

# **Public Benefit and the Prevention or Relief of Poverty**

## **Draft supplementary guidance for consultation**

# Public Benefit and the Prevention or Relief of Poverty

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## A. Foreword

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

**Dear Reader,**

Relieving the poor and needy in society has long been a charitable activity. Ask any member of the public what comes to mind when they think of what is charitable, and more often than not the first thing that they will mention is helping the poor. Indeed, the courts have recognised that there is such an inherent public benefit element to the relief of poverty that even helping a relatively small number of poor people is still considered to be for the public benefit.

Although society has changed in the hundreds of years that the relief of poverty has been recognised as charitable, it remains as relevant now as it ever did. But, what is regarded as poverty, and the ways in which it might be relieved, has changed significantly over the years. Charities in this field have often been innovative in responding to changing social and economic conditions. No longer is the relief of poverty about poor laws and ‘hand me downs’. Increasingly it is about tackling the root causes of poverty and its consequences, and equipping people with the skills, knowledge and resources that they need to lift themselves out of poverty.

Poverty is a relative concept. What constitutes poverty in an affluent western society is very different in absolute terms from poverty in a developing country. It is clear that the public places a great deal of importance and value on the work of poverty charities in both a domestic and international context. So, at first glance, the public benefit of any charity concerned with preventing or relieving poverty might appear so obvious as to negate the need for any assessment. Indeed, with the presumption of public benefit for the relief of poverty that was the case, unless there was evidence to the contrary. Following implementation of the Charities Act 2006, that presumption no longer applies, and so we need to be able to explain to poverty charities what meeting the public benefit requirement means for them.

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

**Dame Suzi Leather**

**Chair**

**Andrew Hind**

**Chief Executive**

## B. Introduction

### B1. What is this draft supplementary guidance about?

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

We recognise that many charities are concerned with preventing or relieving poverty in a specific context, such as relieving unemployment or an urban or rural regeneration project. It is also common for poverty to be relieved by the provision of low-cost housing. This draft supplementary guidance does not deal with the prevention or relief of poverty in those specific contexts. However, charities operating in those areas might be interested in our separate guidance *Promotion of Urban and Rural Regeneration* (RR2) and *Charities for the Relief of Unemployment* (RR3). And, for charities providing low-cost housing, we have issued joint guidance with HM Revenue and Customs and the Housing Corporation, entitled *Affordable Home Ownership and taxation liability*.

Charities for the prevention or relief of poverty that are also involved with the promotion of social inclusion might be interested in our separate draft guidance *Promotion of Social Inclusion*. We would be very interested to receive comments on this draft guidance, in particular from charities that are working, or wish to work, in this area.

### B2. The 'public benefit requirement'



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

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

### B3. Charitable Purposes



Charitable purposes (or aims) are those that fall within the various descriptions of charitable purposes in the Charities Act 2006, set out below, and any new charitable purposes that might be recognised in the future.

- a) the prevention or relief of poverty;
- b) the advancement of education;
- c) the advancement of religion;
- d) the advancement of health or the saving of lives;
- e) the advancement of citizenship or community development;
- f) the advancement of the arts, culture, heritage or science;
- g) the advancement of amateur sport;
- h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- i) the advancement of environmental protection or improvement;
- j) the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- k) the advancement of animal welfare;
- l) the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services;
- m) other purposes currently recognised as charitable and any new charitable purposes which are similar to another charitable purpose.

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

### B4. The principles of public benefit



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

**Principle 1: There must be an identifiable benefit or benefits**

Principle 1a It must be clear what the benefits are

Principle 1b The benefits must be related to the aims

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

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

Principle 2a The beneficiaries must be appropriate to the aims

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

- By geographical or other restrictions; or

- By ability to pay any fees charged

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

Principle 2d Any private benefits must be incidental

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

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

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

All of these publications can be found on our website at:

[www.charitycommission.gov.uk](http://www.charitycommission.gov.uk) under 'About Charities' – 'Public Benefit'.

Hard copies are available by calling *Charity Commission Direct* on 0845 300 0218.

## **B5. The effect of the removal of the presumption**

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The relief of poverty has long been recognised as a charitable purpose and, together with the prevention of poverty, is included in the list of descriptions of charitable purposes in the Charities Act.

The Charities Act creates a level playing field whereby all charities now have to demonstrate, explicitly, that their aims are for public benefit. Previously the law presumed this to be the case for charities relieving poverty, as well as charities advancing education or religion. The effect of this is not to suggest that the relief of poverty is no longer charitable, but simply that, in meeting the public benefit requirement, the same rules apply to poverty charities as apply to all other charities.

All charities must benefit the public or a section of the public. In the case of charities concerned with the relief of poverty, a more narrowly defined beneficiary class can be a sufficient section of the public than is the case for other sorts of charity. It is our view that the removal of the presumption of public benefit does not generally affect this. However, we have some doubts regarding the public benefit of family poverty trusts (formerly known as 'poor relations trusts') which are dealt with at section **D7** below.

## B6. Reporting on public benefit



Charity trustees have a new duty to report in their Trustees' Annual Report on their charity's public benefit. The level of detail trustees will need to provide in their public benefit report will depend on whether their charity is above or below the audit threshold. An audit is required when a charity's gross income in the year exceeds £500,000, or where income exceeds £100,000 and the aggregate value of its assets exceeds £2.8 million. Most charities already explain their activities in their Trustees' Annual Report. This information now needs to be set in the context of the charity's aims to show how in practice the aims have been carried out for the public benefit.

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

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

## B7. Assessing public benefit

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

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

In some cases we might ask the trustees to change the way in which they are carrying out their charity's aims in order to meet the public benefit

requirement; sometimes, it will be because the trustees are acting in breach of trust. Therefore, in this draft supplementary guidance, where we indicate that trustees might be asked, in certain circumstances, to show a link between their activities and their charity's aims, or to explain why they are carrying out their charity's aims in a particular way, this might be 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.

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

## **B8 Using this draft supplementary guidance**

### **L**

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

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

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

Section **C** explains the meaning of the prevention or relief of poverty as a charitable aim.

Section **D** explains how public benefit principle 1: there must be an identifiable benefit or benefits, applies specifically to charities for the prevention or relief of poverty. The guidance contained in that section forms part of our statutory guidance on public benefit.

Section **E** explains how public benefit principle 2: benefit must be to the public, or a section of the public, applies specifically to charities for the prevention or relief of poverty. The guidance contained in that section forms part of our statutory guidance on public benefit.

**Annex A** details practical ways of assisting people in poverty.

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

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

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

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

### **B10. Some technical terms used**

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

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

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

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

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

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

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

**Governing document:** a legal document setting out a charity's aims and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, will, conveyance, Royal Charter, Scheme of the Charity Commission, or other formal document.

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

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

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

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

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

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

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

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

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

**Trustees:** the people who serve on the governing body of a charity. They may be known as trustees, directors, board members, governors or committee members. Charity trustees are responsible for the general control and management of the administration of a charity.

### **B11. Previous guidance**

This publication replaces previous guidance contained in our booklet, *Charities for the Relief of Financial Hardship* (CC4).

## C. The Meaning of the Prevention or Relief of Poverty

### C1 Introduction

The prevention or relief of poverty is included in the list of descriptions of charitable purposes in the Charities Act. Previously the courts divided charities into four groups known as ‘heads of charity’. The first head included the relief of poverty (but not prevention) and it also covered the relief of the impotent and aged. The new first description of charity is the prevention or relief of poverty; the relief of the impotent and aged now falls within a different description, i.e. the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage. We take the view that there is no difference, in practice, between the relief of poverty and the relief of those in need by reason of financial hardship. This draft supplementary guidance is aimed specifically at charities for the prevention or relief of poverty, but it is of equal relevance for charities concerned with the relief of those in need by reason of financial hardship. This is because the courts have always defined poverty by reference to financial hardship or lack of material things.

There is often a significant degree of overlap between the prevention or relief of poverty and other charitable aims. We recognise that many charities concerned with the prevention or relief of poverty, or the relief of people in financial hardship, are also concerned with relieving other sorts of need.

For example, a charity may be specifically concerned with relieving poverty associated with old age, or ill-health or disability.

We recognise that poverty can create social consequences, such as mental health problems, alcohol and drug abuse, increasing crime rates etc that cannot be resolved merely by giving out money. We therefore consider that the prevention or relief of poverty includes not just relieving a person’s lack of financial resources, but also alleviating or addressing the social and economic circumstances that are caused by that poverty.

However, we do not consider that the prevention or relief of poverty can be extended to include the relief of social disadvantage which does not arise from financial hardship.

For example, it would not include the relief of the social problems of rich emotionally deprived youngsters.

Of course, these issues might be addressed under other charitable aims, but they would not be an aspect of the prevention or relief of poverty.

## C2. What is poverty?

Poverty means financial disadvantage.

Although 'poverty' can sometimes be interpreted to mean people who are financially and/or socially disadvantaged, the legal meaning of poverty in charity law only applies to people who are financially disadvantaged. Of course, anyone who compares themselves with someone who has more money than they do could consider themselves financially disadvantaged. Accordingly, this is an insufficient definition for charity law purposes. The Oxford English Dictionary defines 'poor' as "*of a person or people; having few, or no, material possessions; lacking the means to procure the comforts or necessities of life, or to live at a standard considered comfortable or normal in society; needy, necessitous, indigent, destitute*".

Whilst this is not an absolute definition of what 'poverty' might mean, it does indicate the circumstances of people regarded in charity law terms as being 'poor'. Such persons must lack something in the nature of a necessity or quasi-necessity which the majority of the population would regard as necessary for a modest, but adequate standard of living.

Throughout this draft supplementary guidance we have used the term 'people in poverty' to describe 'the poor'.

The meaning of 'poverty' in individual cases will be considered in the context of the organisation's aims, whom those aims are intended to benefit and where it carries out its aims.

For example, for a charity carrying out its aims in the poorest areas in developing countries, 'people in poverty' might typically mean people who lack even the most basic essentials to sustain life, such as adequate clean water, food and shelter. But for a charity carrying out its aims in the UK, 'people in poverty' might typically mean households living on less than 60% of median income or people living on or below the level of income support who go short in some unacceptable way. This includes those people who, despite working, might still fall into this category. However, even in the UK, 'poverty' is a relative term that might be interpreted differently depending upon the organisation's aims.

Poverty is relative. The courts have avoided setting any absolute parameters although they have been prepared to state in specific cases whether or not a particular level of income or assets meant that a person was 'poor'.

A person does not have to be destitute to qualify as being 'in poverty'. Nor do people necessarily have to be in poverty over a long period of time to qualify; someone suffering a temporary period of financial hardship due to a sudden change in circumstances (for example an accident or a death in the family) might also be eligible for assistance. Generally speaking, anyone who does not have access to the normal things of life which most people take for granted would probably qualify for help.

People may qualify for assistance from a poverty charity whether or not they are eligible for state benefits. Some people who already receive their full entitlement of state benefits may need additional help. Equally, some people who are not entitled to state benefits may sometimes need help because of particular circumstances (where, say, they encounter some gap in an acceptable standard of living which they would find difficult to fill from resources available to them).

Poverty does not just include people who are destitute but also those who cannot satisfy a basic need without assistance. We consider that this is the proper test for trustees to apply in assessing whether an individual is an appropriate beneficiary for a prevention or relief of poverty charity. The view that it might be charitable to help a person who finds themselves in reduced circumstances compared with other persons of the same 'class', although still relatively well off when compared to most other people, is now outdated. We think that in order to benefit from a prevention or relief of poverty charity, a person needs to be in poverty, or be at actual risk of being in poverty, and not just be less well off than they used to be. This means that to be 'in poverty' a person needs to lack one of the normal things of life which most people take for granted and not just one which most people of a particular 'class' or social status take for granted.

**Consultation questions:**

- Q1 *Do you agree that there is no distinction between the relief of poverty and the relief of those in need by reason of financial hardship? If you do not agree, please indicate what you consider to be the difference between them.*
- Q2. *Do you think our approach to poverty as a relative concept is reasonable?*

The requirement for assistance is not restricted to individuals or families. The problems giving rise to chronic financial hardship are often multi-dimensional and cumulative, and affect whole communities. People can become excluded from the opportunities, goods and services necessary for them to live a decent life in modern society, and there might be lasting difficulties on grounds to do with factors such as ethnicity, geography, gender, age, disability and educational and skills attainment. It might be possible for a charity to assist a community in a deprived area, for example by the provision of facilities. In such cases it is not absolutely necessary that all people using those facilities are people in poverty for the charity to be able to assist, as long as most are.

Difficulties may arise in assessing whether someone who is 'asset rich' but 'income poor' is a person in poverty. In making the assessment, it is relevant to consider what unmet needs, i.e. lack of some normal thing which everyone takes for granted, they have and the practicability of them meeting those needs from their own resources.

### C3. The prevention of poverty

#### *Prevention of poverty as a freestanding purpose*

The Charities Act includes the ‘prevention or relief of poverty’ in the list of descriptions of charitable purposes, adding prevention to the relief of poverty which has long been recognised as charitable. We consider the term ‘or’ is disjunctive; by that we mean that the ‘prevention of poverty’ can be read separately from the ‘relief of poverty’. That means it is possible for a charity to be set up to deal solely with the issue of preventing poverty.

Examples of ways in which poverty might be prevented or relieved include:

- providing debt or money management advice;
- awarding a ‘fair trade mark’ to products, the sale of which intends to relieve the poverty of producers by ensuring they receive at least a fair price for their goods;
- advising such producers of the best ways in which to engage in the trading process;
- advising poor farmers in developing countries about more effective farming techniques;
- providing legal advice and/or support on land tenure and ownership issues to widows in countries where women’s rights are restricted;
- working with women’s groups who are concerned about a lack of equitable conditions for women workers;
- providing emergency aid in the wake of a natural disaster to people who are at imminent risk of becoming poor because of the loss of their home, possessions, crops or business.

The key here is the need to show a clear link between what the charity does, or proposes to do, and the resulting effect on preventing poverty by tackling its root causes. Trustees of such charities will need to demonstrate that such a link exists.

#### **Consultation questions:**

*Q3(a). What examples of the sorts of activities charities preventing poverty undertake would it be helpful to include in this draft supplementary guidance?*

#### *Campaigning on preventing poverty*

There are some charitable purposes (such as the promotion of human rights) which are more likely than others to lead trustees to want to engage in campaigning and political activity. The prevention of poverty might well be one of the charitable purposes that gives considerable opportunity for political activity. Indeed, there are some who argue that preventing poverty is inherently a political purpose, and that the only way to further a prevention of

poverty aim is by political campaigning to change the law or government policy. We are not persuaded that this is the case. The notion that poverty is caused, or perpetuated solely by, government policy (and hence can only be prevented by changing government policy) is contentious. Moreover, it is clear that efforts to prevent poverty might take a wide range of forms, such as pursuing improvements in agriculture or agricultural practice, increasing economic activity, making education more widely available and securing better healthcare.

An organisation cannot have aims to change the law. But, within a wider preventing or relieving poverty aim, can certainly campaign for political measures to tackle poverty. This is because where an aim is to change the law or change government policy, the courts are not able to say whether or not such a purpose is for the public benefit. However, where the purpose of the charity is the prevention of poverty and the organisation carries out that purpose in ways that are not political, such as the examples listed above, then it might be charitable. It would be open to a charity to campaign for changes in the law or government policy to support its work, provided that the charity reasonably considered that the campaign would contribute to its purpose of preventing poverty. For further guidance see our separate publication *Campaigning and Political Activities by Charities* (CC9).

**Q3(b) Are there any activities that such charities would like to undertake that they do not feel able to at present?**

### *Prevention and relief of poverty as a joint purpose*

There is a fine distinction between assisting someone who is already in poverty and assisting someone so that they do not become poor. It is similar to the prevention and treatment of ill-health. People who are ill require treatment but, where possible, it is preferable to prevent someone from becoming ill rather than waiting until they are ill and then treating them. We think it would be unhelpful to regard preventing poverty as something that is necessarily separate from relieving poverty; they are just different points along a continuum of financial need at which people might require assistance.

In our *Commentary on the Descriptions of Charitable Purposes in the Charities Act* we recognise that the prevention of poverty includes preventing those who are poor from becoming poorer, and preventing persons who are not poor from becoming poor. Of course, for it to be a proper use of charitable resources, the amount applied to prevent a person from becoming poor should be reasonable having regard to the circumstances of the case. Where trustees wish to take action to prevent individuals from becoming poor, they will need to take care to ensure that beneficiaries are at actual risk of becoming poor (or, in the case of people who are already poor, poorer) and are unable to avoid this using their own resources.

Examples of ways in which an individual's poverty might be prevented, include:

- providing money management and debt counseling advice and training to someone at actual risk of being in poverty;
- establishing a micro-credit scheme or schemes (i.e. a scheme for making small loans to poor borrowers and providing other forms of assistance such as skills training) in an area of particular deprivation in a developing country;
- providing a grant to a local business so that they can give a job to an unemployed person (and so relieve their poverty).

**Consultation questions:**

Q4. *It is difficult to be prescriptive about the circumstances in which a person would be at actual risk of becoming poor. We would like to know how charities working in this area would interpret this statement. What factors or criteria could we cite in order to help such charities?*

**C4. The relief of poverty**

The relief of poverty is limited to providing those resources necessary to meet a person's need. Trustees of charities for the relief of poverty should have appropriate criteria in place to ensure that assistance given to individuals is no more than that actually required to relieve their need.

We recognise that the relief of poverty can cover measures to address the needs of a deprived community. By this we mean a group of people who share a position of social and economic disadvantage, or social disadvantage alone, either by virtue of living in the same geographical area, or because they have something else in common, such as a disability, or membership of a particular ethnic group. Even though this might benefit some people who are not in poverty, we would see this as legitimately incidental to the furtherance of the charity's aim of relieving the poverty of the community in question.

**C5. Ways of relieving poverty**

There are a number of ways in which assistance can be given to people in poverty. If the charity's aims are expressed in general terms then any, or all, of these options might be open to the trustees, but some governing documents are specific about the ways in which people in poverty might be helped. If trustees are in any doubt as to whether they have the power to assist in a particular way, we suggest that they contact us for advice.

Some examples of how people in poverty might be assisted are shown below and a more detailed list can be found in the [Annex](#):

- helping people gain access to safe water and sanitation and contributing to helping the world's poorest people gain access to these basic needs;
- sending essential basic food supplies, cooking sets and bedding, to help people in a state of poverty as a result of an emergency;
- sending tools and materials to help people who are hit by such an emergency situation build shelter for their families;
- donations to other charities accommodating those in need in the area of the charity, such as almshouses, homes or hostels for the old, infirm, or homeless; and
- the provision of basic supplies, such as children's clothes and shoes, books and other personal or educational supplies to help families, children and schools throughout the world that are unable to afford them.

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

### **D1. Important points to consider**



Our general guidance *Charities and Public Benefit* sets out the following important points to consider when deciding whether an organisation's aims meet the 'benefit' principle of the public benefit requirement:

- 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

### **D2. Principle 1a It must be clear what the benefits are**



The benefits of the relief of poverty are usually self evident. In the majority of cases it will be very simple to establish that a charity for the relief of poverty has an identifiable benefit; people who would otherwise lack a basic necessity will be provided with it.

The benefits of the prevention of poverty might not always be so clear, such as where the link between what the organisation does and its effect on the prevention of poverty might not be obvious. Or, it might be that the organisation is concerned with promoting a political purpose with the aim of preventing or relieving poverty, the benefits of which cannot be determined by the Charity Commission, or the Charity Tribunal or the courts, and so cannot be charitable.

In the case of the prevention or the relief of poverty, the organisation concerned will need to be able to show that the way in which it carries out, or proposes to carry out, its aims is capable of preventing or relieving a person's poverty.

### **D3. Principle 1b The benefits must be related to the aims**



The following are examples of benefits which might flow from the prevention or relief of poverty and would be related to such aims:

- the reduction of crime and anti-social behaviour due to a reduction in poverty;
- benefits to the environment flowing from promoting sustainable development as a means of relieving poverty;
- the promotion of compassion and altruism;

- a healthier community (in both its physical and mental health).

**Consultation questions:**

Q5 (a) What other benefits related to the aims of poverty charities which flow from their activities would you find it helpful to include in this draft supplementary guidance?

**D4. Principle 1c Benefits must be balanced against any detriment or harm**

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The prevention or relief of poverty, for so long regarded as an inherently 'good thing', so rarely raises issues of detriment or harm that it can be difficult to contemplate any circumstances in which it is not for public benefit.

Some might argue that it is not for the public benefit to help people whose poverty is considered to be 'self-induced' or the result of 'irresponsible behaviour'. We consider that, however a person finds themselves in poverty and however 'irresponsibly' people might have behaved which has resulted in their poverty, it is a characteristic of a civilised society that certain basic needs are met. Accordingly, we do not consider it appropriate for trustees to take a judgmental approach to the financial needs of beneficiaries if such beneficiaries genuinely lack a basic requirement of life.

Likewise, we consider that it is proper for a charity to relieve the poverty of asylum seekers or other persons who, for whatever reason, are denied welfare benefits by law. While there might be public policy reasons why such people are not permitted access to welfare benefits, we think that it is permissible for charities to assist those people who are destitute or in need due to financial hardship.

For example, a current debate about soup kitchens illustrates the different approaches that trustees can take. Some consider soup kitchens do not help people meet their needs as it makes them dependent on the soup kitchen rather than taking responsibility for feeding themselves. Others consider that feeding those who do not, or cannot, take this responsibility is an important way of relieving their needs. Sometimes people talk about the poverty of substance abusers or gamblers as being 'self-induced'. However, we think that the relief of poverty of such people is for the public benefit; the issue is whether those people lack the basic things in life rather than why they lack them.

We do not consider that such cases give rise to any public harm that might influence whether an organisation is relieving poverty for public benefit.

However, there might be circumstances in which there are public harm issues to consider and we would welcome views regarding circumstances where this might be the case.

*Consultation questions:*

*Q5(b). We would welcome comments on whether there are circumstances in which it might not be for the public benefit to relieve poverty. In particular, are charities concerned with preventing or relieving poverty likely to engage in activities which might be viewed as detrimental or harmful?*

**D5. Questions to help assess public benefit**

Charity trustees and their professional advisers might find the following questions useful as a way of self-assessing their charity's public benefit, and to provide information that will help us to assess whether or not an organisation's aims are for public benefit.

**Principle 1: There must be an identifiable benefit or benefits**

1. What are the benefits that arise from your organisation's aims?
  - Do your aims fully express all of the work that you do?
  - If you are concerned with preventing poverty, are you able to show a clear link between what you are doing, and the prevention of poverty?
2. Is there any detriment or harm that, in your view, might arise from carrying out your organisation's aims? Are you aware of any widespread views among others that such detriment or harm might arise?

## **E. Public benefit – Principle 2: Benefit must be to the public, or a section of the public**

### **E1. Important points to consider**



Our guidance *Charities and Public Benefit* sets out the following important points to consider when deciding whether an organisation's objects meet the 'public' principle of the public benefit requirement:

- 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 living in poverty must not be excluded from the opportunity to benefit;
- 2d Any private benefits must be incidental.

### **E2. Principle 2a The beneficiaries must be appropriate to the aims**



For charities concerned with relieving poverty there will be an appropriate link between the beneficiaries and the aims, as the beneficiaries will need to be living in poverty in order to be eligible to benefit.

Of course, the people who benefit from a charity will depend upon the type of poverty charity in question. Some poverty charities will be quite small and operate on a local level whereas others will be large, multimillion pound organisations working globally.

For example, in the case of a local almshouse charity, the beneficiaries might be small in number given the small number of places available in the almshouse, where beneficiaries are drawn from the local community. In contrast, in the case of a charity working to relieve poverty in a developing country, the beneficiaries potentially extend to the entire population of that country.

For charities concerned with relieving need, the particular need will usually be expressed in the charity's objects. The beneficiaries will be defined by virtue of the fact that they are in need.

### E3. Principle 2b Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted

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In general, to be a sufficient section of the public, the class of beneficiaries must have a public character and not be defined by a personal connection. An exception currently exists in charity law that allows charities for the relief of poverty to benefit a more narrowly restricted beneficiary class, including one that defines the beneficiaries by reference to a personal connection, such as being part of the same family, or having the same employer. The reason for this is that relieving poverty has been considered by the courts to be of such a public character that a more narrowly defined class of beneficiary can still be a sufficient section of the public.

This reasoning has never been dependent upon the presumption of public benefit. If it had been, it would have applied to other purposes for which there was previously a presumption of public benefit. Accordingly, there might be circumstances where such a narrow beneficial class is a sufficient section of the public for relief of poverty.

However, there are boundaries to the types of restriction which can be imposed. A general principle expressed in *Charities and Public Benefit* is that any restrictions on who can benefit must be legitimate, proportionate, rational and justifiable given the nature of the organisation's charitable aims. Although for the relief of poverty a narrower beneficial class might, in certain circumstances, be a section of the public, that does not mean that any restriction of the beneficial class will be acceptable.

What is a section of the public for one charitable purpose is not necessarily a sufficient section for a different charitable purpose. The prevention of poverty is a distinct purpose from the relief of poverty, although in the Charities Act both are included in the same description of purposes that are capable of being charitable. As a result, what is a section of the public for the prevention of poverty is not necessarily the same as what is a section of the public for the relief of poverty.

Where a charity has the prevention of poverty as a distinct aim, the beneficial class for such a charity is likely to be very broad. The more restricted beneficial class, which can be sufficient in certain circumstances for the relief of poverty, is unlikely to be sufficient for the prevention of poverty. Preventing poverty is likely to involve addressing practices and issues within society which might have a very wide impact - for example, pursuing improvements in agricultural practices in order to address rural poverty. It would not be appropriate to restrict the beneficial class for this purpose in an artificial way e.g. to farmers from a particular family.

**Q6(a) Do you agree that, although a narrowly restricted beneficial class may sometimes be a sufficient section of the public for a relief of poverty aim, it is unlikely to be a sufficient section of the public for a distinct aim to prevent poverty?**

Prior to the Charities Act, charitable purposes were grouped under four 'heads'. The first 'head' included purposes for the relief of poverty, as well as the relief of need by reason of age, youth, sickness or disability. In general, the more narrowly restricted beneficial class, that is permissible for the relief of poverty, does not usually apply to the other purposes formerly included within the first 'head'.

In the case of a joint purpose for the prevention and relief of poverty, prevention might be difficult to distinguish from relief in many cases involving assistance to an individual. Accordingly, there might be circumstances in which a more restricted beneficial class that is sometimes permitted for the relief of poverty will also be acceptable for the prevention and relief of poverty as a joint purpose.

For example, a benevolent fund with a prevention and a relief of poverty aim might wish to prevent a person, from its narrow beneficial class, falling into housing need, which s/he would not have the resources to deal with, by making a grant to prevent that person losing their accommodation.

*Q6(b) Do you agree that there may be circumstances in which a restricted beneficial class might be for the public benefit in the case of a charity established for the prevention and relief of poverty (i.e. a joint purpose of preventing **and** relieving poverty)?*

*Q6(c) Do you agree that, as the relief of need by reason of financial hardship is indistinguishable from the relief of poverty, the rules regarding a restricted beneficial class would be the same for the relief of financial hardship as for the relief of poverty?*

*Q6(d) Do you agree that the rules regarding a restricted beneficial class are generally limited to the relief of poverty and do not apply to other charitable purposes previously within the first 'head' of charity, such as the relief of need by reason of age, youth, sickness or disability?*

In some cases, the trustees of a particular organisation might wish to restrict the benefits to a particular group of people purely on the basis of the exercise of their discretion. Founders and trustees might have some discretion in deciding who to benefit. Where the exercise of that discretion is allowable within the charity's stated objects, and where the people who will have the opportunity to benefit constitute a 'section of the public', then such a restriction may be reasonable. In exercising their discretion, in line with general trustee duties, the trustees should act honestly, reasonably and with common sense.

#### **E4. Benevolent Funds**

Generally, an organisation that confers benefits on employees of a particular company or employer cannot be a charity. This is because the aim is likely to benefit the company or employer by making its package of employment

benefits attractive. Such a restriction on a beneficial class would not be reasonable or rational in relation to charitable aims, and the beneficiaries would not be a 'section of the public'. However, charities for the relief of poverty have been treated as a special case.

Bodies, such as company benevolent funds, set up to assist individuals who fall on hard times and do not have the material resources to cope, have been considered charitable by the courts, even though the benefits are specifically limited to employees/former employees of a particular company. Some benevolent funds are set up with the beneficial class limited to an occupation or profession rather than employment with a particular company or employer. Our approach is to assess the public benefit of these benevolent funds in the same manner in which we assess with those limited to a particular employer.

There has been some discussion as to whether the removal of the presumption of public benefit affects the rules permitting a more restricted beneficial class for relief of poverty charities. We consider that the courts have generally limited the narrower beneficiary class (a feature of some benevolent funds) to charities for the relief of poverty. Accordingly, we think it likely that such a narrow beneficiary class will only be sufficient to meet the public benefit requirement if the aim of the organisation is to relieve people in financial hardship. Benevolent funds with other charitable aims instead of, or in addition to, the relief of poverty could not therefore have such a narrowly defined beneficiary class. See E3 above for more detailed consideration of what is a section of the public who can benefit from the prevention or relief of poverty.

*Q7(a) We propose looking in more detail at the work of benevolent funds in the future. Would you welcome further guidance on the work carried out by benevolent funds?*

*Q7(b) Do you agree that the charitable aims for benevolent funds with a restricted beneficial class must generally be limited to the relief of poverty?*

## **E5. Family poverty trusts**

'Family poverty trusts' are charitable trusts for the relief of poverty where the beneficial class is limited to the members of the donor's family. They have previously been known as 'poor relations trusts'. Trusts with such a restricted beneficial class have generally only been considered charitable where they are for the relief of poverty. We have referred above to our view that the case-law concerning a more limited beneficial class for the relief of poverty in general is still relevant, in spite of the removal of the presumption. However, the family poverty trust cases have been referred to as an 'anomaly'. Unlike employee benevolent funds, where staff changes usually mean that the people who can benefit from the fund are likely to change on a reasonably regular basis, the membership of a particular family is unlikely to change with the same degree of regularity or frequency, and so such trusts tend to have

more of a private, rather than public, character to them. Notwithstanding that it is only family members who are in poverty who can benefit, it might be questionable whether having such a restricted beneficial class is still justifiable following the removal of the presumption. We would therefore welcome views as to whether such trusts should continue to be regarded as charitable following the removal of the presumption.

**Q8** *Should family poverty trusts continue to be regarded as charitable following removal of the presumption of public benefit? If so, does the term 'family poverty trusts' adequately describe such trusts?*

**E6. Principle 2c People living in poverty must not be excluded from the opportunity to benefit**



It is the essence of the prevention or relief of poverty, that people in poverty will have the opportunity to benefit, since they are the people such charities aim to benefit.

**E7. Principle 2d Any private benefits must be incidental**



It is generally the case that, when considering public benefit, we are not concerned with the 'private' benefits to individuals who are the charity's beneficiaries. This is because such 'private' benefits are a necessary result of, and are incidental to, carrying out the charity's aims. However, in the case of charities for the prevention or relief of poverty, the over-provision of benefit to individuals, giving significantly more than is needed to meet the basic needs of the individual (at the extreme, making someone who is poor into a millionaire for example) would affect public benefit.

A 'private' benefit could be considered to arise if the funds for the relief of poverty are used to provide payments to members of a donor's family or to his/her employees for example.

The courts have drawn a distinction between donors who wish to benefit particular individuals who happen to be poor, and those who wish to relieve the poverty of a class of people. In the latter case the benefit to the donor, if there is one, is incidental to the relief of poverty. In the former case there would not be a charitable purpose.

So, for example, a father, A, may leave his money to relieve poverty among his sons (of whom he has six, five of whom are poor). Another father, B, may leave his money to his six sons who all happen to be poor. A's gift may be charitable as the only sons who will benefit are the poor ones and they will only benefit to the extent necessary to relieve their poverty. B's gift will not be charitable even though all the sons are poor as their right to benefit from the gift does not depend on their poverty and is not limited to the extent necessary to relieve their poverty.

## **E8. Questions to help assess public benefit**

Charity trustees and their professional advisers might find the following questions useful as a way of self-assessing the public benefit of their charity's aims, and to provide information that will help us to assess whether or not an organisation's aims are for public benefit.

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

1. Who do your organisation's aims intend to benefit?
2. If the benefit is to a section of the public, how are the beneficiaries defined or what restrictions are there on who can have the opportunity to benefit?
3. Does anyone receive any private benefits from your organisation, other than as a beneficiary? If so, what benefits do they receive? Are those benefits incidental?

### *Consultation questions:*

- Q9. *What do you think of the clarity, style, format and language overall used in this draft supplementary guidance?*
- Q10. *Is there anything that you would have expected us to cover in this draft supplementary guidance that we have not included?*

## ANNEX Practical ways of assisting people in poverty

Examples of how individuals in poverty might be assisted are listed below:

### **Grants of money:**

- in the form of:
- weekly allowances for a limited period;
- to meet a particular need;
- one-off payments in a crisis or disaster;
- payment of travelling expenses for visiting people, for example in a hospital, convalescent home, children's home, prison or other similar place, particularly where more frequent visits are desirable than payments from public funds will allow;
- payments to meet expenses associated with visiting people (as mentioned above) for example, child-minding, accommodation, refreshments etc;
- payments to assist in meeting electricity, gas, and water bills.

**The provision of items** (either outright or, if expensive but appropriate, on loan), such as:

- furniture, bedding, clothing, food, fuel, heating appliances;
- washing machines and fridges.

**Payment for services**, such as:

- essential house decorating;
- insulation and repairs;
- laundering;
- meals on wheels;
- outings and entertainment;
- child-minding;
- telephone line, rates and utilities.

**The provision of facilities**, such as:

- the supply of tools or books;

- payments of fees for instruction or examinations, or of expenses connected with vocational training or with language, literacy, numerical or technical skills;
- travelling expenses to help the recipients to earn their living; or
- equipment and funds for recreational pursuits or training intended to bring the quality of life of the beneficiaries to a reasonable standard.

Charities for the relief of financial hardship might give extra help to people in poverty who are also **sick, convalescent, infirm, or with disabilities**, whether physically or mentally. This might include:

**Grants of money** in the form of:

- special payments to relieve sickness or infirmity;
- payment of travelling expenses on entering or leaving hospitals, convalescent homes, or similar institutions, or for out-patient consultations;
- payment towards the cost of adaptations to the homes of people with disabilities; or
- payment of telephone installation charges and rentals.

**The provision of items**, such as:

- expensive food for special diets; or
- medical equipment, such as wheelchairs, either outright or, if expensive but appropriate, on loan.

**The provision of services**, such as:

- exchange of library books;
- gardening;
- bathing, hair washing, shaving, foot care;
- help in the home;
- nursing aid, physiotherapy in the home;
- shopping;
- reading, sitting-in, audio tapes for the housebound; and
- travelling companions.

**The provision of facilities**, such as:

- arrangements for a period of rest or change of environment;
- treatment at convalescent homes or other institutions; or

- transport.

### Other practical ways of assisting people in poverty

- a national helpline to direct people to the correct state benefit and to what benevolent funds might be available to them.

### Making grants to other charities

As well as giving grants to individual people in poverty, or to organisations on behalf of those individual people, trustees can also make grants to other charities and organisations which offer help to people in poverty. In this case, however, trustees should take reasonable care to ensure that any donation will be passed on, in cash or kind, to persons who qualify as proper recipients of assistance from the donor charity.

On this basis, grants to almshouse charities, and other charities which cater exclusively for people in poverty, are permissible provided that the receiving charities operate in the same area of benefit as the donor charity.

Grants can be made by a charity for the relief of poverty to another charity even if that charity's aims and activities do not include the relief of poverty provided that the effect of the grant is to relieve poverty (the receiving charity would only be able to accept the grant if it also furthered its own aims).

Some local charities might cater only or mainly for people in poverty even though their aims might not be strictly confined to the relief of poverty.

For example, in a particularly deprived area most people attending a youth club or an old age pensioners' club might be in poverty, although membership of the club is not limited to people in poverty.

If trustees wish to give a general grant to another charity in such circumstances, they will need to find out whether, in practice, the charity's beneficiaries are people in poverty. If they are, then a grant might be permissible if its effect is likely to relieve poverty. Even if a few people who are not in poverty will benefit, this will not prevent a grant if their benefit is merely incidental and unavoidable, and the bulk of the benefit is for people in poverty. Again, we suggest that trustees contact us for advice if they are in any doubt.

A grant could also be made to another charity having a variety of aims, one of which was for the relief of poverty. In such a case, a grant could be made in support of that charity's work subject to the specific condition that it be used by that charity in relieving poverty.

## Consultation questions

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

Consultation question	Section
Q1. Do you agree that there is no distinction between the relief of poverty and the relief of those in need by reason of financial hardship? If you do not agree, please indicate what you consider to be the difference between them.	C2
Q2. Do you think our approach to poverty as a relative concept is reasonable?	C2
Q3(a). What examples of the sorts of activities charities preventing poverty undertake would it be helpful to include in this draft supplementary guidance?  Q3(b) Are there any activities that such charities would like to undertake that they do not feel able to at present?	C3
Q4. It is difficult to be prescriptive about the circumstances in which a person would be at actual risk of becoming poor. We would like to know how charities working in this area would interpret this statement. What factors or criteria could we cite in order to help such charities?	C3
Q5(a). What other benefits related to the aims of poverty charities which flow from their activities would you find it helpful to include in this draft supplementary guidance?	D3
Q5(b). We would welcome comments on whether there are circumstances in which it might not be for the public benefit to relieve poverty. In particular, are charities concerned with preventing or relieving poverty likely to engage in activities which might be viewed as detrimental or harmful?	D4

<p>Q6(a) Do you agree that although a narrowly restricted beneficial class may sometimes be a sufficient section of the public for a relief of poverty aim, it is unlikely to be a sufficient section of the public for a distinct aim to prevent poverty?</p> <p>Q6(b) Do you agree that there may be circumstances in which a restricted beneficial class might be for the public benefit in the case of a charity established for the prevention and relief of poverty (i.e. a joint purpose of preventing <b>and</b> relieving poverty)?</p> <p>Q6(c) Do you agree that as relief of need by reason of financial hardship is indistinguishable from relief of poverty, the rules regarding a restricted beneficial class would be the same for the relief of financial hardship as for the relief of poverty?</p> <p>Q6(d) Do you agree that the rules regarding a restricted beneficial class are generally limited to the relief of poverty and do not apply to other charitable purposes previously within the first 'head' of charity, such as the relief of need by reason of age, youth, sickness or disability?</p>	<b>E3</b>
<p>Q7(a) We propose looking in more detail at the work of benevolent funds in the future. Would you welcome further guidance on the work carried out by benevolent funds?</p> <p>Q7(b) Do you agree that the charitable aims for benevolent funds with a restricted beneficial class must generally be limited to the relief of poverty?</p>	<b>E4</b>
<p>Q8 Should family poverty trusts continue to be regarded as charitable following removal of the presumption of public benefit? If so, does the term 'family poverty trusts' adequately describe such trusts?</p>	<b>E5</b>
<p>Q9. What do you think of the clarity, style, format and language overall used in this draft supplementary guidance?</p>	<b>E8</b>
<p>Q10. Is there anything that you would have expected us to cover in this draft supplementary guidance that we have not included?</p>	<b>E8</b>

The following are the questions that appear in the separate draft guidance *The Promotion of Social Inclusion*:

**Consultation question**

QA. This guidance has been prepared in respect of charities promoting

*social inclusion in England and Wales. Do you have any suggestions on issues to include which relate to the promotion of social inclusion by charities working internationally?*

*QB. Do you agree that circumstances such as these can amount to social exclusion that it would be charitable to relieve?*

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

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