

Public Benefit and Fee-charging

Draft supplementary guidance for consultation

Public Benefit and Fee-charging

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A. Foreword

Many different sorts of charities can, and do, charge for their services or facilities. Charities are allowed to charge. However, where, in practice, the level of fees charged restricts the benefits only to those people who can afford to pay the fees charged, this might result in the benefits not being available to a sufficient section of the public. What is of key importance to all fee-charging charities is the effect of their charges on who can benefit from the charity. Where a charity's charges effectively restrict the charitable benefits it offers to people who can pay, then it must provide other opportunities to benefit to people who cannot afford those charges, including people in poverty. This does not mean that charities necessarily have to provide free or subsidised services, although clearly that can help and is one effective way of meeting the requirement. Otherwise, where the fee level has the effect of excluding people from the opportunity to benefit, then trustees need to consider what can be done to ensure that those who cannot afford the fees can benefit in a material way that is related to the charity's aims. There are many different ways in which fee-charging charities can do this.

Our general guidance *Charities and Public Benefit* explains, in general terms, what the public benefit requirement means. This draft supplementary guidance on *Public Benefit and Fee-charging* is intended to help the trustees of fee-charging charities understand how the principles of public benefit set out in *Charities and Public Benefit* relate specifically to their charity and enable them to do whatever is necessary to ensure their charity satisfies the public benefit requirement.

We appreciate that some trustees have expressed a desire for very specific, detailed guidance for fee-charging charities. However, the fee-charging charity sector is diverse and individual charities' circumstances vary widely. What might be relevant and appropriate for one sort of fee-charging charity will be irrelevant and inappropriate for another. We have included some specific examples to help illustrate the points made where appropriate. However, we welcome other examples in consultation responses for possible inclusion in our published supplementary guidance.

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 that charge fees for their services or facilities. 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.

Charities and Public Benefit sets out the principles of public benefit we have identified from existing case-law that must be met by all charities in order to show that their aims are, and are carried out, for the public benefit. Those principles have relevance for all charities, regardless of whether or not they charge fees for their services or facilities.

However, the following principles do have particular relevance for fee-charging charities:

- Principle 2b – Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted by ability to pay any fees charged, and
- Principle 2c – People in poverty must not be excluded from the opportunity to benefit.

This draft supplementary guidance deals solely with the effect of those two principles on fee-charging charities.

This draft supplementary guidance is concerned with fees that a charity charges for its services or facilities, which might therefore affect who can benefit from the charity.

For example, this draft supplementary guidance is concerned with:

- fees that a charity directly charges for services or facilities it offers to its beneficiaries as a way of carrying out its charitable aims, such as schools that charge for the education they offer or hospitals that charge for their services;
- trading by a charity in the course of carrying out its primary aims (whether or not it is carried out by the charity or through a charitable trading subsidiary), which is sometimes referred to as 'primary purpose trading'. This includes, for example, leisure centres, museums and others that charge entrance fees to access the charitable facilities or services;
- any costs that beneficiaries would have to incur in order to benefit from the service or facility, such as where they would need to purchase specialist books or equipment; and

- any other fees that have the effect of restricting access or which act as barriers to the charitable services and facilities, (for example, high membership fees where a person has to be a member in order to benefit from the charity).

This draft supplementary guidance is not concerned with fees that are charged to people who are not the beneficiaries of the charity, and which do not therefore affect who is able to access the charitable benefits from the charity in accordance with the charity's aims.

For example, this draft supplementary guidance is not concerned with:

- sponsorship or other fund-raising activities, for example fees to attend a charity fund-raising dinner, show, concert or ball, or trading that is carried on with the main or sole aim of raising funds for the charity, eg selling Christmas cards, calendars, mugs or T-shirts, the proceeds of which go to charity;
- trading by a charity that is not undertaken in the course of carrying out its primary aims – such as trading activities that are incidental to carrying out the charity's aims (eg charging for refreshments in the interval during a performance or concert, or charging for general photocopying or faxing charges in a community centre);
- activities carried out through a non-charitable trading subsidiary, (that is a non-charitable trading company owned by a charity to carry on trade on its behalf); or
- charges that are made to people who are not the charity's beneficiaries, such as the fees charged to members of a professional body where such fees do not affect the ability of people to benefit from the increased knowledge and skill of those members in carrying out their particular profession.

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. How do the principles of public benefit relate to fee-charging charities?



All charities, regardless of whether or not they charge fees, must meet the public benefit requirement.

Most of the principles of public benefit apply to all charities equally; the considerations are the same whether or not fees are charged. However, principle 2b - that the opportunity to benefit must not be unreasonably restricted by ability to pay any fees charged, and principle 2c - that people in poverty must not be excluded from the opportunity to benefit, do have particular relevance for fee-charging charities. These two key principles overlap. Taking the two principles together, what is important is that there are opportunities to benefit throughout the range of people that cannot afford the fees, including people in poverty.

Poverty has a specific meaning in charity law and does not just mean those who are destitute. The context and aims of each organisation are also important in deciding who 'people in poverty' are in a specific case and whether those people are excluded from the opportunity to benefit. See section F11 of *Charities and Public Benefit*.

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 happens 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. This might 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 will 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 a charity might need to make changes in order to meet the requirement. A charity or anyone affected by one of our public benefit decisions who 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

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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 **C – G** forms part of our statutory guidance on public benefit.

This draft supplementary guidance explains, in more detail, the effect of principles 2b and 2c on fee-charging charities and the more detailed questions and issues the Commission and trustees are likely to consider. Since questions and issues overlap, to avoid unnecessary repetition and avoid confusion, we have not separated the two principles. Rather, we have structured the draft guidance to alert trustees to the factors they will need to consider and the issues that are likely to arise.

Section **C** will tell you about the way in which we will approach our assessment of the impact of fee-charging on a charity's ability to meet the public benefit requirement.

Section **D** will tell you about some key issues for trustees of fee-charging charities to consider when making decisions about fees charged by their charity, and the effect of those charges on who can benefit from the charity.

Section **E** will tell you some issues for trustees to consider when setting, and assessing the impact of charging, fees.

Section **F** will tell you about some issues for trustees to think about when considering ways of providing direct access to the service or facility that is charged for to people who are unable to afford the fees charged.

Section **G** will tell you about some issues for trustees to think about when considering ways of providing other opportunities to benefit, that are related to the charity's aims, to people who are unable to afford the fees charged.

Section **H** will tell you about how we will approach assessing the overall effect of measures to provide opportunities to benefit for those who are unable to afford the fees charged.

Our *Analysis of the law underpinning Public Benefit and Fee-charging* 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's 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 of an 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.

Larger 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 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 Charity Commission's approach to assessing public benefit and fee-charging

C1. Following the principles of better regulation

In *Charities and Public Benefit* (section H3) we say, “*In developing our approach to public benefit assessments we will follow the principles of better regulation – proportionate, accountable, consistent, transparent and targeted. Any actions we take will be proportionate, fair and reasonable, taking account of the issues, the risk involved to the charity and its beneficiaries and the capacity of the charity to comply.*” We also say (section F10), “*When considering the effect of any charges we will take account of:*

- *The nature of the particular charitable aim (and the law that applies to it);*
- *The level of fees charged;*
- *The particular circumstances of the organisation; and*
- *The social and economic conditions under which it carries out its work.”*

This approach, in line with better regulation principles, will underpin our assessment of the effect of fee-charging on a charity's ability to meet the public benefit requirement.

There are many different types of fee-charging charities. Some fee-charging charities are small, local charities charging fees that most people can afford. In the case of those charities, any restrictions on who can benefit are likely to be reasonable, and people in poverty are unlikely to be excluded from the opportunity to benefit. These charities are unlikely to have to provide other opportunities to benefit for people who cannot afford those fees. Some fee-charging charities are large charities, with considerable income and endowments which charge fees that many people would be unable to afford. Those charities are likely to have to do more to ensure that people who are unable to afford those fees have sufficient opportunity to benefit, either through fee-reductions, or through providing other opportunities to benefit in a material way that is related to the charity's aims.

Recognising the different circumstances of different fee-charging charities, we do not expect all fee-charging charities to meet the public benefit requirement in the same way. Nor do we expect small charities with few resources to be in a position to offer the same opportunities to benefit that larger charities with more resources at their disposal might be capable of providing.

This does not mean, though, that small charities do not have to meet the public benefit requirement, or that a fee-charging charity that is not meeting the requirement can avoid doing anything on the basis that there is ‘nothing it can do’. Doing nothing to meet the public benefit requirement is not an option. However, we will work with charities which have difficulty in meeting the public benefit requirement to try to help them find ways in which they can do so.

For example, this might include:

- the charity undertaking fund-raising activities itself or through non-charitable trading subsidiaries to fund fee-reductions or to fund concessions or other initiatives to provide other opportunities to benefit;
- the charity working in collaboration with other organisations or charities;
- finding additional funding to subsidise costs or fund free or discounted places, perhaps working in collaboration with grant-making bodies, local or central government funding bodies or international funding programmes;
- increasing fees for some beneficiaries to subsidise fees for others who cannot afford the fees;
- looking for another charity or setting up a separate charity to provide support and voluntary assistance;
- looking for innovative ways of delivering the benefits in different ways; or
- restructuring or reorganising activities.

These are just a few examples. Other examples of different ways of opening up access to the benefits of a charity are set out in sections **F** and **G** below.

What is possible for a particular charity and how much impact a specific initiative can have will need to be considered in each individual case. What might be possible for one type of charity with a particular aim, may not work for other types of charities. What might be possible for an individual charity might not be possible for another charity, even one with the same aim. This is why it is important to consider what is reasonable and appropriate in a particular charity's circumstances. (See section **D** below.)

We encourage the trustees of fee-charging charities to find innovative ways to enable as many people as possible to have the opportunity to benefit from their charity. When assessing whether a charity meets the public benefit requirement, we will take into account how much time and resources might reasonably be needed by the charity to make any necessary adjustments to the way in which it carries out its aims. We will not expect charities to make changes overnight, and we will have regard to what is reasonable in the circumstances. In *Charities and Public Benefit* (section H3) we say, “*No two charities are exactly the same, so our detailed public benefit assessments will consider each case on its own merits, taking into consideration issues of risk and proportionality, and the particular circumstances of the individual charity.*”

C2. The framework of factors we will consider when assessing fee-charging and public benefit

When we assess the extent to which fee-charging affects a charity's ability to meet the public benefit requirement, we will take account of the level at which a charity decides to set its fees. This will have an effect on the question of what other opportunities to benefit the charity must offer to those who cannot afford to pay the fees it charges, in order to meet that requirement.

As a general rule, the lower the fees that are charged, the greater the opportunity there is likely to be for people to be able to benefit. The higher the fees, the more likely it is that there will be more people unable to afford the fees and the more the charity is likely to have to do to provide those people with sufficient opportunity to access benefits from the charity.

Trustees will have to be able to show that people who are unable to pay the fees charged have sufficient opportunity to access the charity's benefits in a material way related to the charity's aims.

For some charities this will be easy to demonstrate from what they are already doing. For others, the trustees will have to examine their charity's activities more carefully. Trustees will also have to consider the charity's aims. This will be particularly important where, for example, the aims are very specific, where they limit the activities or benefits that may be provided by the charity, or where they restrict the way in which activities or benefits are provided by the charity. (In some cases, the charity's governing document might have to be amended before changes can lawfully take place.)

As explained in *Charities and Public Benefit* (section F10), in cases where fees are charged by a charity for the services or facilities it provides, we will consider the following issues:

1. Whether the levels at which fees are set have the effect of preventing people who are unable to pay the fees from benefiting from the services or facilities.
2. If this is the case, whether it is possible to show that people who are unable to pay the fees are not excluded from the opportunity to benefit.
3. Whether and how people who are unable to pay the fees may otherwise benefit from those services or facilities.
4. The nature and extent of the other benefits provided.

In considering these issues, there are a number of factors we might take into account. The questions and issues that we will consider will differ from charity to charity, depending on the circumstances, so this means we will not be prescriptive about what questions we will ask, or list all the factors we will consider for all charities. We have set out below a general framework, listing a range of factors that could apply. They are only examples of factors that it might be relevant for us to take into account when considering what opportunities to benefit are available to people who are unable to pay the fees charged. There may be others. Not all of these factors will be relevant in all cases; it will depend on the circumstances of each charity:

- The nature of the charitable aim and the law that applies to it.
- The need for, and nature of, the services and facilities provided.

For example:

- who has need of the service or facility? - is it the public generally, or is

it only people with particular needs that would want to, or need to, access the service or facility?

- is the same service or facility easily available from other sources?
- if it is otherwise easily available, is it usually provided at a charge or free?
- is it a service or facility that is delivered to particularly high standards?
- is the service or facility providing added advantages in comparison with similar services?

- The extent to which charges are set at a certain level for specific reasons.

For example:

- how are the fees set?
- are the fees set at cost price?
- are the fees already partly subsidised by the charity from its general funds or from its trading activities?
- are the fees subsidised by funding from other sources?
- have the fees been lowered specifically to permit access to those who cannot otherwise afford the charges?
- have the fees been raised for some beneficiaries to subsidise opportunities for others unable to afford the fees to benefit?
- are the fee levels influenced by other factors, such as the need for consistency across a service (for example, social housing rents)?
- are the fees set at a specific level to take account of the charity's position in the market (for example, if there are few service providers in their field) or in light of what other service providers (charitable or not) charge for the same or similar services?

- The nature of the benefit, including whether it is a one-off facility or service, or one that people would want to use regularly, or a service or facility that is usually provided on a longer-term basis.
- The particular circumstances of the organisation (see section C1 above).

For example:

- how easy it is for the charity to widen access to its services;
- the level of resources available to the charity;

- if the charity sets its fees at a certain level to generate a profit, what that profit is used for;
- to what extent the charity's costs can be reduced;
- the social and economic circumstances in which the charity carries out its work.

Q1. Do you have any comments on our proposed approach to assessing the public benefit of fee-charging charities?

Q2. Are there other examples of factors when assessing the public benefit of fee-charging charities that you think we should take into account?

D. Key issues for trustees to consider if they want to charge fees

D1. Charities and fee-charging



Charities are allowed to charge fees and many do.

Where a charity charges fees for its services or facilities, its trustees must consider what effect the charging of those fees has on who can benefit from the charity. This is important because, where a charity's fees effectively restrict who can benefit, this can affect the charity's ability to meet the public benefit requirement and, consequently, its charitable status.

In deciding whether or not to charge fees, or what level of fees to charge, trustees should have regard to:

- their charity's aims;
- the nature of the service or facility that the charity provides that is to be charged for and whether the provision of that service or facility is one of the primary aims of the charity;
- who those aims, or the service or facility, intends to benefit and the financial circumstances of the intended beneficiaries; and
- whom has the opportunity to benefit, and in what way, given the level of fees charged.

D2 Who must have the opportunity to benefit from a charity?



Charities and Public Benefit explains that the opportunity to benefit from a charity must not be unreasonably restricted by ability to pay any fees charged and that people in poverty must not be excluded from the opportunity to benefit. What is important is that there are opportunities to benefit throughout the range of people who cannot afford the fees charged by a charity, including people in poverty.

It would not be enough, for example, to reduce very high fees slightly to enable more 'middle income' people to benefit, if people in poverty were still excluded from the opportunity to benefit. In some cases, the people who cannot afford the fees will be confined to those who are living in poverty. In other cases, however, the fee levels might exclude **both** people in poverty **and** some people who are not poor but still cannot afford the fees. In such cases, the charity would need to do more to ensure that those who could not afford the fees have the opportunity to benefit. It would not be sufficient for a charity simply to ensure that people in poverty have the opportunity to benefit whilst continuing to exclude others who could not afford the fees.

Benefits must not be unreasonably restricted by ability to pay the fees charged

Where the fees charged by a charity are relatively low then its services or facilities will be generally accessible to most people. The benefits are therefore unlikely to be ‘unreasonably restricted’.

In those cases, the trustees might wish to choose to benefit, in particular, people in poverty, in order to relieve the charitable need of such people, without also having to provide opportunities to those who are not in poverty to benefit. It is open to those trustees to do this provided that doing so is appropriate to the charity’s aims and that it does not unreasonably restrict access to the charity’s benefits by people who are not in poverty.

People in poverty must not be excluded from the opportunity to benefit

Charities do not have to positively show that access to their services or facilities is open to every single person who is in poverty. However, they must be able to show that, in practice (in light of the circumstances of the individual charity and all the information available) the opportunity to benefit is not restricted to a very limited number as this might call into question whether people in poverty truly have the opportunity to benefit.

D3. Key questions for trustees

The following questions are intended to help trustees think about the impact of charging fees on who can benefit from the charity and, if necessary, what other opportunities to benefit they will need to provide for people who are unable to afford the fees.

1. What fees do you charge for the services or facilities provided by your charity? (see section **E1** below)
2. What is the impact of charging the fees on who can have the opportunity to benefit? (see section **E2** below)
3. What steps have the trustees taken, or can they take, to provide direct access to the benefits of the service or facility provided by the charity to people who are unable to afford the fees charged? (see section **F** below)
4. What other opportunities to benefit related to the charity’s aims (if any) do you provide for people who are unable to afford the fees charged? (see section **G** below)
5. What is the overall effect of all the measures taken by the trustees to enable people who are unable to afford the fees to benefit? (see section **H** below)

Q3. Do you think the key questions for trustees set out in section D3 are the right questions and are they helpful?

D4. Opting out of charitable status

In *Charities and Public Benefit* (section H3) we say, “Charities do not have the right to opt out of the charitable sector if they consider their responsibilities to meet the public benefit requirement are too demanding.” If the way in which a charity is operating is not enabling sufficient opportunity to those unable to afford the fees it charges for its services or facilities to benefit, then, as a matter of law, the charity will need to change the way in which it operates in order to meet the public benefit requirement. The trustees might be in breach of trust if they do not do so.

It is not an option for the trustees of an existing registered charity simply to decide that the organisation will no longer call itself a charity, ask to be removed from the register of charities, and keep its charitable land, money and other assets. Nor can it simply give away its charitable assets to be used for non-charitable aims or activities. A charity can wind up or dissolve, if its governing document permits this but, under charity law, any land, assets or money left over, after paying off the charity’s debts, must be transferred to other charities or for others for use for similar charitable activities or aims.

For example, some commentators have suggested that trustees of charitable independent schools that are unable to meet the public benefit requirement could sell their school as a going concern to a commercial or private enterprise to be run as a non-charitable school.

Such a sale could only take place if there is an appropriate power of sale. If there was such a power, a sale could only take place for the best price reasonably obtainable. The proceeds of sale of the school would then be held by the trustees of the charity to be used for its charitable aims. Many charities hold their land and assets on terms that mean they can only be used to provide specific activities, such as running a school. The assets are held on specific trusts, and the land is referred to as designated land. (‘Designated land’ is land held on trust which stipulates that it is to be used for the aims, or any particular aim, of the charity.) Where designated land is sold it can usually only be done with the intention to use the proceeds of sale to replace the land and then use the replacement land for the same purpose. In this case, this means the proceeds of sale of the charitable school could only be used to buy a new piece of land to be run as a charitable school. It would require a Commission scheme before the trustees could propose spending it on other educational or indeed other charitable activities.

Even if the school land or assets are not held on designated trusts, the proceeds of sale could only be used for charitable educational purposes. If its objects were wide enough it might be able to change its activities to other charitable activities, such as providing grants. Depending on the circumstances of the individual charity, this might require the objects or aims of the charity to be amended, and this might require assistance and approval from the Charity Commission.

Q4. Do you have any general comments on section D?

E. Setting and assessing the impact of charging fees

E1. Setting fees



It is not the Commission's role to direct or guide trustees on whether or not they should charge fees. One of our statutory duties is to raise awareness and understanding of the public benefit requirement and assess the public benefit of registered charities and organisations applying to register as charities. Existing charities have to comply with the public benefit requirement, as do new charities that we admit to the register of charities. We therefore need to ensure trustees of existing charities, and organisations applying for registration, are aware of the consequences that charging fees might have on meeting the public benefit requirement.

Every charity must meet the public benefit requirement. It is for trustees to decide whether or not to charge fees and, if they do charge, at what level to set the fees for their charity's services or facilities. In setting fees, trustees need to consider what impact the fee levels would have on how many will have the opportunity to benefit.

However, subject to that general position, trustees' decisions on fee-setting will be subject to the usual test of whether the trustees have exercised their discretion properly.

In deciding at what level to set their fees, in order to comply with the legal framework for decision making set out below, trustees are likely to need to consider factors such as:

- What fees might be needed to cover the charity's costs?
- What other income sources are available to the charity, which might (in full or in part) subsidise fees?
- Who are the charity's intended beneficiaries?
- To what extent will the fees be used (in full or in part) to finance other charitable activities undertaken by the charity?
- What are the implications of charging the fees on who can access the service or facility that is charged for.

There are legal restrictions - under competition legislation - on the ability of charities and other organisations to exchange information about their fees. Trustees must not breach those rules. (For further information and advice on the law that affects charities' ability to swap information about setting fees, please see the Office of Fair Trading's website www.of.gov.uk).

Additionally, there might be specific laws or rules that affect a particular charity's situation.

For example, there might be rules in a charity's governing document agreed by its membership setting out a maximum level for fees, or charities operating in particular service areas might have to follow specific guidance.

As with any decision that trustees make, whether about fees or other matters, they must:

- act within the powers given to them. These may be those established under the general law, or specifically in the charity's governing document, and under the established rules and procedures for dealing with issues of the kind under consideration;
- act in good faith;
- adequately inform themselves in order to make the decision in question;
- not take into consideration any factors which it is not appropriate for them to take into account;
- consider all the factors which they ought to take into account;
- act reasonably (i.e. the decision should be within the range of decisions which a reasonable body of trustees could have made).

Q5. If you work in a particular area or field where there are additional rules or guidance that affects at what level you can set your fees, whether as a minimum or maximum, please let us know and explain what they are.

E2. Assessing the impact of fees

In deciding at what level to set their charity's fees, trustees need to be aware that their decisions about fee levels will directly affect whether charging has the effect of preventing people who are unable to pay from having the opportunity to benefit from the charity's services or facilities.

The question whether, in order to comply with the public benefit requirement, other opportunities to benefit must be offered and, if so, how far those opportunities must be provided to people in poverty and to those who cannot afford the fees and what sorts of opportunities they should be, will depend upon the level of fees charged, the particular charitable purpose and a range of other factors.

There are many different ways in which trustees might ensure that people who are unable to afford the fees charged can have sufficient opportunity to benefit from the charity. No one way, method, idea or arrangement is necessarily better than another. However, when charity trustees are considering what opportunities they can provide, they should be aware that some ways are likely to have more impact than others. As a general rule, the greater the opportunity to benefit from the charity, the more impact it will have and the more likely it is that the charity will meet the public benefit requirement.

What matters is:

- how exclusionary the effect of the fees might be on who can benefit;
- what more the charity might therefore need to do to ensure that people who are unable to afford the fees have the opportunity to benefit; and
- whether these other opportunities to benefit made available by the charity are sufficient for it to meet the public benefit requirement.

Affordability

It is difficult to be precise and say that a particular fee level is or is not generally affordable; it depends in part on the nature of the service. A charge that might be considered affordable in one situation, might not be considered affordable in another. The fee levels need to be considered in context.

For example, most people would probably not consider a fee of £250 for a single theatre ticket to be affordable, whereas more people might consider they could afford £250 for a 1 year adult education course.

For many fee-charging charities, affordability will not be an issue because they are charging amounts that the vast majority of people can afford and, therefore, the fees do not prevent people from accessing their services or facilities. These charities may need to do nothing more than report on this in their Trustees' Annual Report.

Examples of charities charging fees that the vast majority of people can afford might include:

- a local village hall charging membership fees of a few pounds to local residents before they can hire out rooms;
- a small entry fee to attend an event at a community centre;
- the annual cost of a library card to enable borrowers to use books or reading rooms for free but ensure the charity can administer and monitor their use;
- low charges, perhaps a few pence/pounds an hour, for use of a charitable public internet terminal;
- a small subscription fee to join a playgroup, scouts, guides, youth clubs or after school clubs or small charges to fund their activities. This might be because the charges for activities are confined to the core costs which are low, such as entry fees for trips. Alternatively, this might be because they are funded by the charity either generally or through hardship funds; and
- mobile units (such as a medical boat, or food and clothing vans) touring deprived areas in developing countries providing services, equipment, goods or facilities at low cost to local people.

Each case must be assessed on an individual basis.

With activities for children and young people, such as an independent school or children's hospital, the services and facilities are likely to be paid for by their parents, or another adult on whom they are financially dependent. In these sorts of cases, the consideration is whether the person who is most likely to pay the charges in this situation is likely to be able to afford to.

Availability of external funding

Some charities, by virtue of the way their activities are arranged might, in theory, charge high fees, but, in practice, the fees might be covered by external funding or subsidy in almost all cases. This external funding might help to reduce fee levels or help pay the fees of those who cannot afford them.

For example, a charitable residential care home has a contract with a local authority and the local authority offers partial subsidy, dependent on income, to those it places in the home.

In another example, a charitable housing association provides rented housing to help people of limited means to meet their housing needs. Access to such housing is usually controlled through statutory criteria that apply through a hierarchy of defined need, as assessed by local authorities. However, it is usual for charitable housing providers to be able to veto any local authority nominee to one of their properties to ensure that they only provide homes for their properly qualified beneficiaries. In many parts of England for example, access to social rented housing is available only to people who are homeless, at risk of becoming homeless, or who need to be re-housed quickly for reasons of health or personal safety.

Rents are based upon relative property values and local earning levels. Tenants on low incomes (as defined by the Department of Work and Pensions) are also eligible for housing benefit payments.

In some instances the effect of the high fees is mitigated because funding is available from a third party. – see section F4 below.

Charities providing services through other charities or organisations

Assessing the impact of fees will be different for charities whose aims are furthered by supporting beneficiaries indirectly through other organisations or charities. The public benefit requirement does not mean that charities that support the work of other charities and organisations have to provide that support or some of it free of charge or at cost price.

Charities providing premium, intensive or long-term services

Some charities provide a service that, by its nature, is intensive or on-going over a number of years, such as educating a child, providing intensive or long-term medical or nursing care, providing a course of treatment or counselling, or providing accommodation. In such cases, the fees charged for that service are often necessarily high or require a long-term financial commitment. They are therefore often outside the financial reach of many.

In these circumstances, unless the fees are very low, it is more likely that people will be excluded from benefiting because they are unable to afford the fees. The public benefit requirement places the onus on charities providing such services to ensure that people who are unable to afford those fees, including people in poverty, have other opportunities to benefit in a material way that is related to the charity's aims (see section G below). Charities charging relatively high fees for a service that requires an on-going degree of financial commitment are, therefore, likely to have to do more to ensure that other opportunities to benefit are available, than charities charging relatively low fees for a service that people are likely to use on a more infrequent basis.

A charity might argue that the fees it charges for its services or facilities are necessarily high but, in the circumstances, are nevertheless reasonable and cost effective. Even so, the public benefit requirement means that what trustees offer in order to mitigate the impact of those high fees must be sufficient to reach people who cannot afford the fees. In assessing this, we will take into consideration the totality of the fee-charging scheme and all the ways in which people who cannot afford the full fees have the opportunity to benefit.

This does not mean that charities must, or should, only provide basic or low cost services or facilities in order to generally keep costs down. However, where a charity is providing a service or facility that comes at a high cost, whether or not it is provided to a particularly high standard, trustees will have to pay particular attention to the impact the fee charging has on the opportunities people may have to benefit from the charity's services.

Spreading the fee payments

Where the fees charged are not excessively high, the fact that the charity provides the opportunity for a beneficiary to spread the cost of the charges, to help the person paying to budget and meet the cost, might be a relevant factor to take into consideration where that enables more people to have the opportunity to benefit.

However, if the smaller, more regular payments are still unaffordable for many, or if, in totality, taking account of the nature of the service and other issues, the opportunity to benefit is still restricted by the fees charged and people in poverty are still excluded from opportunity to benefit, then the charity would need to provide other opportunities to benefit.

Charging high fees to subsidise others

Sometimes the fees charged to those able to afford them are relatively high, but this is part of a deliberate pricing strategy aimed at generating revenue to cover the cost of concessions of various types. Trustees might therefore decide to increase general fee levels in order to provide subsidies to those unable to pay the full cost. However, increasing fee levels in order to generate subsidies is only one option open to trustees and may not be feasible for every fee-charging charity.

E3. Summary of key points in this section

The following is a summary of the key points for trustees to note from this section:

- Charities can legitimately charge fees and, in some circumstances, can legitimately charge 'high' fees.
- The Charity Commission does not specify whether fees should or should not be charged.
- It is for trustees to decide whether or not to charge fees and, if they do charge, at what level to set the fees for their charity's services or facilities.
- In setting fees, trustees need to consider what impact the fee levels would have on who will have the opportunity to benefit.
- Trustees' decisions must be consistent with the general legal framework.
- There are many different ways in which trustees can ensure that those who cannot afford the fees have sufficient opportunity to benefit.
- Fee levels need to be considered in context.
- In some cases, the availability of external funding might help reduce fee levels or help pay the fees of those who cannot afford them.
- Charities providing services or facilities that require a high or long-term financial commitment are likely to have to do more to ensure that sufficient opportunities to benefit are available to people who are unable to afford those fees, than charities providing a service that people are likely to use on an infrequent basis and whose fees are at a level that the vast majority could afford.
- Schemes that enable beneficiaries to spread the cost of fees might help provide opportunities to benefit but not if those payments are still unaffordable for many people.
- In some cases it might be appropriate for a charity to use high fee levels in order to finance subsidies for people who cannot afford the full costs, but this will not be appropriate or feasible for every fee-charging charity.

F. Providing direct access to the service or facility that is charged for

F1 Opportunities to benefit that specifically open up direct access to benefits

In general, where the provision of the service or facility that is charged for is one of the primary aims of the charity, the legal framework suggests that it is preferable for trustees to focus on enabling as many people as possible to have the opportunity to directly access that service or facility. We would therefore expect trustees, in those circumstances, first of all to look for ways to enable people who cannot afford the full fees to do this.

However, we recognise that, in some circumstances, providing other opportunities to benefit that are related to the charity's aims, but which do not provide direct access to the service or facility that is charged for, might provide greater benefit to the public generally. (See section **G** below)

F2. Ways of providing direct access to the service or facility that is charged for

There are various ways in which charities might provide people who are unable to afford the full fees direct access to the service or facility that is charged for. The most obvious ways are offering free places, subsidies, discounted fees or concessions. Section **F3** below sets out some specific issues for trustees to consider about this.

Charities might also look to external sources to assist them.

For example, charities might be able to provide opportunities to open up direct access to a service or facility that is charged for by securing sponsorship or funding for the costs of its services, facilities or places from other bodies. This might include, for example, grant funding or donations provided by other charitable or voluntary sector bodies, or funding provided by the state (e.g. subsidy for care home provision under the benefits system) or sponsorship by wealthy philanthropists or future employers.

Section **F4** below sets out some specific issues for trustees to consider.

In some instances, it might be argued that insurance schemes exist which directly open up access to a service or facility that is charged for. The extent to which such schemes can be taken into account in assessing what opportunities to benefit are available for people unable to pay the fees is considered in more detail at section **F5** below.

Examples of ways of providing direct access to the service or facility that is charged for might include:

- providing concessions, subsidised or free places;

- sliding scales of fees or reduced price tickets or places or providing selected services or facilities at no or reduced fees;
- the existence of other reliable sources of funding that are specifically made available to beneficiaries, or to which beneficiaries have some entitlement to access, to help meet the costs of any fees charged;
- providing free access to facilities including buildings, laboratories, research facilities or workshop space to other service providers;

Independent schools or other educational establishments:

- offering bursaries or assisted places;
- a funding arrangement between an independent school and a separate, and possibly linked, grant-making body;

Hospitals:

- the existence of accessible medical insurance or other benefit schemes; (This would depend, though, on the cost of such schemes and what sorts of services people are entitled to receive under them – see section F5 below)

Theatres, concert halls or other arts charities:

- offering concessionary tickets;
- lottery-based or ballot systems for allocating places for cheaper tickets for concerts or performances;
- providing free or concessionary rates for state school parties at performances;

Residential care homes:

- funding, offered by a local authority, to pay for a place in a care home;

Museums and art galleries:

- providing free or concessionary rates for state school parties at exhibitions, museums.

Section H2 considers quantifying and assessing the impact of benefits further.

Q6. Do you think that, where the provision of the service or facility that is charged for is one of the primary aims of a charity, trustees should, first of all, seek to provide opportunities to people who cannot afford the fees to directly access the service or facility that is charged for?

F3. Issues trustees might want to consider when providing free, discounted, subsidised or concessionary access

Do we have to provide free or subsidised access?

It is not a requirement that fee-charging charities have to offer free or subsidised access to people who cannot afford to pay the full fees charged. There is no requirement in law that people in poverty must, in all cases,

actually take up benefit, or that part of the aims of a charity must be to include, or assist in, relieving poverty. What matters is that people who cannot afford the fees, including people in poverty, are not excluded from the opportunity to benefit and that their opportunity to benefit is not unreasonably restricted because of the fees charged.

Offering free, discounted or subsidised access to people is an obvious and, in many cases, the simplest way in which charities can provide an opportunity to access the charity's services or facilities to people who might not otherwise have the opportunity to benefit because they cannot afford to pay the fees charged. However, funding or subsidising places clearly impacts on the financial situation of a charity as it costs money.

Provided they can show that people unable to afford the charges have the opportunity to benefit in a material way that is related to the charity's aims, it is primarily for the trustees of the charity to decide for themselves whether or not to offer free or subsidised access, and how much free or subsidised access to offer to how many people. However, charity trustees need to be aware that token, minimal or nominal access or access that occurs by chance will not be enough.

For example, a radio station runs a regular competition to win free tickets to a performance at a charitable concert hall. The fact that these tickets might be won by someone who could not otherwise afford to attend a concert is not sufficient to demonstrate that people who cannot afford the cost of the tickets have the opportunity to benefit.

In making their decisions trustees must comply with the general decision making framework (see section E1 above on general decision-making) and have regard to this draft supplementary guidance and *Charities and Public Benefit*.

How much free or subsidised access should we provide and how much discount should we give?

There is no general minimum number or percentage of free or subsidised tickets, places or services that have, as a legal requirement, to be offered.

The Charity Commission cannot specify how many concessionary tickets a theatre should offer, or suggest a percentage of bursaries that all independent schools should offer, or say how many free beds should be available at a hospital. This is because we have to consider what is reasonable and appropriate in each particular charity's circumstances. What is appropriate, and sufficient, will vary from charity to charity, depending upon, amongst other things, its charitable aims, the level of the fees charged, any relevant local needs or factors and the resources available to the charity. In each case it is for the trustees to show, where necessary and if challenged, that people who are unable to pay the fees nevertheless have the opportunity to benefit in some material way related to the charity's aims.

Where reduced fee arrangements are in place, how much discount is given will affect how much impact it has on making the fees affordable to more people.

For example, the discount on the price of an entrance ticket to a museum or gallery might mean that the amount to be paid still prevents some people from having the opportunity to visit it. The area in which the museum is located is socially and economically disadvantaged and the families of those children, both attending the local state schools and living near by, are, in practice, in poverty and not able to afford the entrance fees, even at discounted rates.

One of the measures it has put in place to open up access to the people who cannot afford the fees is to arrange for annual free entrance passes to be provided to the families of children at a local school.

Should free or subsidised access be available for anyone to apply for, or just people who cannot afford the fees?

Measures that are designed specifically, and exclusively, to assist people who cannot afford the charges are likely to have greater impact on increasing the opportunities to directly access the service or facility that is charged for, and are therefore more likely to be sufficient in meeting the public benefit requirement, than other measures.

For example, in the context of charitable independent schools, it means that bursaries (which are usually specifically aimed at assisting children from poorer families) will have a greater impact than scholarships (which are usually open to anyone to apply for and are awarded solely on merit).

Bursaries usually still require the applicant to show merit (e.g. entrance requirements) but should guarantee that children, whose parents or guardians are unable to pay the fees, are given sufficient opportunity to benefit.

Some schools might wish to offer bursaries to children from disadvantaged families irrespective of their academic ability, and such an approach would also count.

Scholarships usually require merit to be demonstrated and can be legitimate ways of encouraging educational excellence, but ability to pay is not usually a criterion. Scholarships might not, therefore, provide as much opportunity to benefit to people unable to afford to pay the fees in the same way that bursaries might.

Some schools use scholarships and bursaries in tandem where, once a scholarship is awarded, an accompanying financial package is tailored to the means and financial circumstances of the parent or supporting adult.

Q7. Is our understanding of the difference between bursaries and scholarships correct?

Q8. Do you agree that ways that are designed specifically to assist people who cannot afford the charges are likely to have greater impact on increasing the opportunities to directly access the service or facility that is charged for, and are therefore more likely to be sufficient in meeting the public benefit requirement, than other measures?

Q9. Aside from offering bursaries, in what instances might there be a more appropriate way for educational charities to open up direct access to the educational service or facility?

How much impact will providing free or subsidised access have on opening up direct access to the service or facility that is charged for?

The following are some further factors for trustees to consider when thinking about how much impact scholarships, bursaries, concessionary or other discount and subsidy schemes have on opening up direct access to the service or facility that is charged for, for people who are unable to afford the fees:

Questions for trustees to ask themselves regarding free places or other concessions or subsidies:

- How are the concessions, free places or subsidies set up to operate, including the terms of application?
- Who may apply? Are they limited to relatives of staff of the charity or to members, or ex members, of the charity for example?
- Where and how widely are they advertised; is it word of mouth or public advertisement?
- Will they be funded by the charity or from alternative funding sources? (see section F4 below)
- What does the subsidy cover? Is it only the charity's core services or does it cover additional costs that, in reality, the beneficiary will have to meet e.g. in the case of a sports club requiring specialist sporting equipment, or, in the case of schools, uniforms or expensive school trips?
- How long will it last? Will it cover fees for a limited time?

We would encourage trustees to be open and transparent about how their schemes to fund free or discounted places, including scholarships and bursaries, operate; and to take reasonable steps to advertise them widely and publicly.

In some cases, but not always, offering a specific number of completely free places is likely to have greater impact than the same number of discounted or subsidised places.

For example, a treatment centre charges £50 for a counselling session. Ensuring that ten completely free sessions a month are always provided is likely to have greater impact on providing opportunity to benefit to people who

cannot afford the fees than offering ten of the same sessions at a 10% discount.

It is also possible that offering one free place (effectively concentrating subsidy in one person) might have less impact overall than offering ten partially discounted places to ten people.

Providing a longer-term or regular commitment to reduce fees is likely to provide greater opportunity to benefit than by providing a one-off opportunity.

For example, a theatre decides for a one-off performance to offer 100% of tickets at discounted rates for people in poverty. This is not likely to provide as much opportunity to benefit as a commitment that 10% of tickets for every performance over the next year will be offered at discounted rates.

In some cases, a charity might allow equipment or staff to be used by other charitable service providers as a way of opening access to people who are otherwise excluded from the opportunity to benefit. Providing this service free of charge will have more impact, and so offer greater opportunity to benefit, than where the charity charges the other organisation for the equipment or staff, or whether it is let on a commercial basis. If the staff or equipment is lent out for unrelated charitable aims, then this would not count at all towards any public benefit assessment.

How much impact this type of measure has on opening up access to benefit (and whether it will be sufficient in showing there are other opportunities to benefit) will also be affected by whether the fees charged to the other organisation are at a profit to the charity, at cost price, or are the same rates that are charged by other service providers, whether charitable or not, in the area.

The more discount or subsidy that is offered, the more likely that the opportunity to benefit for people who cannot afford the fees will be achieved.

For example, a 5% discount on the fees charged for entry to a historic building, might have little impact in making them affordable but a 20% discount would make them affordable to more people, a 50% discount even more so, and so on.

Offering temporary assistance with fees will usually have less impact than offering permanent assistance.

For example, offering a person a loan to help them pay the charges (which they have to pay back), or offering a delayed payment mechanism, will have less impact than offering them a permanent grant, concession or waiver of the charges.

However, it might be that lending smaller amounts to more people, which are paid back and so can be 'recycled' as loans to help other people, might have greater impact overall. Also, it might be possible for a loan of a larger amount

to have more effect on widening access than a one off subsidy of a small percentage of the cost.

Each case will have to be assessed on its own merits.

Q10. Do you have any comments on our approach to assessing the impact of measures taken to open up direct access to the service or facility that is charged for?

Some more practical issues for trustees to consider about providing free or subsidised access

Leaving aside their consideration about how much impact they will have, there are also practical issues for trustees to consider when deciding whether to offer free, concessionary or discounted places as one of the ways in which they will ensure there are adequate opportunities to access the charity's benefits and if so, how many.

Things trustees might want to think about include:

- How will trustees assess a person's ability to pay the fees charged? Will they use a means test, for example, in individual cases, or will they consider generic indicators of poverty perhaps?
- How much income does the charity need to generate from charging for its services to break even; how many paying beneficiaries does the charity need?
- Are the places to be provided in addition to or instead of existing places? What impact will this have on the charity's income? This decision will be affected by whether there are practical or legal limits on the number of free places that may be offered. Some examples:
 - It might be possible to provide additional places at a school in addition to the places for existing pupils. Even if there are legal and practical limitations on how many boarding pupils can be housed, additional day pupils might be easier to cater for and cost less to the charity to provide.
 - However, a care home might have a fixed number of rooms available to use and so if free places are to be provided, this would mean finding additional money from the charity's own funds or from charging for other services or facilities it provides or finding new sources of funding.
 - A sports club might only be able to cater for a certain number of participants because of health and safety restrictions and so might not be able to increase the number of places it can offer.
- Will the trustees need to find additional money to fund the free, discounted or concessionary places? If so, how much?

- Where might this come from?
 - Where does the charity's income come from? Is it solely from charging fees to beneficiaries? Is it from endowments? Is it from investments? Is it from grant funding?
 - Would this require a specific fundraising campaign to fund? Is it likely to be successful? What are the risks?
 - How much is the charity's current level of reserves? Is this reasonable or should this be used to fund places?
 - Can additional funding be sought from other charitable or voluntary sector organisations or other public sources?
 - Can funds in the charity be diverted from other activities?
 - Would charges for those quite able to afford the fees need to increase to fund additional places? What impact would charging higher fees have on the charity being able to attract a sufficient number of full paying beneficiaries?

In practice, it may well be the larger charities that will have greatest flexibility to be able to provide access by funding free, discounted or concessionary places. They might be more likely to be able to afford to fund additional places from their other funds, or have more flexibility to deal with the impact of less income, to fundraise or be able to charge higher fees to other beneficiaries. We recognise that smaller charities are unlikely to be able to offer the same opportunities to benefit as larger charities.

We will seek examples of how larger charities can open up access, and what we might expect to see, as a matter of good practice, from larger charities (and others), when we carry out further research and carry out assessments in individual cases.

F4. Funding issues

Fundraising campaigns and subsidising costs from other activities

Trustees might decide to implement particular measures to ensure that they sufficiently widen opportunities to benefit from the charity's services or facilities. This might be funding free, discounted or concessionary places or providing additional activities to a wider range of people in addition to existing services. They might want or, in practical terms, need to fundraise specifically for this.

Fundraising will be easier for some charities than others. A fundraising campaign invariably means the charity will have to devote trustee or staff time and financial resource to organise it. The costs and risks of doing so

(including that the campaign does not make enough money) should be assessed by the trustees.

Similarly, trustees might want, or need, to raise the funds by charging higher fees to other beneficiaries. As a general principle, we support charities endeavouring to keep the costs of their core services and facilities to their beneficiaries as low as possible, but charity trustees would be free to exercise their discretion to cross-subsidise their charitable activities.

For example, a charity might introduce a tiered membership structure, with differing fee levels.

There is no general legal requirement for a charity to embark on a fundraising campaign to raise additional funds for the purpose of widening access to their services or facilities. Similarly, there is no general legal requirement for a charity to fund places or services by charging higher fees to other beneficiaries or cross-subsidising activities.

However, there might be some cases, where the only way a charity can ensure it meets the public benefit requirement is to provide these extra measures, which require funding. If this is the case, we might ask the trustees whether they considered any of these, and other, methods and if so, why they decided it was not appropriate and reasonable to do so.

We would take their response into account. We would also consider what other ways (e.g. by applying for grants, or by securing additional public funding) it would be reasonable to expect the trustees to have considered when deciding whether it was possible for the charity to meet the public benefit requirement.

If it was clear that the trustees were acting unreasonably, then the trustees would be in breach of trust and we would follow the approach set out in section D4 of *Charities and Public Benefit*, including considering regulatory action, to ensure the charity met the public benefit requirement. In other cases, where it was clear the trustees' decision not to take further action was reasonable, we could provide formal advice to the trustees by way of legal protection for them.

The funding of free, discounted or subsidised places by other bodies

Charities and Public Benefit (section F10, page 25) states that the existence of other reliable sources of funding that are specifically made available to beneficiaries, or to which beneficiaries have some entitlement to access to help meet the costs of any fees charged, is an acceptable way of opening up access.

Whilst these measures may count, how much impact they have on opening up access will be affected by:

- How widely it is available for people to apply for in the first place:

- Is it available for anyone to apply for?
- Is it targeted at assisting people in poverty?
- Is anyone excluded?
- Is it publicly advertised or are people made aware by word of mouth?
- Alternative funding specifically designed to assist people in poverty will have more impact than a funding scheme available generally to anyone to apply, irrespective of their financial circumstances.
- It is relevant to consider the way in which such a scheme is designed to operate, including any conditions for eligibility. The qualification or selection criteria used might impact on the extent to which it can be said that this truly opens up access.

For example, it might be limited to relieving the poverty of employees from a certain company or might only be available to people living in a particular town, or of certain ages.

- The terms of the additional funding – are there specific conditions as to its use?
- How long does it last? Is it one-off or long-term?
- Is the funding organised by the charity, or a body linked to the charity, or the beneficiaries, or by an independent third party?
- Is it a permanent commitment to fund the charity's services or is it a commitment to fund an individual who happens to be a beneficiary of the charity at this point in time but who might decide to take up services with other providers in the future, transferring the external funding with them?
- Does it cover the full cost, or only part of the fees?
- If it covers only part of the fees charged, are the charges, which still need to be met, still unaffordable?

We would encourage trustees to be informed about how other funders' schemes to fund free or discounted places, including scholarships and bursaries, operate.

For some charities, the funding they rely on might come from public or government sources. They might use this money to keep the fees charged low, or to subsidise a specific number of places, in whole or in part. It may be that public funding under the current law is compulsory for certain services or activities, or it might be discretionary. It might take the form of state benefits, for example, housing benefit for social housing providers, or other state benefits, for example, for care providers. Other charities might have secured specific funding directly for certain activities. It can take a variety of forms, last for different periods of time and have different risks associated with it in terms of its reduction or cessation.

Q11. Do you think that it should matter whether the funding is organised by the charity itself, or by another charity (such as a grant-making charity), or by another body that is linked to the charity (but which may not be a

charity itself), or by a local authority, or by another independent third party?

Trustees of fee-charging charities delivering public services under contract should refer to our guidance, *Charities and Public Service Delivery – An Introduction and Overview*.

What if the external funding is withdrawn?

Whatever its source, if external funding provision is relied on as a key way in which the charity can show that those otherwise unable to afford the fees charged have the opportunity to benefit, then trustees need to be aware that they might be in difficulty in showing their charity meets the public benefit requirement if that funding is withdrawn or stops. If external funding reduces, or is withdrawn, then it does not automatically mean the charity stops being a charity. However, where the withdrawal of the funding means that the trustees have to increase the level of fees charged to the beneficiaries, it does mean the trustees might need to take some action to ensure their charity continues to meet the public benefit requirement.

Trustees should be monitoring their funding streams and, hopefully, any reduction or withdrawal of funding will not come as a surprise to them. We would expect trustees to assess the situation in full and consider the implications. They might be able to seek replacement funding. Where fee levels might have to rise, we would expect the trustees to look as soon as possible for other ways to mitigate this and ensure there is continuing opportunity for people who otherwise would be unable to have the opportunity to take up their facilities or services.

If the trustees conclude that they cannot find a way of doing so, then we would work with the trustees to see if their conclusion was reasonable. As explained above, where it is clear the trustees' decision not to take further action was reasonable, we could provide formal advice to the trustees by way of comfort and legal protection for them. If their decision was not reasonable, then unless they took action, they would be in breach of trust. Section G3 below provides some examples of ways that trustees might consider if they have to take action.

In cases where trustees were in breach of trust unless they took action, we would follow the approach set out in section D4 of *Charities and Public Benefit*, assessing whether the charity's objects needed to be altered or the way in which they were carrying them out, whether we needed to take regulatory action, or make a scheme to ensure the assets were properly applied in the future for charitable purposes, or wind up the charity.

Q12. Do you think our approach to assessing whether or not trustees' decisions to take no further action regarding public benefit is right?

F5. The effect of the availability of insurance schemes as a way of providing direct access to the service or facility that is charged for

The existence of insurance schemes might offer some opportunity to people who are unable to afford the full cost of private medical care to access the services or facilities. However, it is not a simple solution. Our research indicates that where the costs of premiums are reduced or low, this is generally because limitations or restrictions are placed on what the insurance covers rather than that the payments have been reduced so that more people in poverty can afford them and access treatment.

Factors that might affect insurance schemes' ability to extend benefit to people who could not afford full fees, include:

- the cost of premiums;
- the type and extent of the cover available – what degree of cover is provided by low cost premiums for example?
- whether the premiums are more expensive for certain groups - e.g. elderly people or people with on-going pre-existing medical conditions might be more likely to call on medical insurance and therefore might have to pay higher premiums. Where those people are unable to afford the higher premiums they might continue to be excluded from accessing the charity's benefits notwithstanding the general availability of insurance schemes;
- whether the premiums are paid for by others - e.g. as a benefit provided under conditions of employment;
- what are the conditions? How tough are they?
- is the choice of provider or type of service limited?
- is there an excess to be paid? Is it one-off, annual or over a longer period?
- are there additional or top-up fees for certain services?
- is it a shared responsibility scheme where, for example, the person insured pays a certain percentage of the cost, with their contribution capped as say £500, £1,000 or some other amount? The more the person agrees to pay themselves, the lower the premium.

Therefore, it might be unwise for trustees to rely on insurance as a significant way of showing the availability of access to their charity's services or facilities to those unable to afford the fees.

Where trustees wish to show they are opening up access to those who cannot afford the fees by way of insurance cover, the onus will be on the trustees to show by evidence that, in reality, people in poverty, and others that cannot afford the fees, are genuinely able to access the services or facilities. It is not likely to be enough to simply state that insurance provision exists or refer to how much the premiums are.

Q13. Do you agree with our approach as regards insurance schemes?

F6. Summary of key points in this section

The following is a summary of the key points for trustees to note from this section:

- Where the provision of the service or facility that is charged for is one of the primary aims of a charity, the legal framework suggests that it is preferable for trustees to focus on enabling as many people as possible to have the opportunity to directly access that service or facility.
- An obvious (but not the only) way to enable more people to directly access the service or facility that is charged for is to offer free or subsidised access (through free places, subsidies, discounted fees or concessions).
- There is no general minimum number or percentage of free or subsidised tickets, places or services that have, as a legal requirement, to be offered.
- The Charity Commission cannot specify how much free or subsidised access should be offered. We have to consider what is reasonable and appropriate in each charity's circumstances.
- Measures that are designed specifically to assist people who cannot afford the charges are likely to have greater impact on increasing the opportunities to directly access the service or facility that is charged for.
- Trustees are encouraged to be open and transparent about how their schemes to fund free or subsidised access operate and to take reasonable steps to advertise them widely and publicly.
- Larger charities might have more flexibility to fund free or subsidised access than smaller charities.
- Trustees might want, or need, to fundraise to fund free or subsidised access.
- In some cases, free or subsidised access might be funded by another body, such as a local authority or grant-making body. Trustees are encouraged to be informed about how other funders' schemes to fund free or subsidised access operate.
- Trustees who rely on external funding as a key way to enable people who cannot afford the full fees to have the opportunity to directly access the service or facility that is charged for, should monitor those funding streams. They will have to look for replacement funding, or find alternative ways for people who cannot afford the fees to directly access the service or facility, or have other opportunities to benefit, if that funding is withdrawn.
- Trustees who rely on the availability of insurance schemes as a way of providing direct access to the service or facility that is charged for to people who cannot afford the full fees will need to be able to demonstrate,

by evidence, that, in reality, those people are genuinely able to access the service or facility via such schemes.

- In some circumstances, it might be the case that providing other opportunities to benefit that are related to the charity's aims, but which do not provide direct access to the service or facility that is charged for, might provide greater benefit to the public generally.

G. Providing other opportunities to benefit that are related to the charity's aims

G1 Providing other opportunities to benefit



Where the fees charged by a charity for the service or facility it provides might have the effect of unreasonably restricting who can benefit based on ability to pay, or which mean that people in poverty are excluded from the opportunity to benefit, the trustees must provide other opportunities to benefit to the people who cannot afford the fees. Where possible, we encourage trustees to consider providing ways in which those people can directly access the service or facility that is charged for. But, trustees can also consider providing other opportunities to benefit that do not provide direct access to the service or facility that is charged for but which, nevertheless, enable people who are unable to afford to pay the fees to benefit in a material way that is related to the charity's aims.

What is most important is the impact of these sorts of measures on who has the opportunity to benefit and in what way.

Such measures might in fact have a greater impact in terms of enabling more people to benefit in a material way from the charity's aims, or enabling people to benefit in a more significant way, than providing a few people with direct access to the charity's service or facility.

Whatever other opportunities to benefit trustees consider, the benefits they offer to people who are unable to afford the fees must not be minimal or tokenistic or happen by chance.

G2. Providing other opportunities to benefit that meet local needs

It is possible that, in looking to ensure that the public benefit requirement is met, trustees will seek to offer opportunities to work with other service and facility providers. The Commission does not want, as a result of the public benefit requirement, for charities to provide opportunities to benefit that are not required, valued or may be damaging. Charity trustees should have regard to whether the way in which they propose providing other opportunities to benefit are relevant and required. This is likely to affect the effectiveness of the measures offered and offering services or facilities that are not appropriate or wanted will not help to meet the public benefit requirement.

If trustees decide to explore other opportunities to benefit to meet local needs, we recommend that they engage with their partners and local communities so they can properly and sufficiently discuss and evaluate local needs when deciding what sort of services or facilities or collaboration to offer. Trustees might want to use peer review or other forms of quality assessment to assist them.

Examples of other opportunities to benefit that are not wanted or required because they do not meet the needs of the intended beneficiaries might include:

- a charitable hospital argues that they offered the local NHS hospital the use of a consultant specialising in children's illnesses but the NHS hospital refused the offer. Where the local NHS hospital caters only for elderly patients, or if it already has sufficient medical staff, the opportunity offered by the charity would have no effect in showing that it provides other opportunities to benefit. In this case, what might have more impact is where the charitable hospital consults the local NHS hospital about what it could offer that would be of more assistance to the NHS hospital and which would therefore have greater impact locally;
- a charitable independent school offers to provide teaching staff to the local state school for certain subjects but the subject areas offered are not required by the local state school. In this case, what would have more impact is where the trustees of the independent school consult other education providers locally about how to achieve the maximum impact from sharing resources and then targets their charity's assistance to state schools and other educational establishments with most need of help in ways which are likely to make most difference to students.

G3 Examples of ways of providing other opportunities to benefit

Our guidance *Charities and Public Benefit* gave some examples of ways in which charities might provide other opportunities to benefit. Using these and other examples we have set out below some possible ways in which different types of fee-charging charity might provide other opportunities to benefit that are related to the charity's aims.

Examples of ways of providing other opportunities to benefit that might apply to any fee-charging charity might include:

- providing wider access to charitable facilities or services. Some charities might provide additional facilities or services for people who would otherwise be excluded because they are unable to pay the fees. Some charities might lend equipment or staff out to other charities or groups that provide the same facilities or services to people who are unable to pay the fees.

Charitable independent schools and other fee-charging educational establishments

Some specific examples of ways in which charitable independent schools and other fee-charging educational establishments might provide other opportunities to benefit might include:

- allowing a state-maintained school to use its educational facilities (including sports facilities, such as swimming pool, sports hall, astro and playing fields, design technology or arts and concert facilities for example);
- allowing state school pupils to attend certain lessons or other educational events at independent schools;
- collaboration between independent schools and state schools, including city academies;
- formalised ways of sharing knowledge, skills, expertise and experience with other educational providers, for example, state schools, colleges or city academies as a form of non-financial sponsorship;
- the formal secondment of teaching staff to other state schools or colleges, for example in specialist subjects such as individual sciences or modern languages;
- working with schools overseas that provide education to children from families that cannot afford to pay for the child's education;
- supporting state schools to achieve more proportional success rates at entry to universities;
- hosting joint schools events with other local state and independent schools, such as sports days, maths, spelling, music, dance and drama competitions or productions;
- a charitable independent school and a state school working together on a project to improve the quality of teaching and learning for pupils with the intention of raising standards in the local area across education providers. The project is research based and the intention is to develop a model of good practice in school development and improvement which others can use;
- a charitable independent school and a state school collaborating to share their respective skills and experience. For example, the charitable independent school helps the state school to set up a sixth form. The state school helps the charitable independent school develop its approach to arts and drama.

Charitable hospitals

Some specific examples of ways in which charitable hospitals might provide other opportunities to benefit might include:

- providing free access to specialised medical equipment not available in the local NHS hospital, or through a number of beds in the charitable hospital being made freely available to NHS patients;
- providing medical training to nurses or doctors at an NHS hospital which benefits the non-fee-paying patients at that hospital;

Theatres, concert halls and other arts charities

Some specific examples of ways in which theatres, concert halls or other arts charities might provide other opportunities to benefit might include:

- putting on additional free, low cost or understudies' performances of a play or concert or using other media such as videos, films, DVDs or CDs to enable others to enjoy the event;
- performing in local state schools or other community facilities;
- using the internet to publish or transmit events and publications to a wider audience;
- in addition to offering concessions on ticket prices, a local theatre might also have an exhibition space for local people to view works of art and an amateur dramatic society that local people can join.

Residential care homes

Some specific examples of ways in which charitable residential care homes might provide other opportunities to benefit might include:

- inviting local people who are elderly and in need, but living in their own homes, to join the residents for meals, or attend outings with them, or join in organised recreational activities in the care home.

Museums and art galleries

Some specific examples of ways in which charitable museums and art galleries might provide other opportunities to benefit might include:

- offering additional jobs or volunteer places, for example at exhibitions, museums or events, specifically for people unemployed, who are students or for other reasons have limited incomes and providing them with opportunities to enjoy the exhibition, or event, freely.

There will be many other examples.

Providing alternative services and facilities, including in collaboration with other service providers can provide other opportunities to benefit that are related to the charity's aims. It will depend upon the nature and extent of these alternative services and collaborations as to how much impact they will have, the extent to which this is the case. Collaborations might therefore count in any public benefit assessment, but they will be considered on a case by case basis taking into account the totality of the other ways used by the charity.

For example, in the case of a charitable independent school, opportunities that provide direct access to benefits might include providing places for pupils otherwise unable to pay the fees through bursaries, scholarships or reduced fees. In addition, it might also work in collaboration with local state schools to provide teaching staff at their schools, carrying out joint lessons or

educational projects, open up facilities at the independent school or teaching sessions to state school pupils, or hold sessions with local state schools in the area to give six formers the opportunity to improve their chances of going to university.

In the case of an arts charity, providing free or subsidised one to one lessons, will enable pupils to benefit directly from the expertise of a highly respected musician that they would otherwise not be able to learn from. In addition, the charity might also increase opportunities to benefit through an initiative with community music groups where the same musician provides free master classes to a wider group of pupils.

In practice, charities are likely to use a combination of different ways of providing other opportunities to benefit that are related to its aims.

Each of these ways will have a different impact on providing other opportunities to benefit, depending on the circumstances of the particular charity, including what the charity's aims are, what it does, how much its fees are and what result that has on excluding people in poverty, and others who cannot afford the fees, from having the opportunity to benefit.

So what a particular charity might want or need to do, how far those opportunities must be provided and how, will need to be considered on a case by case basis. Nevertheless, it is likely to be helpful for trustees to be aware of as many different methods as possible.

Q14. Do you have other examples of ways in which organisations might provide other opportunities to benefit to people who are unable to pay the fees?

G4 Ways of providing other opportunities to benefit that have less impact or might not count at all

There might be other ways in which charities provide other opportunities to benefit which are related to the charity's aims which could be taken into account in an overall assessment of public benefit but which might have little impact, and so be insufficient on their own to show that other opportunities to benefit are available to people who cannot afford to pay the fees charged.

All such opportunities to benefit, however, must be related to the charity's aims, and so any opportunities to benefit that are not related in some way to the charity's aims will not be taken into account.

Charity trustees therefore need to understand the scope and extent of their charity's aims in order to be clear about what sorts of benefits might be related to those aims.

See, for example, our *Consultation on draft supplementary guidance on Public Benefit and the Advancement of Education* which considers the purpose of a school.

By way of illustration:

- a school providing education for 11-18 year olds opens up its sports facilities for free, or minimal charge, to the local community on Saturday mornings for primary school children's swimming classes. If the charity's aims are specifically limited to 'providing education for 11 -18 year olds', then the educational benefits the younger swimmers gained would not count in a public benefit assessment of the school's educational aims which are directed towards 11-18 year olds. However, if the charity's aims were to 'advance the education of young people', then the benefits to the younger swimmers could, to a limited extent, count in the totality of a public benefit assessment. This is because the opportunity to benefit that has been provided relates to the charity's core educational activities;
- another charity, whose aim is limited to providing a school for girls. It is an independent charitable school and it has entered into a collaborative arrangement with a local state school, which provides education for boys and girls. The charity can count the educational benefits that the girls at the state school receive through the collaboration. However, it cannot count the benefits to the boys at the state school, except to the limited extent that the girls at the school receive educational benefits indirectly from the inclusion of the boys at their school;
- a charitable amateur sports club whose aim is to promote healthy recreation by providing a sports facility, allows its car park to be used regularly by the local community as a public amenity. For example, it is used as the venue for a car boot sale once a month and it is used as a free overflow car park on market days. Whilst this might provide a valuable service to those people who use the car park, it does not provide other opportunities to benefit from the charity's recreational facilities and so would not count in any public benefit assessment.

In cases other than those charities with aims specifically to relieve or prevent poverty, it has been suggested that one way in which charities that charge relatively high fees, unaffordable to many, might be able to provide other opportunities to benefit would be by simply making a donation to another organisation to relieve poverty or by making a grant to help poor people. Where funds are specifically provided for genuine and real access to the same or similar charitable services and facilities to those who could not otherwise afford them, then such a donation might be taken into account. But the trustees would need to show that the opportunity occurred more than by chance and resulted in wider access for people otherwise excluded. This would apply whether the donation helped people take up the charity's own services or those services provided by other bodies, whether or not those bodies were charitable.

G5. Summary of key points in this section

The following is a summary of the key points for trustees to note from this section:

- There are many different ways in which charities can provide other opportunities to benefit that are related to the charity's aims.
- In practice, charities are likely to use a combination of different ways of providing other opportunities to benefit; some ways might not be sufficient on their own.
- What is most important is the impact those other opportunities to benefit have on who can benefit and in what way.
- The other opportunities to benefit must not be minimal or tokenistic or happen by chance.
- If trustees decide to explore other opportunities to meet local needs, we recommend that they engage with their partners and local communities so they can properly and sufficiently discuss and evaluate what sort of services or facilities or collaboration to offer.
- Opportunities to benefit that are not related to a charity's aims will not be taken into account.

H. Assessing the overall effect of measures to provide opportunities to benefit for those who are unable to afford the fees charged

H1. Assessing the overall effect of all the opportunities to benefit provided by a charity

Where a charity charges fees for the services or facilities it provides, in order to satisfy the public benefit requirement, the total package of measures taken by the charity to provide opportunities to benefit to people who cannot afford those charges, must be considered. They need to be looked at in the context of the individual charity's circumstances and would have to be sufficient to show that the charity is benefiting a sufficient section of the public.

Trustees need to be able to show that the measures they have put in place to provide opportunities for those who, because of the fees charged, are unable to directly access their charity's services or facilities are sufficient to show that the benefits are not unreasonably restricted based on ability to pay and that people in poverty are not excluded from the opportunity to benefit.

What might be sufficient for one charity might not be enough for another. Much will depend upon:

- the charity's aims;
- the nature of the service or facility that is charged for;
- whether the provision of that service or facility is one of the primary aims of the charity;
- the level of charges made;
- the resources available to the charity;
- the needs of beneficiaries;
- local needs; and
- other relevant factors.

Different charities will have different ways of providing opportunities to benefit from their services or facilities. Each charity's circumstances are likely to be different.

For example, some charities work in inner city areas and others in rural locations and their respective beneficiary classes may well be quite different.

These sorts of factors have to be taken into consideration when assessing the overall effect of the measures to provide opportunities to benefit to those who are unable to afford the fees charged.

For some charities, providing direct access to the service or facility that is charged for might be the main or only way in which people can benefit, and providing other opportunities to benefit might not be possible, feasible or sufficiently effective.

However, even where it is not possible to provide direct access, measures to provide other opportunities to benefit, might, when taken together, have sufficient impact.

Each case must be considered on its own merits.

It is likely that most charities will need to offer a package of measures to provide opportunities to benefit to people who cannot afford the fees charged in order to meet the public benefit requirement. The key is to consider the overall effect of the total package of measures taken by the trustees to enable people who are unable to afford the fees to benefit.

Example a. An opera company

An opera company receives significant state subsidy and grant funding and uses this funding to subsidise ticket prices. While some tickets are very expensive, its policy is to ensure that some of the tickets for every performance are affordable to people in poverty.

Another opera group widens access through an outreach and touring programme where it puts on performances at cheaper prices at other venues regionally, in the open air at the local park in collaboration with the local authority, it uses the internet and modern technology to transmit performances more widely and puts on mini performances at local schools, educational establishments and especially for people who find it difficult to travel.

Example b. A residential home for people with disabilities

A residential home caring for people with disabilities charges around £600 a week for its service. It sets its fees at the average for similar provision in the local area. People who need the service but are unable to pay the fees are generally offered a full or partial subsidy by the local authority. In addition, the charity fundraises in order to be able to subsidise people whom the local authority does not support, or only partially supports, who still report difficulty in meeting fee levels.

Example c. A heritage charity

A heritage charity is concerned with the preservation of a particular group of buildings and their grounds and charges fees for entry. Restoration was costly and maintenance is expensive – this means that entry fees are high (although some concessions are offered). The charity undertakes extensive education work with local schools. It is also involved in an innovative collaboration with local schools and colleges to develop the craft skills needed for historic building restoration and maintenance.

Some charities might offer a number of small measures which, in isolation, would not be sufficient if considered on their own but which, when viewed in totality, offer significant opportunities to benefit to people who cannot afford the fees charged.

Other charities might offer just one measure but that measure alone offers a significant opportunity to benefit to those who cannot afford to pay the fees charged.

Different initiatives by charities will have different effects or outcomes. However, the overall effect must be the same for all these charities – that people who are unable to afford the fees charged by a charity are provided with the opportunity to benefit in a material way that is related to the charity's aims.

H2 Quantifying and assessing the impact of benefits

There are different approaches that we, and trustees, could take towards assessing the impact of the various means of providing direct access to the service or facility that is charged for and providing other opportunities to benefit that are related to a charity's aims.

For example, we could apply a different weighting to different sorts of benefit, such as giving greater weight to opportunities to benefit that provide direct access to the service or facility that is charged for. Or, greater weighting could be given to those opportunities to benefit that have the greatest impact. Or, all opportunities to benefit could be given the same weighting.

Another approach might be, either as a matter of law or good practice, for the Commission to take into account the financial or other value that the other opportunities to benefit have compared with the income the charity makes from charging for its services or facilities.

In the case of charities that charge high fees, as a matter of good practice, one way in which they might consider expressing their charity's public benefit would be to assess and report the quantified (financial, social or other) value of the benefits they provide, alongside the value of the tax breaks, or other benefits, they receive.

Q15. Would it be helpful, or more likely to mislead, if we used the concept of what ways might have greater **weight** than others in any public benefit assessment?

Q16. Do you think that, in assessing public benefit, opportunities to benefit that provide direct access to the service or facility that is charged for, such as offering free places, subsidies, discounted fees, or concessions, should be given more importance than ways that provide other opportunities to benefit related to the charity's aims, such as local collaborative arrangements, or should they be given equal importance?

- Q17. Is using the concept of what ‘impact’ a particular way or initiative has on providing opportunity to benefit a useful one? If not, what might be a more helpful phrase to use?
- Q18. Do you think that the Commission should, either as a matter of law or good practice, take into account the financial or other value that these additional ways of opening up direct access have compared with the income the charity makes from charging for its charitable services?
- Q19. Do you think that, as a matter of good practice, the trustees of high fee-charging charities should consider expressing their charity’s public benefit by assessing and reporting the quantified (financial, social or other) value of the benefits they provide, alongside the value of the tax breaks, or other benefits, they receive?

General consultation questions

We have taken into account comments provided in the previous consultation on our general public benefit guidance, *Charities and Public Benefit*, that indicated we need to strike a balance. On the one hand we are asked to provide enough detail to ensure that our supplementary guidance is meaningful to as many different charities as possible. On the other hand, we are asked not to go into too much detail and use too many specific examples because this can lead to trustees mistakenly thinking they must copy the examples given, or that, if they do copy the examples, that their charity will therefore meet the public benefit requirement, which is not necessarily the case.

- Q20. Do you think the amount of detail and examples we have provided in this draft supplementary guidance strikes the right balance?
- Q21. At the end of sections E – G we have included some key points for trustees to note about each section. Do you have any comments on these key points sections and do you find them helpful?
- Q22. Is there anything that you would have expected us to cover in this draft supplementary guidance that we have not included?
- Q23. Do you have any comments on specific points made in this draft supplementary guidance that are not covered by the other consultation questions?
- Q24. What do you think of the overall clarity, style, format and language used in this draft supplementary guidance?

Consultation questions

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

Consultation question	Section
Q1. Do you have any comments on our proposed approach to assessing the public benefit of fee-charging charities?	See section C2
Q2. Are there other examples of factors when assessing the public benefit of fee-charging charities that you think we should take into account?	See section C2
Q3. Do you think the key questions for trustees set out in section D3 are the right questions and are they helpful?	See section D3
Q4. Do you have any general comments on section D?	See section D
Q5. If you work in a particular area or field where there are additional rules or guidance that affects at what level you can set your fees, whether as a minimum or maximum, please let us know and explain what they are	See section E1
Q6. Do you think that, where the provision of the service or facility that is charged for is one of the primary aims of a charity, trustees should, first of all, seek to provide opportunities to people who cannot afford the fees to directly access the service or facility that is charged for	See section F2
Q7. Is our understanding of the difference between bursaries and scholarships correct?	See section F3
Q8. Do you agree that ways that are designed specifically, and exclusively, to assist people who cannot afford the charges are likely to have greater impact on increasing the opportunities to directly access the service or facility that is charged for, and are therefore more likely to be sufficient in meeting the public benefit requirement, than other measures?	See section F3
Q9. Aside from offering bursaries, in what instances might there be a more appropriate way for educational charities to open up direct access to the educational service or facility?	See section F3
Q10. Do you have any comments on our approach to assessing the impact of measures taken to open up direct access to the service or facility that is charged for?	See section F3
Q11. Do you think that it should matter whether the funding is organised by the charity itself, or by another charity (such as a grant-making charity), or by another body that is linked to the charity (but which may not be a charity itself), or by a local authority, or by another independent third party??	See section F4
Q12. Do you think our approach to assessing whether or not trustees' decisions to take no further action regarding public benefit is right?	See section F4
Q13. Do you agree with our approach as regards insurance schemes?	See section F5
Q14. Do you have other examples of ways in which	See section

organisations might provide other opportunities to benefit to people who are unable to pay the fees?	G3
Q15. Would it be helpful, or more likely to mislead, if we used the concept of what ways might have greater weight than others in any public benefit assessment?	See section H2
Q16. Do you think that, in assessing public benefit, opportunities to benefit that provide direct access to the service or facility that is charged for, such as offering free places, subsidies, discounted fees, or concessions, should be given more importance than ways that provide other opportunities to benefit related to the charity's aims, such as local collaborative arrangements, or should they be given equal importance?	See section H2
Q17. Is using the concept of what 'impact' a particular way or initiative has on providing opportunity to benefit a useful one? If not, what might be a more helpful phrase to use?	See section H2
Q18. Do you think that the Commission should, either as a matter of law or good practice, take into account the financial or other value that these additional ways of opening up direct access have compared with the income the charity makes from charging for its charitable services?	See section H2
Q19. Do you think that, as a matter of good practice, the trustees of high fee-charging charities should consider expressing their charity's public benefit by assessing and reporting the quantified (financial, social or other) value of the benefits they provide, alongside the value of the tax breaks, or other benefits, they receive?	See section H2
Q20. Do you think the amount of detail and examples we have provided in this draft supplementary guidance strikes the right balance?	
Q21. At the end of sections E – G we have included some key points for trustees to note about each section. Do you have any comments on these key points sections and do you find them helpful?	See sections E - G
Q22. Is there anything that you would have expected us to cover in this draft supplementary guidance that we have not included?	
Q23. Do you have any comments on specific points made in this draft supplementary guidance that are not covered by the other consultation questions?	
Q24. What do you think of the overall clarity, style, format and language used in this draft supplementary guidance?	