

CHARITY COMMISSION GUIDANCE ON PUBLIC BENEFIT

The Charity Commission has recently finalised its sector guidance on poverty, religion education and fee charging (18th December 2008). At the same time it re-issued its document called Analysis of the Law Underpinning Charities and Public Benefit. It has now (January 2009) re-issued its general guidance note Charities and Public Benefit. See <http://www.charitycommission.gov.uk/news/pblatest.asp>

With regard to the Charities and Public Benefit and the supporting legal analysis, these have been issued in a revised print format which makes them easier to read. No indication was given by the Commission of any changes. A line by line comparison reveals that there are none, and indeed clause G2 of Charities and Public Benefit still refers to regulations being made in March 2008, so the text has not been updated.

With regard to the sector guidance there are substantial changes from the consultation drafts. Each sector guidance topic has three documents. These are the general guidance note, the legal analysis and the report of consultation responses.

General Guidance notes

The general guidance notes have been substantially recast, with detailed arguments and examples placed in schedules. The guidance sections are more succinct and focussed. It must be said that the Commission has done well in making these more user friendly. Where issues of complexity or difficulty have arisen, the Commission has decided to issue further separate guidance and so far the following are promised:

- Family and Employer Benevolent Funds (including the distinction between occupation funds and single employer funds)
- Think Tanks
- Professional Education and Professional Bodies

The Commission has now included an L symbol in the text to indicate to readers when a requirement is a legal duty.

It has also signposted which paragraphs in the general guidance notes are supplementary guidance and to which trustees must have regard.

Poverty

The sections are D, E (public benefit) and F (reporting on public benefit). Annexe A contains detailed lists of how a charity might prevent or relieve poverty. There is an extended section on Social Inclusion including useful guidelines on what it means and specimen objects for charities concerned with it.

Religion

In the case of religion the relevant sections are D, E (public benefit) and F (reporting public benefit). There are three Annexes. Annexe A sets out the characteristics of religion, Annexe B the ways in which charities can advance religion and Annexe C examples of what might constitute detriment or harm so as to prevent a religion being for the public benefit.

Education

Again the supplementary guidance sections on public benefit are sections D,E and F. There are two Annexes. Annexe A gives numerous examples of how education can be advanced, which were compiled from responses to the consultation and represents current educational practice. Annexe B is entitled “What are the aims of a school?”. The message from this is that schools need to define their aims more carefully than simply saying “running a school”. This is especially true if they are fee-charging because aims are important in assessing the delivery of public benefit e.g. are they delivering benefit in the local community? The Commission indicates that they would help schools to redefine their objects if the trustees feel that they are too narrow.

Fee charging

Sections C,D, and E are the supplementary public benefit guidance. In this case section C discusses fee-charging as a public benefit issue. Despite an accurate analysis of *Re Resch* in its legal analysis document, the Charity Commission still cannot bring itself to accept that excluding some of the poor is lawful. It is notably absent from all the statements of principle. There are three important Annexes.

Annexe A “Setting and assessing the impact of charging fees”. This is worth studying in detail. It is not enough that the services are provided at cost or are good value for money. There must be opportunity for people in poverty to benefit, but this could be achieved by external funding from local authorities or other charities. Putting up the fees of the “better off” beneficiaries to subsidise access for poorer ones is also mooted, although the Commission accepts that this will not be an option for some charities.

Annexe B “Offering and funding free or subsidised access”. It is not possible to give a short summary of this, but it deals with the practical issues of how subsidised access might work and what is required of the trustees. It deals with issues from advertising to external funding. The Commission admits that the bigger charities are the ones most likely to have the flexibility to adapt to this.

Annexe C “ Illustrative examples of ways in which fee-charging charities with different charitable aims might provide opportunities to benefit”. This contains a useful list of ways in which charities can comply. There are a number of examples relating to the interaction of state and independent schools.

In terms of delivery of public benefit the guidance refers the trustees to the check list questions in section G8 of the general guidance note *Charities and Public Benefit*. Trustees will obviously need to be familiar with these.

Legal analysis documents

The legal analysis documents on education and fee-charging are substantially unchanged but there are changes to those relating to poverty and religion.

In the case of poverty there is a new paragraph 25 in which the Commission expresses the view that relief of financial hardship in section 2(2)(j) of the Charities Act 2006 is quite separate from the prevention or relief of poverty in section 2(2)(a). Paragraphs 39-44 are recast to give more space to the alternative arguments about Family and Employer Benevolent Funds. There is further argument in paragraphs 54-59 on whether following the abolition of the presumption of public benefit whether family poverty trusts still meet the criteria for

public benefit. The Social inclusion section has been recast in the light of the consultation responses.

In the case of advancement of religion paragraph 2.3 has been recast and extended so as to give more guidance on the charitable nature of religion, especially the need to have a positive and beneficial impact on society. The text jumps inexplicably from paragraph 2.19 to 2.25. The old paragraphs 2.20 -2.25 are simply omitted without renumbering. It is not clear whether this is deliberate or not. Paragraph 2.25 is extended to discuss in depth concepts such as “Supreme Being” , “Worship” and “Advancement”. Paragraphs 2.26-2.32 deal with certainty of purpose in gifts for the advancement of religion with useful guidelines.

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