

Public Benefit Assessments

Emerging findings for charity trustees from the Charity Commission's public benefit assessment work: 2008-09



The Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public trust and confidence. Most charities must register with the Commission, although some special types of charity do not have to register. There are some 190,000 registered charities in England and Wales. In Scotland the framework is different, and the Commission does not regulate Scottish charities.

The Commission provides a wide range of advice and guidance to charities and their trustees, and can often help with problems. Registered charities with an annual income over £10,000 must provide annual information to the Commission. The Commission has wide powers to intervene in the affairs of a charity where things have gone wrong.

More information about the Commission together with a range of guidance for charities can be found on our website.

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A report from the Charity Commission on the emerging findings for charity trustees from its public benefit assessment work.

This report is intended to help charities with their public benefit reporting but is not statutory public benefit guidance.

A. Foreword

We have published on our website detailed reports on the findings of twelve public benefit assessments of individual charities. Those reports provide details of the issues that arose in individual cases and our conclusions and recommendations.

It is too soon to draw from our first round of public benefit assessments any firm conclusions about the ability of charities in general, or certain types of charity, to meet the public benefit requirement. However, we think charities might find it helpful if we set out some general points of interest and initial observations about what we have learned from this exercise so far, alongside our emerging findings from carrying out the assessments.

It is clear that this is a learning process for everyone, charities and the Charity Commission alike; and not just for the individual charities involved in our first round of assessments, but for the charity sector as a whole. There were many good examples of aspects that went well, and some areas where improvements could be made, both in how we assess public benefit and in the way in which charities demonstrate that they meet the public benefit principles. On the whole we were encouraged by the extent to which the charities we assessed demonstrated their understanding of the public benefit requirement by providing many excellent examples of how they meet the principles of public benefit. We are also confident that our case by case approach to assessing public benefit, which takes account of different charities' circumstances, is the right one.

We believe that the more charity trustees regard the public benefit requirement as an opportunity actively to review, and be open and transparent about, how they carry out their charity's aims for the public benefit, rather than a burden or hurdle to be got over, the more it will help their charity develop and keep in step with the social and economic circumstances in which it operates. Our experience from the public benefit assessments completed so far has reinforced our conviction that raising awareness of the public benefit requirement, and encouraging charities to continue to find ways to maximise their public benefit and communicate that well, will be good for the health, strength and reputation of the charity sector overall.

We are grateful to all the charities that participated in our first round of public benefit assessments. We hope that what we, and they, have learned from this process will help all charities to reach a better understanding of what it means in practice to have aims for the public benefit and will help the general public to see what charities do actively to reflect the benefits of their special status.

Dame Suzi Leather
Sam Younger

Chair
Chief Executive

B. Background and methodology

B1. The purpose of this report

In this report, using general observations and illustrative case studies from our first round of public benefit assessments, we aim to provide trustees of all charities with:

- good practice examples of ways in which charities have demonstrated that they meet the public benefit principles;
- examples of where public benefit principles were not met, and why;
- examples of what helps our public benefit assessments; and
- details of what we have learned from the process of assessing public benefit.

B2. Context

Under the Charities Act 2006, an organisation can only be a charity if it has aims that:

- fall within the descriptions of purposes listed in the Act; and
- are for the public benefit.

The public benefit requirement is not a new requirement for charities. However, the Charities Act highlights this requirement by explicitly including public benefit in the definition of a charitable purpose. In addition, the presumption that some kinds of charity are for the public benefit has been removed.

The Charity Commission, as the independent regulator of charities in England and Wales, has a specific statutory objective to **promote awareness and understanding of the operation of the public benefit requirement** and to issue guidance in pursuit of this objective. Trustees must have regard to our public benefit guidance when exercising any powers or duties where that guidance is relevant. We also have to ensure that registered charities are properly established for charitable aims, a necessary characteristic of which is that the aims are for the public benefit.

Our public benefit assessment programme is part of the work we are doing to fulfil our statutory public benefit objective.

B3. Our role in assessing public benefit

To help explain the requirements introduced by the Charities Act 2006, we have published the following guidance, all of which is available on our website.

- *Charities and Public Benefit* – this is our general guidance on public benefit
- *The Prevention or Relief of Poverty for the Public Benefit*
- *The Advancement of Religion for the Public Benefit*
- *The Advancement of Education for the Public Benefit*
- *Public Benefit and Fee-charging*

Also, for each publication, we have published an analysis of the law that underpins that guidance.

The Charity Commission is responsible for registering charities and for promoting their compliance and accountability. In carrying out this role, both at registration stage and with already registered charities, we have to interpret and apply the law on charitable status. That includes assessing the public benefit of individual charities. *Public Benefit: Statement of the basis for the Charity Commission's role and actions*, which is available on our website, explains our approach to assessing public benefit.

B4. What a public benefit assessment covers

We assess whether:

- the organisation's aims fall within the descriptions of purposes in the Charities Act 2006 – these are purposes which have been recognised by the Courts or the Charity Commission as potentially charitable and are now enshrined in statute;
- the charity is capable of being operated in accordance with those (potentially charitable) aims;
- the charity's aims are capable of being carried out for the public benefit;
- the charity's trustees are in practice carrying out those aims for the public benefit.

Section H of *Charities and Public Benefit* sets out in more detail the criteria we apply.

B5. How we selected charities for the first programme of assessments

In our first programme of assessments we looked at twelve individual charities:

- charities for the advancement of religion (4 charities); and
- fee-charging charities, consisting of:
 - independent schools (5 charities); and
 - residential care homes (3 charities).

We deliberately included charities of a type which were presumed to be for the public benefit, before the changes made by the Charities Act 2006, and, because of the high level of public interest in how the public benefit requirement might affect them, we also included fee-charging charities.

When selecting the individual charities to assess within these groups, we used the following selection criteria:

- charities within each group which are sufficiently different in character, for example in the nature of the charity's objects and the methods used to advance the aims;
- a geographical spread across England and Wales;
- a range of income levels;
- (in the case of fee-charging charities) a range of the numbers of users, methods of access and fees charged.

In some cases the charities we selected had specifically volunteered to take part in the assessment programme.

B6. The findings from our individual assessments

We have produced a report of our findings for each of the individual charities we assessed, all of which are available on our website.

These reports concern the following charities (registered numbers are given in brackets after the charity's name):

Charities advancing religion:

- United Christian Broadcasters Limited (299128)
- Church Mission Society (220297)
- London Sri Murugan Temple (271097)
- Tara Mahayana Buddhist Centre (517949)

Independent schools:

- The Manchester Grammar School Foundation (529909)
- Highfield Priory School Limited (532262)
- Pangbourne College Limited (309096)
- Manor House School Trust Ltd which operates as Moyles Court School (307347)
- S. Anselm's School Trust Limited (527179)

Residential care homes:

- Cornwall Old People's Housing Society also known as Perran Bay Home for the Elderly (1071067)
- Penylan House Jewish Retirement & Nursing Home Cardiff (243968)
- The Rest Bay Convalescent Hotel (220744)

C. Are the charity's aims capable of being charitable?

In this section we have set out some general, wider issues relating to whether a charity's aims are capable of being charitable. Some of those issues are examined in more detail at sections C2 and C3.

C1. Wider issues

From the assessments we carried out we found that:

- keeping a charity's aims and governing document under regular review can help avoid 'mission drift';
- altering or widening a charity's aims might be necessary in order to ensure that a charity continues to meet the needs of its beneficiaries and to respond to changing social and economic circumstances;

- where social and economic circumstances (including, for example, changes in statutory requirements) alter both the ability of a charity to further its aims, and the economic viability of the charity, the trustees may find it helpful to carry out a full review of their charity's position (such as the suitability of any premises, and whether the charity's objects could be better achieved through other means);
- it is important that trustees of charities that have multiple aims are able to demonstrate how they are carrying out each of those aims for the public benefit.

C2. Mission drift

'Mission drift' is where a charity strays from its original or stated aims. A charity's aims are important when assessing public benefit, as the requirement is that the **aims** are for the public benefit. Therefore, if a charity strays too far from its stated aims, without reviewing and amending those aims, it may in some cases become extremely difficult to assess the charity's public benefit against those aims.

We recognise that, over time, charities develop and change as the needs of their beneficiaries, and the social and economic circumstances in which they operate, change. It is therefore important that charity trustees keep their charity's aims under regular review, to evaluate their ongoing usefulness and public benefit.

Case study: The Rest Bay Convalescent Hotel

In this case, the charity was originally set up with aims to assist convalescents back to health and to relieve disability or chronic illness. Over time, changing social and economic circumstances resulted in the charity no longer providing residential care, a substantial decline of convalescents (or people who are disabled or chronically ill) from the mining and other heavy industries that had previously referred a significant number of residents to the home, and a gradual decline in the number of people staying at the home.

At the time of our public benefit assessment, the charity's focus appeared to be the provision of holidays primarily (although not exclusively) for people who are elderly or disabled. The provision of holidays for the general public is not a charitable aim, nor is the provision of holidays for elderly people, except where that is specifically to cater for a charitable need related to old age. As a result of the declining numbers of residents at the home and a need to ensure that the hotel remained financially stable, the trustees were directing the charity's operations towards the provision of holidays. Whilst that included providing holidays to people who had a charitable need by reason of their old age or disability, the admissions policy was not specifically restricted in this way and people with no such charitable need could stay at the hotel.

As the public benefit of any charity must relate to furthering its stated aims, we concluded that we could not form a conclusion about the extent to which the charity was operating for the public benefit unless and until the charity is operating within its aims. We therefore advised the charity's trustees to re-examine the charity's aims and consider whether they are still capable of being furthered in the current economic and social circumstances and in the interests of the charity.

For further information see the following guidance on our website:

- *Changing Your Charity's Governing Document (CC36)*
- *Milestones: managing key events in the life of a charity (RS6)*
- *Application of Property Cy-Près (OG2)*

C3. Charities with multiple aims

Many charities have more than one aim. Where that is the case, we have to ensure that each aim satisfies all of the public benefit principles.

Case study: United Christian Broadcasters Limited ('UCB')

UCB is a Christian media charity operating within the United Kingdom and Ireland. It also promotes the work of humanitarian organisations whose aims and activities are based on Christian principles. It has multiple objects, which are:

- the advancement of the Christian Religion either in the United Kingdom or overseas;
- the advancement of religious or other education; and
- the relief of the aged, poor, sick or disabled.

Examples of the ways in which UCB carries out each of these objects for the public benefit are:

Advancement of the Christian religion:

- broadcasting on five Christian radio channels and one television channel broadcasting 24 hours a day;
- publishing and distributing booklets containing daily bible readings and materials for school and college age ranges;
- offering a 'prayerline' service, available to anybody who needs someone to pray with.

Advancement of religious or other education:

- providing training in leadership and management accredited by the Institute of Leadership & Management;
- sales of Christian resources.

Relief of the aged, poor, sick or disabled:

- promoting the work of humanitarian organisations whose aims and activities are based on Christian principles and the relief of need;
- raising funds and providing grants to an orphanage in Romania.

D. Assessing benefit

Sub-principles 1a (it must be clear what the benefits are) and 1b (the benefits must be related to the aims)

In this section we have set out some general, wider issues relating to assessing benefit. Some of those issues are examined in more detail at sections D2 - D4.

D1. Wider issues

From the assessments we carried out we found that:

- when providing evidence of public benefit, it is helpful where trustees provide or refer to:
 - recent, relevant, real examples of what the charity has done to carry out its aims which show the frequency, regularity, and extent of the availability of what the charity does;
 - where available, recent reports by an independent third-party, such as an independent sector assessor or regulator;
 - audited accounts and Trustees' Annual Reports;
 - information provided on the charity's website or other published material;
- when providing evidence of, or reporting on, public benefit, it is helpful if trustees avoid:
 - making general statements about what the charity does that are not supported by specific examples;
 - examples that give little or no indication of how often they occur, or the extent to which they are a significant or insignificant aspect of the charity's work;
 - examples of benefits that are accidental or unplanned, which occur by chance, or which are not related to the charity's aims.

D2. Assessing evidence of benefit

In this context, 'evidence' refers to information provided by a charity which demonstrates how it carries out its aims for the public benefit. That evidence might take a number of forms.

In our public benefit assessments we took into consideration:

- information provided by the charities in writing and at meetings at their premises;
- reports by other regulators or independent assessors;
- information held by the Charity Commission in relation to previous dealings with the charity;
- the charity's audited accounts and Trustees' Annual Reports; and
- other relevant and reliable publicly available information.

In considering evidence of public benefit, we found the availability of recent, independent reports which shows what a charity has done to carry out its aims, and how well it has done so, particularly useful. Not only did this enhance the information provided by the charity, it also provided third-party validation of that information.

For example, we found the information provided in Independent Schools Inspectorate reports on schools and Commission for Social Care Inspection (now the Care Quality Commission) and Care and Social Services Inspectorate Wales reports on residential care homes helpful in providing evidence of benefit.

However, it is not necessary for charities to provide third-party validation of the information they provide and, for many charities, there is no other regulator or independent assessor that exists to provide such evidence. Where that was the case, we found it was all the more important that the charity provide relevant, recent, real examples of what it has done to carry out its aims which demonstrate the benefits of its work.

For example, in the case of charities advancing religion there is usually no independent assessor to provide evidence of benefit, and often the benefits are of a sort that are difficult to quantify or measure. However, there are many ways in which such charities can provide evidence of benefit, examples of which can be found in our assessment reports.

In assessing evidence of public benefit our approach is to take account of Better Regulation principles, which require our regulatory activities to be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed.

For example, where we were satisfied that the charity had provided sufficient evidence of benefit, we did not seek out further evidence, even if it might be available. Nor did we consider it cost effective for us to search out evidence of benefit where insufficient evidence was provided by the charity. The responsibility lies with the charity trustees to demonstrate evidence of benefit where that is not obvious or clear.

In the context of our public benefit assessments, we took a proportionate, risk-based, evidence-based approach, which means that we:

- considered the information we were given by the charity;
- where appropriate, tested any particular evidence that was crucial to a particular decision; and
- sought further evidence where the information provided by the charity raised any material concerns as to its accuracy or sufficiency.

D3. Assessing intangible benefits

In some cases the benefits were identifiable but not easy to quantify or measure. Provided the benefits were clear, we took intangible or non-quantifiable benefits into account.

Case study: The Church Mission Society ('CMS')

The aim of CMS is to advance religion by proclaiming the gospel and to gather all peoples into fellowship with the Lord Jesus Christ.

The trustees of CMS identified benefits which are less tangible or quantifiable but which arise as a result of the beliefs and practices that are promoted by the charity. These included benefits arising from contributing towards the development of civil society through imparting positive values, attitudes and skills, such as mediating in times of civil unrest; encouraging churches in Britain to play an active part in community development; encouraging altruism and volunteering; and encouraging people to live with simplicity and a commitment to serve other people. It also included providing opportunities for intercultural enrichment and international understanding.

Although beneficial to the public, it was difficult to quantify the impact of these benefits in the achievement of the charity's aim. Nevertheless, we considered that they do involve significant benefits which can be recognised and described and which do relate to the charity's aim.

D4. Political activity and campaigning

A charity cannot exist for a political aim, which is any aim directed at furthering the interests of any political party, or securing or opposing a change in the law, policy or decisions either in England or Wales or in other countries. However, campaigning and political activity can be legitimate and valuable activities for charities to undertake. These can only be undertaken by a charity where to do so would further or support the delivery of its charitable aims.

Case study: The Church Mission Society ('CMS')

In our public benefit assessment of CMS the trustees advised us that the charity engages in some political activities in furtherance of its aims. It does this through the promotion of human rights by, for example, opposing the trafficking of women for sex work in various Asian cities.

This was a good example of trustees taking steps to ensure that any political activity is carried out in accordance with our guidance *Speaking Out: Campaigning and Political Activity by Charities* (CC9).

E. Assessing detriment or harm

Sub-principle 1c (benefits must be balanced against any detriment or harm)

In this section we have set out some general, wider issues relating to assessing detriment or harm. Some of those issues are examined in more detail at sections E2 – E4.

E1. Wider issues

From the assessments we carried out we found that:

- when assessing the public benefit of a charity that deals with vulnerable beneficiaries, it is helpful if the trustees can provide evidence, especially independent third-party evidence, of how they manage risks of detriment or harm to those beneficiaries;
- when assessing the public benefit of a charity that carries out an activity to further the charity's aims that could have the potential to cause detriment or harm, it is helpful if the trustees can provide information and evidence about how they undertake that activity in a way that does not give rise to detriment or harm.

E2. How we approached assessing detriment or harm

We took a similar approach when assessing evidence of detriment or harm as we did when assessing evidence of benefit.

Consistent with our general approach to casework, in our public benefit assessments information we took into consideration when assessing the extent to which there was any evidence of detriment or harm included:

- a preliminary review of the Charity Commission's data and case files;
- relevant, recent third-party inspection reports;
- a high level review of publicly available information, such as any recent media reports relating to the charity;
- whether the widespread publicity given to our public benefit assessments prompted any substantiated complaints about an individual charity.

Clearly where the information available to us suggests that there may be evidence of actual detriment or harm, or evidence that the risks of detriment or harm are not being properly or adequately managed, then we would investigate this further. In our public benefit assessments, where, taken together, this information suggested there were no reasonable grounds for conducting a more detailed investigation into detriment or harm issues we did not actively seek further supporting evidence of it. That would not be a proportionate use of our resources.

Evidence provided by third-party inspection reports was a useful way of providing assurance that no detriment or harm is being caused and that such risks are being properly managed.

We did not regard wider debates about the alleged detriment or harm of particular types of charity, or the way in which some charities carry out their aims, as evidence of detriment or harm in the individual cases we assessed. This is consistent with our guidance in section E4 of *Charities and Public Benefit*.

E3. Protecting vulnerable beneficiaries

When assessing the public benefit of a charity that provides services or facilities to vulnerable beneficiaries (such as children and young people, elderly people or people with a disability) it was particularly important that the trustees could demonstrate that there is no detriment or harm to those beneficiaries and that they are taking reasonable steps to protect those beneficiaries from detriment or harm. That might include, for example, ensuring that Criminal Records Bureau (CRB) checks are properly conducted for people where there is a legal requirement or entitlement to carry them out.

Case study: S. Anselm's School Trust Limited

S. Anselm's School caters for children aged 3 - 13 years old. The trustees demonstrated that they were particularly alert to child protection issues. For example, they took particular care to consider child protection issues when making facilities at the school available to external users.

This was a good example of how a charity can show that it is actively managing the risks of detriment or harm to its beneficiaries.

For further information see the following guidance on our website:

- *Finding new trustees: What charities need to know (CC30)*
- *Safeguarding Children*
- *Registering as a charity: evidence of CRB disclosures*

E4. Charities carrying out activities internationally

When assessing charities that carry out activities internationally it is helpful where trustees can show that they follow our guidance *Charities Working Internationally*. That includes assessing the extent of the risks that the charity would be running and the extent to which it could remove or reduce or manage those risks.

Case study: The Church Mission Society ('CMS')

In our public benefit assessment of CMS, the trustees demonstrated that they recognise the potential risk of detriment or harm arising from certain activities, such as:

- in places where governments object to Christian mission, including where it might be illegal; and
- in relation to staff and those engaged in mission work.

In its international work, the charity assesses the extent of any risk arising to the charity or its mission workers and has developed appropriate systems to manage these risks.

For further information see the following guidance on our website:

- *Charities Working Internationally*

F. Assessing who are the beneficiaries and any restrictions on who can benefit

Sub-principles 2a (the beneficiaries must be appropriate to the aims) and 2b (where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted)

In this section we have set out some general, wider issues relating to assessing who are the beneficiaries and any restrictions on who can benefit. Some of those issues are examined in more detail at sections F2 and F3.

F1. Wider issues

From the assessments we carried out we found that:

- where, over time, the practice has been for beneficiaries to be drawn from the local area (even though there are no geographical restrictions specified in the charity's aims) it is relevant to consider the extent to which the opportunity to benefit might be known to people outside that local area. Where the opportunity to benefit is not widely advertised (such as on the charity's website) it can, in effect, limit the opportunity to benefit in a way that is not consistent with the charity's aims.

F2. Identifying who are the beneficiaries from a charity's aims

In some cases a charity's aims might specify who can benefit from the charity, but it also carries out other incidental charitable activity that benefits people outside that defined group. Where that is the case, we will only take into account the benefits to the people who are defined in the charity's aims.

Where a charity carries out a significant amount of activity that benefits people outside its defined group of beneficiaries we would need to consider whether this is a consequence of 'mission drift', a legitimate and necessary broadening of the charity's aims in response to changing social and economic circumstances which requires the charity's objects to be amended, or whether the trustees are acting in breach of the charity's trusts. In those cases, we will advise the trustees where they are proposing to alter the definition in the charity's objects of who can benefit.

Case study: The Manchester Grammar School Foundation

In this case, the charity's stated aims are to advance the education of boys at a school in or near the City of Manchester.

The school carries out a wide range of charitable activity, some of which also provides educational benefits to girls.

In this case the clear benefits that were related to the charity's aims were primarily those that arise for boys who attend the school and, secondary to that, other boys who are not pupils at the school.

The wider educational activities undertaken by the charity that provide benefits to girls are a legitimate and incidental aspect of the general running of the school, and it was not necessary for the charity to consider broadening its aims to specifically refer to the education of girls.

However, had this been a consequence of a change in the school's circumstances, which meant that it now provides co-education for example, then it would have been appropriate to consider amending the charity's objects to the education of boys and girls.

Where a charity has been operating for many years it is sometimes necessary to alter its aims to take account of changing social and economic circumstances, such as changing local demographics.

Case study: Penylan House, Jewish Retirement and Nursing Home

In this case, the charity had original objects to provide an Orthodox Jewish care home, situated in Cardiff, for elderly people of the Jewish faith. As a result of a significant and continuing decline in the size of the Jewish community in and around Cardiff, and a tendency for people to remain living in their homes for longer, the trustees had found it increasingly difficult to fill vacancies.

The trustees secured our approval to widen the charity's objects to allow some non-Jewish people who are elderly and in need of care to be considered as beneficiaries. It is the charity's policy that beneficiaries who are not of the Jewish faith must be willing to live within an environment which follows Jewish religious law and practice so that the home continues to be primarily an Orthodox Jewish home.

F3. Reasonable restrictions on who can benefit

In some cases a charity's aims are intended to benefit people who are defined on the basis of some common charitable need. Restricting benefits to such a group can usually be said to be reasonable because they have a charitable need that is being relieved or addressed.

Case study: Cornwall Old People's Housing Society

In this case, beneficiaries are restricted to people over the age of 65 who are in need of residential, respite or day care for reasons of their health or old age. Residents are only admitted to the care home following an assessment of their needs to ensure that the home can provide appropriate care. The charity does not provide access to people in need of full medical or nursing care, as the charity is not registered to provide nursing care.

We considered the restrictions on who can benefit to be reasonable as the restrictions are based on charitable need and on the level of care that the charity is registered to provide.

In some cases a charity's aims are intended to benefit people who are defined by reference to some personal characteristic, such as their gender, race, ethnic origin, religion, sexual orientation, or other defining characteristic. Restricting benefits in this way may or may not be considered reasonable. It depends upon the aims that are to be carried out.

Case study: Penylan House, Jewish Retirement and Nursing Home

In this case, the aim of the charity is the provision of an Orthodox Jewish residential care home. Within that aim, in deciding who can benefit, preference is given to elderly people of the Jewish faith.

We considered the preferences expressed (and therefore the restrictions on who can benefit) to be reasonable and appropriate to the charity's aim. The charity's beneficiaries are people who, because of their religious beliefs, must follow a particular lifestyle. The charity offers a suitable environment for that specific lifestyle to be maintained by providing a care home in which the residents can continue to live out of the particular tenets and traditions of the Jewish religion. These tenets and traditions are such that an Orthodox Jewish care home could not be maintained unless the majority of the residents were following Jewish laws, practices and customs.

Sometimes, a charity's aims (as expressed in its objects clause) do not define a specific geographical area in which the intended beneficiaries must live, but they do express a preference for people living in a particular area. Sometimes, the aims do not express a preference for people living in a particular area but, in practice, the benefits are delivered at a specific facility which often means that beneficiaries are mainly drawn from the neighbourhood in which that facility is situated.

Case studies: Penylan Jewish Retirement & Nursing Home Cardiff and Cornwall Old People's Housing Society

In both these cases, the charities' aims contain no geographical restriction on who can have the opportunity to benefit. However, in practice, the location of each residential care home means that most of the beneficiaries are drawn from local areas, as many residents wish to remain close to the communities in which they have lived for many years and to their families who live locally; although the homes also had some residents who came from other areas.

In our public benefit assessments of these charities, we considered this sort of restriction to be reasonable because it simply occurs naturally as a result of practicalities and personal preferences, and because it does not preclude people from outside the locality from applying to become a resident.

However, we also explored with the trustees how people outside the local area are made aware of the opportunity to benefit.

G. Assessing the effects of fee-charging

Sub-principles 2b (the opportunity to benefit must not be unreasonably restricted by ability to pay any fees charged) and 2c (people in poverty must not be excluded from the opportunity to benefit)

In this section we have set out some general, wider issues relating to assessing the effects of fee-charging on public benefit. Some of those issues are examined in more detail at sections G2 – G8.

G1. Wider issues

From the assessments we carried out we found that:

- whilst providing free or subsidised access is an obvious way of providing opportunities to benefit for people who cannot afford the fees, there is no formula which sets out what amount of free or subsidised access should be provided. What matters is that the opportunity to benefit for people who cannot afford the fees is, overall, (when taken together with any other significant opportunities to benefit that do not involve providing free or subsidised access) more than minimal or tokenistic or occurring by chance;
- ensuring awareness amongst potential beneficiaries or referring agencies of the availability of fee assistance or other significant opportunities to benefit is helpful to ensure that any charged-for services or facilities are likely to be accessible to people who cannot afford the fees. This is an important matter in helping us determine whether an opportunity to benefit is ‘material’. (Our public benefit assessment reports include lots of examples provided by the charities we assessed of how people who cannot afford the fees can benefit from those charities’ services or facilities);
- features of a fee assistance programme that can be modelled as good practice include:
 - deliberate and planned fund-raising campaigns to create funds for fee assistance;
 - having dedicated funds for fee assistance;
 - setting budgets or targets for the number or amount of fee assistance that can be offered;
 - having a means-tested fee assistance scheme which sets an income level below which full funding can be offered, and a sliding scale above this which helps with part-funding;
 - having an advertising strategy intended to reach those who might not be able to afford the fees which clearly indicates the opportunities to benefit that are available;
- more emphasis on the use of means-tested assistance helps to demonstrate that a charity is seeking to ensure that access to the services or facilities it provides is not unreasonably restricted by the payment of fees;
- a charity’s financial and other circumstances are an important part of assessing the extent to which it can satisfy principles 2b and 2c;

- the availability of local authority funding to help meet beneficiaries' costs can assist charities in satisfying principle 2b and, where it covers the full costs, principle 2c;
- for care homes, budgeting to provide support with top up fees, and regularly reviewing the availability of any reserves for this purpose, can help a charity demonstrate how it satisfies principles 2b and 2c;
- including the following information in a charity's Trustees' Annual Report can assist in demonstrating clearly that principles 2b and 2c have been met:
 - openly publishing the availability of the opportunity to benefit for those who are unable to afford the full fees (for example on the charity's website), in particular by making a clear statement that funded places are available;
 - formally identifying the specific funds in the charity's budget for subsidising fee costs, either through subsidy of the actual cost of providing a service or facility to those who are funded by a local authority, or otherwise;
 - formally establishing a clear protocol for providing subsidised places, both where local authority funding does not meet the full cost and in other cases where there is no eligibility for local authority funding;
 - periodically reviewing the number of beneficiaries with funded places; at the end of the financial year identifying any unused funds allocated in subsidising funded places; and considering retaining any unused funds for future years. Where the number of funded places falls below the budgeted sum, the trustees could consider retaining the balance of the unspent sums for future years for the purpose of subsidising places.

G2. Our approach to assessing the effects of fee-charging on public benefit

The following factors indicate whether the extent to which a charity's charged-for services and facilities are made available to people who cannot afford to pay for them satisfies the public benefit requirement:

- the charity's aims and the need for, and nature of, the services or facilities it provides;
- the extent and level of the fees which people need to pay to access those services or facilities (and consequently the exclusory nature of those fees);
- the extent to which the charity moderates those fees, in whole or in part, to people who cannot afford them, or provides other opportunities to benefit to those people;
- the nature of the benefit (including whether it is of singular or long-term benefit) as well as the general circumstances, including the current social and economic circumstances, in which the charity operates.

In considering these factors, where a charity charges high fees that many people could not afford the trustees must demonstrate that there is **sufficient opportunity for people who cannot afford those fees to benefit in a material way that is related to the charity's aims**. **Material** opportunities to benefit are those that are more than minimal or tokenistic or which occur by chance.

G3. Assessing fees in context

We considered the effect of fee-charging on public benefit in context. It is not generally possible to make relevant comparisons between different types of charities that charge fees because of the wide range of aims that charities pursue, different types of funding streams and the different circumstances (geographical, social, economic) in which charities operate.

For example, it is not useful to compare fee levels and fee assistance provided by charitable independent schools and charitable residential care homes. This is because the cost of providing accommodation and care for a resident at a care home is often funded, at least in part, by a local authority. In some cases that funding may cover all of the fees; in other cases the charity might offer or ask for 'top-up' funding where the local authority only provides partial funding.

However, in the case of independent schools, there is not the same level of external funding available to help provide opportunities to benefit for people who cannot afford the fees; schools therefore usually have to find the funding for bursaries and other fee assistance from their own resources.

We did not therefore expect schools and residential care homes to be able to offer the same level or type of fee assistance as each other.

It was not, therefore, possible to produce a simple formula that all charities, or charities within a specific sector, could follow based on an ideal or agreed amount or percentage of fee assistance that should be offered. We needed to take account of many different factors; what is right for one charity will not necessarily be right for another charity, even one with similar aims.

G4. Charities that charge low fees

Many charities charge fees for the services or facilities they provide but the payments are relatively low. In our public benefit assessments, where that was the case the fee-charging presented no public benefit difficulties. The following case studies help to illustrate this.

Case study 1: The London Sri Murugan Temple

In the case of the London Sri Murugan Temple, access to the Temple and participation in religious services are free, although the charity does have guidance on charges for some services which are calculated on the basis of actual cost to the charity. These charges range from £1 for an archana (which is a personalised abbreviated puja performed by Temple priests) to £200 for a simple wedding service, and may be paid at the discretion of the individual. People generally make their contribution at the guided amount but there is no requirement to do so, and those unable to pay would not be denied access on that basis. The Temple is open both to casual visitors and regular worshippers.

As the fees in this case (where paid) are affordable by most people they fit within the definition of 'low fees' in *Public Benefit and Fee-charging*. This means that the fees do not prevent people from having the opportunity to benefit from the charity's services.

Case study 2: The Tara Mahayana Buddhist Centre

The Tara Mahayana Buddhist Centre delivers its benefits in a number of ways, including those for which no charge is made. These include the opportunity to attend daily chanted prayers, to visit the Centre and use the meditation rooms, and to take part in 'working holidays' which enable the individual to access the full range of classes on offer, in return for their volunteered time and services.

The charges or fees that do apply relate to the study programmes taught by the charity although discounts are available for those who cannot afford them.

At the time of our assessment the charity's fees or charges were:

- £5 per week for weekly meditation classes;
- £30 per month for foundation and teacher training programmes;
- £25 per day for day courses; and
- £40 for weekend courses.

In addition to these charges, students need to buy books to support their courses of study. This is approximately one book per year at a cost of around £15; anyone who cannot afford to buy a required study book is likely to be given one by other students. The Centre has a Charges and Discount Policy which sets out concessionary rates for students, disabled carers and the unwaged. The trustees advised that they would not want to deny the teaching of Buddhism to those who could not afford their costs as this would go against their religious principles.

G5. Charities that charge high fees

Where a charity charges high fees, which many people could not afford, the charity trustees must be able to demonstrate that the charity provides sufficient opportunity to benefit in a material way that is related to the charity's aims to people who cannot afford the fees.

We have set out below some of the key issues that arose in our public benefit assessments of charities that charge high fees.

G6. Providing free or subsidised access

In assessing the opportunity to benefit provided by free or subsidised access offered by a charity, we took into account the following factors:

- **The financial health and circumstances of the charity**

In our assessments, where fee-charging was an issue, we considered what was reasonable and appropriate for a charity to do in its particular financial circumstances to provide opportunities to benefit for people who cannot afford the fees. We took into account:

- the level of income from fees;
- the extent of the charity's reserves and endowments;
- whether the charity's reserves and endowments were in the form of savings and investments or property (and so the extent to which they could be used to subsidise fee assistance); and
- the ability of the charity to make any necessary changes within a reasonable timeframe to provide sufficient opportunities to benefit.

- **The extent of fee assistance that is offered**

An important factor here was whether the charity provides subsidised access of up to 100% of fee remission. Where the level of fees charged is very high this may be especially important in demonstrating that the poor are not excluded from the opportunity to benefit.

However, this does not mean that all the fee remission offered by a charity would need to be 100% fee remission; simply that 100% fee remission is available where needed.

- **The availability of assistance with other costs (not just fees)**

There are often significant additional costs associated with using a charged-for service or facility.

For example, educating a child at an independent school might also involve additional costs, such as the costs of uniform, sports gear and equipment, school meals, travel costs for day pupils, school trips, music lessons, or possibly special learning needs.

Where these sorts of additional costs were integral to the service provided by the charity (and not really optional) then the availability of financial assistance with those costs was a relevant consideration when assessing the extent to which people who cannot afford the fees have the opportunity to benefit.

- **How fee assistance is advertised**

We considered it important that the availability of fee assistance is widely advertised, such as on the charity's website, or ideally through a range of media which reaches a socially diverse audience. Even though a charity may operate a fee assistance scheme, if it does not advertise the details of that scheme sufficiently widely, then people who cannot afford the fees are likely to be deterred from applying to benefit from the charity's services. It may therefore be difficult for the charity to demonstrate that it has provided those people with a material opportunity to benefit.

Case study: The Manchester Grammar School Foundation

In the case of Manchester Grammar School, the availability of fee assistance is widely advertised through local press, the charity's website, through other schools and on buses and in shopping malls.

However, we also recognise that more widely advertising the availability of fee assistance may significantly increase the number of applications for assistance that a charity might receive. This might result in increased administration costs for charities in processing higher numbers of applications. Charities might therefore wish to manage this by being transparent about the fee assistance they offer and having tightly drawn criteria for processing applications for assistance.

- **The application process**

It was useful for us to know what process applicants need to follow when seeking assistance with fees in order to consider the extent to which that process might (albeit unintentionally) deter people from applying for assistance. We therefore found it helpful if charities could provide us with copies of examples of the relevant application forms and any written policies on how applications are assessed.

- **The amount or percentage of fee assistance offered**

There is no general minimum or optimal amount or percentage of fee assistance (either as a percentage of the charity's total beneficiaries or as a percentage of the charity's total income) that charities should offer. Much will depend, for example, upon an individual charity's circumstances, such as its size, resources and the availability of funding from other sources.

We have, in individual public benefit assessments, reached conclusions about whether the particular amount or percentage of fee assistance (either on its own or taken together with other opportunities to benefit that are offered) provides a material opportunity to benefit for people who cannot afford the fees. However, because of the wide range of circumstances affecting charities it is not possible for us to set out definitively whether that particular amount or percentage of fee assistance is, or would be, necessarily regarded as a material opportunity to benefit in every case.

What is clear is that, as *Public Benefit and Fee-charging* explains, we considered each case on its own merits whilst taking a consistent approach to each case. In all cases, what mattered overall was that the opportunities to benefit for people who cannot afford the fees were more than minimal or tokenistic or occurred by chance.

Although our first programme of public benefit assessments does not therefore provide general minimum requirements, it does provide useful examples of what we have or have not considered to be a material opportunity to benefit in particular sets of circumstances, and the basis for our conclusions. We hope this will be a helpful indication for charities.

- **How fee assistance is funded**

There are a number of ways in which charities might fund fee assistance, including:

- **income from fees;**
- **reserves or restricted funds:** where the charity has specific funds set aside from which it can finance fee assistance;
- **third-party funding such as a separate endowed charity or local authority funding:** where the charity does not finance fee assistance from its own funds, but it has an arrangement with a third-party which can provide fee assistance for people wishing to benefit from the charity's services;
- **setting fees at a level to help finance fee assistance:** where, instead of keeping all fees as low as possible, the fee levels are set at a slightly higher level in order, over time, to create a fund to assist people who cannot afford the full fees.

It is for a charity's trustees to decide whether to provide fee assistance, in addition to third-party assistance, and how much assistance to provide. However, the way in which fee assistance is funded was relevant in assessing the extent to which a charity is taking reasonable steps to ensure that people who cannot afford the fees have the opportunity to benefit. We did not expect smaller charities to be able to do as much as larger charities; what was important was the extent to which a charity has deliberate measures in place to enable it to fund fee assistance, in a planned way through its budgeting processes and by having funds available that are dedicated to the purpose of supporting fee assistance. In our assessments, we took into account what options a charity has considered, and what it could reasonably consider, in order to ensure that it provides a material opportunity to benefit.

- **Means-testing**

It was important to know whether or not fee assistance that is offered is means-tested. This is because means-tested assistance is better able specifically to demonstrate that assistance is targeted towards people who cannot afford the fees.

Case study: The Joint Educational Trust ('JET')

The Joint Educational Trust (usually known as JET) is a charity which enables children between 7 and 13 who have suffered seriously at home, or are at risk in some way, to attend independent boarding or day schools, or state boarding schools, by arranging part or full funding for their education. The JET scheme is specifically directed at providing assistance to people who cannot afford a school's fees and so where schools accept children whose education is funded, in full or in part, by the JET scheme this can help satisfy principles 2b and 2c.

Schools have no control over how many referrals the JET scheme makes to them and so the fact that the school will take referrals may not be sufficient by itself to satisfy those principles – however, we will look at levels of such referrals.

- **Non means-tested fee assistance**

The availability of non means-tested fee assistance by itself could not be relied upon by a charity as a way of demonstrating that it satisfies principles 2b and 2c, although it can be taken into consideration together with other forms of fee assistance.

This is because this sort of assistance is awarded on the basis of criteria (such as academic or other ability) which are not based on financial need, or which is available to anyone regardless of their financial circumstances. The extent to which people who cannot afford the fees are helped by non means-tested fee assistance is therefore less certain, and is more likely to occur by chance than by design. An opportunity to benefit that occurs by chance is not a 'material' opportunity to benefit.

In our assessments, we took into account any financial assistance offered by a charity to enable someone offered non means-tested fee assistance to pay any additional costs not covered by that assistance (such as additional uniform costs for a child at an independent school).

Case study: The Continuity of Education Allowance and the Early Years Education nursery vouchers scheme

The Continuity of Education Allowance is a funding scheme run by the Ministry of Defence to assist families in the armed forces with the cost of educating their children if they are posted abroad. The scheme is available to all ranks and is not means-tested.

Similarly, the Early Years Education nursery vouchers scheme is a state funded scheme which provides a non means-tested source of funding to families, regardless of their income, to help with the cost of sending their children to any registered nursery.

In both cases, as the funding is not means-tested it is available to people who can and cannot afford the fees. As these schemes do provide an opportunity to benefit for people who cannot afford the fees, they can be a relevant factor in considering whether a school satisfies principles 2b and 2c. However, since the opportunity to benefit is also available to people who can afford the fees, they cannot be relied upon by schools as a way of showing that people who cannot afford the fees are necessarily benefiting as a result of those schemes.

However, where a school provides further means-tested support to bridge the difference between these schemes and the fees, we would take that into consideration as means-tested fee assistance to people who cannot afford the fees.

- **The availability of local authority funding**

In some cases, statutory or local authority funding is available for people in need of a charity's services. Financial assistance offered by a local authority is usually means-tested. In our public benefit assessments, where relevant, we took into account the availability of local authority funding in considering the extent to which people who cannot afford the fees have the opportunity to benefit.

In some cases, even with the availability of local authority funding, the remaining 'top up' fees were still high. Whilst the availability of local authority funding therefore often helped charities to satisfy principle 2b, it did not necessarily assist with satisfying principle 2c.

- **The payment of 'top up' fees**

In some cases, the amount of funding provided by a local authority is not sufficient to meet the full costs of a service provided by a charity. In those cases the local authority or the charity may seek 'top up' payments from a third-party (such as family members). In considering the extent to which a charity provides opportunities to benefit to people who cannot afford the full fees, we took into account the level of 'top-up' payments that might be required, and under what circumstances the charity agrees to waive or subsidise the 'top up' payments.

- **Hardship funds**

Some charities have hardship funds which are available to provide financial assistance in cases where the financial circumstances of an existing beneficiary change, so that they can no longer afford to pay some or all of the fees.

We considered the availability of a hardship fund to be relevant when assessing the extent to which a charity satisfies principles 2b and 2c, as it is a way of providing an opportunity to benefit to people who cannot afford the fees.

However, that opportunity is only available to people who are already beneficiaries and who could previously afford the fees. We would therefore usually look for this sort of assistance to be available together with more general fee assistance to the entire class of beneficiaries. In our assessments, we took into account the combined effect of hardship funds with other forms of financial assistance when assessing the extent to which a charity satisfies principles 2b and 2c.

- **Sibling or other family discounts**

Some charities offer discounts to siblings or other family members where a family may be paying for more than one family member to benefit from a charity.

We considered sibling and other family discounts to be relevant, when taken together with other sorts of financial assistance, as it goes some small way towards enabling people who could not otherwise afford the fees to ensure that all their family members who are eligible to benefit have the opportunity to do so. However, this only extends the opportunity to benefit very slightly to people who cannot afford the fees and, in practice, is unlikely to be a factor in showing that people in poverty have the opportunity to benefit. Whereas it may be relevant in demonstrating that a charity satisfies principles 2b, it is unlikely to be relevant, at least on its own, in showing that the charity satisfies principle 2c.

- **Savings schemes**

Some charities offer savings schemes which enable families to spread the cost of fees over a year (in weekly or monthly amounts) where they may have difficulty in paying a full year's fees in advance.

We considered the availability of this sort of savings scheme to be relevant when assessing the extent to which a charity satisfies principles 2b and 2c as it goes some way towards making the fees more affordable, but it had little bearing on a public benefit assessment overall where the weekly or monthly costs were still high.

- **Staff discounts**

Some charities offer discounts on fees to members of staff.

Although some of the members of staff who are able to benefit from this may be people who could not otherwise afford the fees, as the opportunity to benefit in this case arises as a result of a contractual entitlement (as part of a staff remuneration package) and not as a benefit as a charitable beneficiary, it is not something that we took into account when assessing principles 2b and 2c.

We also considered staff discounts in the context of assessing principle 2d (any private benefit must be incidental). It is usually considered to be a legitimate and incidental private benefit. For further guidance on this principle see section F12 of *Charities and Public Benefit*.

G7. Offering other significant opportunities to benefit

Providing free or subsidised access to a charity's services or facilities is one clear way of showing that people who cannot afford the fees have the opportunity to benefit, but charities can also demonstrate other significant opportunities to benefit.

Our public benefit assessment reports include many examples provided by fee-charging charities of other significant opportunities to benefit that they provide for people who cannot afford the fees.

Case study: charitable residential care homes

In our public benefit assessments, we considered that the provision of day care and respite facilities can be used as a material way of demonstrating that a charity is widening access to its services and offering other significant opportunities to benefit to people who cannot afford the fees, particularly where day care was specifically mentioned in the charity's objects.

In none of the assessments were other opportunities to benefit significant enough on their own to satisfy principles 2b and 2c. However, we did take those opportunities to benefit into consideration, where appropriate, together with any fee assistance offered by the charity.

G8. Assessing the totality of opportunities to benefit

In assessing the totality of opportunities to benefit provided by a charity, what was important was the extent to which the charity is targeting fee assistance and other opportunities to benefit in a planned and deliberate way to provide opportunities to benefit for people who cannot afford the fees.

What mattered most was what opportunities to benefit were offered, rather than the extent to which people were choosing to take up the opportunity. However, where there was little or no take up of those opportunities, we explored with the trustees whether there may be barriers to people taking up those opportunities. For example, whether the opportunity to benefit was not being sufficiently widely or clearly advertised, and so people may not be aware of the opportunity, or because of other factors, such as the need to be able to afford other costs not covered by the fee assistance that is offered.

We would encourage charities (and were encouraged by those charities that clearly did this) to approach this issue in a way that embraces the spirit of 'public' benefit, rather than as a hurdle to be got over. Even in those cases where we concluded that the trustees need to do more to fully satisfy principles 2b and 2c, we acknowledged where the trustees are currently working towards making improvements and we recognise that a period of adjustment may be needed.

Case study: The Manchester Grammar School Foundation

Manchester Grammar School is a good example of a large school with resources which can be, and are, used to provide a wide range of opportunities to benefit for people who are unable to afford the fees charged.

The charity's advertised range of available means-tested fee assistance includes a substantial bursary scheme, which provides bursaries of up to 100% of fees for people below a specified income threshold, free school meals, free or subsidised school travel and hardship awards.

It also provides an extensive range of other significant opportunities to benefit which reach out into the wider community. These fall within the following categories:

- access to lessons or other educational events;
- support for A-level students at state schools to help prepare them for entry to universities;
- collaborative working with state schools;
- work with schools overseas;
- hosting events with other schools;
- use of facilities by state and independent schools and groups for young people; and
- sharing expertise.

H. Assessing private benefits

Sub-principle 2d (any private benefits must be incidental)

In this section we have set out some general, wider issues relating to assessing private benefits. Some of those issues are examined in more detail at section H2.

H1. Wider issues

From the assessments we carried out we found that:

- it is helpful where trustees are open and transparent about any related party transactions in their accounts and annual reports;
- it is helpful for charity trustees to establish a formal conflict of interests policy;
- it is important for charity trustees to familiarise themselves with the terms of their charity's governing document regarding the payment of trustees and other conflicts of interests provisions;
- it is helpful for trustees to keep under review any private benefits to individuals, to ensure that they do not become more than incidental to the charity's aims, or outweigh the public benefits it provides.

H2. Managing conflicts of interest

Trustees should not be subject to any conflict between their duties to their charitable trust and their personal interests, unless the possibility of personal benefit which gives rise to that conflict is authorised and managed.

In assessing public benefit, where a conflict of interest is not adequately managed the trustees cannot demonstrate objectively that all decisions have been, and will be, made in the interests of the charity and its beneficiaries to the exclusion of all private interests. As a result, we cannot judge the extent to which unmanaged private interests, and the possibility of unauthorised private benefit, can be regarded as incidental. Where the constitutional requirements of a charity mean that it is not currently possible for the trustees to demonstrate that any conflicts of interest can be properly authorised and managed then they will need to put effective provisions in place so that their decisions which affect the charity's public benefit are transparent and compliant with the law.

Case study: Cornwall Old People's Housing Society

In the case of Cornwall Old People's Housing Society, the trustees demonstrated that they manage conflicts of interests, for example by having a policy that any trustee who is subject to a potential conflict of interest (such as where a trustee has a relative who is resident at the home) does not take part in any discussions relating to fees which are charged to the residents.

For further information see the following guidance on our website:

- *The Essential Trustee: What you need to know* (CC3)
- *Trustee expenses and payments* (CC11)
- *Users on Board: Beneficiaries who become trustees* (CC24)

I. The assessment process

In this section we have set out some initial observations on what we have learned from the process we used for this first programme of public benefit assessments.

I1. Information gathering

The public benefit assessment questionnaire

We asked each of the twelve charities included in our public benefit assessment programme to complete a questionnaire. The questions mirrored the principles of public benefit as set out in *Charities and Public Benefit*. All the questions were the same and we provided guidance notes to help the charities complete them. Our general approach was to allow charities freedom to complete it in the way they thought best and to give them an opportunity to give us any information they felt would be relevant to the assessment. Whilst that general approach worked well, in some cases we found it necessary to ask the charities for additional information, either to clarify information provided or to ensure that we could assess similar charities in the same way.

For example, we needed to ask some schools for additional information about bursaries and ask some residential care homes for additional information about local authority funding so that we could be sure we assessed those aspects of the charities' work in a consistent and fair way.

From the assessments we carried out, in relation to the assessment questionnaire we found that:

- we sometimes needed to go back to charities for additional information. In future this might mean that we will need to ask some questions in a more directive way, or provide more guidance on what information would help our assessment, particularly in relation to financial information;
- similar charities provided a wide variety and quantity of information. We believe we now have a better idea about what sort of information is necessary and relevant to enable us to reach a conclusion;
- we need to explain better to charities what evidence we are looking for in the way of focused, quality, evidence-based information that helps us reach a conclusion;
- the summary of the key information provided by the charity we produced for each assessment will be helpful in informing our development of future public benefit assessment questionnaires.

The visit to the charity

In all cases our public benefit assessment included a visit to the charity's premises.

The purpose of the visit was to meet with representatives of the charity and to help us understand the context within which the charity operates. It was not intended or necessary to view all aspects of the charity's operations as the assessment visit is not an inspection of the charity's premises or general operations.

From the assessments we carried out, in relation to the charity visits we found that:

- although for this first round of assessments the visits were useful in helping us gain a better understanding of how a charity operates it may not be necessary to incorporate a visit to the charity in all future assessments. We will only do so where that is appropriate and proportionate;
- the visits enabled us to explore some areas in greater detail where this was needed to help clarify information provided by the charity;
- several charities asked us about what would be the best mix of people representing the charity to have present at the visit. Our experience from this first round of assessments has given us some clearer ideas about this for future assessments.

Pre-visit desk-based research

In all cases we carried out desk-based research to review information we already held about each charity, the history of the charity, financial information from the last three years and any public information such as websites and leaflets. We also reviewed reports from other regulators.

From the assessments we carried out, in relation to our desk-based research we found that:

- charity websites and published literature, connected websites (such as those of relevant statutory regulators) and general internet searches were helpful, especially where this indicated what information a member of the public could easily find out about a charity. However, in reaching our conclusions we only took into account relevant information from credible sources;
- financial information, especially a charity's recent and draft accounts, was helpful in understanding its current economic circumstances and in relation to assessing fee-charging;
- details of any written policies, procedures and forms (such as policies and practices on providing financial assistance) were helpful. We often found that charities had policies or procedures which they operated in practice but which were not written down and might therefore be misunderstood or operate inconsistently;
- information from previous Charity Commission cases was generally helpful in understanding the charity's history (such as reasons for changing its objects).

12. Making recommendations and reaching conclusions

For each of our public benefit assessments we set out our conclusions about the extent to which the charity has demonstrated that it has aims that are capable of being charitable, and that those aims are, and are being carried out, for the public benefit. We have done this by assessing the charity's aims against the principles and sub-principles of public benefit set out in our general guidance, *Charities and Public Benefit*.

Where we conclude that a charity's aims are not capable of being charitable, or are not being carried out in a way that satisfies the public benefit sub-principles, we specify any required or recommended actions that the trustees will need to take in order to address those issues.

In some cases we concluded that a charity's aims are not being carried out for the public benefit, on the basis that the organisation is a charity but the charity trustees are operating in breach of their charity's trusts.

In exceptional cases, we may conclude that the effect of not operating for the public benefit means that the organisation is not, in substance, a charity. However, this is likely to be rare and was not something that we concluded in the twelve assessment cases. In all cases we will work with the charity's trustees to help them resolve any public benefit difficulties where this is possible.

13. The public benefit assessment report

We have produced a report of the findings from each of the first twelve public benefit assessments. For each charity, the report describes the charity, considers whether its aims are capable of being charitable for the public benefit and summarises the extent to which it is currently fulfilling that requirement.

Each assessment is carried out against the public benefit principles set out in *Charities and Public Benefit*, so the reports follow the same format. The reports also set out our conclusions and any actions we are recommending to the trustees or requiring them to carry out.

Each charity received a copy of their report in advance of publication on our website. This created an opportunity for the trustees to learn of our conclusions and recommendations, and to give comments on the factual accuracy of the report, before the findings were published.

14. Feedback questionnaire

We have invited each charity that has been through the public benefit assessment process to complete a feedback questionnaire about how they found the process so that we can improve it in the future.

We will publish something further on this in due course.

15. Managing the process

We will have a more complete picture of the lessons to draw from the process when the feedback questionnaires are completed and returned to us. Our initial thoughts are that we will want to consider:

- how to improve the initial questionnaire and guidance about the process – for example, we received a number of questions about confidentiality and it would be helpful to explain at the outset how the Freedom of Information and Data Protection Acts apply;
- the selection of charities and the value of inviting charities to volunteer;
- what will be a reasonable timescale for future assessments;
- what further steps we can take to reduce the regulatory burden on charities being assessed – in working with schools, for example, we developed our working practices to take account of holiday periods;
- how effective we were at keeping the charities informed regularly throughout the assessment process;
- what advice and support trustees might need where the assessments attract media and public interest; and
- factors that charities might wish to consider when deciding who should be involved in the assessment process.

16. Next steps

Whilst consideration of public benefit issues is a routine part of our casework and an essential element of all registration cases, we will continue to conduct a separate programme of public benefit assessments for existing charities where this will help to develop understanding of, and compliance with, the public benefit requirement.

We expect to start the next phase of the assessment programme later this year, following a review of the costs of the programme, the benefits achieved and how these might affect future programmes. In the next programme we intend to include other types of fee-charging charities, some small charities and charities for which sub-principle 2d (any private benefits must be incidental) may be an issue.

As we note in section H of *Charities and Public Benefit*, we will, on a wider front, develop public benefit assessments through our general casework, through working with professional and umbrella bodies and by carrying out public benefit research studies.

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