathedrals) or churches
- » researching the military history of a regiment or other unit, and publishing books about it
- » maintaining a museum or other collection for the preservation of artefacts connected with a military unit or service and supporting military and service museums generally
- » encouraging esprit de corps (loyalty of a member to the unit to which he or she belongs and recognition of the honour of the unit)
- » providing associations which support a unit and enable serving and former members to mix together
- » providing facilities for military training (e.g. drill halls)
- » encouraging recruitment to the services (e.g. through exhibitions, etc.)
- » provision of an emergency air or sea rescue service and equipment

Example purposes for objects clauses for Promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services:

- » To promote, for the benefit of the public, the efficiency of the police and to promote good citizenship and greater public participation in the prevention and solution of crime in the area.
- » To promote for the benefit of the public in Bermuda, in partnership with the police, the protection of people and property from, and the prevention of, criminal acts.
- » To promote, for the benefit of the public, the efficiency of [the Bermuda Regiment][the fire and rescue services] and/or [ambulance services].

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- » To provide assistance to the police by promoting for the benefit of the public the provision of services for mediation and conciliation between victims of crime and offenders, with a view to the preservation of public order, and for the preservation and protection of the well-being of such victims and the rehabilitation of such offenders.
- » To provide assistance to the police by promoting for the benefit of the public to the preservation of public order, the provision of services for mediation and conciliation between people, organizations and groups who are involved in disputes or interpersonal conflicts where that dispute or conflict results from or may lead to acts of nuisance, vandalism, racial abuse or breach of the peace.

Recreational and similar facilities

Section 6 of the Act provides details on the recognition of providing, or assisting in providing, facilities for recreation and other leisure-time occupations in the interests of social welfare. Such charities must be provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended.

In addition:

- » those persons must have need of the facilities because of their youth, age, infirmity or disability, poverty, or social and economic circumstances or
- » the facilities are to be made available to the public at large or to male, or female, members of the public at large.

It is not enough that such charities meet the social welfare requirement contained in section 6. They must still meet the public benefit requirement.

Example purposes for objects clauses for Recreational and similar facilities:

- » To promote for the benefit of the inhabitants of [insert place] and the surrounding area the provision of facilities for recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age, infirmity or disablement, financial hardship or social and economic circumstances or for the public at large in the interests of social welfare and with the object of improving the condition of life of the said inhabitants.
- » To provide or assist in the provision of facilities in the interests of social welfare for recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age infirmity or disability, financial hardship or social circumstances with the object of improving their conditions of life.

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Analogous purposes

This includes any charitable purpose not covered by the other descriptions of purposes and any new charitable purposes that may be recognised in the future as being similar to another charitable purpose.

By including as a charitable purpose any other purpose that may reasonably be regarded as analogous to any of the listed charitable purposes, the Act provides the necessary flexibility to allow charitable purposes to evolve as society changes.

By specifying that a relevant purpose must be analogous to one of the purposes contained in the Act, this ensures that this flexibility is balanced by certainty and stability in the development of charitable purposes.

A purpose might be recognised as analogous to one or more of the existing purposes in the Act and therefore as a charitable purpose when:

- » it combines aspects of established charitable purposes into a distinctive and coherent whole reflecting current social contexts and necessities
- » it includes or resembles certain aspects of existing purposes, but also includes novel or differing aspects
- » it becomes appropriate in a changed social or practical context to consider as a freestanding purpose something previously considered as an activity in furtherance of an existing charitable purpose.

The following is a list of examples of the sorts of charities and charitable purposes falling within this description which have been recognized by the Charity Commission of England & Wales, the Office of the Scottish Charity Regulator, and the Charity Commission of New Zealand, and such purposes will be highly persuasive to the Bermudian Commissioners.

- » Advancement of a philosophical belief not traditionally regarded as 'religious'
- » Promotion of social inclusion
- » Relief of unemployment
- » Provision of public works and services and the provision of public amenities (such as the repair of bridges, ports, havens, causeways and highways, the provision of water and lighting, a cemetery or crematorium, as well as the provision of public facilities such as libraries, reading rooms and public conveniences)
- » Defence of the country (such as trusts for national or local defence)
- » Promotion of certain patriotic purposes, such as war memorials
- » Social relief, resettlement and rehabilitation of persons under a disability or deprivation (including disaster funds)
- » Promotion of industry and commerce
- » Promotion of agriculture and horticulture gifts for the benefit of a particular locality (such as trusts for the general benefit of the inhabitants of a particular place); the beautification of a town; civic societies
- » Promotion of mental or moral improvement

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- » Promotion of the moral or spiritual welfare or improvement of the community
- » Preservation of public order
- » Promoting the sound administration and development of the law
- » Promotion of ethical standards of conduct and compliance with the law in the public and private sectors
- » Rehabilitation of ex-offenders and the prevention of crime

PUBLIC BENEFIT

The 2014 Act requires that any purposes which are charitable in description must also meet what it refers to as the 'public benefit requirement'. This means that a charity's purposes must be for the public benefit. Since trustees must carry out their activities only in pursuance of a charity's stated purposes, they must also carry out those purposes for the public benefit.

This part of the guidance is aimed at two different sets of people:

- » New Charity Applicants – In particular, they will have to demonstrate that the purposes of their proposed organization are for the benefit of the public and their intended activities to further those purposes provide public benefit.
- » Current Charity Trustees – Their obligation to ensure that public benefit is provided is ongoing, and their activities must be in furtherance of this. When their application comes up for renewal, in addition to their purposes, the actual activities and programmes provided will be looked at to ensure that public has benefited before renewing their charitable status.

This part of the guidance deals with both of these aspects of the public benefit requirement together. The next part discusses trustees' additional requirement to report on public benefit.

Overview of the public benefit requirement

The public benefit requirement can be broken down into three distinct aspects:

- » There must be an actual benefit to the public.
- » Charities must serve the public or a sufficient section of the public, and must not unduly restrict access to its benefits.
- » Private or personal benefits must be necessary or incidental to achieving charitable purposes.

In addition, charities cannot have political purposes.

To see whether an organization provides public benefit we will look at:

- » what it says it does
- » what it has done and continues to do
- » what it plans to do

to achieve its charitable purposes. The organization must show that it will make a positive difference for the public in the ways suggested by its charitable purposes.

Providing Benefit

Clear benefit

Charities must provide an actual 'benefit' to the public they serve, which is identifiable and is capable of being proved by evidence, if necessary, and is not based on personal views.

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Benefit provided by charities or organizations that wish to become charities can take many different forms. Some benefits may be material or measurable. For example, if a charity relieves a person's sickness or financial hardship, the person's health or financial circumstances can be measurably improved. These are **tangible benefits**.

On the other hand, **intangible benefits** may be more difficult to measure, but should still be identifiable. These can include, for example, many of the benefits of education or religion, or promoting appreciation of historic buildings. Both tangible and intangible benefits will be taken into account.

Indirect as well as direct benefits will be taken into account in assessing whether a body provides (or intends to provide) benefit to the public.

A **direct benefit** is one which is directly related to the activities carried out in pursuit of the charitable purpose and benefits the intended group of beneficiaries. For example, there is a direct benefit to the people who receive medical care if they are sick; to the people whose conditions of life have been improved by taking part in recreational activities; or to the people whose skills have been developed by taking part in a training programme.

Indirect benefit exists when the benefit can be said to extend beyond the immediate beneficiary group, in many cases to the public generally. In most cases a charity will provide both direct and indirect benefits as a result of its activities, but to different degrees depending on individual circumstances.

There is no minimum amount of benefit that must be provided: many charities operate on a small scale or in small communities but are still able to show that what they do provides public benefit.

There needs to be a link between a body's purposes, its activities in furtherance of those purposes and the benefit in question. The situation will be considered as a whole – what is required is that the overall picture is predominantly one of providing public benefit through activity in furtherance of the charitable purposes. If the link is not clear, the benefit is not relevant to determining whether public benefit is provided for the purpose of the charity test.

Inactivity

Charities must avoid excessive and unreasonable inactivity if it is to be regarded as meeting the public benefit requirement.

A charity must actively provide, or plan to provide, benefit in some way. This cannot be the case if there is no activity (though short periods of inactivity may be acceptable where a good reason can be shown for it).

In assessing whether a charity actively provides public benefit a reasonable, fair and proportionate approach will be taken and it is acknowledged that different charities will have very different levels of activity. There may be periods of apparent inactivity in a charity's existence. However, these should last for a limited time only and expect that charity trustees will explain them in their Annual Report, which must be prepared every year and submitted to the Registrar.

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The following are borderline examples of inactivity which trustees, in particular, should be aware of. This is not to say that the following are not permitted. Ultimately, if the apparent inactivity is unreasonable and/or excessive in the circumstances, the public benefit requirement will not be met and the organization cannot be charitable.

- » **Accumulation of reserves or funds.** A charity may be accumulating reserves or funds in preparation for a particular capital project or programme of activity, but not have any other activity at this point in time. This could be regarded as providing benefit but the reasons for it would need to be clearly stated in the charity trustees' Annual Report, and the notes to any reserves policy.
- » **Research as activity.** Some charities may have this as a primary activity – for example medical charities or campaigning charities. However, there may be other charities where research is undertaken to support, guide or inform other activity. It is recognised that the outcome of research cannot always be predicted, and that in the longer term even negative results can provide a degree of public benefit. Where research is ongoing the charity trustees' Annual Report should indicate what progress is being made and what is a realistic anticipated timetable for the conclusion of particular projects, in particular where further primary activity, is dependent on this.
- » **The award of grants to charities or other bodies can fall within the definition of providing public benefit.** While larger organizations may have a rolling programme of grant giving, many smaller charities will make awards only once a year or possibly less often (for example, there may be a three-year cycle of grant giving with little activity in between). Again, we would expect the grant giving policy to be clearly stated in a body's application for status or in charity trustees' Annual Reports.

Where there is no activity, and it is established that a charity is not providing any public benefit, remedial action will be taken, including cancellation of the organization's registration as a charity as it is consequently no longer fit and proper.

Need for evidence

The Registrar along with the Commissioners may require evidence of a benefit before considering that the public benefit requirement is met.

A benefit must be capable of being proven by evidence in the event that it is needed. In many cases, a purpose is so clearly beneficial that there is no need for trustees to provide evidence. For example, the trustees of an organization whose purpose is to provide emergency aid in the context of a natural disaster would not need to provide evidence that the purpose is beneficial.

However, where it is not clear, further inquiries of a trustee as needed may be made, and the type of evidence looked for might concern the following:

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- » the architectural or historical merit of a building preserved under an advancement of heritage purpose
- » the artistic merit of an art collection displayed under an advancement of art purpose
- » the healing benefits of a therapy provided under an advancement of health purpose
- » the educational merit of a training programme offered under an advancement of education purpose

Detriment or harm

Any detriment or harm which is caused by a charity's purposes must be balanced against its benefit.

The fact that some detriment or harm results from the purposes or activities of a charity does not necessarily mean that the public benefit requirement is not met. The detriment or harm resulting from it will have to outweigh the benefit to fail the public benefit requirement.

Detriment can vary in nature, scale and the immediacy or visibility of the impact or result. It should be possible to identify and describe the detriment or harm caused, and will only be considered on the clearest of evidence. Where the benefit of a purpose is obvious and commonly recognised, there is an even greater need for evidence of detriment or harm to be clear and substantial, if it is to outweigh that benefit.

Examples of how detriment or harm is considered

- » A body set up to advance mental health includes among its activities the provision of an unorthodox therapy, known to have adverse effects on some individuals. Will have to consider whether the detriment or harm from this activity (from possible distress to vulnerable individuals) would be likely to outweigh any benefit, and will need to look at this detriment or harm in the context of the likely benefit from the body's wider activities.
- » A body set up to advance environmental protection wants to construct a wind farm in a rural area. A householder close to the site is concerned that it may reduce the value of their property but it is unlikely that this detriment or harm, since it is effectively private to them, can be said to be a detriment or harm to the public. On the other hand, will take into account, usually in the form of any decision from the statutory planning system, the likely wider environmental impact of the wind farm on the local area and weigh this against the likely benefit to the environment from reduced reliance on fossil fuels.
- » A charity intends to help reintroduce to a particular area a plant or animal formerly native there. Will need to consider independent evidence of benefit to the public through the enhancement of the local ecosystem against any evidence of possible damage to the economic life of the community through damage to farming or sporting interests.

While appropriate account of public opinion will be taken, public opinion cannot be the final arbiter of benefit or detriment or harm. Public opinion can be both deeply divided on an issue and liable to change,

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and charities may often be working in controversial areas or undertake activities which are not popular or well understood. Indeed, part of a body's activities in furtherance of its purposes may be to change public sentiment on an issue (such as majority attitudes to minority groups). The simple fact that some individuals or groups in society may disagree with aspects of a charity's activities does not in itself mean that detriment or harm is caused: there must be evidence of actual or likely detriment or harm.

Forbidden purposes

Purposes which:

- » **explicitly provide for some detriment or harm,**
- » **are unlawful or contrary to public policy, or**
- » **are of such a serious nature as to negate the benefit provided,**

cannot be beneficial, and consequently, are never charitable.

This is so even if the organization's additional benefit would otherwise outweigh its detriment or harm.

Restricting who benefits

General public

A purpose which benefits the public in general, will nearly always satisfy the public benefit requirement.

This means that the benefit of purpose is not limited to people with a particular need or who have to satisfy some other criteria. When a purpose does not specify who can benefit, it will generally be taken to mean that it will benefit the public in general. As an example, a purpose which is concerned with conserving an endangered species would be for the public in general.

Section of the public

A charitable purpose can benefit a section of the public, but the section must be appropriate (or 'sufficient') in relation to the specific purpose.

Most charities have a limited number of potential beneficiaries. There may be criteria on who can benefit based on need (such as sickness or financial hardship for example), based on a particular geographical area, or other criteria. Provided that the access is sufficiently open in nature and the criteria are consistent with the charitable purpose being pursued, these will not constitute undue restrictions.

If a body's benefits are potentially available to anyone who, falling within the (acceptable) criteria, chooses to take advantage of them, it can be considered to provide benefit to the public, even though in some cases the actual number of beneficiaries may be quite small. For example, a body may offer only a small number of places for the services it provides, such as a small number of available rooms in a care home, but those places are open to the relevant section of the public to apply for them.

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However, a purpose where the number of people who can benefit (now and in the future) is numerically negligible (unless the purpose is for the relief, and in some cases the prevention, of poverty) fails the public benefit requirement.

Limitations must be justifiable

A charity which places limitations on who may benefit must ensure that such limitations are justifiable.

This means that the limitations must be connected to the purpose in a way that (in the context of that particular purpose) is legitimate, proportionate and rational.

In general, there may be greater justification for restricting the number of people who can benefit where:

- » the individual need of the beneficiaries is very great or
- » the resources available to the charity are very limited

Any restriction on who can benefit is not justifiable purely on the basis that there may be some wider benefit to society from the charity benefiting that particular section of the public. The justification for the restriction cannot rely solely on those wider benefits.

Charities cannot be 'exclusive clubs' that only a few can join. So, where the restriction is narrow, inward-looking and exclusive, the greater the justification for the restriction may be needed.

Geographical limitations

A charity can limit those who may benefit to a geographical area, provided that area is not too small.

In Bermuda, parishes, municipalities and economic empowerment zones will be regarded as sufficient. Limiting those who benefit to residents of just one street would be too small.

The geographical area does not have to be in Bermuda. An organization that is set up and registered in Bermuda can be a charity, even if its purpose is to benefit people entirely outside that area. However, the general rule relating to the size of geographical limitations still applies.

Charities and the Human Rights Act

A charity cannot limit those who may benefit in a manner which is contrary to the Human Rights 1981.

This legislation makes it unlawful to discriminate against anyone on the basis of listed prohibited grounds of discrimination in a wide range of areas including employment and the provision of services.

Prohibited grounds for discrimination include:

- » race
- » place of origin
- » colour
- » ethnic or national origins

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- » sex
- » sexual orientation
- » marital status
- » disability
- » family status
- » religion
- » beliefs or political opinions
- » criminal record
- » age (does not apply to provision of goods and services)

The provisions of the Human Rights Act apply to charities when they are providing services to beneficiaries. However, there are some limited exceptions to the prohibition. The prohibition of discrimination in the provision of premises does not apply where the whole occupancy of those premises is bona fide restricted to individuals of the same sex. Same sex education is also permitted under the Act. Employers need only address the physical disability of an employee to the extent that it does not cause unreasonable hardship.

For more information on the operation of the Human Rights Act and whether or not your charity is in compliance, please consult the Human Rights Commission.

Personal characteristics

A charity cannot limit those who may benefit by reference to any other personal characteristic not covered under the Human Rights Act 1981 where such a limitation would not be justifiable.

Examples of such characteristics might include a person's occupation, profession or employment status. Such limitations may be allowed depending on the circumstances.

Please see above for more information on what constitutes a justifiable limitation.

Family and employment relationships

The beneficiaries of a charity or charitable gift cannot be linked by reference to (1) a family relationship with one or more individuals, or (2) an employment or former employment relationship with one or more employer.

This rule is significantly relaxed for charities aiming to relieve or prevent poverty, which can, in fact, define who can benefit by reference to:

- » their family relationship (that means their descent from one individual)
- » their employment by an employer

Nonetheless, a charity must not have a purpose which is for the benefit of named individuals, whether or not they are poor. This is so even if the motive is to relieve poverty and the named individuals happen to be poor.

Membership-based associations

If the primary purpose of a membership-based association is assistance towards its members, it will not be serving a sufficient section of the public.

However, an charity can use a membership structure to deliver benefits if

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- » its primary purposes are exclusively charitable
- » access to membership is not restricted so as to exclude those of limited means and
- » the use of a membership structure is suitable for carrying out the organization's purposes for the public benefit.

All those who might benefit should be able to apply to join and there should be objective criteria for deciding membership. There may be practical reasons which dictate a limit upon membership numbers, such as where there is limited access to recreational facilities for health and safety reasons. In these cases it is acceptable to have a waiting list for membership provided the next available membership is offered on a 'first come, first served' basis.

The provisions of the Human Rights Act 1981 relating to membership of organizations must be adhered to.

Ultimately, trustees of charities which have a membership must ensure that any changes to membership provisions do not have the effect of turning the charity into a private members' club.

This rule is significantly relaxed for charities aiming to relieve or prevent poverty, which can, in fact, define who can benefit by reference to membership in an organization.

Nonetheless, a charity must not have a purpose which is for the benefit of named individuals, whether or not they are poor. This is so even if the motive is to relieve poverty and the named individuals happen to be poor.

Access to facilities

Charities cannot unreasonably limit access to their physical facilities.

Acceptable reasons for limiting access to facilities might include the following:

- » security of property
- » lack of resources
- » the condition of, and need for, preservation of land, buildings or artefacts
- » the better administration of the charity.

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

Charity trustees are not required to maintain public opening hours. However, as a matter of good practice, trustees should ensure that access is available frequently enough to cater for all types of visitor given the nature of the facility provided by the charity.

Excluding the poor

Charities cannot have purposes which directly exclude the poor.

Charities do not have to serve only the poor or those of modest means. However, these individuals cannot be excluded. Being poor is a relative term which depends upon the circumstances, and it does not just mean the very poorest in society means.

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Charging fees

Charities cannot unduly restrict access to its benefits by charging fees which are too high. This would have the effect of indirectly excluding the poor.

However, this does not mean that the charities cannot charge fees at all. They may need to recuperate costs from beneficiaries because:

- » the charity's services or facilities are expensive to provide, or
- » unless the charity makes charges, it will be unable to operate at all.

Examples of such charities include educational organizations, hospitals, care homes and various others providing social services.

When setting the level of fees, trustees must consider whether this would involve charges that someone of modest means will not find readily affordable.

Examples of charges that the poor can usually afford include:

- » membership fees of a few dollars paid by local residents to hire out a community hall
- » small entry fees to attend events at a community centre or visit an historic house or site
- » the annual cost of a library card
- » low ticket prices to see a production by an amateur dramatic society
- » low hourly fees to use a charitable public internet terminal
- » small subscription or membership fees to join a playgroup, scouts, guides, youth club or after-school club, sports club or leisure centre
- » mobile units (such as medical boats, food and clothing vans) touring deprived areas in developing countries providing services, equipment, goods or facilities at low cost for local people

If a charity does charge fees which has the effect of excluding those of modest means, it may still meet the public benefit requirement by making alternate provision for the poor to benefit which must be more than minimal or tokenistic.

It is for a charity's trustees to decide, taking into account all the circumstances of their charity, what provision (in addition to what would be more than minimal or token provision) to make to enable the poor to benefit, which must be within the range of decisions that trustees could properly make in those particular circumstances.

There are no objective benchmarks for trustees to follow regarding what is more than minimal or token provision for the poor. It will generally be deferred to the trustees to decide, taking into account all the circumstances of their charity. However, this does not take away from the fact that the ultimate decision as to whether the public benefit requirement is met rests with the Registrar along with Commissioners.

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It could include a reduction in charges for people who cannot afford the full cost, or by providing benefit in other ways, such as by supporting the delivery of similar services by a publicly run organization.

Trustees can take into account the availability of other sources of funding from outside the charity which assist the poor in accessing the benefits of the charity. This might include, for example:

- » scholarship funds provided by other charities
- » public funding to pay towards the cost of residential care
- » government loans for students attending education

In considering how this might be assessed in the context of a charitable fee-charging independent school, a decision by the Upper Tribunal in the UK³ set out some relevant factors to be considered by the trustees.

These factors include:

- » the level of fees charged
- » the charity's financial situation and business plans (including the level of salaries for professional staff and their required level of qualification)
- » how the charity operates on the ground
- » whether the charity provides a 'luxury' of 'gold-plated' service and what facilities it offers
- » whether the charity has any endowment funds (the funds which the trustees are legally required to invest or keep and use for the charity's purposes. Endowment may be expendable or permanent)
- » the charity's geographical location and
- » other relevant local factors (such as whether it is in an area of social deprivation).

The presence of one or some of these factors will determine the level of deference given to the efforts made by trustees to provide benefit. For example, the more 'gold-plated' a charity's services are, the greater burden there is on the trustees to provide benefit and the less likely the public benefit requirement will be met.

Personal benefits

A charity may only confer personal benefits (also commonly referred to as private benefits) if these are necessary or incidental to carrying out its charitable purposes.

This rule is related to the need to serve the public and is what distinguishes charities from for-profit businesses. A 'personal benefit' is one that any person or organization receives from a charity. The most common personal benefits are: direct assistance to beneficiaries, salaries for employees and payments to suppliers for goods and services. It can also include non-tangible benefits, such as public goodwill a business gets from being associated with a charity.

³ *The Independent Schools Council -v- The Charity Commission and others* [2011] UKUT 421 (TCC): <http://www.judiciary.gov.uk/media/judgments/2011/independent-schools-council-charity-commission-decision>

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The following is an example that illustrates the difference between private and public benefit. A trust may be set up to restore a historic building belonging to a private individual – clearly the owner of the building, as well as the public, will benefit from the value added by the work the trust does.

A charity which has purposes or which pursues activities and programmes that confer personal benefits that are not necessary or incidental to its purposes will fail the public benefit requirement, and consequently, will not be charitable.

Just because there is some personal benefit as a result of what your organization does, this will not necessarily cause it to fail the public benefit requirement. The amount of personal benefit will be looked at and assessed in reference to your organization's purposes.

- » A benefit is **necessary** where the amount of personal benefit involved is reasonably required for your organization to be able to provide benefit.
- » It is **incidental** where the personal benefit is a reasonable by-product of what your organization does, rather than being the main point of it.

Benefits received by individuals in their capacities as beneficiaries will nearly always be acceptable. Other common personal benefits include salaries for employees and payments to suppliers for goods and services. They can also include non-tangible benefits, such as public goodwill a business gets from being associated with a charity. If in our historic building example we thought that the benefit to the owner was the main reason for setting up the Trust, this would not be necessary or incidental, and the application would fail the charity test.

If your organization has a membership structure you will have to pay particular attention to this issue. If you have to be a member of your organization to benefit from what it does, and the conditions for becoming a member are unduly restrictive then we will not see it as providing public benefit. See our earlier guidance on membership associations.

Some common problems that will be looked out for include unreasonable compensation package, director fees, excessive travel/entertainment expenses, inflated supplier contracts, amongst others. Where personal benefits are unnecessary or more than incidental to pursuing its charitable purposes, the organization is NOT charitable.

The following are some illustrative examples of different types of personal benefit.

- » **financial benefits** – these might be in the form of cash, grants or other payments
- » **non-financial benefits or payments in kind** – these might be benefits in the form of goods or services rather than in cash, for example the provision of free accommodation, meals or transport
- » **benefits to trustees** - trustees should not receive any benefit from their charity including in return for any service they provide to it, unless there is legal authority to do so and it is reasonable.

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- » **benefits to owners of property** that a charity uses, occupies or is set up to preserve
- » **gifts or honoraria** as a mark of recognition for service
- » **enhancing the reputation of a person or organization** – for example an individual whose work is promoted by a charity might benefit from having their profile raised.
- » **benefits to funders** – for example, benefits to a government department from a charity carrying out some of its services under contract. Or commercial benefits to a business from being able to use a charity's logo on its material or products.
- » **business benefits to commercial organizations** – for example, local businesses might benefit from a charity working to regenerate an area, or from working with businesses to create employment opportunities as a way of relieving unemployment.
- » **personal benefits to members** - a charity must not be set up to provide benefit only to the organization's members unless:
 - a sufficient section of the public can access those benefits by becoming members
 - the membership structure is a suitable way of carrying out the charity's purposes for the public benefit

Political purposes

In charity law, a **political purpose** cannot be a charitable purpose. That means that an organization cannot be a charity if it has a 'political purpose'. The courts have taken the view that neither they, the Registrar nor the Commissioners can properly assess the benefit of the political outcomes being advocated for – that is the proper role of a democratically elected legislature.

The courts define political purposes as follows:

- » furthering the interests of a particular political party or candidate
- » securing or opposing any change in the law, whether in Bermuda or overseas
- » securing or opposing a change in the policy or decisions of central government or local authorities or other public bodies, whether in Bermuda or overseas

However, a charity can carry out **political activity** if it facilitates or supports the delivery of its charitable purposes.

To illustrate the distinction, consider the following examples: a health charity may promote the benefits of a balanced diet in reducing heart problems while a children's charity may draw attention to deficiencies in the law relating to child abuse or domestic violence.

ANNUAL REPORTING

Trustees of registered charities must report each year in their Trustees' Annual Report on how they have carried out their charity's purposes for the public benefit. They must also prepare statements of account which must be submitted with the annual report.

Non-auditable Charities

Trustees of non-auditable registered charities must report on public benefit by:

- » including a brief summary setting out the main activities undertaken by the charity to carry out its charitable purposes for the public benefit
- » including a statement as to whether they have complied with their duty to have due regard to our public benefit guidance when exercising any powers or duties to which the guidance is relevant

Auditable Charities

Trustees of auditable registered charities must report on public benefit by:

- » providing a review in the Trustees' Annual Report of the significant activities undertaken by the charity to carry out its charitable purposes for the public benefit
- » providing details of purposes and objectives
- » providing details of strategies adopted and activities undertaken to achieve those purposes and objectives
- » providing details of the achievements by reference to the purposes and objectives set
- » including a statement as to whether they have complied with their duty to have due regard to our public benefit guidance when exercising any powers or duties to which the guidance is relevant

How to report on public benefit

Other than the different requirements between categories of charities, there are no general rules about how trustees should report on public benefit. It is for trustees to decide how they wish to describe how they have carried out their charity's charitable purposes for the public benefit in the reporting year.

It is not necessary for a report on public benefit to be dealt with as a separate section of a Trustees' Annual Report. It can be addressed, naturally, throughout the body of the report. However, some trustees may find it helpful to have a separate section.

For many registered charities (especially smaller charities) it will be enough to satisfy the requirement to report on public benefit where the Trustees' Annual Report:

- » explains what the charity is there to achieve (its purposes)
- » explains what the charity has done during the year to carry out those purposes (for the public benefit)

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- » includes a statement whether the trustees, in making decisions about that, have had due regard to our public benefit guidance when exercising any powers or duties to which the guidance is relevant

How public benefit reporting can help charities

Public benefit reporting is an opportunity for the trustees to explain how they have done that each year. Public benefit reporting, when done well, can be an effective tool for trustees.

Charity trustees should appreciate that reporting allows them to:

- » stay focused on what their charity is there to achieve (its purposes) when planning activities
- » demonstrate what their charity does and the value of its work, particularly when applying for grant funding or fundraising
- » link with impact reporting and demonstrating the charity's transparency and accountability
- » improve the overall quality of reporting on the charity's work

Reports & the Registrar

Trustees' reports must be submitted to the Registrar annually, together with their financial statements and reports of audits, where required.

All Trustees' Annual Reports, statements of account and audit reports that are sent to the Registrar are open for inspection by members of the public. They may attend the Registry General for access. Additionally, the Registrar reserves the right to make these reports available in electronic format online.

Given the role that charity reporting plays in ensuring transparency to donors and the public, the Registrar along with the Commissioners would likely consider a general failure to report to be a possible indication of other problems that we might wish to explore further with the trustees. Persistent non-reporting of public benefit by charity trustees is a potential regulatory issue.

Every effort will be made to check annual reports submitted to them. The Registrar along with the Commissioners do not, however, endorse reporting on public benefit by individual charities. It is up to individual donors and members of the public to evaluate for themselves what public benefit is delivered by charities by relying on information which is publicly available.

Where it is believed that a report demonstrates insufficient public benefit, or where any other issue connected to reporting arises, this may lead to remedial action, up to, and including, cancellation of a charity's registration.

APPENDIX: HOW WE DECIDE WHAT IS A CHARITABLE PURPOSE

