


Public Benefit and Fee-charging





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

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

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Guidance from the Charity Commission on how the principles of public benefit relate specifically to charities that charge fees for their services or facilities.

A. Foreword

A message from the Chair and Chief Executive of the Charity Commission to trustees of existing charities, and anyone thinking of setting up a new charity, which charges fees for the services or facilities it provides.

Dear Reader,

Many different sorts of charities can, and do, charge for their services or facilities. Charities are allowed to charge.

However, the issue for charities that charge high fees is whether or not there is sufficient opportunity to benefit for those people who cannot afford to pay.

Such charities must ensure that they provide to people who cannot afford the fees sufficient opportunity to benefit in a material way that is related to the charities' aims. There are many different ways in which fee-charging charities may do this.

We encourage fee-charging charities to be positive, innovative and imaginative in considering how to maximise the benefits they provide to the public and, in particular, to people who cannot afford the fees.

This guidance is designed to help them do so. We hope that trustees find it helpful.



Dame Suzi Leather
Chair

Andrew Hind
Chief Executive

B. Introduction

B1. What is this guidance about?

L Our guidance *Charities and Public Benefit* explains, in general terms, what the public benefit requirement means. This guidance is about how the principles of public benefit, set out in *Charities and Public Benefit*, relate specifically to charities that charge fees for their services or facilities.

Sections **C** and **D** are supplementary public benefit guidance which forms part of our statutory guidance on public benefit. Trustees of fee-charging charities must therefore have regard to this.

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 might be irrelevant and inappropriate for another. This is why it is important to consider the effect of fee-charging on public benefit in the context of an individual charity's circumstances.

It would therefore be impractical to produce tailored guidance for each type of fee-charging charity. However, we have included some illustrative examples in **Annex C** of ways in which charities with different charitable aims might provide opportunities to benefit for people who cannot afford the full fees charged.

B2. What is the 'public benefit requirement'?

L 'Public benefit' is the legal requirement that every organisation set up for one or more charitable aims must be able to demonstrate that its aims are for the public benefit if it is to be recognised and registered as a charity in England and Wales. This is known as the 'public benefit requirement'.

Charitable aims are those that fall within the various descriptions of purposes in the Charities Act 2006 (including any new purposes that might be recognised as charitable in the future) and which are for the public benefit. You can find out more about this in our *Commentary on the Descriptions of Charitable Purposes in the Charities Act* on our website.

Although all charities have always had to meet the public benefit requirement, the Charities Act 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.

We have an obligation to ensure all charities meet the public benefit requirement and to provide guidance on what the requirement means. Charity trustees have a legal duty to have regard to our public benefit guidance and to report on their charity's public benefit.

B3. What are the principles of public benefit?

L The two key principles of public benefit are that there must be an identifiable benefit or benefits, and benefit must be to the public, or a section of the public. These are explained more fully in *Charities and Public Benefit*.

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

Each of a charity's charitable aims must satisfy these principles.

B4. How do the principles of public benefit relate to fee-charging charities?

L The principles of public benefit set out in *Charities and Public Benefit* have relevance for all charities, regardless of whether or not they charge fees for their services or facilities.

Principles 2b and 2c: although most of the principles of public benefit apply to all charities equally (the considerations are the same whether or not fees are charged), principle 2b (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) do have particular relevance for fee-charging charities.

People in poverty' does not just include people who are destitute but also people who cannot satisfy a basic need without assistance. The context and aims of each organisation, such as the country in which it operates, 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*.

These two principles overlap. Taking the two principles together, there must be sufficient opportunity to benefit in a material way that is related to the charity's aims for people who cannot afford the fees, including people in poverty.

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

B5. What sorts of fees are relevant when considering public benefit?

The sorts of fees that are relevant when considering public benefit are those that might affect who can benefit from the charity.

For example:

- fees that a charity directly charges for services or facilities it provides to its beneficiaries as a way of carrying out its charitable aims, such as schools that charge for the education they provide or hospitals that charge for their services. This includes 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', 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 who has the opportunity to benefit from the charity's services and facilities (for example, high membership fees where a person has to be a member in order to benefit from the charity).

B6. What sorts of fees are not relevant when considering public benefit?

The sorts of fees that are not relevant when considering public benefit are those 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:

- sponsorship or other fundraising activities, for example charges to attend a charity fundraising 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 members of an organisation who are not the charity's beneficiaries.

B7. Using this guidance

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This guidance represents our interpretation of the relevant charity law on public benefit; it is not the law itself.

However, charity trustees do have a statutory duty to have regard to our guidance on public benefit where it is relevant for their charity. This 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.

Section **C** (supplementary public benefit guidance) explains the extent to which fee-charging can be an issue when assessing the public benefit of a charity's aims. It also explains what fee-charging charities must do for people who cannot afford the fees in order to meet public benefit principles 2b and 2c.

Section **D** (supplementary public benefit guidance) explains how to report on public benefit.

Section **E** explains how we will assess the public benefit of charities that charge fees for their services or facilities.

Annex A sets out some issues for trustees to consider when setting, and assessing the impact of charging, fees.

Annex B provides guidance to trustees on offering, and funding, free or subsidised access to the services or facilities they charge for.

Annex C sets out some illustrative examples of ways in which fee-charging charities with different charitable aims might provide opportunities to benefit for people who cannot afford to pay the fees.

B8. 'Must' and 'should': what we mean

In this guidance, 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.

B9. Some technical terms used

The following terms are used throughout this guidance, 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; or, where applicable, the Charities Act 2006.

Activities: what organisations do in order to carry out their aims.

Aims: 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 an organisation applying for registration as a charity.

Audit threshold: under the Charities Act, for financial years ending on or after 1 April 2009, an audit is required when a charity's gross income in the year exceeds £500,000, or where income exceeds £250,000 and the aggregate value of its assets exceeds £3.26 million. For financial years beginning on or after 1 April 2008, but ending before 1 April 2009, the same gross income threshold applies but with a lower assets threshold of £2.8m applying when gross income exceeds £100,000.

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

Fees: charges made by a charity for the services or facilities it provides to its beneficiaries.

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.

High fees: fees that many people could not afford.

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

Low fees: fees that most people could afford. What might be regarded as a 'low fee' will be considered in the context of an individual charity's circumstances, such as the social and economic circumstances of the people in the country in which it operates.

Objects: an organisation's aims are usually expressed in the 'objects clause' of its governing document.

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

Purpose(s) and charitable purpose(s): in this guidance we use the term '**purposes**' when referring to the descriptions of purposes listed in the Charities Act. These describe broad areas of potentially charitable activity but there is no automatic presumption that an organisation with a stated aim or object that falls within one of the descriptions of purposes is charitable. To be a '**charitable purpose**' it must be for the public benefit. This has to be demonstrated in each case.

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

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

Statutory guidance on public benefit: the guidance on public benefit that we are 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 our legal decisions.

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.

B10. To what public benefit guidance must charity trustees have regard?

L Charity trustees must have regard to all of our statutory public benefit guidance that is relevant to their charity.

Therefore, all charity trustees must have regard to our general public benefit guidance, *Charities and Public Benefit*.

In addition, charity trustees must have regard to the statutory guidance contained in our supplementary public benefit guidance on any subject that is relevant to their charity's aims, or the way in which they carry out those aims. (We indicate in our guidance which elements are supplementary public benefit guidance which forms part of our statutory guidance on public benefit.)

For example, a charity might have multiple charitable aims and charge fees for the charity's services or facilities. The trustees must therefore have regard to the supplementary public benefit guidance we have produced for each of the charity's aims, as well as our guidance on public benefit and fee-charging

If we have not produced supplementary public benefit guidance in relation to one or more of your charity's aims, you need to apply the principles as set out in *Charities and Public Benefit* to those aims.

For details of all of our public benefit guidance that is available please see our website www.charitycommission.gov.uk under 'About Charities' – 'Public Benefit'. Hard copies are available by calling Charity Commission Direct on 0845 300 0218.

Our website also contains details of our other guidance and publications.

B11. What other guidance regarding public benefit and fee-charging is available?

The legal underpinning for this guidance is set out in our *Analysis of the law underpinning Public Benefit and Fee-charging*.

Our Example *Trustee Annual Reports and Accounts* includes an example of how a fee-charging charity might report on its public benefit. We shall be adding to these examples in the future.

All of this guidance is available on our website.

C. Fee-charging as a public benefit issue

This section is supplementary public benefit guidance which forms part of our statutory guidance on public benefit.

C1. When is fee-charging a public benefit issue?

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The issue for a fee-charging charity is the effect that charging fees has on who has the opportunity to benefit from its services or facilities and, where relevant, whether or not there is sufficient opportunity to benefit for people who cannot afford to pay the full fees charged.

Fee-charging is likely to be a public benefit issue where:

- the service or facility that is charged for forms a significant part of the charity's aims, or the way it carries out those aims; and/or
- the fees that are charged for that service or facility are high.

A significant part of the charity's aims: where a charity's sole or main aim, or way it carries out its aims, is to provide a service or facility for which it charges, the level of fees it charges is significant when assessing whether the organisation is carrying out those aims for the public benefit. This is because it has a bearing on who has the opportunity to benefit from that service or facility and, in particular, the extent to which the charity can show that its aims meet public benefit principles 2b and 2c.

Where the service or facility that is charged for is an insignificant aspect of what the charity does, or is just one of many ways in which the charity carries out its aims, many of which are not charged for, then fee-charging is generally less of a public benefit issue. This is dealt with further at section **C8**.

Charities charging low fees: where a charity charges low fees that most people can afford, then the fee-charging is unlikely to give rise to public benefit difficulties. In most cases it will not be necessary for those charities to demonstrate any further opportunities to benefit since the low fees do not prevent people from having the opportunity to benefit from the charity's services or facilities.

The following are examples of where charities charge low fees that the majority of people can afford:

- a local village hall charging membership fees of a few pounds to local residents to hire out rooms;
- a community centre that charges a small entry fee to attend an event;
- the annual cost of a library card to enable borrowers to use books or reading rooms for free whilst ensuring that the charity can administer and monitor their use;
- low charges, perhaps low hourly costs for use of a charitable public internet terminal;
- a small subscription fee to join a playgroup, scouts, guides, a youth club or after school club, or small charges to fund their activities, or charging low entry fees for trips, or offering assistance with fees 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.

Charities charging high fees: where a charity charges high fees that many people could not afford, the trustees must ensure that:

- the benefits are not unreasonably restricted by a person's ability to pay; and that
- people in poverty are not excluded from the opportunity to benefit.

The charity trustees must therefore demonstrate that there is sufficient opportunity for people who cannot afford those fees to benefit in a material way that is related to the charity's aims.

In general, the higher the fees that are charged, the more people there are likely to be who cannot afford the fees, and the more the charity is likely to have to do to provide those people with sufficient opportunity to benefit. The framework of factors that we will consider when assessing whether or not a fee-charging charity does that, is set out in section **E3**.

C2. What are opportunities to benefit in a material way that are related to a charity's aims?

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Opportunities to benefit: there must be sufficient **opportunity** to benefit for people who cannot afford to pay the fees charged for the services or facilities provided by the charity. It does not mean that people who cannot afford the fees must actually benefit. What is important is that they must not be excluded from the opportunity to benefit, whether or not they actually choose to do so.

However, the opportunity to benefit should be genuine and meaningful. If the opportunity to benefit that is provided is not genuine, or is meaningless or trivial, then it would count for very little in a public benefit assessment.

It is important to remember that opportunities to benefit that are not related to the charity's aims do not count in a public benefit assessment of those aims.

Material way: material means significant, important, relevant and tangible. The opportunity to benefit cannot be something that is minimal or tokenistic or which happens by chance.

For example, a radio station runs a regular competition to win free tickets to a performance at a charitable concert hall which charges high fees for its performances. 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 full fees have the opportunity to benefit.

Some fee-charging charity trustees might wish to argue that there are wider or remote benefits to the public at large that arise from carrying out their charity's aims and that these benefits should be regarded as opportunities to benefit for people who cannot afford the fees.

For example, this might include wider or remote benefits such as:

- the general relief of public expenditure from a charity doing something that the state would otherwise have to provide, such as relieving the exchequer of the cost of educating children at state schools or treating patients at NHS hospitals; or
- benefits to the nation from educating students who go on to become, for example, successful entrepreneurs or scientists; or
- other sorts of wider or remote benefits to the public that might be claimed by any charity carrying out a charitable aim, such as encouraging charitable giving or volunteering.

In cases where such public benefits are clear and related to the charity's aims, they might be relevant when considering the public benefit of a fee-charging charity in relation to public benefit principle 1a. The charity might also wish to refer to them when reporting on that aspect of its public benefit (see section D of this guidance). However, we do not consider that they are opportunities to benefit in a 'material way' for people who cannot afford the fees. For that reason we do not consider they are relevant when considering the extent to which a charity meets public benefit principles 2b and 2c.

In the same way, any arguments about wider or remote detriment or harm are not relevant when considering the effect of opportunities to benefit provided, or not provided, by an individual fee-charging charity.

This is consistent with our guidance in *Charities and Public Benefit* (section F10, page 26) in which we say, "The existence of those wider benefits, that apply to all charities, cannot be used to justify a restriction on who can have the opportunity to benefit. The beneficiaries must constitute a sufficient section of the public in their own right, notwithstanding any wider benefits to the public generally. It would not be sufficient, therefore, if the only benefits available to people who are unable to pay the fees are wider benefits such as those which, it can be argued, the public in general receives where a service provided by a charity relieves public funds."

Related to a charity's aims: being 'related to a charity's aims' means something that is a legitimate means by which the charity can advance its aims. It does not mean something that has only a vague connection to the charity's aims.

A charity's aims are usually found in the objects clause of its governing document. Fee-charging is not a charitable aim, and so the aims of fee-charging charities will be the charitable aims that it carries out, in full or in part, by providing services or facilities that it charges for.

The aims are essential when considering the public benefit of any charitable organisation because:

- each of a charity's aims must be for the public benefit;
- only benefits that arise from carrying out those aims can be taken into consideration; and
- the beneficiaries must be appropriate to the aims.

In addition, in the case of fee-charging charities, the aims are also important because opportunities to benefit for people who cannot afford the full fees must be related to the charity's aims.

Where the service or facility that is charged for is a significant part of the charity's aims then 'being related to the charity's aims' means, in practice, 'being related to the service or facility that is charged for'.

For example, a charity has aims for the preservation of a historic building. It charges high entrance fees which many people cannot afford, but twice a year it allows one of the rooms to be used to host house auctions which members of the public can attend free of charge. We would not regard this as a material way to benefit as it is only vaguely related to the charity's aims and to the service or facility that is charged for.

Opportunities to benefit that are not related to the charity's aims will not be taken into account. This is because if the benefits are not related to the charity's aims they cannot demonstrate that the aims satisfy public benefit principles 2b and 2c.

For example, a high fee-charging charitable leisure centre 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 (such as being used as the venue for a car boot sale once a month and as a free overflow car park on market days). Whilst this might provide a valuable service to those people who use the car park, we would not regard it as an opportunity to benefit in a way that is related to the charity's aims as it does not provide opportunities to benefit from carrying out the charity's recreational aims.

Charity trustees should therefore 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.

Making a donation for the relief of poverty: in cases other than those charities with aims specifically to relieve or prevent poverty, it has been suggested that by simply making a donation to another organisation to relieve poverty, or by making a grant to help people in poverty, a charity that charges high fees could show that it provides opportunities to benefit for people who cannot afford the fees. We might be able to take such a donation into account where funds are specifically provided for genuine access to the same or similar charitable services and facilities for people who cannot afford the fees. However, the trustees should show that the opportunity to benefit occurred more than by chance and resulted in people who cannot afford the fees having sufficient opportunity to benefit in a material way related to the charity's aims. This would apply whether the donation helped people take up the charity's own services or similar services provided by other bodies, whether or not those bodies were charitable. A more general donation to relieve poverty would not be relevant.

Terms used: in the remainder of this guidance:

- opportunities to benefit in a material way that are related to a charity's aims are referred to as '**opportunities to benefit**'; and
- people who cannot afford to pay the full fees charged for the services or facilities provided by the charity are referred to as '**people who cannot afford the fees**'.

C3. What opportunities to benefit for people who cannot afford the fees can fee-charging charities provide?

L Fee-charging charities must ensure that there are sufficient opportunities to benefit for people who cannot afford the fees. There are many different ways of doing this.

This might be by:

- **offering free or subsidised access:** enabling people who cannot afford the fees to access the service or facility by offering it at a reduced rate or for no fee, or via schemes or arrangements which offer financial assistance to help meet the cost of the fees;
- **providing other significant opportunities to benefit:** providing other significant opportunities to benefit that do not involve free or subsidised access to the service or facility that is charged for.

Trustees' discretion: it is for the charity's trustees to decide what sorts of opportunities to benefit they wish, and are able, to provide for people who cannot afford the fees, taking into consideration what is appropriate in their charity's circumstances. However, what is provided must be sufficient to satisfy principles 2b and 2c.

Satisfying principles 2b and 2c:

- where a charity provides a sufficient amount of free or subsidised access (in the context of the charity's circumstances) to people who cannot afford the fees, this will satisfy principles 2b and 2c;
- where a charity provides a combination of free or subsidised access and other significant opportunities to benefit, we can take into account the totality of the opportunities to benefit it provides;
- where a charity provides other significant opportunities to benefit, but offers no free or subsidised access, the trustees must be able to demonstrate in what other ways the opportunities to benefit that the charity provides clearly satisfy principles 2b and 2c.

We will look at each case on its own merits and in the context of the individual charity's circumstances.

Totality of benefits: in assessing whether a charity provides sufficient opportunity to benefit for people who cannot afford the fees, we will consider the totality of the opportunities to benefit that the charity provides. We set out in section E how we will do this.

C4. Must fee-charging charities always offer free or subsidised access?

Offering free or subsidised access is an obvious and, in many cases, the simplest way in which charities can provide opportunities to benefit for people who cannot afford the fees. It is also easier to show that the opportunity to benefit is material and related, not only to the charity's aims, but also to the service or facility that is charged for. It also minimises the instances whereby charities, in effect, provide 'two-tier' services, resulting in a less complete or comprehensive service for people who cannot afford the fees.

Examples of ways of offering free or subsidised access might include:

- offering concessions, subsidised or free places;
- offering sliding scales of fees or reduced price tickets or places, or offering selected services or facilities at no, or reduced, fees;
- drawing upon other reliable sources of funding, including public 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 charitable or public service providers who in turn provide free or subsidised access to that facility.

Percentage of free or subsidised access: there is no 'one-size-fits-all' amount, or percentage, of free or subsidised access that fee-charging charities must offer.

We 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.

It is primarily for the trustees of the charity to decide for themselves the extent to which they offer free or subsidised access, and how much to offer to how many people, provided they can show that people who cannot afford the fees have sufficient opportunity to benefit in a material way that is related to the charity's aims.

We have to consider what is reasonable and appropriate in each particular charity's circumstances. Offering free or subsidised access costs money and

so can clearly impact on the financial situation of a charity. 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.

It is unusual for a charity that charges high fees to offer no free or subsidised access. Typically, most such charities offer concessions on fees, or assistance with fees, and might also provide other significant opportunities to benefit alongside offering some free or subsidised access.

Where a charity offers no free or subsidised access, it will be for the charity's trustees to make the case, and show that there are sufficient other significant opportunities to benefit for people who cannot afford the fees. We will consider the case put forward by the trustees, in the context of the particular charity's circumstances, in accordance with the framework of factors set out in section E of this guidance.

C5. What are the key public benefit considerations for charities offering free or subsidised access?

Where the only opportunity to benefit that a charity provides to people who cannot afford the fees is offering free or subsidised access, more such access might need to be offered than might be the case for a charity which provides other significant opportunities to benefit in addition to offering free or subsidised access.

Where reduced fee arrangements are in place, how much discount is given might affect how much of a bearing it has on demonstrating sufficient opportunity to benefit for people who cannot afford the fees.

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 many families living near by might not be able to afford the entrance fees, even at discounted rates.

One way in which the charity could address this problem might be to arrange for free entrance passes to be offered to families in the local area.

Using external funding sources to offer free or subsidised access: in some cases charities might look to external funding sources to assist them.

For example, charities might be able to offer free or subsidised access 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 (eg subsidy for care home provision under the benefits system); or
- sponsorship by wealthy philanthropists or future employers.

Insurance schemes: in some instances, trustees might argue that insurance schemes exist which are ways of offering free or subsidised access. Trustees who rely on this should be able to demonstrate, by evidence, that people who cannot afford the fees are genuinely able to access the charity's services or facilities via such insurance schemes. This is considered in more detail in **Annex B**.

Measures aimed at people who cannot afford the fees: measures that are designed specifically, and exclusively, to assist people who cannot afford the fees are likely to provide greater opportunity to benefit 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) are likely to provide a greater opportunity to benefit to people who cannot afford the fees than would be the case with scholarships (which are usually open to anyone to apply for and which are awarded solely on academic merit).

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

C6. What are the key public benefit considerations for charities providing other significant opportunities to benefit?

There might be circumstances in which a charity offers less by way of free or subsidised access, but does provide other significant opportunities to benefit for people who cannot afford the fees.

Where a service or facility for which high fees are charged is a significant part of a charity's aims, or the way in which it carries out its aims, then where the charity provides other significant opportunities to benefit for people who cannot afford the fees those opportunities to benefit must be related to that service or facility.

This is particularly important where a charity provides other significant opportunities to benefit, and offers no free or subsidised access. In those cases, the trustees must be able to demonstrate that the other opportunities to benefit the charity provides satisfy principles 2b and 2c. We will consider this on a case-by-case basis, taking into account the particular circumstances of the charity.

Examples of ways of providing other significant opportunities to benefit might include:

- providing additional facilities or services for people who cannot afford the fees;
- offering the use of facilities, or lending equipment or staff out to other charities or groups that provide the same, or similar, facilities or services to people who cannot afford the fees;
- providing a similar service or facility of equivalent standard to people who cannot afford the fees by working with an outside body or third party.

Providing other significant 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 opportunities to work with other service and facility providers. We do not want charities, as a result of the public benefit requirement, to provide opportunities to benefit that are not desired or valued. Charity trustees should have regard to whether the way in which they propose providing other significant opportunities to benefit are relevant and desired.

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

Examples of other significant 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 that argues that it 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 significant opportunities to benefit. In this case, the charitable hospital might provide more significant opportunities to benefit if it consults the local NHS hospital about what it could offer that would be of more assistance to the NHS hospital and to benefit people locally;
- a charitable independent school that 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, it would be more beneficial for the trustees of the independent school to consult other education providers locally about how to achieve the maximum impact from sharing resources. It could then target the charity's assistance to state schools and other educational establishments most in need of help in ways that are likely to make most difference to their students.

C7. What are the key public benefit considerations for charities providing a combination of free or subsidised access and other significant opportunities to benefit?

The majority of high fee-charging charities might use a combination of different ways to provide sufficient opportunity to benefit for people who cannot afford the fees.

For example, a charity has aims to promote the art of dramatic theatre. It operates from a charitable, historic theatre that provides the opportunity to experience the performance of Shakespearean plays in an authentic setting. For people who are unable to afford full price tickets it offers concessions on tickets and, in addition, it also offers tours of the building when there are no performances. It also makes available DVDs of performances, and offers concessions and educational visits for schools.

Percentages or ratios: there is no specific percentage or amount of free or subsidised access, or other significant opportunities to benefit, that fits all charities; each will be assessed in its individual circumstances.

Holistic approach: in the case of charities that provide a combination of free or subsidised access and other significant opportunities to benefit, it will be for the charity trustees to decide what combination works best in their charity's circumstances, taking into account the key public benefit considerations set out in sections **C5** and **C6**. Charity trustees can take a holistic approach that takes into account, for example, the nature of the charity's aims, the needs of its beneficiaries and the resources the charity has at its disposal. It is not necessary for each individual activity undertaken by the charity to meet the requirements of public benefit principles 2b and 2c. It is for the trustees to show that, for each of the charity's aims, from all of the activities they undertake to carry out those aims, people who cannot afford the fees have sufficient opportunity to benefit.

C8. Is fee-charging a public benefit issue for a charity that carries out a range of aims and activities, only some of which it charges for?

The public benefit requirement applies to each of a charity's aims. Although a charity's activities must further those aims in a way that ensures the aims are carried out for the public benefit, this does not mean that each of a charity's activities must satisfy all of the public benefit principles.

Where a charged-for service or facility is a significant part of a charity's aims, or way in which it carries out its aims, the fees charged have a bearing on who has the opportunity to benefit from it, and so on the public benefit of those aims.

However, where a charged-for service or facility is a minor or insignificant aspect of the way in which a charity carries out its aims, or any one of its aims, and where the charity carries out its aims in a number of other significant ways which are not charged for, the fees charged for that service or facility are less important when assessing public benefit.

In some cases, a charity might have a number of aims and might undertake a variety of activities to carry out those aims, only some of which it charges for. Assessing the impact of fee-charging in such a case is more complex as there are many more factors to take into consideration. We can only assess this on a case-by-case basis.

C9. Summary of key points in this section

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

- Fee-charging is likely to be a public benefit issue where:
 - the service or facility that a charity charges for forms a significant part of its aims, or the way it carries out those aims; and/or
 - the fees that are charged for that service or facility are high.
- Charities that charge high fees must demonstrate that there is sufficient opportunity for people who cannot afford the fees to benefit in a material way that is related to the charity's aims.
- In general, the higher the fees that are charged, the more people there are likely to be who cannot afford the fees, and the more the charity is likely to have to do to provide those people with sufficient opportunity to benefit.
- There are many different ways in which charities can ensure that there are sufficient opportunities to benefit for people who cannot afford the fees.
- When assessing public benefit we will take into consideration the totality of the opportunities to benefit that the charity provides for people who cannot afford the fees.
- Offering free or subsidised access is an obvious and, in many cases, the simplest way in which charities can provide opportunities to benefit for people who cannot afford the fees. It is also easier to show that the opportunity to benefit is material and related, not only to the charity's aims, but also to the service or facility that is charged for.
- It is primarily for the trustees of the charity to decide for themselves the extent to which they offer free or subsidised access, provided they can show that people who cannot afford the fees have sufficient opportunity to benefit in a material way that is related to the charity's aims.
- There is no 'one-size-fits-all' amount or percentage of free or subsidised access that charities must offer.

- Where a charity provides a sufficient amount of free or subsidised access (in the context of the charity's circumstances) to people who cannot afford the fees, this will satisfy principles 2b and 2c.
- Where a charity provides a combination of free or subsidised access and other significant opportunities to benefit, we can take into account the totality of the opportunities to benefit it provides.
- Where a charity provides other significant opportunities to benefit, but offers no free or subsidised access, the trustees must be able to demonstrate in what other ways the opportunities to benefit that the charity provides clearly satisfy principles 2b and 2c.
- Where a service or facility for which high fees are charged is a significant part of a charity's aims, or the way in which it carries out its aims, then where the charity provides other significant opportunities to benefit for people who cannot afford the fees those opportunities to benefit must be related to that service or facility.
- Where a charged-for service or facility is a minor or insignificant aspect of the way in which a charity carries out its aims, or any one of its aims, or where the charity carries out its aims in a number of other significant ways which are not charged for, the fees charged for that service or facility are less important when assessing public benefit.

D. Reporting on public benefit

This section is supplementary public benefit guidance which forms part of our statutory guidance on public benefit.

D1. Trustees' duties to report on public benefit



Charity trustees have a new duty to report in their Trustees' Annual Report on their charity's public benefit. Most charities already explain their activities in their Trustees' Annual Report. This information must now 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.

The level of detail trustees must provide will depend on whether their charity is above or below the audit threshold.

For smaller charities, below the audit threshold, trustees must now include a brief summary in their Trustees' Annual Report of the main activities undertaken explaining how these furthered the charity's aims for the public benefit. The summary 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 must 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 must 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.

Examples and statistics: the trustees can describe in their report what were the main benefits to their beneficiaries by using examples and, if appropriate, statistical information.

Grant-making to other organisations: charity trustees are required only to report how their charity has met the public benefit requirement. Trustees of grant-making charities are not required to establish whether charities they make grants to comply with the public benefit requirement. This would be for the trustees of the charity receiving the grant to address.

Charities charging high fees: trustees of some high fee-charging charities might wish to consider reporting the financial or other value of the opportunities to benefit their charity provides for people who cannot afford the fees, compared with the income the charity makes from charging for its services or facilities.

Also, the trustees of some charities that charge high fees might consider enhancing their charity's public benefit report by assessing and reporting the quantified (financial, social or other) value of the benefits their charity provides, alongside the value of the financial, reputational or other benefits their charity receives from charitable status.

E. Assessing public benefit

E1. How will we assess the public benefit of fee-charging charities?

We will assess whether the aims of all organisations applying to register as charities are for the public benefit and whether charities that are already registered 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 public benefit requirement and by working with representative professional and umbrella bodies and with users of those charities.

Detailed assessments of individual organisations: in some cases we might need to carry out detailed assessments of individual charities. In those cases, we will ask each individual organisation to demonstrate that its aims, and what it is doing to carry out those aims, will be for the public benefit. Where appropriate we will work with umbrella and national bodies to help them assist their members in this.

Where changes are needed: it may be that in some cases, changes will have to be made to an organisation to enable it to meet the public benefit requirement. Where that needs to happen, we will advise the trustees on why we consider it does not 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.

No charity will be expected to make changes overnight and we will take reasonable account of how much time and resources might be needed by a charity that needs to make changes in order to meet the requirement.

Breach of trust: a breach of trust can arise where trustees act outside their duties or powers, including using their charity's property and other resources for something that falls outside the charity's aims. If we think that trustees might, inadvertently or otherwise, be acting in breach of trust we will 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. Therefore, in this guidance, where we indicate that trustees might be asked, in certain circumstances, to show a link between the activities and their charity's aims, or to explain why they are carrying out their charity's aims in a particular way, this might be required either to show that they are carrying out their charity's aims for the public benefit or to show that they are not acting in breach of trust.

Disagreeing with our decisions: where we make a public benefit decision which affects whether a charity remains as a charity, or on whether the way in which it operates is for the public benefit, the charity, or anyone affected by our decision, who disagrees with the regulatory action that we take, can seek a review of that decision by using our internal decision review procedures. If they consider it necessary, they can make a further appeal to the Charity Tribunal or to the Courts.

However, by working constructively with charity trustees and undertaking extensive public consultation on our public benefit guidance we anticipate that such circumstances would be rare.

For further detail see section H of *Charities and Public Benefit*.

E2. 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 are small, local charities charging fees that most people can afford. These charities are unlikely to have to do more to demonstrate that their aims satisfy public benefit principles 2b and 2c. Some are large charities, with considerable income and endowments that charge fees that many people cannot afford. Those charities are likely to have to do more to ensure that people who cannot afford those fees have sufficient opportunity 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 smaller resources to be in a position to provide 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 that have difficulty in meeting the public benefit requirement to help them find ways in which they can do so, such as by drawing on our experience of working with other similar charities and exploring with the charity trustees the possibility of finding ways to fund free or subsidised access, or provide other significant opportunities to benefit, that they may not have considered.

For example, this might include suggesting that the charity:

- undertakes fundraising activities, itself or through non-charitable trading subsidiaries, to fund free or subsidised access, or other initiatives to provide other significant opportunities to benefit;
- works in collaboration with other organisations or charities;
- seeks additional funding to subsidise costs or fund free or subsidised access, perhaps working in collaboration with grant-making bodies, local or central government funding bodies or international funding programmes;
- increases fees for some beneficiaries to subsidise fees for others who cannot afford the fees;
- looks for another charity, or sets up a separate charity, to offer support and voluntary assistance to people who cannot afford the fees;
- looks for innovative ways of providing benefits in different ways;
- broadens its aims, where possible, to ensure they accurately and adequately cover the full range of the charity’s activities which provide other significant opportunities to benefit to people who cannot afford the fees; or
- restructures or reorganises its activities.

These are just a few examples. Other examples of different ways of providing other significant opportunities to benefit are set out in **Annex C**.

We will need to consider what is possible for a particular charity, and how much impact a specific initiative can have, 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, or 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.

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.”

E3. What is 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 a bearing on what other significant opportunities to benefit the charity might need to provide to people who cannot afford the fees.

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 people there are likely to be who cannot afford the fees, and the more the charity is likely to have to do to provide those people sufficient opportunity to benefit.

For some charities it will be easy to demonstrate through what they are already doing that people who cannot afford the fees have sufficient opportunity to benefit. 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. 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 cannot afford the full fees. 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, 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 offered at a charge or for 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 E2 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 surplus, what that surplus is used for;
- to what extent the charity's costs could be reduced;
- the social and economic circumstances in which the charity carries out its work.

E4. Assessing the overall effect of all the opportunities to benefit provided by a charity

L When assessing whether a charity that charges fees for the services or facilities it provides satisfies the public benefit requirement, we will consider the charity's total package of measures to provide opportunities to benefit for people who cannot afford the fees. We will look at this in the context of the individual charity's circumstances; we will consider each case on its own merits.

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.

For some charities, offering free or subsidised access to the service or facility that is charged for might be the main or only way in which people who cannot afford the fees can benefit, and providing other significant opportunities to benefit might not be possible, feasible or sufficiently effective.

Where a charity offers less by way of free or subsidised access, but does provide other significant opportunities to benefit, the charity trustees must be able to demonstrate how this amounts to sufficient opportunity to benefit for people who cannot afford the fees.

It is likely that most charities will need to offer a package of measures to provide opportunities to benefit for people who cannot afford the fees in order to meet the public benefit requirement.

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

Other charities might offer just one measure but that measure alone provides a significant opportunity to benefit for people who cannot afford the fees.

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 cannot afford the fees are provided with sufficient opportunity to benefit.

Detriment or harm: in *Charities and Public Benefit* we cited the following examples of things that might be evidenced to be detrimental or harmful:

- something that is damaging to the environment;
- something that is dangerous or damaging to mental or physical health;
- something that encourages or promotes violence or hatred towards others; and
- unlawfully restricting a person's freedom.

We also said that no organisation that has aims that are illegal can be a charity.

The need for evidence: as with other charities, in the same way that public benefit must be capable of being demonstrated, so must detriment or harm if this is to be an issue. In assessing the public benefit of fee-charging charities we will consider any evidence of significant detriment or harm of an individual organisation carrying out its aims in its particular circumstances.

As with the consideration of benefits, we are concerned only with the detriment or harm that arises from a particular organisation carrying out its particular aims. The fact that it may be argued there is detriment or harm to the public generally from certain types of charity carrying out particular charitable aims does not mean that the detriment or harm actually exists. Or, if it does exist, that it necessarily applies to any organisation having those aims.

General disagreement with the aims or activities of fee-charging charities in general, or those which carry out particular charitable aims, does not constitute evidence of the existence of detriment or harm arising from the way in which a particular fee-charging charity is advancing its aims. An organisation's public benefit will be affected only where there is evidence of significant detriment or harm arising from what that particular organisation does which outweighs the benefits of that organisation carrying out its aims.

For example, it might be argued that the very existence of independent schools damages the quality of state education and so there is a general detriment to the public from fee-charging charitable independent schools offering bursaries to encourage more children to attend such schools. Whilst such general arguments might be relevant in a wider debate about the benefits or detriment of the charitable independent schools sector as a whole, it would not be relevant when assessing the public benefit of the aims of an individual charitable independent school.

To be relevant to our public benefit assessment there would need to be clear evidence that something being done by a particular charitable independent school was causing demonstrable detriment or harm.

E5. Does public benefit only take account of the benefits to people who cannot afford the fees?

When considering whether a charity's aims meet the public benefit requirement, we will take into consideration all of the benefits that the charity provides that are related to its aims. In the case of fee-charging charities, that includes the benefits to the people who can afford to pay the fees charged for services or facilities provided by the charity, as well as the benefits to people who cannot afford those fees.

However, when assessing whether the charity satisfies public benefit principles 2b and 2c, we are primarily concerned with the opportunities to benefit for people who cannot afford the fees.

E6. Can a fee-charging charity opt out of charitable status rather than do what is necessary to meet the public benefit requirement?

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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 to others to use for similar charitable activities or aims.

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 benefit for people who cannot afford the fees, then, as a matter of law, the charity must change the way in which it operates in order to meet the public benefit requirement. The trustees will be in breach of trust if they do not do so.

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 were 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. It would require a Commission scheme before the trustees could propose spending it on other educational or indeed other charitable activities.

In any event, the proceeds of sale could only be used for charitable educational aims. 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 our assistance and approval.

Annex A: Setting, and assessing the impact of charging, fees

1. Do we decide whether or not a charity can or should charge fees?

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 should consider what impact the fee levels would have on who will have the opportunity to benefit.

Whilst it is not for us to decide whether or not a charity can or 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 do 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.

2. What factors should trustees take into consideration when setting fee levels?



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;
- whom those aims, or the service or facility, intend to benefit and the financial circumstances of the intended beneficiaries; and
- who has the opportunity to benefit, and in what way, given the level of fees charged.

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, 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?

Reducing high fees marginally to enable more people to benefit would not be sufficient if people in poverty were still excluded from the opportunity to benefit.

In carrying out their charity's aims, and in order to satisfy principles 2b and 2c, it is open to trustees to choose to focus more on providing access to people in poverty, as opposed to others who cannot afford the fees.

Exchanging information about fees: there are legal restrictions - under competition legislation - on the ability of charities and other organisations to exchange information about their fees.

For example, the exchange of information between charitable independent schools regarding current fees, or potential fee increases, or about the level or types of scholarship offered by schools, or about other factors which parents might take into account when choosing which school to send their children to, might directly affect the competitive process and reduce, or eliminate, competition between schools. This is therefore likely to infringe the Competition Act 1998.

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.offt.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 (ie the decision should be within the range of decisions which a reasonable body of trustees could have made).

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 cannot afford the fees from having the opportunity to benefit from the charity's services or facilities.

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 charged have the opportunity to benefit; and
- whether these opportunities to benefit made available by the charity are sufficient for it to meet public benefit principles 2b and 2c.

3. What makes a fee 'affordable'?

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 and each case will be assessed on an individual basis.

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

Charities charging low fees: 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.

4. Is 'affordability' based on what the person who receives the benefit could afford, or what the person who is most likely to pay the fee could afford?

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.

In the case of charities that provide day or residential training courses for which the fees charged are high, it may be the case that the fees are generally paid for by another organisation, such as a company, charity, local authority or government department. In such cases, the need to ensure that people who cannot afford the fees have the opportunity to benefit will depend upon whether attendance at the course is the way in which the public benefits from the charity.

For example, a charity provides professional training courses for surgeons. The fees charged for the courses it provides are high, but attendance at those courses is not the way in which the public benefits. The public benefits from the increased skills and knowledge that the surgeons are able to apply when treating patients as a result of the training they have received, and so it is not necessary for the charity to offer free or subsidised access or other significant opportunities to benefit for people who could not afford the fees to attend those courses.

If attendance at the courses is the way in which the public benefits from the charity's aims, then the charity providing the courses would have to ensure that there is sufficient opportunity to benefit for people who cannot afford the fees, either:

- by offering free or subsidised access to the courses; or
- by ensuring the organisation who pays the fees does not unreasonably restrict who has the opportunity to benefit; or
- by ensuring that, overall, the people who have the opportunity to attend the courses are not unreasonably restricted by their ability to pay.

The effect of fee-charging on public benefit in these circumstances is likely to vary and so we would have to consider this carefully in the context of the individual charity's circumstances.

5. Does it help to meet the public benefit requirement if the fees charged are at cost level, or are set at a rate that is consistent with the equivalent cost of state provision, for example?

A fee-charging charity will not necessarily meet the public benefit requirement simply because:

- the fees charged are necessarily high because the provision of the service or facility is costly; or
- the fees are charged at cost, or below cost, price; or
- the fees are set at a level that is equivalent to the cost of what might be charged by the state to provide a similar service or facility.

However reasonable the fees charged might be, in terms of the factors listed above, if people who cannot afford those fees do not have the opportunity to benefit, either because the charity offers no free or subsidised access or no other significant opportunities to benefit, then the charity would not be able to show that its aims satisfy public benefit principles 2b and 2c.

There may of course be certain mitigating factors that are relevant to consider, such as the needs of the beneficiaries.

Providing an intensive, or ongoing, service:

some charities provide a service that, by its nature, is intensive or ongoing 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 people.

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 sufficient opportunity to benefit. Charities charging relatively high fees for a service that requires an ongoing degree of financial commitment are, therefore, likely to have to do more to ensure that sufficient 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.

For example, a charity might provide a service or facility to people who require a very intensive and costly form of medical or residential care. In such a case the fees charged for that service or facility are likely to be very high, which many people cannot afford. What is likely to be important in such cases is the extent to which people who cannot afford the fees can access financial assistance to help meet the cost of fees, such as eligibility for state funding for example. The charity would not have to show that everyone who cannot afford the fees could access such funding, simply that there is sufficient opportunity to benefit for people who cannot afford the fees.

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 provide 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.

6. Do fee-charging charities have to show that people in poverty are benefiting?

In order to satisfy principle 2c, trustees of fee-charging charities must be able to show that people in poverty are not excluded from the **opportunity** to benefit. They do not have to show that people in poverty are actually benefiting, in the sense that they have taken up that opportunity, although clearly they may wish to do so when reporting on their charity's public benefit.

However, where, consistently, none or very few of the opportunities to benefit that are offered for people in poverty are taken up, trustees should, as a matter of good practice, explore whether there are other reasons which may be a barrier to people taking up those opportunities. Where there may be, the trustees should consider whether there are other ways in which they could provide opportunities to benefit that do not have those barriers.

7. Is the availability of external funding relevant when considering the impact of charging fees?

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.

Or, 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.

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 charging high fees is mitigated because funding is available from a third party and so the availability of external funding can be a relevant factor when considering whether there are sufficient opportunities to benefit for people who cannot afford the fees. (See [Annex B](#), section 4.)

8. Can fee-charging charities provide 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 offer that support, or some of it, free of charge or at cost price.

9. Can schemes that enable people to spread the fee payments help with meeting the public benefit requirement?

The fact that a 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 who cannot afford the fees are still excluded from the opportunity to benefit, then the charity might need to provide other significant opportunities to benefit.

10. Can fee-charging charities charge 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 offer subsidies to those unable to pay the full cost. Whilst this option is certainly available to trustees it may not be desirable or feasible for every fee-charging charity.

11. Summary of key points in this Annex

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.
- We do 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.
- There are many different ways in which trustees can ensure that people 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.

Annex B: Offering, and funding, free or subsidised access

1. How much impact will offering free or subsidised access have on providing opportunities to benefit for people who cannot afford the fees?

The following are some factors for trustees to consider when thinking about how much impact offering free or subsidised access, such as offering scholarships, bursaries, concessionary or other discount and subsidy schemes, has on providing opportunities to benefit for people who cannot afford the fees:

Questions for trustees to ask themselves regarding offering free or subsidised access:

- How is the free or subsidised access offered, including the terms of application?
- Who may apply? Is it limited to relatives of staff of the charity or to members, or ex-members, of the charity for example?
- Where and how widely is it advertised; is it word of mouth or public advertisement?
- Will it be funded by the charity or from alternative funding sources? (see section 4 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 eg 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 subsidised access operate; and to take reasonable steps to advertise them widely and publicly.

In some cases, a charity might allow equipment or staff to be used free of charge by other charitable service providers as a way of providing opportunities to benefit to people who cannot afford the fees.

How much impact this type of measure has on providing opportunities to benefit (and whether that is sufficient) 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 a charity offers, the more likely that it will be able to show there is sufficient opportunity to benefit for people who

cannot afford the fees. Offering temporary assistance with fees might provide fewer opportunities to benefit than would be the case if the charity offers 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, provides less of an opportunity to benefit 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.

2. Practical issues for trustees to consider about offering free or subsidised access

Leaving aside their consideration about how much impact it will have, there are also practical issues for trustees to consider when deciding whether to offer free or subsidised access (and if so, how much).

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 free places to be offered 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. For example:
 - It might be possible to offer 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.

- A care home might have a fixed number of rooms available to use and so if free places are to be offered, 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 or subsidised access? 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 free or subsidised access?
 - 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 people who can afford the fees need to increase to fund free or subsidised access? 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 offer free or subsidised access. They might be more likely to be able to afford to fund free or subsidised access 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 provide the same opportunities to benefit as larger charities.

We will seek examples of how larger charities can offer free or subsidised 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.

3. Fundraising campaigns and subsidising costs from other activities

Trustees might want or, in practical terms, need to fundraise specifically to enable them to offer some free or subsidised access.

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. Trustees should assess the costs and risks of doing so (including that the campaign does not make enough money).

Similarly, trustees might want, or need, to raise the funds by charging higher fees to other beneficiaries. Charity trustees are 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 offering free or subsidised 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 (eg 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 were 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.

4. Can free or subsidised access be funded 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 offering free or subsidised access.

The following factors will affect the extent to which measures taken to offer free or subsidised access will provide sufficient opportunity to benefit for people who cannot afford the fees:

- How widely it is available for people to apply for:
 - Is it available for anyone to apply?
 - 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 inform themselves 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.

Trustees of fee-charging charities delivering public services under contract should refer to our guidance, *Charities and Public Service Delivery: An Introduction and Overview* (CC37).

5. What happens if 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 people who cannot afford the fees 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 mean the organisation automatically stops being a charity.

However, the withdrawal of the funding means that the trustees might need to take some action to ensure their charity continues to meet the public benefit requirement, if this results in an increase in fee levels charged to beneficiaries.

Trustees should be monitoring their funding streams, in which case, any reduction or withdrawal of funding will be less likely to come as a surprise to them and should enable them to mitigate the effects by, for example, seeking replacement funding or providing other significant opportunities to benefit.

If the trustees conclude that they are unable to provide other significant opportunities to benefit, then we would work with the trustees to see if their conclusion was reasonable. 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. **Annex C** gives some examples of opportunities to benefit that trustees might consider providing if they have to take action.

In cases where trustees are in breach of trust unless they take action, we would follow the approach set out in section D4 of *Charities and Public Benefit*. That includes:

- assessing whether the charity's objects, or the way in which they are being carried out, need to be altered; or
- whether we need to take regulatory action, or make a Scheme to ensure the assets are properly applied in the future for charitable aims, or wind up the charity.

6. What effect does the availability of insurance schemes have as a way of offering free or subsidised access?

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

For example, 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 - eg elderly people or people with ongoing 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 - eg 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 opportunities to benefit for people who cannot afford the fees.

Where trustees wish to show they are providing opportunities to benefit for people who cannot afford the fees by way of insurance cover, the onus will be on the trustees to show by evidence that, in reality, those people 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.

7. Summary of key points in this Annex

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

- 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 inform themselves 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 benefit from the service or facility that is charged for, should monitor those funding streams. If that funding is withdrawn, 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 significant opportunities to benefit.
- Trustees who rely on the availability of insurance schemes as a way of offering free or subsidised access to people who cannot afford the fees should be able to demonstrate, by evidence, that, in reality, those people are genuinely able to access the charity's services or facilities via such schemes.

Annex C: Illustrative examples of ways in which fee-charging charities with different charitable aims might provide opportunities to benefit

In practice, most fee-charging charities are likely to use a combination of different ways of providing opportunities to benefit for people who cannot afford the fees.

Each of these ways will have a different impact depending on the circumstances of the particular charity, including: what the charity's aims are; whether the service or facility that is charged for is a significant part of those aims, or way in which the aims are carried out; 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.

For example, where the service or facility that is charged for is a significant part of the charity's aims, or way in which it carries out those aims, and where it offers no, or insufficient free or subsidised access to satisfy principles 2b and 2c, then, where the charity provides other significant opportunities to benefit for people who cannot afford the fees, those opportunities to benefit must be related to that service or facility.

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.

We have listed below some examples of the ways in which charities with particular charitable aims can provide opportunities to benefit for people who cannot afford the fees. There will be many other examples.

Working in collaboration with others: providing alternative services and facilities, including in collaboration with other service providers, can provide other significant opportunities to benefit. It will depend upon the nature and extent of these alternative services and collaborations as to how much opportunity to benefit they will provide. 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.

Fee-charging charitable educational establishments (eg schools, colleges, universities)

The following are some specific examples of ways in which fee-charging charitable educational establishments, such as charitable independent schools, might provide opportunities to benefit for people who cannot afford the fees:

Offering free or subsidised access:

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

Providing other significant opportunities to benefit:

- allowing pupils from local state schools 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 pupils from local state schools 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 help them prepare A-level students for 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;
- a charitable independent school and a state school collaborating to share their respective skills and experience;
- a charitable independent school working in partnership with a non fee-charging school overseas to share knowledge, skills and expertise and arrange cultural exchange visits for pupils at both schools.

Other fee-charging charities for the advancement of education and fee-charging charities for the promotion of the arts (eg theatres, concert halls, museums, art galleries)

The following are some specific examples of ways in which other sorts of fee-charging charities for the advancement of education (such as charities advancing education in a particular subject, or museums), and fee-charging charities for the promotion of the arts, such as charitable theatres, concert halls and art galleries, might provide opportunities to benefit for people who cannot afford the fees:

Offering free or subsidised access:

- offering concessionary tickets;
- offering free or reduced membership fees;
- lottery-based or ballot systems for allocating places for cheaper tickets for concerts or performances;
- offering free or concessionary rates for state school parties at performances;
- offering free or concessionary rates for state school parties at exhibitions, museums.

Providing other significant opportunities to benefit:

- 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;
- offering free tours of a theatre or other similar venue;
- drama workshops for students;
- free lectures;
- providing educational opportunities for writers or performers;
- 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;
- 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 opportunities to enjoy the exhibition, or event, freely;
- providing mentoring schemes, which could be offered in person, by phone or via the internet for example;
- providing networking schemes to share educational knowledge and information, for example to increase understanding of safer working practices in a particular field.

Fee-charging charities for the advancement of health/relief of sickness (eg charitable hospitals)

The following are some specific examples of ways in which charities for the advancement of health/relief of sickness, such as charitable hospitals, might provide opportunities to benefit for people who cannot afford the fees:

Offering free or subsidised access:

- offering treatment for free or at a reduced rate;
- 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 Annex B, section 6 above.)

Providing other significant opportunities to benefit:

- offering 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;
- developing new technologies and undertaking medical research the useful results of which are made publicly available and shared with non-fee-charging hospitals and medical practitioners.

Fee-charging charities providing residential care

The following are some specific examples of ways in which fee-charging charities that provide residential care might provide opportunities to benefit for people who cannot afford the fees:

Offering free or subsidised access:

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

Providing other significant opportunities to benefit:

- 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.

Fee-charging charities for the advancement of heritage or environmental protection or improvement

The following are some specific examples of ways in which fee-charging charities that for the advancement of environmental protection or improvement might provide opportunities to benefit for people who cannot afford the fees:

Offering free or subsidised access:

- offering free or reduced membership fees or entry fees;
- providing free open public access to land, such as commons, open countryside, public footpaths, coastal paths, harbours and woodlands.

Providing other significant opportunities to benefit:

- offering learning opportunities, active mentoring and coaching opportunities to schools and other educational establishments;
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