

Public Benefit and the Advancement of Education

Draft supplementary guidance for consultation

Public Benefit and the Advancement of Education

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A Foreword

A message from the Chair and Chief Executive of the Charity Commission to charity trustees and anyone thinking of setting up a new charity.

Dear Reader

The advancement of education is one of the most wide-ranging of the descriptions of charitable purposes, listed in the Charities Act 2006. It covers charities as diverse as schools and colleges, pre-school playgroups, adult learning, research bodies, think tanks, professional institutes, museums and libraries, to name but a few. The largest percentage of charities on the register of charities in England and Wales are set up to advance education.

The right to education is recognised in the Universal Declaration of Human Rights. In the past, advancing education was viewed as something so inherently beneficial that the courts had previously presumed that the aims of any organisation advancing education were for the public benefit, unless there was evidence to the contrary. Following implementation of the Charities Act 2006, that presumption no longer applies, and so we need to be able to explain to charities advancing education what meeting the public benefit requirement means for them.

Our guidance, *Charities and Public Benefit* explains, in general terms, what the public benefit requirement means. In addition to that guidance, we have also prepared this draft supplementary guidance for trustees of charities, or anyone thinking of setting up a charity, for the advancement of education. This draft supplementary guidance explains the meaning of the advancement of education as a charitable aim and provides specific guidance on how the principles of public benefit set out in *Charities and Public Benefit* relate to charities with that aim.

Dame Suzi Leather **Chair**

Andrew Hind **Chief Executive**

B INTRODUCTION

B1 What is this draft supplementary guidance about?

This draft supplementary guidance is about how the principles of public benefit, set out in our general public benefit guidance *Charities and Public Benefit*, relate specifically to charities concerned with the advancement of education. It explains what such charities need to consider in order to meet the public benefit requirement. When published, it will form part of the Commission's statutory guidance in this area, to which trustees must by law have regard.

Education is a very broad topic and overlaps with a number of descriptions of purposes that are capable of being charitable, such as the advancement of the arts, culture, heritage and science and the advancement of citizenship and community development. The roots of these other descriptions of charitable purposes are in education but they have developed as separately recognised purposes. As a result, this draft supplementary guidance will have some general relevance for trustees of organisations which advance those other purposes, but they may find it more useful to look at the separate guidance we have already issued for these types of charity, such as *Museums and Art Galleries* (RR10), *Charities and Unemployment* (RR3) and *Community Capacity Building* (RR5) and which we will expand upon in due course.

The scope of this draft supplementary guidance is the core of education and research.

B2. The 'public benefit requirement'



All charities must have charitable purposes or 'aims' that are for the public benefit. This is known as the 'public benefit requirement'.

Although all charities already have to meet this requirement, the Charities Act 2006 highlights it by requiring all charities to demonstrate, explicitly, that their aims are for the public benefit, including charities advancing education, or religion or relieving poverty which were previously presumed to be for the public benefit. The Charity Commission has to ensure all charities meet the public benefit requirement and provide guidance on what the requirement means. Charity trustees are required to have regard to the Commission's public benefit guidance and to report on their charity's public benefit.

B3. Charitable Purposes



Charitable purposes (or aims) are those that fall within the various descriptions of

charitable purposes in the Charities Act 2006, set out below, and any new charitable purposes that might be recognised in the future.

- 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 amateur sport;**
- 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) **Other purposes currently recognised as charitable and any new charitable purposes which are similar to another charitable purpose.**

You can find out more about charitable purposes in our *Commentary on the Descriptions of Charitable Purposes in the Charities Act* on our website.

B4. The principles of public benefit



There are two key principles of public benefit and, within each principle there are some important factors that must be considered in all cases. These are:

Principle 1: There must be an identifiable benefit or benefits

- 1a It must be clear what the benefits are
- 1b The benefits must be related to the aims
- 1c Benefits must be balanced against any detriment or harm

Principle 2: Benefit must be to the public, or section of the public

- 2a The beneficiaries must be appropriate to the aims

- 2b Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted:
- by geographical or other restrictions; or
 - by ability to pay any fees charged
- 2c People in poverty must not be excluded from the opportunity to benefit
- 2d Any private benefits must be incidental

These key principles of public benefit are explained more fully in our general public benefit guidance, *Charities and Public Benefit*.

To accompany that guidance we have also published an *Analysis of the law underpinning Charities and Public Benefit*, which explains the legal underpinning for the principles of public benefit set out in *Charities and Public Benefit*.

We have also published a summary *Charities and Public Benefit: Summary Guidance for Charity Trustees*.

All of these publications can be found on our website at www.charitycommission.gov.uk under 'About Charities' – 'Public Benefit'. Hard copies are available by calling *Charity Commission Direct* on 0845 300 0218.

B5 The effect of the removal of the presumption of public benefit for charities advancing education



The advancement of education has long been recognised as a charitable purpose and is included in the list of descriptions of charitable purposes in the Charities Act.

The Charities Act creates a level playing field whereby all charities now have to demonstrate, explicitly, that their aims are for the public benefit. Previously the law presumed this to be the case for charities advancing education, as well as charities advancing religion or relieving poverty.

The effect of this is not to suggest that the advancement of education is no longer charitable, but simply that, in meeting the public benefit requirement, the same rules apply to charities advancing education as apply to all other charities.

B6. Reporting on public benefit



Charity trustees have a new duty to report in their Trustees' Annual Report on their charity's public benefit. The level of detail trustees will need to provide in their public benefit report will depend on whether their charity is above or below

the audit threshold. An audit is required when a charity's gross income in the year exceeds £500,000, or where income exceeds £100,000 and the aggregate value of its assets exceeds £2.8 million. Most charities already explain their activities in their Trustees' Annual Report. This information now needs to be set in the context of the charity's aims to show how in practice the aims have been carried out for the public benefit.

For smaller charities, below the audit threshold, trustees are required to include a brief summary in their Trustees' Annual Report of the main activities undertaken in order to carry out the charity's aims for the public benefit. The statement should also confirm that the trustees have had regard to our public benefit guidance where relevant. Trustees can, of course, provide fuller public benefit statements if they wish.

For larger charities, above the audit threshold, trustees are required to provide a fuller explanation in their Trustees' Annual Report of the significant activities undertaken in order to carry out the charity's aims for the public benefit, as well as their aims and strategies. They are required to explain the charity's achievements, measured by reference to the charity's aims and to the objectives set by the trustees. It is up to the charity's trustees to decide how much detail they want to provide to clearly illustrate what their charity has done in the reporting year to meet the requirement; we will not be prescriptive about the number of words or pages needed. But a charity that said nothing on public benefit in its Trustees' Annual Report, or produced only the briefest statement with no detail, would be in breach of the public benefit reporting requirement.

B7. Assessing public benefit

We will assess whether the aims of all organisations applying to register as charities are for the public benefit. Charities that are already registered have to continue to meet the public benefit requirement. We will do this by carrying out research studies on the extent to which different types of charity are meeting the requirement and by working with representative professional and umbrella bodies and with users of those charities.

In some cases we might need to carry out detailed assessment of individual charities. Where that needs to happen we will advise the trustees, where necessary, on what needs to change in order to meet the public benefit requirement, and give clear reasons and advice on what happens next where it is not possible for the organisation to meet the requirement.

In some cases we might ask the trustees to change the way in which they are carrying out their charity's aims in order to meet the public benefit requirement; sometimes, it will be because the trustees are acting in breach of trust. Where, in this draft supplementary guidance, trustees are asked to show a link between their activities and their charity's aims, or to explain why they are carrying out

their charity's aims in a particular way, this might be related either to showing that they are carrying out their charity's aims for the public benefit or to showing that they are not acting in breach of trust.

No charity will be expected to make changes overnight and we will take reasonable account of how much time and resources might be needed by a charity that needs to make changes in order to meet the requirement. A charity or anyone affected by one of our public benefit decisions, that disagrees with it, can seek a review of that decision using our internal decision review procedures and, if they consider it necessary, can make a further appeal to the new Charity Tribunal and, ultimately, to the courts. However, by working constructively with charity trustees and undertaking extensive public consultation on our public benefit guidance, we would hope such circumstances would be rare.

B8. Using this draft supplementary guidance



Charity trustees are not legally required to follow this guidance but they must have regard to it when it is relevant for their charity. As with all the Charity Commission's published guidance, that means they should be able to show that:

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

As explained in section B9 below, we indicate in this draft supplementary guidance where there is a specific legal or regulatory requirement that trustees must comply with, and where guidance is suggested as minimum good practice, but for which there is no specific legal requirement. However, the Charities Act has introduced a new statutory duty for trustees to have regard to guidance we publish on public benefit. The guidance contained in sections D and E form part of our statutory guidance on public benefit.

Section C explains the meaning of the advancement of education as a charitable purpose.

Section D explains how public benefit principle 1; *there must be an identifiable benefit or benefits*, applies to charities for the advancement of education.

Section E explains how public benefit principle 2; *benefit must be to the public, or a section of the public*, applies specifically to charities for the advancement of education.

The Annex provides specific guidance on schools and explores the question

'what is the purpose of a school?'

Our *Analysis of the law underpinning Public Benefit and the Advancement of Education* sets out the legal underpinning for this draft supplementary guidance and can be found on our website.

B9. 'Must' and 'should': what we mean

In this booklet where we use '**must**' we mean it is a specific legal or regulatory requirement affecting trustees or a charity. Trustees must comply with these requirements. To help you easily identify those sections that contain a legal or regulatory requirement, we have used the **L** symbol next to that section.

We use '**should**' for items we regard as minimum good practice but for which there is no specific legal requirement. Trustees should follow the good practice guidance unless there is a good reason not to.

B10. Some technical terms used

The following terms are used throughout this booklet and should be interpreted as having the specific meanings given below:

The Charities Act: the Charities Act 1993 as amended by the Charities Act 2006.

Activities: we use this term when talking about what organisations do in order to carry out their aims.

Aims: in this guidance we use this term to mean the purposes of an individual organisation. It is important to be able to distinguish clearly in this guidance between an individual organisation's purposes and charitable purposes in general. We have therefore used the term 'aims' as shorthand for the purposes of an individual charity or organisation applying for registration as a charity.

Audit threshold: under the Charities Act, an audit is required when a charity's gross income in the year exceeds £500,000 or where income exceeds £100,000 and the aggregate value of its assets exceeds £2.8 million.

Beneficiary or Beneficiaries: the people an organisation's aims are intended to benefit.

Charitable purpose(s): in this guidance we use this term specifically when talking about the charitable purposes included in the list of descriptions of charitable purposes in the Charities Act.

Governing document: a legal document setting out the charity's aims and,

usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, will, conveyance, Royal Charter, Scheme of the Charity Commission, or other formal document.

Large charities: charities whose income and/or assets are above the audit threshold.

Objects: an organisation's aims (or purposes) are usually expressed in the 'objects clause' of its governing document. However, not all charities have a governing document with an objects clause, and sometimes the objects clause does not adequately or fully express the organisation's aims. There is therefore a distinction between an organisation's aims and the words that appear in its objects clause.

Private benefits: in this guidance we have used the term 'private benefits' to mean any benefits that a person or organisation receives other than as a beneficiary of a charity. It does not, therefore, include the sorts of personal benefits people might receive as a beneficiary, such as receiving an education, or medical treatment, or a charitable grant for example.

Public benefit reporting requirement: this means the statutory requirement for charity trustees to report in their Trustees' Annual Report on their charity's public benefit.

Smaller charities: charities whose income and/or assets are below the audit threshold.

SORP: the Statement of Recommended Practice, issued in March 2005, sets out the recommended practice for the purpose of preparing the Trustees' Annual Report and to preparing the accounts on an accruals basis. The accounting recommendations of the SORP do not apply to charities preparing receipts and payments accounts, which are non-company charities whose gross income does not exceed £100,000.

Statutory guidance on public benefit: this is the guidance on public benefit that the Charity Commission is required to produce under section 4 of the Charities Act.

The Charity Tribunal: the Charity Tribunal, established by the Charities Act, is the first level of appeal against legal decisions of the Charity Commission.

The public generally: the public in general; the rest of the public not covered by a defined class of beneficiaries.

Trustees: the people who serve on the governing body of a charity. They may be known as Trustees, Directors, Board Members, Governors or Committee

Members. Charity trustees are responsible for the general control and management of the administration of a charity.

C THE MEANING OF THE ADVANCEMENT OF EDUCATION

C1 What is education?

Charity law gives a wide meaning to education and does not limit it to education by a teacher in a classroom, playground or sports field. Broadly, education in charity law means what it means in contemporary speech.

For example, the courts have said education includes:

- training the mind, for instance memory or spatial ability;
- physical education and development of young people;
- increasing public learning and knowledge about a particular subject;
- giving information in a way that increases the knowledge and abilities of those being educated.

The dictionary meaning of ‘*educate*’ is to bring up (children) in particular manners, habits or ways of life. The meaning of ‘*education*’ is the systematic, instruction, schooling or training of children and young people, or, by extension, instruction of adults; and the development of mental or physical powers; and the moulding of (some aspect of) character. In the context of maintained schools and education that the State considers should be funded, the Education Act 2002 (s.78), establishes that such education should be balanced and broadly based and:

- (a) promote the spiritual, moral, cultural, mental and physical development of pupils at the school and of society; and
- (b) prepare pupils at schools for the opportunities, responsibilities and experiences of later life.

The meaning will evolve with changing social values. In *Charities and Public Benefit* we explain that we will assess public benefit in the light of current economic and social circumstances. As a result, what education means in charity law keeps up with these changes whilst retaining what is relevant and valuable from the past.

In today’s context, with an emphasis on life-long learning for all, education includes education for adults in the same breadth of areas as for children and young people.

Education today 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, competencies, skills and understanding.

Consultation question:

Q1. Do you agree with our understanding of education? Are there other aspects that we should include?

C2. Not all experience is educational

It is sometimes said that all experience is educational, and that you can learn from everything you do. Education, in the charity law context, requires something more than this. It requires the education to be deliberate. The educative nature of the experience needs to be intended, or drawn out and explained or analysed, or to be structured in a way that is capable of increasing learning or understanding or skills or capabilities. There needs to be a connection between the experience and the process or subject for the experience to be capable of being educative.

For example, going for a walk in the country with a friend who happens to be a botanist may mean you learn the names of some plants as part of the general conversation. This happens by chance. Going on an organised walk led by that same friend where the purpose is to learn the names and the conditions in which the plants thrive, would be capable of being education. Not only would the botanist be intending to impart knowledge but it is also likely, for example, that the route of the walk will be planned to ensure that a range of different plants are seen.

C3. Education or mere increase in knowledge?

Increasing the availability of factual information about some thing or opportunity in order to bring people's attention to the wider possibilities open to them may be education if the subject matter is of educational value.

However, just giving people information is not necessarily educating them. The

key is whether it is provided in such a way (however structured) that is capable of educating them, rather than just adding to factual information. This is a difficult distinction and more easily explained by example.

For example, an organisation simply presents facts, such as football league tables or train timetables. Whilst these facts are informative, and may be of use to the recipient, we would regard them as the provision of factual information, rather than being of an educative nature. The organisation would not, therefore, be advancing education. If, however, the football league tables were given to people in the context of, and with the intention of, teaching mental arithmetic or spelling for example, then in that context they would be used as part of an educational process and so would be capable of educating people.

However, the provision of factual information in a library, such as football league tables, is capable of being education because, in that case, the information forms part of a structured arrangement of accessible resources for broader educational purposes.

C4. Education or promoting a particular point of view?

Education does not have to be value free and completely neutral. Education can be based on broad values that are uncontroversial which would be generally supported by objective and informed people.

Most people would agree that protecting the countryside, in general, is a good thing, or that public services should be efficient so there is no need for education to embrace the opposite view. Similarly, in educating children, teachers do not need to be neutral about treating fellow pupils as equals and bullying being wrong.

Although education can have an uncontroversial broad value base, it has to allow those being educated to make up their own minds on controversial issues. This means:

- researching and presenting information in a neutral and balanced way that presents both sides of an argument;
- considering the arguments in an appropriate way related to the evidence; and
- if it reaches conclusions, these conclusions being based on evidence and analysis.

For example, if you start from the premise that public services should be efficient, it can be educational to explore the different ways in which public services might be more efficient, but you cannot start from the position that a particular theory is the best way to achieve efficiency unless this view has been formed based on evidence or argument, or there is evidence that there is a general consensus supporting that view. Even if the view has been formed based on evidence, of

course any theory is hypothetical and the approach must be kept under review in light of further evidence or analysis.

If the purpose of providing information or education is to persuade people to form specific conclusions, then this is not education. Raising people's awareness of an issue to build support for a campaign is not educating them about this issue as the aim is to gain their support.

Promoting a specific point of view may be a way of furthering another charitable aim, but it would not be education.

For example, persuading people of the health benefits of a particular diet might not be education, but it could be a way of advancing health and a charity with that aim would be entitled to do this.

Consultation question:

Q2. Do you share our understanding of what advancing education is, as opposed to promoting a particular point of view?

C5. Education can be advanced in a very wide range of ways

Education often is, but does not have to be, given in formal settings or by a formal process. Education may be delivered because the subject matter or the process is capable of being educational. Sometimes it is the topic that is capable of being educational, such as literature, or design. In other cases, it is a skill or capability that is the focus of education, such as reading or public speaking. What is capable of being educative may depend on the class of people it is intended to educate. Materials or processes that are used to educate primary school children are not likely to be capable of educating university students.

The ways in which education can be advanced include:

- formally in institutions and informally in community groups;
- in highly structured formats, and with very little formal process;
- by making materials, or objects capable of educating, available to the public, such as in libraries or on databases;
- lessons, lectures, seminars;
- publications, websites, television, radio programmes;
- setting standards for educational processes;
- setting exam and qualification standards;
- education in the community;
- research;

- works of art, or of historic or scientific interest, displayed for people to see.

Consultation question:

Q3. Are there less obvious ways of advancing education?

C6. Types of charities that advance education

Types of charities that advance education include:

- educational establishments, such as schools, colleges and universities;
- charities supporting the work of educational establishments, or associated with them, such as parent-teacher organisations, prize funds, standard-setting organisations, teacher training organisations, student unions, examination boards;
- pre-school education and out of school education, such as playgroups, Saturday schools, summer schools, homework clubs;
- physical education of young people, such as youth sporting facilities;
- life skills training, such as Duke of Edinburgh award scheme, Scouts & Guides, Woodcraft Folk;
- research projects, think tanks, etc;
- learned societies, such as the Royal Geographical Society;
- museums, galleries, libraries, scientific institutes;
- professional education bodies;
- organisations that educate the public in a particular subject, for instance in human rights, climate change, physics, personal financial management;
- organisations that educate the public in particular skills and competences, such as surgery, carpentry, electronic engineering;
- internet, radio, television, libraries, information centres, university presses, seminars, conferences, lectures, and so on.

Not all organisations capable of advancing education are charities, as to be a charity they must advance education for the public benefit. The public benefit of charities advancing education is dealt with in Section D below.

Consultation question:

Q4. Are there other types of organisation that advance education?

C7. Can unstructured information be education?

Although education does not need to be formal, or have a formal process, it does need to have a sufficient structure for it to be capable of educating the intended audience. The level of structure is likely to be different for children than it will be for educated adults, for example. It will also be different if the education is aimed at increasing learning in a specific subject of study, or in increasing a capability or skill.

For example:

- teaching a person to handle a saw effectively might require a level of structure to ensure safety;
- teaching mathematics might require a level of structure to enable people to understand basic concepts before more complex concepts can be considered;
- unstructured papers on a website might be capable of being educational, where the process of looking on the website and assessing the information is the focus of the education, or where the intention is to bring people into education;
- meetings of highly educated people might depend for their structure largely on the knowledge and experience of those attending, who are familiar with educational process and of ensuring sufficient rigour to their discussions.

By contrast, a discussion by an informal group at a social event might educate some of those attending, but whether it does or does not would be a matter of chance. Its lack of structure and purpose would mean that it is not a way of advancing education.

Consultation question:

Q5. Do you agree that, for education to be advanced, it is necessary for there to be a sufficient structure or process related to those whom it is intended to educate?

C8. Vocational and professional education

Professional education is capable of being charitable as advancing education if its purpose is the education of the public, in a similar way that vocational education is capable of being charitable. Education that gives an individual the necessary training to enter employment is charitable. Once an individual is established in their employment, vocation or profession, the question as to whether educating them is for the public benefit is more complex. We will discuss these issues in more detail in forthcoming guidance on professional bodies and professional education.

Consultation question:

Q6. Do you agree that professional education is capable of being charitable in a similar way to vocational education?

Q7. Do you think we have accurately described 'education', the advancement of which can be charitable if it is also for the public benefit? If not, please let us have your comments, supported by examples where possible.

D Public benefit – Principle 1: There must be an identifiable benefit or benefits

D1 Important factors to consider



The following are important factors to consider when deciding whether an organisation's aims meet the 'benefit' principle of the public benefit requirement:

Principle 1a it must be clear what the benefits are

Principle 1b the benefits must be related to aims

Principle 1c benefits must be balanced against any detriment or harm

D2 Principle 1a: it must be clear what the benefits are



It must be clear what benefits to the public arise from carrying out the charity's aims.

The broad benefit of education is likely to be self-evident. A society that has learning (knowledge about subjects) and skills and competences is needed to tackle the many challenges of human existence.

For example, the national charity, The Campaign for Learning, claims that research shows that life-long learners are more likely to be happier, healthier, have better jobs, contribute more to society, live longer and have more fulfilled lives.

The benefits of education are about acquiring basic life skills, such as literacy, numeracy, citizenship skills, and can include acquiring the capacity for life-long learning. The benefits can also include the creation of a skilled workforce. Education also leads to innovation and major advancements that improve the lives of everyone.

Education is also about personal development. The development of an individual's mental, physical, emotional and spiritual capabilities are of fundamental value to both the individual and to the health and well being of the society around them. Education is about equipping people with the capacity to understand and operate successfully in society.

Educational Value or Merit

All experience or engagement with people, which is claimed to be educational, will not necessarily be of benefit. To be of benefit, the education must be of educative value or merit.

There are two main aspects to educative merit or value:

- is the subject capable of being of educative value; and
- is the process such that it delivers educative value?

Educative value or merit can be present either in the subject, or the process, or both at the same time.

A very wide range of subjects, from mathematics to dancing to plumbing skills, are capable of being of educative value. It includes subjects taught in educational establishments but is not necessarily limited to them.

Equally, a very wide range of processes, from scout camps and seminars, to publications, to interactive websites and television programmes, are capable of delivering educative value.

The educative value, or benefit, will usually be self-evident. If the subject is a nonsense, it will not be of value. If the process is so unstructured that whether or not education is in fact delivered is a matter of chance, it will not be of value.

Where the value is not self-evident, positive evidence of merit will need to be given.

For example, in one case, the court decided that carrying out research into a new alphabet was not of value. In another, the court took account of evidence that the collection was of low quality and of no educative value in concluding that it was not charitable.

A modern example might be a 'wiki' site which might contain information about historical events but, as the content is superficial and this information is not verified in any way, it would not be accepted as having educational value without positive evidence.

The Commission, having been satisfied on the evidence before it, accepted in a particular case that an interactive website was a process capable of delivering educative value as it was capable of delivering learning through improving the student's analytical and learning skills.

An individual's blog, on the other hand, is not likely to be of educative value, as neither the subject matter nor the process is of educational value.

If there is doubt, or a divergence of views, regarding educational merit, the Charity Tribunal, the court or the Commission will make a decision based on the evidence.

Increasing useful knowledge is a benefit

Adding to the store of useful human knowledge is a benefit. 'Useful', here, does not mean that the knowledge is necessarily practically useful, but rather that it is capable of increasing knowledge, understanding and learning and is not a nonsense. The results of research may be negative, or inconclusive, and still be of use; for knowing that a particular theory is not proved is itself useful. Even if all that is learnt from a proper process of inquiry is that further questions need to be asked, or what those questions might be, this would be capable of increasing the store of useful knowledge.

The benefit of the provision of a factual resource, such as a library, is obvious. A pile of papers in a drawer is not necessarily of educative value, or of benefit, but it might be as the raw material of research or because it is of historical value. A properly structured archive is likely to be of more benefit than a facility that is haphazard.

For example, a database of Derby winners may be very useful to someone who bets on horses, but it is not in itself of educative value.

Increasing useful skills, capabilities and capacities is self-evidently a benefit if the skill, capability or capacity is useful.

The benefit to the public should be capable of being recognised, identified, defined or described but that does not mean it also has to be capable of being quantified or measured.

For example, the benefit to a young person of being motivated to learn might not be capable of quantification, but is clearly a benefit. One of the benefits of a student union is that, by looking after the welfare of students, they are better able to concentrate on the formal learning that the university or college provides.

Benefits must be demonstrated by facts

It is for each charity to demonstrate the benefits that flow from its aims. In most cases this will be straightforward. If the benefits are self-evident, nothing more will be needed to demonstrate them.

If the benefits are not obvious, the Commission (or the Charity Tribunal or Court) will consider the evidence put to them and, for certain kinds of benefit, this may include taking into account whether the benefits are generally accepted by objective and informed people. It is a question of judgement based on the facts.

It is not necessary for the organisation to show that the way that it advances education is the most effective way, but only that it is capable of being an effective way.

If the benefit is not capable of being proved, then it does not count.

If it cannot be shown by fact (or a consensus of objective and informed opinion) that a subject or process is capable of being educative, benefit will not be proved.

The purported 'benefit' of education that is intended to persuade people to support a controversial, propagandist or political viewpoint is not capable of proof, and for this reason not capable of being a recognised benefit.

Consultation question:

Q8. Do you agree with what we say about how organisations can clearly show the benefit of the education they provide? If not, please explain your reservations. Are there any other examples that you think it would be helpful for us to include to illustrate the need to show the benefit of education?

D3 Principle 1b: the benefit must be related to the aims

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All charities must act within their charitable aims. In assessing public benefit we will take into account any benefits that arise from carrying out those aims.

When assessing the public benefit of an organisation's aims, we will only take into consideration the benefits which arise as a result of the organisation carrying out its aims.

For example, if the organisation's aims are to run a school to educate boys, the benefit of educating those boys will count. The benefits to the boys of their running a luncheon club for old people in their community will also count as part of their broader education as future citizens.

Accidental or unplanned benefits do not count

Benefits arising from an organisation carrying out its aims that are accidental or unplanned, and that are not related to the organisation's aims, are not taken into account since they cannot be used as a way of demonstrating that the aims are for the public benefit.

For example, the teaching of plant biology might result in the discovery of a new clothes dye with significant potential for commercial exploitation. This benefit is not related to the aim of teaching plant biology and, as it is accidental or unplanned, will not count, even if it is of clear benefit more widely to the community.

Occasionally, a charity might engage in activities that are not related to its aims, such as a scientific institute collecting funds in response to an international humanitarian disaster. This is unobjectionable, if it is a relatively minor activity.

But, it is not related, directly or indirectly, to its aims. Therefore, any benefit that might arise from those activities will not count in assessing the public benefit of the aims of the scientific institute.

Wider or remoter benefits

It might be suggested that an aim to educate a limited class of people provides benefit to wider society. However, only benefits that arise from educating a sufficient section of the public count.

Society, or the public generally, benefits in the widest sense from every charity. But the existence of this wider benefit to the public does not mean that educating a limited beneficial class which is not a sufficient section of public is charitable because of these wider benefits to the public at large.

If a charity has more than one aim, each aim must be for the public benefit. The public benefit shown by one or more of the aims cannot be used to 'off-set' any aim or aims which lack public benefit.

For example, if a charity has an aim to advance astronomy and another aim to preserve an historic observatory, any benefit that may flow from, for example, restoring the stonework of the building will not count in the assessment of whether the aim of advancing astronomy is for the public benefit. The benefits of the restoration can only count in relation to the aim to preserve the observatory.

As any benefit must be related to the aims, charity trustees should have a clear understanding of their charity's aims. Organisations that might appear very similar might have different aims.

For example, some educational establishments have aims which are specific to that establishment – for instance “*to run a school for girls aged 12-18*”; some have aims to educate people in a particular geographical area – for instance “*to educate young people in Hampshire*”; etc.

What might be regarded as benefits that flow from activities that are related in some way to an organisation's aims, and what might be regarded as incidental or remoter benefits that are unrelated to the aims, will depend on the actual aims of each individual charity.

There has been a great deal of discussion concerning what an aim to run a school might include. Are its beneficiaries those who have the opportunity to attend the educational establishment, or might they include students at other educational establishments, or even people in the local community? As being clear about the aims, and the beneficiaries of the aims, will be important in assessing public benefit, we have included in the [Annex](#), a discussion about what the aims of a school might be in current social and economic conditions.

D4 Principle 1c; benefits must be balanced against any detriment or harm

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In assessing the public benefit of an organisation's aims, we must also take into account any detriment or harm that may flow from the organisation carrying out its aims. As is also true of assessing benefit, unless it is self-evident, there must be evidence of detriment or harm; it cannot just be supposed.

For example, running a course in computer hacking might teach some general skills that are of educational value, but the harm in teaching people how to hack into computers is self-evident and outweighs any benefit.

Similarly, a generally accessible guide on how to effectively launder money would not be for the public benefit.

In the same way, benefit, or educational value or merit, might be provided by a course on life skills, but if the process is one that is harmful by, for instance, by employing a bullying approach, this harm may outweigh the benefit.

Consultation question:

Q9. Do you think that we have explained sufficiently clearly about benefits having to be related to an organisation's educational aims? Are there other issues that arise in this context that you think it would be helpful for us to include?

E Public Benefit - Principle 2: benefit must be to the public or a section of the public

E1 Important factors to consider



The following are important factors to consider when deciding whether an organisation's aims meet the 'public' principle of the public benefit requirement:

Principle 2a: the beneficiaries must be appropriate to the aims

Principle 2b: where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted:

- by geographical or other restrictions; or
- by ability to pay any fees charged

Principle 2c: people in poverty must not be excluded from the opportunity to benefit

Principle 2d: any private benefits must be incidental

E2 Principle 2a: the beneficiaries must be appropriate to the aims



Access to education, in whatever form it takes, must be open to the public or a section of the public. Who constitutes 'the public' or a 'section of the public' will be based on whom the organisation's aims are primarily intended to benefit.

Who are the beneficiaries?

In the case of advancing education, the beneficiaries are those who are eligible to be recipients of the education.

For example, the beneficiaries of educational establishments are usually the students who have the opportunity to attend them. The people who have the opportunity to attend vocational training courses are the beneficiaries of the organisations providing those courses.

For organisations that support educational establishments, the beneficiaries are usually the people who have the opportunity to be educated at those establishments.

For example, the beneficiaries of a student union are those being educated at the university or college, as they all have the opportunity of being members, even if some opt out of some membership.

The beneficiaries of a charity that sets curriculum standards are the students likely to follow that curriculum.

The beneficiaries of a lecture or literary society are those who have the opportunity to attend the lectures or events.

For other forms of education, the benefits might extend to the public at large.

For example, the beneficiaries of a library or a data base will be anybody who wishes, and has the opportunity, to take advantage of access to that library or database.

The beneficiaries of an organisation that extends knowledge in a particular topic are the public at large.

The beneficiaries of research are the public, and the courts have emphasised that research is only charitable if its useful results are made available to the public. This does not mean that research has to be presented in a way that is understandable by everyone. It might only be capable of being understood by people who are experts in the topic. What is important is that it is published and placed in the public domain so that everyone who is capable of understanding it has access to it, and its benefits or usefulness are available to everyone.

There may be some unusual cases where the beneficiaries of a seminar or lecture are not only those who have the opportunity to attend the seminar but because of the status and influence of the attendees also the wider public with whom those beneficiaries interact in their everyday life.

E3 Principle 2b: where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted

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Where the benefit is not to the public generally it can be to a 'section of the public' where restricting benefit in that way is reasonable and relevant to the charitable aim of advancing education. Public benefit will be affected where the restrictions are unreasonable. Any restrictions on who can benefit must be 'reasonable'. This means that restrictions are legitimate, proportionate, rational and justifiable given the aim of the organisation.

For example, restrictions that are linked to the aim of educating those who have the opportunity to attend a school may be reasonable. In some cases, for instance living in a particular area or having particular educational needs, could all be the basis for reasonable restrictions. However, if the restriction is to children who are Harry Potter fans, for example, where there is no rational link between the restriction and the charitable aim, that would not be a sufficient class to be for the public benefit.

A section of the public defined by social circumstances or charitable need might be a sufficient section of the public for advancing education.

For example, restricting a life skills course to young parents would benefit a section of the public.

People who are eligible to follow a vocation or profession can be a section of the public where the aim is to educate those people in that vocation or profession. Other restrictions related to that aim, such as excluding people with relevant criminal convictions or people who do not have the aptitude or educational achievements in order to be able to benefit, would not affect whether the beneficiary class is a section of the public.

Educating people established in their vocation or profession might be charitable if there is an overarching charitable aim for the public benefit in doing so.

For example, educating surgeons in the latest techniques or professional standards will, potentially, be capable of being charitable as advancing health or saving lives, as would educating plumbers in the latest safety standards for gas installations.

Consultation question:

Q10. Do you think we have explained the impact of restrictions on the beneficial class sufficiently clearly? Do you agree with our understanding?

Q11. Do you think that restricting the opportunity to benefit to a group of people who are established in their profession or vocation impacts on whether the beneficiary class can be a section of the public?

Many scholarship funds and bursaries are restricted to those who have the opportunity to attend a particular educational establishment. There might only be funds available to educate one or two persons at any one time. Provided that the opportunity to be educated at the educational establishment is open to a section of the public, and there are not other reasons why the fund might not advance education for the public benefit, the restriction of the scholarship or bursary fund to attendance at a particular educational establishment will not, in itself, mean that the beneficiary class is not a section of the public.

Other scholarship funds and bursaries are restricted to those who follow a particular vocation or profession, or to the children of those who follow a particular vocation or profession. Whether or not that beneficiary class is a section of the public will depend on the particular vocation or profession.

For example, restricting benefits to the children of missionaries might be a reasonable restriction in that missionaries tend to work in a range of countries. There may be a specific need to educate those children in one educational

system, and to support their living costs away from their family, at a boarding school perhaps. However, it is less clear whether a fund restricted to the children of doctors or Masons for example, is a restriction that is related to the aim of educating children, and whether it would be a section of the public.

Consultation question:

Q12. Do you agree that a beneficial class restricted to the children of particular professionals may, in some circumstances, not be a sufficient section of the public? Is our example here helpful? Are there any other examples?

Restrictions related to a common employer

Where access to benefits from education is restricted to the employees, or the children of employees, of a particular employer then that is not a sufficient section of the public. The court has considered this issue on several occasions and has taken the view that, however large the number of people who might be able to benefit is, the fact that the class is defined in relation to a common employer suggests that the aim might be a private one to benefit the employer. The restriction is not one that is reasonable related to the aim of advancing education, but is a restriction based in part on benefit to the employer.

If the restriction is to all of the people within an industry then the restriction might not affect public benefit.

For example, education that is open to everyone in the construction industry is capable of being for the public benefit.

Restrictions based on a personal or family link

The members of a particular family are, in principle, a private class of people and so, in the case of advancing education, restricting the beneficiaries to members of a family is not reasonable. However, historically, charities have been set up which have not restricted the beneficiary class, but have said that children from a particular family should be preferred. It is likely that in current social and economic circumstances, and now that each charity has to demonstrate that its aims are for the public benefit, that a fund that gives a preference to the children from a particular family, however large a group, would not be benefiting a section of the public. Only if the class that is preferred is, in itself, a section of the public would the charity in question be recognised as having aims for the public benefit.

Restrictions based on the ability to pay fees

This draft supplementary guidance does not address the issue of whether a restriction on the beneficial class that is related to the ability to pay fees impacts on public benefit as we are issuing separate guidance on this aspect: *Public Benefit and Fee-charging*.

Consultation question:

Q13. Are there any other ways in which access to education might be restricted and which might affect whether that education is for the public benefit?

E4 Principle 2c: people in poverty must not be excluded from the opportunity to benefit



This draft supplementary guidance does not address the impact of whether people in poverty are excluded from the opportunity to benefit where that exclusion is related to the ability to pay fees or charges as we are issuing separate guidance on this aspect: *Public Benefit and Fee-charging*.

Consultation question:

Q14. Are there any ways, other than by fee-charging, that might exclude people in poverty from the opportunity to benefit and which might impact on the ability of an educational organisation to meet the public benefit requirement, which would be useful examples here?

E5 Principle 2d: Any private benefit must be incidental



'Private benefits' are benefits that people, or organisations, receive other than as a beneficiary.

When assessing private benefits, we are not therefore concerned with such benefits as those to the individual student receiving an education, because these benefits are what the charity exists to produce. Private benefits, on the other hand, are benefits to individuals or organisations that are not the benefits that the charity exists to produce, even though, in some cases, they might be justified as the necessary means to a charitable end.

A typical example of such a justifiable, incidental private benefit is the salary paid to the charity's staff.

If, however, the real aim of an organisation is to create private benefits, it cannot be a charity for the public benefit.

Benefits to commercial organisations

Educational establishments set up as commercial businesses with the aim of providing a profit for their owner(s) are not capable of having aims for the public benefit, as the private benefit to the owners is not incidental. Nor are educational establishments set up by an employer to train its employees in the skills it needs and in the company ethos. If the establishment offers skills training that is of

wider application, and offers the opportunity to attend to a wider section of the public than just its employees, it might be capable of being a charity.

Private benefits to artists and writers and others with pre-eminent skills

Teaching and training artists, writers or others with pre-eminent skills, such as musicians or architects, to enable them to produce works of a high standard, is capable of being a way of advancing education. The fact that those individuals might be professionals is not an issue, as long as the purpose of the teaching and training is to benefit the public at large by producing better musicians or architects, for example, so that the public at large can receive, in those cases, the aesthetic benefits of excellent music or a beautiful building.

However, an organisation that is set up to promote the work of a living artist, or a philosopher for example, will inevitably benefit that artist or philosopher by increasing the value of their work or the fees that they can command. The organisation will need to demonstrate, with evidence, such as criteria limiting the profit for the artist or philosopher and independent measures of the educational value, how the personal benefit is only incidental.

Research bodies

A research project might be set up with the aim of improving the construction process for buildings. If that research is carried out with the aim of benefiting a particular commercial concern that will exploit any learning in order to increase its own profits, the private benefit will not be incidental. If, however, the research has been carried out by a school and, in order to obtain the funds to develop the research results into a useful product, the establishment goes into partnership with a commercial company, the private benefit to that commercial company might be incidental, provided that sufficient safeguards are put in place to ensure this, and the results of that research are published so that the public at large can exploit any useful results.

Consultation question:

Q15. Is it clear enough how private benefit might jeopardise the aims of the organisation being for the public benefit?

General consultation questions

Q16. What do you think of the overall clarity, style, format and language used in this draft supplementary guidance?

Q17. Is there anything that you would have expected us to cover in this draft supplementary guidance that we have not included?

Annex: What is the purpose of a school?

What is the purpose of a school?

In the Shorter Oxford Dictionary, a 'school' is defined as "*an establishment in which children are given formal education*". Usually a school provides primary or secondary education. Not all educational establishments are called schools, for instance some are 'Academies'. In this Annex we have used the term 'school' but it might also be read as including other similar educational establishments.

Broadly, the aim of a school is to provide pupils with a range of educational opportunities within which they can fully realise their individual potential (over the range of aspects envisaged by the curriculum requirements of the Education Acts perhaps). A school is not, we suggest, a community resource for general community purposes, although its aims and activities can, and often do, extend into the wider benefit of the community in which they are situated.

In assessing whether benefits can be taken into account in meeting the public benefit requirement, it is the benefits of carrying out the aims of the particular school that will be relevant. The aims of schools vary considerably. A charitable school might have aims expressed in a range of different ways. Their objects may be narrowly or broadly framed:

Example 1

The school's objects are "*to advance the education of boys and/or girls by the provision of a school [...] and any other boarding school or day school for the education of girls and boys.*"

Example 2

The school's objects are "*a) the promotion of education, b) the relief of persons resident in the area of benefit who are sick, or in need, hardship or distress, c) the provision of facilities in the area of benefit for recreation or other leisure-time occupation for inhabitants in the interests of social welfare with the object of improving their conditions of life.*"

These two extreme examples illustrate the importance of the aims of any particular school in assessing whether its aims are for the public benefit. In the first example, the benefits of activities undertaken in carrying out the aims that would count in the assessment of public benefit are limited to those that arise specifically from running one or more schools for the pupils who have the opportunity to attend those schools. In the second example, the benefits of a broader range of linked activities would be taken into account, extending beyond the benefits for the pupils, for example, the benefits of running mother and toddler groups, health projects and providing community and recreational facilities for local people.

It is sometimes argued that, even if a school's aims are narrowly defined as the running of a particular school, the running of that school involves, as part of the education of children, the following wider activities:

- community education activities undertaken by the children in the school;
- providing the children of other schools access to the school's activities and facilities, for example lectures or swimming pools or career counselling; and
- providing access to community and voluntary organisations for educational activities with children and young people - examples might include after school or homework clubs, guides and scouts, hobby groups for young children, careers counselling or vocational education.

The first activity is clearly part of educating the pupils at the school. The second two may provide benefits, but to people other than the pupils at the school and are ancillary to furthering the purpose of running the school. In 2003, the Commission agreed that charitable independent schools could restate their objects to encompass educational or community activities or other associated activities provided that such activities are incidental or ancillary to the provision of a school. It was not intended that it would be part of the educational purpose of a school, with aims directed at educating those who have the opportunity to attend that school, to provide general community benefits.

In our separate draft supplementary guidance, *Public Benefit and Fee-charging*, we make a distinction between opportunities to benefit that are made available to people who are unable to afford the fees charged that provide direct access to the service or facility that is charged for, and the benefit of other opportunities to benefit that the charity provides that are related to the charity's aims but which do not provide direct access to that service or facility.

We can make a similar distinction here between the benefits of activities that relate to the education of pupils who attend a school, and the benefits of other activities that are related to the provision of education to other children (either within the school premises or elsewhere) but which are not about educating the pupils attending the school, or the benefits of other community activities (such as those involving the education or recreation of adults).

It is clear that schools can, and often do, extend into their communities as part of the educational process. Pupils, as part of their education fitting them for life in the community, must learn about the community and its concerns and make contributions to that community.

Where a school's aims are simply to advance education, not limited to any particular age group, a broader range of activities might be linked to the aims, for example:

- making facilities available to local drama, arts and hobby groups;

- promoting concerts, running lectures, screening films for the local community; and
- hosting festivals for the local community.

The wording of a school's aims is therefore important when deciding whether activities it undertakes provide opportunities to benefit from a service or facility it provides as a way of carrying out those aims, or whether they provide other opportunities to benefit in some other way that may or may not be related to the charity's aims. The wording is a key part of interpreting what the aims of any charity are in the modern context and in light of background information relating to the school. This will then determine the extent to which the benefits of those activities can count towards an assessment of the public benefit of the charity's aims.

Consultation questions:

Q18: Do you agree with our analysis of the purpose of a school in a modern context?

Q19: Do you consider that a school with narrow aims focused on educating those who have the opportunity to attend it, can only educate people from other educational establishments in ways that are ancillary and incidental to the education of its beneficiaries? And that these wider educational activities, going beyond its stated aims, would not count in the public benefit assessment?

Consultation questions

The following is a list of all the consultation questions that appear throughout this draft supplementary guidance:

| Consultation questions | Section |
|--|---------|
| Q1 Do you agree with our understanding of education? Are there other aspects that we should include? | C1 |
| Q2 Do you share our understanding of what advancing education is, as opposed to promoting a particular point of view? | C4 |
| Q3 Are there less obvious ways of advancing education? | C5 |
| Q4. Are there other types of organisation that advance education? | C6 |
| Q5. Do you agree that, for education to be advanced, it is necessary for there to be a sufficient structure or process related to those whom it is intended to educate? | C7 |
| Q6. Do you agree that professional education is capable of being charitable in a similar way to vocational education? | C8 |
| Q7. Do you think we have accurately described 'education', the advancement of which can be charitable if it is also for the public benefit? If not, please let us have your comments, supported by examples where possible. | C8 |
| Q8. Do you agree with what we say about how organisations can clearly show the benefit of the education they provide? If not, please explain your reservations. Are there any other examples that you think it would be helpful for us to include to illustrate the need to show the benefit of education? | D2 |
| Q9. Do you think that we have explained sufficiently clearly about benefits having to be related to an organisation's educational aims? Are there other issues that arise in this context that you think it would be helpful for us to include? | D4 |
| Q10. Do you think we have explained the impact of restrictions on the beneficial class sufficiently clearly? Do you agree with our understanding? | E3 |
| Q11. Do you think that restricting the opportunity to benefit to a group of people who are established in their profession or vocation impacts on whether the beneficiary class can be a section of the public? | E3 |
| Q12. Do you agree that a beneficial class restricted to the children of particular professionals may, in some circumstances, not be a sufficient section of the public? Is our example here helpful? Are there any other examples? | E3 |

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| Q13. Are there any other ways in which access to education might be restricted and which might affect whether that education is for the public benefit? | E3 |
| Q14. Are there any ways, other than by fee-charging, that might exclude people in poverty from the opportunity to benefit and which might impact on the ability of an educational organisation to meet the public benefit requirement, which would be useful examples here? | E4 |
| Q15. Is it clear enough how private benefit might jeopardise an organisation from having aims for the public benefit? | E5 |
| Q16. What do you think of the overall clarity, style, format and language used in this draft supplementary guidance? | |
| Q17. Is there anything that you would have expected us to cover in this draft supplementary guidance that we have not included? | |
| Q18. Do you agree with our analysis of the purpose of a school in a modern context? | Annex |
| Q19. Do you consider that a school with narrow aims focused on educating those who have the opportunity to attend it, can only educate people from other educational establishments in ways that are ancillary and incidental to the education of its beneficiaries? And that these wider educational activities, which go beyond its aims, would not count in any public benefit assessment? | Annex |