

CC40 - Disaster Appeals

Attorney General's Guidelines (Version 01/02)

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What is this publication about?

1. This publication sets out the Attorney General's guidelines about disaster appeals. They were first printed in Appendix A of our Annual Report for 1981, and have been updated in line with current legislation.

2. Complementary guidance on the tax treatment of appeal funds has been produced jointly by Inland Revenue and HM Customs and Excise. This is available from the Inland Revenue Charity Helpline (telephone 0845 3020203) or on their website at charities@inlandrevenue.gov.uk

Introduction

3. Action to set up a public appeal following some tragic accident or disaster, or an occasion on which some special misfortune is brought to the public eye, is generally taken with little time to prepare the ground. The community may

well feel an urgent need to give practical expression to its sorrow and respect, and the response may well exceed expectations.

4. In these circumstances it is not unnatural that questions should arise over the precise status of appeals after they have been set up; and events following past tragedies have shown how much unhappiness can be caused by these questions.

5. The Attorney General is anxious that doubts about the nature of appeals should be avoided if at all possible, and that those who answer an appeal should know that their generosity will have the results which they intend.

6. Accordingly, the Attorney General, after consultation, has prepared the following guidelines which might usefully be taken into account by those faced with the responsibility of making appeals in the future.

The Guidelines

The making of the appeal

7. Those who use these guidelines must remember that no two appeals can ever be quite the same, and should do all that they can to ensure that their own appeal is appropriate to the particular circumstances of their case, and runs into no unforeseen difficulties, whether personal, administrative, or financial.

8. Amongst the most important and urgent decisions which must be made will be whether or not a charitable appeal is called for, and it may well be desirable to take advice on such questions before the appeal is issued. Generally speaking, the terms of the appeal will be all-important in deciding the status and ultimate application of the fund.

Pros and cons of the types of appeal

9. Once the terms are agreed, it will usually be desirable to publish the appeal as soon as possible, and as widely as appropriate in the circumstances.

10. Sometimes gifts may be sent before publication of the appeal. If there are more than can be acknowledged individually, the published appeal should indicate that gifts already made will be added to the appeal fund unless the donors notify the organisers (say within ten days) that this is not their wish.

11. **Charitable funds** attract generous tax relief; donations to them may also do so, especially through the Gift Aid scheme, details of which are available from your local tax office. In particular, donations will also for the most part be exempt from inheritance tax.

12. But charitable funds, being essentially public in their nature, cannot be used to give individuals benefits over and above those appropriate to their needs; and the operation of a charitable trust will be subject to our scrutiny.

13. **Non-charitable funds** attract no particular tax relief; donations to them are subject to no special tax treatment (and will have to be taken into account for inheritance tax purposes unless, as is likely to be the case for the bulk of donations, they are within the normal reliefs).

14. But under a non-charitable trust there is no limit on the amount which can be paid to individual beneficiaries if none has been imposed by the appeal; and only the Court acting on behalf of the beneficiaries will have control over the trust, which will not be subject to scrutiny by us.

15. The terms of the non-charitable appeal must be prepared with particular care to ensure that there is no doubt who is to benefit, whether or not their benefit is to be at the discretion of the trustees, and whether or not the entire benefit is to go to the beneficiaries, and if not, for example because specific purposes are laid down and the funds may be more than is required for those purposes, or because the beneficiaries are only to take as much as the trustees think appropriate, what is to happen to any surplus.

16. If specific purposes are laid down, and after they have been fulfilled a surplus remains for which no use has been specified, the surplus will belong to the donors, which may lead to expensive and wasteful problems of administration.

Forms of appeal

17. If a **charitable** fund is intended then the appeal could take the following form:

“This appeal is to set up a charitable fund to relieve distress caused by the accident/disaster at

.....
on

.....

The purpose is to use the funds to relieve those who may be in need of help (whether now or in the future) as a result of this tragedy in accordance with charity law.

Any surplus after their needs have been met will be used for charitable purposes in one or more of the following ways:

- (i) To help those who suffer in similar tragedies.
- (ii) To benefit charities with related purposes.

(iii) To help the locality affected by the accident/disaster.”

18. If a **non-charitable fund** is intended and those affected are to take the entirety of the fund in such shares as the trustees think fit the appeal could take the following form:

“This appeal is to set up a fund, the entire benefit of which will be used for those injured or bereaved in the accident/disaster at

.....
.....

on

.....

and their families and dependants as the trustees think fit. This fund will not be a charity”.

19. A non-charitable fund in which the trustees would have a discretion to give as much as they think fit to those who have suffered with any surplus going to charity could be set up on the basis of the following form:

“This appeal is to set up a fund for those injured or bereaved in the accident/disaster at

.....

on

.....

and their families and dependants. The trustees will have a discretion how and to what extent to benefit individual claimants: the fund will not itself be a charity but any surplus will be applied for such charitable purposes as the trustees think most appropriate to commemorate those who died”.

Appeals for individuals

20. It sometimes happens that publicity given to individual suffering moves people to give. In such a case it is particularly desirable for those who make appeals to indicate whether or not the appeal is for a charitable fund.

21. It is also desirable for those who give to say whether their gift is meant for the benefit of the individual, or for charitable purposes including helping the individual so far as that is charitable; if no such intention is stated, then the donation should be acknowledged with an indication how it will be used if the donor does not dissent.

22. Those who make appeals should bear in mind the possibility that generous response may produce more than is appropriate for the needs of the individual, and should be sure to ask themselves what should be done with any surplus.

23. Thus, if a child suffers from a disease, the alternatives are:

- to appeal for the benefit of the child; or
- to appeal for charitable purposes relating to the suffering of the child, such as may help them and others in the same misfortune, for example by helping to find a cure.

24. It may be that the child will not live long, in which case, that child may not be able to enjoy the generosity shown to them as an individual; alternatively, the child may be intended to receive as much as possible, because they face a lifetime's suffering.

25. The pros and cons of setting up a charitable fund or a non-charitable fund should be considered before the appeal is made and the

appeal should indicate which alternative is intended; once again, even if a non-charitable appeal is made, it may be thought right to make it on terms that any surplus can be used for charity.

Generally

26. The terms of appeal suggested in this memorandum are only examples of forms which can be used; and before making an appeal it is always wise to seek advice on what form to use.

27. We will always be ready as a matter of urgency to advise on the terms of any intended charitable appeal, or to consider whether a proposed appeal is likely to be charitable, and if so to advise on the likely consequences.

28. In conclusion, the Attorney General would like to emphasise that those organising an appeal should do all they can to make sure that the purpose of the appeal is clear and that donors know how their gifts will be used.

29. This will do much to reduce the risk of confusion and distress. It is considered undesirable to make a general appeal postponing until the size of the fund is known decisions whether the fund ought to be charitable and whether those affected should take the entire benefit; this can all too easily lead both donors and beneficiaries to form the view that the ultimate result is not what was intended, as well as giving rise to legal problems.

Additional information

30. Our guidance **Registering as a Charity (CC21)** is available to help the promoters of a disaster appeal decide whether or not they wish

that appeal to be a charity; it will also help guide them through the registration process if that is the path they choose.

31. Prospective trustees of the appeal fund should also be aware of their duties and responsibilities, especially if the fund is going to be a charity - they are strongly advised to read our guidance **Responsibilities of Charity Trustees (CC3)**.

32. A complete list of our publications is given in **Charity Commission Publications (CC1)**.

33. To obtain copies of any of our publications you can either:

- view and print from our website: **www.charitycommission.gov.uk**;
- call our Contact Centre staff on **0870 333 0123** (between 08:30 and 18:00 hours weekdays);
- order at other times by telephoning our voicemail orderline on **01823 345427**; or
- write to the Distribution Officer at **PO Box 392, Newton Aycliffe, DL5 6YG**.