

The impact of the public benefit requirement in the Charities Act 2006: perceptions, knowledge and experience

A research report for the Charity
Commission

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Authorship

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Foreword

We would like to thank the *Institute for Voluntary Action Research* and *Sheffield Hallam University* for producing this illuminating research report, which concludes a wider programme of independent research into the public benefit requirement, commissioned in response to the Charities Act 2006.

This report explores the overall impact of the public benefit requirement on the charity sector by looking at the perceptions, knowledge and experiences of key informants and charity trustees.

We welcome the report's findings, in particular the evidence it provides that the public benefit requirement has helped to sharpen charities' focus and acted as a spur to strategic thinking.

However, there is room for improvement, both for the Commission and for charities themselves. We need to help charities understand that far from being an irrelevant distraction, the public benefit requirement is about core questions of mission. It is about charities being clear what their aims are, who they serve, and how they serve. It is vital that trustees use the opportunities presented by the public benefit requirement as a welcome opportunity to tell their charity's story and celebrate its success.

The Commission's full analysis of the research is available on our website www.charity-commission.gov.uk

Dame Suzi Leather, Chair
Sam Younger, Chief Executive

The Charity Commission

1. Introduction

This is the report of a study commissioned by the Charity Commission from the Institute for Voluntary Action Research (IVAR) and Sheffield Hallam University (SHU). It is about perceptions, knowledge and experience of the renewed emphasis on the public benefit requirement for charities in England and Wales, particularly in the light of the changes that arose largely from the Charities Act 2006.¹

The 2006 Act brought about several key changes in relation to public benefit. It removed the presumption of public benefit that had previously existed for some charities and introduced a new reporting requirement. It also stipulated that the Charity Commission raise awareness of public benefit and develop guidance for charity trustees. A summary of the legal context of this study is given in Appendix A.

The research reported here builds on two previous Charity Commission research reports. The first, explored charity trustees' awareness, understanding and attitudes towards the public benefit requirement.² The second, involved a systematic review of a sample of trustees' annual reports to assess the quality of public benefit reporting.³

The general aims of this, the third, study were:

- To explore the overall impact that the renewed emphasis on the public benefit requirement has had on charities and their beneficiaries.
- To build a picture of the ways in which the charity sector has changed (if at all), as a result of that renewed emphasis, and the effect this has had on charities.

Specifically, this study focused on knowledge and experience of the public benefit requirement; perceptions of the impact of the public benefit requirement on charities and the sector; and views about the Commission's formal guidance on the public benefit requirement and its wider support in this field. We looked particularly at trustee and practitioner experiences and viewpoints rather than technical detail of law. During spring 2012, we conducted semi-structured interviews with eleven key informants and ran three workshops with charity chief officers, trustees and professional advisers. We asked study participants to reflect on the period from 1 April 2008, when the new definition of 'charity' took effect under the Charities Act 2006, through to early 2012. Further details of the study approach, the participants, and the interview questions used are given in Appendices B, C, and D, respectively.

As there is no simple statutory definition of 'public benefit'⁴ it is likely to remain a contested topic which is subject to case law. Further effects of the renewed emphasis on the public benefit requirement are likely to continue to emerge, especially as a result of the two Upper Tribunal cases heard in 2011 – the final decisions of which emerged during the course of this study^{5 6}. Nevertheless, this

¹ The changes made by the Charities Act 2006 are now re-enacted in the Charities Act 2011, which took effect from 14 March 2012. Legal references in this report generally refer to the 2011 Act being the legislation applicable at the conclusion of this study.

² FDS International (2009) *Charities' awareness, understanding and attitudes towards the public benefit requirement*, Charity Commission

³ Morgan, G.G. and Fletcher, N.J. (2011) *Public benefit reporting by charities*, Charity Commission

⁴ Charities Act 2011, s.4 (originally Charities Act 2006 s.3)

⁵ *Independent Schools Council and Charity Commission and others* [2011] UKUT 421 (TCC): Decisions 13 Oct 2011 and 2 Dec 2011 – hereafter '*the ISC case*'

research offers the charity sector the opportunity to pause and reflect on developments so far.

Use of terms

Throughout this report we refer to those who took part in workshops or interviews as *study participants* or *participants*.

The term *public benefit* refers to the case law principle now enshrined in s2(1)(b) of the Charities Act 2011 which states that a charitable purpose must be for the public benefit. Section 4 of the 2011 Act defines the *public benefit requirement* as the requirement that a charitable purpose must be ‘for the public benefit’.

Because this study took place in England and Wales and made reference to the Charities Act 2006, we assumed that all study participants were using the term ‘public benefit’ as it applies under charity law in England and Wales. However, it should be noted that whilst some study participants had an expert understanding of the legal meaning of the term, others may have used the term in ways which did not reflect this precision.

Unattributed quotations from interview and workshop participants are presented throughout this report in italics.

⁶ *HM Attorney General and Charity Commission and others - Upper Tribunal (Tax and Chancery) case FTC/84/2011: Decision 20 Feb 2012 – hereafter ‘the Benevolent Funds case’*

2. Summary of key findings

This is a summary of the key findings of a study on public benefit commissioned from the Institute for Voluntary Action Research and Sheffield Hallam University by the Charity Commission. The study findings are based on eleven interviews with key informants with a good overview of the charity sector and three workshops with charity chief officers, trustees and advisers.

Knowledge and experience of the public benefit requirement

- In relation to the charity sector as a whole, the public benefit requirement was perceived as a potential opportunity to develop and maintain confidence in the 'charity brand'.
- Reactions to the public benefit requirement are diverse, and range from the view that it is not a high priority, particularly given the current financial climate; to feelings of anger and anxiety, especially on the part of those charities that feel they are under scrutiny.
- Large charities are perceived as better informed about the public benefit requirement than smaller charities, which may lack awareness, understanding or capacity to engage with the requirement. The latter could be associated with a weak board lacking the necessary skills or experience to fulfil their role.

Perceptions of the impact of the public benefit requirement

- The study found examples of charities changing the way they work in response to the renewed emphasis on the public benefit requirement. These fell into three categories: re-examination of charitable objects; adjustments to the target beneficiary group; and changes in the services provided.
- Study participants saw the renewed emphasis as an important component of the 'modernisation' of the charity sector. As such, it was seen as drawing positive attention to governance, private benefit (as distinct from public benefit) and commissioning.
- Three kinds of charity were perceived as especially affected by the renewed emphasis on the public benefit requirement: religious and faith organisations, fee charging charities and membership organisations.
- The public benefit requirement was generally seen as having had limited impact so far, with the requirement mainly affecting charities at two stages: charity registration and public benefit reporting.

Views about Charity Commission support and guidance

- Charity trustees and their advisers valued the support and guidance provided by the Charity Commission and appreciated the thorough approach taken by the Commission in preparing guidance.
- Study participants raised a variety of concerns about the likely consequences of the Charity Commission having reduced resources to respond to and advise charities. These included diminished capacity to support and also to regulate in relation to public benefit. Charity infrastructure and membership organisations were not thought capable of assuming this role.

3. Knowledge and experience of public benefit requirement

Key findings:

- In relation to the charity sector as a whole, the public benefit requirement was perceived as a potential opportunity to develop and maintain confidence in the 'charity brand'.
- Reactions to the public benefit requirement are diverse, and range from the view that it is not a high priority, particularly given the current financial climate; to feelings of anger and anxiety, especially on the part of those charities that feel they are under scrutiny.
- Large charities are perceived as better informed about the public benefit requirement than smaller charities, which may lack awareness, understanding or capacity to engage with the requirement. The latter could be associated with a weak board lacking the necessary skills or experience to fulfil their role.

In this section, we set out our findings about knowledge and experience of the renewed emphasis on the public benefit requirement. Subsequent sections report our findings on perceptions of the impact of the public benefit requirement (Section 4) and views about Charity Commission support and guidance (Section 5). The implications of our findings are discussed in Section 6.

In this section we outline our findings on participants' knowledge and experience of the renewed emphasis on the public benefit requirement. Broadly speaking, we found that the renewed emphasis had induced a wide variety of viewpoints and provoked strong emotions in some study participants. As well as fervent expressions of personal commitment to the concepts of 'charity' and 'civil society' we found some expressions of fear, anger and anxiety:

'People felt the removal of the presumption [that charities are for public benefit] had changed how charities had to operate – and generally it hasn't. But it has created a lot of anxiety.'

3.1 Awareness and perceptions in relation to individual charities

The diverse reactions to the renewed emphasis included:

- A sense that it is '*not an issue*' for most charities because they are self-evidently '*for public benefit*'.
- Fear of new requirements that are not easy to understand.
- Anger amongst specific kinds of charity that feel '*got at*' for political reasons.
- A belief that public benefit is not as important for charities as worries about financial survival.
- A view that this is a minor issue '*blown out of proportion*' by professional advisers.

Whilst opinions varied widely, we were able to discern some patterns:

- It was thought that larger organisations were more able to engage with guidance and to secure specialist advice if needed. Fee charging schools, in particular, were perceived as very well informed by the Independent Schools Council.

- Smaller charities were perceived as poorly informed about the public benefit requirement, even unaware of it. They were thought to be inhibited in responding to the requirement by lack of capacity or lack of access to advice; and likely to be preoccupied with organisational survival: *'[In small organisations] trustees often equal staff ... they're everything ... one of the challenges for them [trustees of small organisations] is to stand back as they're often fire fighting'*.
- Some emphasised the importance of small charities understanding the public benefit requirement because they make an important contribution to welfare and civil society generally.
- Lack of engagement with public benefit was thought to be associated not only or necessarily with small charities but also with *'weaker boards'*.

3.2 Awareness and perception in relation to the charity sector as a whole

Although it was thought that the full implications would take time to emerge, the renewed emphasis was expected to be vital to the future development of the charity sector and to maintenance of confidence in the idea of 'charity':

'In Deakin and Tumim⁷ [the] intent was the long-term trust and confidence in the charity brand. If [the sector] didn't modernise the charity brand and demonstrate that public benefit was behind it, trust and confidence would go. It would have been seen as tax breaks for private benefit.'

It was also thought likely to be crucial to future attempts to distinguish charities from other newer non-charitable forms of organisation such as community interest companies:

'Each generation redefines charity influenced by prevailing societal values.'

Study participants thought that the public benefit requirement would help to maintain confidence in 'the charity brand', and help to distinguish charities from other kinds of organisations. It would also ensure that charities thought seriously and regularly about their mission and objectives. Finally, it was thought that the renewed emphasis would reassure the public that charities were providing something in return for privileges such as tax relief:

'They [the Charity Commission] saw it as a milestone in the development of the sector – all part of the long term bargain in terms of the relationships between the [charity] sector and wider society.'

'It does not seem to me inappropriate that for one's tax relief, you have to be very clear about what you're doing in return.'

⁷ This was a reference to the Deakin Commission (1996) on the *Future of the Voluntary Sector* and the *Charity Law Review Advisory Group* (2001) chaired by Winifred Tumim – both of which were established by the National Council for Voluntary Organisations (NCVO).

4. Perceptions of the impact of the public benefit requirement

Key findings:

- The study found examples of charities changing the way they work in response to the renewed emphasis on the public benefit requirement. These fell into three categories: re-examination of charitable objects; adjustments to the target beneficiary group; or changes in the services provided.
- Study participants saw the renewed emphasis as an important component of the 'modernisation' of the charity sector. As such, it was seen as drawing positive attention to governance, private benefit (as distinct from public benefit) and commissioning.
- Three kinds of charity were perceived as especially affected by the renewed emphasis on the public benefit requirement: religious and faith organisations, fee charging charities and membership organisations.
- The public benefit requirement was generally seen as having had limited impact so far with the requirement mainly affecting charities at two stages: charity registration and public benefit reporting.

In this section, we set out our finding on perceptions of the impact of the public benefit requirement looking at: the extent to which impact has been achieved; the wider impact of the renewed emphasis; and charities that have been particularly affected by these changes.

Most study participants thought that the renewed emphasis on the public benefit requirement has had a limited effect so far on the behaviour of charities. However, they expect that the impact of the requirement will deepen over time and anticipate positive consequences for the charity sector and its role in civil society.

4.1 Limited impact so far

The renewed emphasis was seen as having limited impact on charity behaviour so far:

'Given how high up the Charity Commission agenda it was, and the fact that it cut across all areas of business, I am surprised at how little impact it's had with the charities I work with.'

Study participants offered several possible explanations:

- There was a view that most charities already see themselves as operating for public benefit and therefore see no need to make any changes. Participants picked out long established charities as especially likely to feel this way:

'For long established trusts who have been giving away money, in their view effectively for a long while, it is understandable if there is sometimes a certain sense of redundancy or tautology in having to say what they're doing. It's not a view that [my organisation] shares.'

'People didn't have to manufacture activities [as a result of the renewed emphasis on public benefit], they were already there. There wasn't a feeling that they might get caught out.'

- Study participants thought that many charities see the renewed emphasis on the public benefit requirement as just that – renewed – and, therefore, there has been little ‘impact’ on them as such; they were already doing whatever they felt appropriate to conform with public benefit ideas.
- Some charities do not perceive the public benefit requirement as relevant to their work, so they comply – in a strict legal sense – with the requirement and then set it aside for day to day purposes.
- It was felt that some charities lack the capacity to engage with the public benefit requirement and/or lack the necessary resources to seek advice when it is needed.
- Study participants felt that some practitioners and advisers think that the public benefit requirement lacks enforcement and therefore does not need to be taken particularly seriously.
- While the registration process and the public benefit reporting requirement have provided a structure and process for implementing the overall public benefit requirement, some see the Charity Commission as lacking the capacity and staffing resources to enforce it. They therefore do not feel they need to take the requirement too seriously.
- Study participants thought that Parliament did not define public benefit precisely in the 2006 Act and that therefore the Commission would be reluctant to take action with specific charities. This was especially the case, it was thought, because of the Commission’s reduction in staffing and resources. Participants commented on the fact that fee charging charities had not lost their charitable status as had been expected by some participants in the study.

4.2 Impact so far

Despite their suggestions that impact had been limited, study participants were aware of specific examples of charities changing the way they work in response to the renewed emphasis on the public benefit requirement. These examples fell into three broad categories: re-examination of charitable objects, adjustments to beneficiary group and changes to services.

4.2.1 Re-examination of charitable objects

Study participants gave examples of organisations that had adjusted their work after revisiting their objects:

‘To have to ask, at least once every year, “are we still fulfilling our charitable purposes and do our activities match this?” is important.’

One organisation realised that, in responding to local authority environmental priorities, its work had moved away from its core objects, to encourage people to enjoy the natural environment; the charity has now adjusted its activities. Another charity that had begun to work across a larger and different geographical area in order to respond to newly arising need, approached the Charity Commission for advice and support in revising its objects. We were also told about a charity that had

withdrawn support from a group of beneficiaries when its trustees realised that this support was not in line with their mission and objects.

4.2.2 Adjustments to the target beneficiary group

Study participants told us about trustees and chief officers who had adjusted the beneficiaries and/or geographical areas they were targeting after assessing the public benefit of their work. Again a charity whose beneficiary base had shrunk due to changing social needs was able to refocus its services on a larger population of local people who remained in need of the holiday and respite services that they provided. They found that they were able to do this while remaining within their charitable objects.

4.2.3 Changes in services provided

Study participants gave us examples of charities which had set up new services or made changes to existing services after reviewing their public benefit delivery. We were told of fee charging schools which had started or extended bursary schemes following the renewed emphasis, and/or had opened their facilities to local people.

One participant described how a residential home for elderly people that charged fees for the service had decided to restructure; moving its fee charging activities into a trading subsidiary, keeping its endowment for the use of the charity.

4.3 Wider impact of the renewed emphasis on the public benefit requirement

In the previous sections, we reported that study participants perceived the immediate impact on charities of the renewed emphasis on the public benefit requirement as limited. They focused their comments on a small range of issues and actions where an impact was discernible. Yet we also found that study participants saw the renewed emphasis as an important component of a welcome 'modernisation' of the charity sector; a positive developmental step when looked at broadly.

Study participants said that the renewed emphasis on the public benefit requirement had generally '*brought to the fore*' or '*sharpened thinking*' about what it means to be a charity, including thinking about organisational identity and beneficiaries. There was now an incentive to treat public benefit reporting as more than '*box-ticking*' and as a spur to strategic thinking. They also thought that the renewed emphasis had been positive in helping to draw attention to three further issues: charity governance, private benefit (as distinct from public benefit), and commissioning. We examine each of these in turn.

4.3.1 Charity governance

Study participants suggested that the renewed emphasis on the public benefit requirement is already helping to improve charities' governance and management, especially in small charities. For example, it encourages consideration of possible mission drift or of issues around private benefit especially in small charities. Participants suggested that for many charities, large or small, the need for trustees to report on public benefit was the catalyst for engaging with public benefit legislation: '*it gets into their conscience*':

'The requirement is most relevant ... when they [charities] have to write their organisations' public benefit statements. The rest of the time they probably

won't think about it. But when they do, it requires them to think about 'how do I define public?', 'how do I define benefit', 'how do I link this to organisational strategy?'

We found (as in the 2011 study undertaken for the Commission⁸) that many charities have already found public benefit reporting to be a useful means of focusing (or refocusing) on: organisational mission; the role of trustees in checking mission; and the distinctive features of a charity:

'[It is] the sort of thing that any well run charity should be doing.'

'If it encourages people [trustees] to think "what are we doing?", "Are we doing it right?", then I think that is good.'

Trustees of charities that have a religious purpose were said (by charity advisers) to be initially concerned that they would be asked to focus their reporting on *'narrow social services type output criteria'* but found instead that this was a chance *'to explain to people not in their own flock what they do'*.

Although some study participants saw the public benefit requirement as being positive in encouraging strategic thinking by boards, there were a range of further views about the appropriate role of charity trustees in meeting the public benefit requirement. Some thought the Charity Commission had, in effect, passed responsibility for defining public benefit to trustees since the Act and guidance have failed to do so. Others thought that charity trustees do not have the time, skills or experience to take on implementation of the public benefit requirement.

4.3.2 Private benefit

As an important concept in charity law, private benefit predates the 2006 Act, but participants felt that the renewed emphasis on public benefit had drawn attention to the converse – private benefit – and that this was a positive impact. Study participants said that questions about private benefit arise in relation to:

- Remuneration of trustees, including trustees who are also employees, service users or members.
- Direct private benefits to trustees who are also members or service users.
- Indirect benefits to businesses where trustees or senior staff have interests.

Examples were given of ambiguities and potential confusion. Study participants said that students' unions have had to think carefully about remuneration of sabbatical officers, especially the proportion of such remunerated roles in the body of trustees. One participant, whose charity provided therapeutic services and wished to have employee therapists on its board, was advised that only one trustee could be paid in this way. School academies were noted as being exempt charities with head teachers given an *ex officio* (i.e. by virtue of their position as head teacher) place on their boards and hence creating *de facto* remunerated trustees.

It was thought that small charities are less likely than larger charities to understand and manage appropriately questions around private and public benefits to trustees and others:

⁸ Morgan, G.G. and Fletcher, N.J. (2011) *Public benefit reporting by charities*, Charity Commission

‘A lot of charities are quite small when they start and people don’t have an understanding of the difficulty of private benefit.’

But participants also noted that this view is based on a further assumption that small charities have ‘weaker boards’ than large charities; weak governance rather than small size in itself are often the cause of poor handling of private benefit issues.

‘The people who have come up with an idea and who are raising the funds will also be the trustees, so there may not be anyone with an outside perspective to question what they’re doing or think through what their responsibilities are in relation to the public benefit requirement.’

4.3.3 Commissioning

Charities that have been commissioned to deliver public services or are subcontracted to deliver services by another organisation were said by study participants to face a particular challenge. Delivering services in line with the objectives of another organisation can affect a charity’s ability to maintain a focus on its own objectives and intended beneficiaries.

‘[In the situation that you are] a subcontractor to another organisation with a different set of objectives. How far does that squeeze you in terms of public benefit ... when the benefit is not defined in terms of public interest, but defined in terms of survival in this environment?’

Study participants recognised that these challenges might be partially addressed through good governance. Nevertheless, they perceived a risk that the current commissioning environment could distract charities from public benefit and charitable obligation in favour of contractual compliance – especially in the current funding climate in which the drive for organisational survival might override compliance with charity law requirements.

4.4 Which charities have felt most impact?

Building on our findings, we have been able to identify three kinds of charities that participants feel have been most affected by the renewed emphasis on the public benefit requirement. These are set out and discussed below.

4.4.1 Religion and faith charities

Although the publicly expressed concerns from the religious charity sector have subsided, there remains concern about how charities in this field can demonstrate conformity with public benefit requirements. Study participants felt that this problem is exacerbated by the existence of high numbers of small religious charities. It was thought that the latter often do not have sufficient income to be obliged to register with the Charity Commission.⁹ Participants held the view that such charities often had insufficient knowledge and resources to engage with the complexities of the public benefit requirement in relation to faith and spiritual issues.

⁹ Many churches linked to the main Protestant Christian denominations were formerly exempted from charity registration, and whilst the Charities Act 2006 removed the exemption for those over £100,000 income, the smaller churches remain exempted – see Appendix A for further details.

At the same time, study participants felt that it was important to support the religious charity sector in articulating its public benefit goals.

4.4.2 Fee charging schools

Although the wider debate about what constitutes public benefit was beyond the terms of reference for this study, many study participants were familiar with the debate around fee charging as it relates to public benefit, including the recent Upper Tribunal cases.¹⁰ A variety of opinions were expressed about the implications for the education sector:

- There was disappointment that little had changed for fee charging schools.
- There was relief that, following the Tribunal ruling¹¹, fee charging schools would continue to make decisions locally and that trustees were in charge of decisions.
- Study participants from within and outside the education sector felt that there had been a misunderstanding about the status of bursary schemes in meeting the public benefit requirement. One senior representative from an umbrella body working with charities of all kinds said: *'we felt they [the Charity Commission] were focusing too much on bursaries, or at least that was the media perception. [We] felt a wider definition of public benefit was okay. We felt there were other things independent schools could do [to meet the public benefit requirement] beyond bursaries'*.
- Participants generally felt that public benefit needed to encompass actions more extensive than providing bursaries. One participant suggested that public benefit in fee charging schools could be evidenced by: financial aid such as scholarships, professional cross-sector partnerships; and shared curricular access (e.g. 'endangered' subjects and extra-curricular activities such as sport, drama and music):

'Post the 2006 Act, momentum behind the bursaries accelerated but schools are reluctant to see that becoming the defining criterion for public benefit.'

Participants also pointed out that the dilemmas faced by fee charging schools are mirrored in the case of fee-paying social care and health organisations.

4.4.3 Membership organisations

For membership charities a key question was said to be: who are the beneficiaries and therefore what is the public benefit? People raised examples of the different roles of members as donors, beneficiaries and/or as professionals serving the wider public.

Study participants raised the example question of whether people joining the National Trust are simply buying benefits for themselves by paying for their own membership; or whether they are donors making a contribution to help the National Trust do its work – which is for public benefit.

¹⁰ See footnotes 4 and 5

¹¹ See footnote 4

Participants also discussed the case of professional bodies. Examples were given of organisations that perceived themselves as being for the public benefit and those that did not. Study participants thought that there was a subtle but important distinction between supporting individuals for their own sake and supporting individuals to do a better job *'for the public benefit'*.

5. Views about Charity Commission support and guidance

Key findings:

- Charity trustees and their advisers valued the support and guidance provided by the Charity Commission and appreciated the thorough approach taken by the Commission in preparing guidance.
- Study participants raised a variety of concerns about the likely consequences of the Charity Commission having reduced resources to respond to and advise charities. These included diminished capacity to support and also to regulate in relation to public benefit. Charity infrastructure and membership organisations were not thought capable of assuming this role.

So far, we have considered reactions to the renewed emphasis on public benefit and the way it has affected charities. We turn now to our findings about the role of the Charity Commission; specifically to its support and guidance role in relation to the public benefit requirement. We found that charities, trustees and their advisers have valued the support and guidance they have received from the Charity Commission. They have generally appreciated the Commission's thorough approach to producing guidance and have noted the way in which the Commission has worked closely with sub-sectors where appropriate.

5.1 Support

5.1.1 Support from the Charity Commission

Study participants thought that there was good access to support from the Charity Commission at present but raised concerns that this will diminish in the future because of spending cuts. They were concerned that charities would have fewer opportunities to seek advice directly from the Commission, and felt that this had the potential to undermine the renewed emphasis on the public benefit requirement, which needs ongoing commitment from the Commission if it is to be fully understood and embedded in charities. In addition, it was thought that there will always be a need to assess charity's public benefit on a case by case basis because the sector is so diverse. The Commission was thought to be well placed to fulfill this role, provided it has the resources to do so.

5.1.2 Public benefit and charity registration

Participants with direct and recent experience of charity registration said that the main reason for applications being delayed was queries about whether the proposed charity could be said to be 'for the public benefit'. The Commission's queries to charities seeking to register tended to focus on proposed activities and likely beneficiaries. Yet, participants pointed out, it was often hard for new organisations to be precise about these while they were still setting up and before they had secured funding.

The difficulty involved in demonstrating that a *newly* established charity would be for public benefit had brought to the fore further questions such as why organisations choose to establish themselves with charitable purposes and at what stage in their

development charity registration was appropriate.¹² Participants raised questions about alternative non-charitable organisational structures and when these might be appropriate.

Study participants suggested that, on the one hand, the process of registration could be frustrating because of the apparent barriers charities face in achieving charitable recognition. On the other hand the process was also perceived as beneficial in helping to ensure that organisations have thought through questions of purpose and understand that they are subject to a clear regulatory framework:

'By going with the Charity Commission, we thought they would regulate us and we would know where we were.'

We learned from one charity, that chose to go through the registration process, that the trustees had found it beneficial in clarifying matters to do with governance and purpose. They also believed that it had helped them to ensure that they operate in a transparent and accountable manner. Another organisation, that undertakes charitable giving, had decided not to establish a separate charity as previously envisaged, but instead to continue giving as part of its parent company. The latter decision had been influenced by a perception of lack of clarity around the public benefit requirement; they anticipated reviewing their decision once they had had the opportunity to consider the Upper Tribunal *Benevolent Funds* ruling.¹³

5.1.3 The potential for alternative forms of support

Due to concerns about the Commission's own capacity, study participants chose to comment on the prospects for support being provided by other infrastructure and membership organisations. They thought that few of these organisations had the resources or expertise to provide detailed advice on public benefit. Even with respect to general guidance some were better placed than others to assume this role. Also, it was pointed out that many charities are not associated with any national body. Therefore, it was felt that support to charities might be uneven if infrastructure of membership organisations were obliged, by default to become a key source of support and guidance to charities on public benefit matters.

5.2 Guidance

Study participants made a wide variety of comments about the Charity Commission guidance on public benefit focusing mainly on the general guidance.¹⁴ These comments relate to purpose and audience; length and style; and content.

5.2.1 Purpose and audience

Study participants generally thought that guidance should *'make the case'* in simple terms for why there is value in trustees thinking about their charity's public benefit. One participant commented: *'it needs a fired up Charity Commission to insist on this as a priority'*.

¹² Not all participants appreciated that charity registration is compulsory when income exceeds £5,000 if an organisation is established for charitable purposes and is not an exempt or excepted charity (Charities Act 2011, s.30).

¹³ See footnote 6.

¹⁴ Charity Commission (2008) *Charities and public benefit: The Charity Commission's general guidance on public benefit ref PB1*, Charity Commission (an amended version was released in December 2011 following the *ISC* case)

They understood the dilemma the Commission faces: whether to provide generic guidance which charities will be able to navigate but where individual charities may not be able to 'see themselves' or find answers to their questions; or, whether to provide detailed guidance. The latter is more likely to address particular questions and issues but may become lengthy and harder to navigate:

'Trustees are wanting resources to guide them in what they are doing and are asking lawyers.'

Participants wanted published Charity Commission guidance to be relevant and accessible to charity trustees, many of whom they noted lack the time (and in some cases, the skills) to work through long and complex advice. Currently, they said, many small and/or inexperienced charities need Commission guidance to be interpreted for them:

'People needed to know what they were expected to do ... but that's the difficulty, because it is different for every case.'

Study participants acknowledged that it is not possible or appropriate for the Commission to provide guidance for every eventuality. Independent schools had described both the legislation and the guidance as unwelcome '*micro management*' and participants also referred to the need for a degree of trust in charities:

'Trust is essential to charity law. There should be a proper element of trust in those running charities.'

5.2.2 Length and style

Related to the above points on purpose and audience, study participants thought that Charity Commission guidance needed to be shorter than *Charities and public benefit (PB1)*¹⁵ and longer than the *Summary guidance*¹⁶.

Recognising how difficult it is to make this guidance accessible to trustees with little or no experience in this area, study participants made some practical suggestions about the style of presentation. They thought that there should be visual aids in the guidance such as flowcharts for 'how to think about public benefit in your charity'. Short videos on the website could cover the same ground:

'People either rely on their professional adviser or CEO to read the documents, or they will engage in the summary documents. It's too heavy for all of the trustees to engage with.'

5.2.3 Content

As noted above, study participants understood that the Commission faced a dilemma about whether to provide detailed or generic advice. There were some specific questions about areas in which charities and their advisers would appreciate more guidance.

¹⁵ See footnote 14

¹⁶ Charity Commission (2008 as amended December 2011) *Charities and public benefit: Summary guidance for charity trustees*, Charity Commission

- Should charities focus on their *potential* or *actual* beneficiaries in relation to both the public benefit requirement in general, and public benefit reporting in particular?
- How should public benefit be interpreted in different types of membership organisation i.e. distinguishing between those where the main beneficiaries are the members; and those whose main beneficiaries are much wider?
- How should charities manage the distinction between public and private benefit?
- How should religious charities explain their public benefit?
- How can grant-making charities pinpoint their beneficiaries when often they support beneficiaries indirectly through intermediary organisations?

6. Discussion

This study has presented a snapshot as at spring 2012 of the perceived impact of the renewed emphasis on the public benefit requirement for charities in England and Wales, as a result of the changes made by the Charities Act 2006. In this final section we consider the implications of our findings.

6.1 The importance of the public benefit requirement for charitable status

Some participants commented specifically on the public benefit requirement as important for signalling the distinction between charitable and non-charitable organisations:

'If the public is happy to be supportive of the privileges of the charity sector – for example the tax breaks – they have to be clear that charities are working for the public benefit in an understandable way ... It [the renewed public benefit requirement] has noticeably and in a significant way increased the sensitivity of many charities to explain to the public how they benefit the public.'

We found that although the impact on individual charities has been limited so far, the renewed emphasis on the public benefit requirement is seen positively as part of a move to 'modernise' the charity sector and improve its image. For example, some study participants spoke of the vital role of the public benefit requirement in protecting the 'brand' of charity and in justifying the tax concessions to charities:¹⁷

'[The renewed emphasis on public benefit] was certainly a change of direction and I don't accept the view that it wasn't necessary – that public benefit was always there. It was absolutely clear that it wasn't there, that something had to be done about it ... there is no doubt the impact is there.'

On the issue of public benefit reporting, some study participants mentioned charities which treated it as a 'tick-box' exercise, but others reported that it was a valuable process which prompted trustees to consider seriously how it applied to the purposes and activities of their own charity:

'Reporting on public benefit is a good thing to do – to be asked to say ultimately what good we do.'

6.2 The challenge of understanding and implementing public benefit

Whilst study participants were broadly positive about the Commission's guidance, it was widely acknowledged that there remains a great deal of misunderstanding of the requirement, and an acceptance that many trustees still have little understanding of what it means in practice.

Participants had varying views about how this could be remedied. Some were highly critical of Parliament for not defining the public benefit requirement more precisely in

¹⁷ The fieldwork in this study was completed before the Chancellor of the Exchequer's March 2012 Budget Speech announcing plans to impose a cap on tax relief for donations to charity. This policy was subsequently dropped, however, it is possible that this development would have affected comments on this issue at the time.

the 2006 Act. Others, felt it was right for the Act to avoid definitions and to allow the Charity Commission to develop practical guidance.

Some study participants made the point that the public benefit requirement is, in law, concerned with the purposes of a charity rather than its activities and thought that this distinction was not well understood. This lack of understanding could play out, for example, as confusion between potential beneficiaries ('the beneficial class') mentioned in formal documents and reporting, in line with the public benefit reporting requirement, on actual beneficiaries for a particular year.

Particular difficulties of understanding were mentioned for membership charities. Participants highlighted cases in which the members are the main beneficiaries, and hence the charity is clearly meeting the public benefit requirement if it can explain how the charity's purposes are carried out for the benefit of the members. However, in other cases (e.g. professional bodies) the beneficiaries may be the wider public, rather than the membership, here, the task of understanding and explaining the public benefit requirement was felt to be much more challenging.

Participants also said that there was confusion and uncertainty amongst charities which by their nature only had a small pool of potential beneficiaries. For example, a charity established to support persons of specific national origin within a locality – the issue of 'a class within a class'.

6.3 Principles of public benefit

The Commission's public benefit guidance sets out two principles which are at the heart of the public benefit requirement. These two principles are then broken down into eight sub-principles (listed in Appendix A). Study participants suggested that few people in the sector understood the scope and breadth of these issues. There was a misunderstanding reported by a number of participants that public benefit was really only relevant to fee charging schools, or at least only for fee charging charities, and that other charities could largely ignore the issue. Certainly it was thought that fee charging has gained more prominence than all the other elements in the Commission's principles.

It was also felt that problems could arise for fee charging charities where the charity's sole funder was a public sector commissioner, which dictated, through its purchasing policies, the clients a charity could work with. According to some, the result of such arrangements could be a restriction on the beneficiaries of the charity – a matter over which the trustees had little or no control.

Several participants pointed to issues concerning private benefit (as distinct from public benefit). They spoke of charities which appeared to offer private benefits that were more than incidental. In some cases, awareness of the public benefit requirement had prompted changes of practice in this respect.

The relationship between the public benefit requirement and the Equality Act 2010 was mentioned by some study participants as another area of uncertainty for charities – particularly for those where the beneficiaries were limited by reference to 'protected characteristics' in the Act – e.g. charities focusing on women, younger people, those of particular faiths and so on.

6.4 The need for support and advice

Our findings suggest that the renewed emphasis on public benefit is most likely to affect charities at two points:

- At the point of charity registration where applicants need to show that they are being established for public benefit
- Annually in terms of public benefit reporting in Trustees' Annual Report.

Professional advisers told us that these were the two points at which charities tended to seek advice on the public benefit requirement. Other participants, however, thought that professional advisers sometimes stimulated market demand for advice by exaggerating the complexities of public benefit. Whatever the reason for charities seeking advice, it seems to be more readily available to larger charities than smaller ones. In particular, smaller charities may find it difficult to get tailored advice on how the public benefit requirement affects them. Some of the umbrella organisations which provide a wide range of advice to smaller charities told us that they would not feel confident in advising specific charities on this issue.

For many charities, their priority in the present climate is to obtain sufficient funds to continue in business. Within that context, public benefit reporting was given a much lower priority. Reporting to funders, by contrast, was seen as crucial, but we were told that funders were generally more interested in 'impact' reporting and less interested in broader assessments of public benefit. Few participants saw a link between these issues. None of our study participants felt that the search for funding was facilitated by demonstrating work 'for the public benefit'. Rather, 'seeking funds' and 'complying with charity law' were often seen as competing pressures.

6.5 Lack of impact of the requirement

Participants who had followed the progress of the Charities Bill, which became the 2006 Act, told us they had expected the renewed emphasis on public benefit to have more immediate impact on charities. Some were disappointed that no organisations had actually lost their charitable status as a result of public benefit reviews. Even those who welcomed the parliamentary decision not to define public benefit precisely in statute were, in some cases, disappointed by the outcome of the recent Tribunal cases, which they felt had '*let charities off the hook*'.

Others felt that, for most existing charities, the only real impact of the renewed emphasis plays out in annual public benefit reporting. Since they felt the Commission does not normally have the resources to review charity accounts and reports submitted, they saw little real impact on charities who failed to comply fully with the public benefit requirement. However, this perception by some of our study participants may be contrasted with the more positive views of those who thought that the public benefit reporting requirement had led to renewed focus on the charities' purpose and mission

6.6 Conclusion

This report has highlighted the experiences and perceptions of charity chief officers, trustees and their advisers in relation to the renewed emphasis on public benefit four years after the Charities Act 2006 took effect.

Some of the challenges experienced relate to issues and questions which are not currently addressed by the Commission's guidance. Some felt that the guidance is

unclear. Others have been disappointed that the impact of the renewed emphasis has been less than they hoped. All the same, our study found wide endorsement of the public benefit requirement as a central requirement of charitable status. It is seen as protecting the reputation and tax concessions afforded to charities. It is also seen as a useful way to keep the minds of charity trustees focused on their charitable aims and their beneficiaries.

Appendix A Legal context of the study

Public benefit is a complex issue, which is central to the definition of a charity. It creates a requirement which is applicable to all charities but which is hard to define in few words. We felt it was important to provide readers with a brief summary of the legal and technical detail behind the requirement in order to explain and contextualise our study findings. What we offer here is a summary; debate continues on the precise legal impact of the changes as indicated by the recent cases mentioned in the introduction to this report.

A.1 Definition of 'charity'

In England and Wales a charity is an organisation which is:

- (1) established for exclusively charitable purposes; and
- (2) those purposes must be 'for the public benefit'.¹⁸

Any organisation subject to the laws of England and Wales and the courts' charity law jurisdiction, which meets these two requirements is a charity (not all charities have to be registered with the Charity Commission – many are exempt or excepted from registration – but all are subject to the public benefit requirement).

These principles were established in case law over many centuries, ultimately going back to the 1601 Statute of Charitable Uses, but they were only written into statute in the Charities Act 2006 (with the new definition of charity implemented from 1 April 2008).

A.2 Changes to the definition of 'charity' arising from the Charities Act 2006

Two main changes to the definition of 'charity' were made by the 2006 Act:

- The former four 'heads' of charity established in case law¹⁹ were expanded in the Act²⁰ into 13 'descriptions of purposes' which could potentially be charitable. This change is *not* explored in this research.
- The Act brought in a renewed emphasis on the public benefit requirement, which is the focus of this study.

It is important to note that the Act did *not* define what is meant by 'public benefit' – even though some of the participants in this study argued at the time in favour of a clearer definition. The Act articulated the public benefit requirement for the first time in statute²¹, but mainly by reference to existing case law, so no new definition of public benefit was introduced by the Act. However, subsequent provisions in the Act dealing with public benefit have wider consequences.

Five main issues can be highlighted.

¹⁸ Paraphrased from Charities Act 2011, ss.1-2

¹⁹ The leading case is *Commissioners for Special Purposes of the Income Tax v Pemsel* [1891] AC 531

²⁰ Now in Charities Act 2011, s.3

²¹ Now in Charities Act 2011, s.4

A.2.1 Removal of presumption

The Act states that no purpose of a particular description is to be presumed to be for the public benefit.²² Previously it had been widely understood in case law that charitable purposes under the former first three heads (poverty, education, religion) were for the public benefit.

There has been much discussion by lawyers about the extent of this former presumption and the recent Upper Tribunal decisions confirmed that previous commentators may have overstated the nature of any presumption. The removal of the presumption may not therefore have had any direct impact in terms of altering what is and is not a charity.

However, for many people, the removal of the presumption was a key change made by the 2006 Act, and in this research we sought to capture any opinions expressed on this issue.

A.2.2 Charity Commission's objectives

The Act created new objectives for the Charity Commission, one of which is 'the public benefit objective which is *'to promote awareness and understanding of the operation of the public benefit requirement'*.²³

A.2.3 Statutory guidance

The Act required the Commission to issue guidance in pursuit of its public benefit objective, after consultation, and empowered it to revise the guidance from time to time.²⁴

The statutory guidance was contained within five publications which, following consultations, were issued in 2008:

- *Charities and public benefit: The Charity Commission's general guidance on public benefit* (ref PB1)
- *The prevention or relief of poverty for public benefit* (ref PB2)
- *The advancement of education for the public benefit* (ref PB3)
- *The advancement of religion for the public benefit* (ref PB4)
- *Public benefit and fee charging* (ref PB5).

Two principles of public benefit, broken into eight sub-principles are at the heart of the Commission's guidance:

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

2. Benefit must be to the public or a section of the public

- 2a The beneficiaries must be appropriate to the aims

²² Charities Act 2011, s.4(2)

²³ Charities Act 2011, s.14

²⁴ Charities Act 2011, s.17

- 2b Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted by:
 - 2b(i) Geographical or other restrictions; or
 - 2b(ii) 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.

However, as a result of the *ISC* case, principle 2b(ii) is deleted pending revision, publication PB5 (fee charging) is now withdrawn and PB1 was re-issued in December 2011 with the deletions that were directed by the Upper Tribunal – this took place just before the start of the fieldwork in this study. Revised versions are expected to be issued in summer 2012.

Perceptions of this guidance are a key theme in this study.

A.2.4 Trustees' duty to 'have regard' to the guidance

The guidance was given particular force because the Act required charity trustees to '*have regard to any such guidance when exercising any powers or duties to which the guidance is relevant*'.²⁵ This requirement applies to *all* charity trustees of charities in England and Wales (including excepted and exempt charities).

A.2.5 Public benefit reporting in the trustees' annual report

It has long been a requirement that the charity trustees of *registered* charities must prepare an annual report (TAR) each year²⁶ which must comply with regulations.²⁷

For financial years starting on or after 1 April 2008 (the date when the new definition of 'charity' took effect) the regulations imposed a specific requirement of *public benefit reporting* on all registered charities. The term *public benefit reporting* refers to two requirements: every TAR should explain the activities undertaken by the charity to further its purposes for public benefit; and the TAR must state whether the trustees have considered the Charity Commission's guidance on public benefit.

The impact of public benefit reporting has been investigated in a previous study²⁸, so it was not a major theme in this research. However, as described in the body of this report, study participants often made reference to the reporting requirement.

These five issues together create significant changes which the Commission refers to as the 'renewed emphasis on public benefit' as a result of the 2006 Act. This study investigated perceptions of the impact of these changes.

A.3 Other related issues

It is worth noting that many other changes in charity law occurred as a result of the 2006 Act. In this study, these were sometimes confused with the renewed public benefit requirement when charities spoke about the regulatory impact. These changes are explained below.

²⁵ Charities Act 2011, s.17(5)

²⁶ Now in Charities Act 2011 s.162

²⁷ Currently the Charities (Accounts and Reports) Regulations 2008

²⁸ Morgan G.G. and Fletcher N.J. (2011) *Public benefit reporting by charities*, Charity Commission

A.3.1 Removal of excepted and exempt charity status

An *excepted charity* is excepted from the requirement to register with the Charity Commission, but is otherwise subject to nearly all the requirements of the 2011 Act and is subject to the Charity Commission's jurisdiction. However excepted charities do not have to prepare a TAR so they are not required to undertake public benefit reporting.

An *exempt charity* is exempt from the normal jurisdiction of the Charity Commission on the grounds that other legislation provides oversight. Under the 2011 Act, many exempt charities have been brought under *principal regulators* which have many powers similar to those of the Charity Commission – for example the Higher Education Funding Council for England is responsible for the oversight of most English Universities on issues of charity regulation. Exempt charities normally prepare accounts and reports under other legislation so they are not subject to the public benefit reporting requirement under the 2011 Act.

Under the provisions of Section 30 of the 2011 Act, more charities are required to be registered than previously, though the legal changes are only partly implemented.

These changes have, however, had significant impact on certain sectors – for example most Protestant churches were excepted from charity registration, but from January 2009 this exemption was removed for those with annual incomes above £100,000. Whilst most of the smaller churches remain excepted at the present, this change has brought large numbers of churches into the process of charity registration. Similar issues have applied to Oxbridge colleges, students' unions, and armed forces charities, for example, which have joined the register.

Most aspects of the public benefit requirement (other than public benefit reporting) are applicable to excepted and exempt charities – in particular, their trustees must have regard to the Charity Commission's guidance. However, the process of charity registration (for formerly excepted charities) may have prompted them to address public benefit issues which they had previously overlooked, and once registered they are required to prepare a TAR including the requirement for public benefit reporting.

Strictly speaking, these changes are separate from the public benefit requirement, but participants frequently commented on these related issues which led them to focus on public benefit issues.

A.3.2 Creation of the Charity Tribunal

The 2006 Act created the Charity Tribunal, now the First-Tier Tribunal (Charity), to allow appeals and references on matters of charity law, not least decisions around public benefit. Decisions can be appealed from the First-Tier Tribunal to the Upper Tribunal (Tax and Chancery) which is where the recent major cases on the public benefit requirement have been heard.

Whilst the existence of the Tribunal does not in any way alter the public benefit requirement, it adds new focus by creating a vehicle for individual charity appeals and for references by the Attorney General and (in the Upper Tribunal) judicial reviews in this area. The Tribunal thus brings public benefit issues into much sharper focus than in the past where cases of charity law only came before the courts occasionally.

Many participants commented that the reporting of the 2011 Tribunal cases were significant factors in shaping the understanding of public benefit issues.

Appendix B Study approach

In the light of the changes outlined in Appendix A, the Charity Commission was keen to gain further understanding of perceptions, opinions and experiences in relation to the renewed emphasis on the public benefit requirement; a research aim for which a qualitative approach is well suited. We therefore chose to obtain our data in two ways:

- *Semi-structured interviews* with eleven 'key informants'; people who were judged to have a good overview of current trends in the charity field. They included chief officers of infrastructure and membership organisations; specialists in charity law including the Charities Act 2006 specifically; and others occupying prominent roles within the charity sector. They constituted a 'purposive sample' of people chosen not only for their individual characteristics but also chosen such that, when taken together with other informants, we could expect to obtain a wide range of opinions and expertise. A list of interviewees can be found in Appendix C.
- *Workshops* with charity chief officers, trustees and their professional advisers held in Cardiff, London and Sheffield. These were advertised via charity infrastructure and membership bodies and a total of 28 people participated in them. Workshops were structured around two broad themes: awareness of the public benefit requirement and consequences of the public benefit requirement. They were co-facilitated by two members of the study team who had also conducted key informant interviews.

Both the interviews and workshops were conducted as semi-structured discussions, using a topic guide to shape the discussion (see Appendix D).

Following fieldwork (interviews and workshops), data was analysed by the study team (the report authors) using iterative and cross-checking methods to identify emergent themes which responded to the initial study questions. Our focus was on identifying themes and insights rather than, as in a quantitative survey, absolute numbers sharing views and perceptions.

We found a wide range of knowledge, experience, perceptions and views which are set out in Sections 3, 4 and 5. Two points about the findings should be noted. First, where we were able to discern specific patterns in our data (for example because they related to a particular sub-sector of the charity field) we have pointed this out explicitly. Second, our findings inevitably have some bias in that they were obtained from individuals who were sufficiently interested in the public benefit concept and the public benefit requirement to be motivated to take part in the study.

Appendix C List of interviewees

Professor Nicholas Deakin

Liz Dyer, Small Charities Coalition

David Emerson, Association of Charitable Foundations

Sir Stuart Etherington, National Council for Voluntary Organisations

Win Griffiths, Wales Council for Voluntary Action

Cath Lee, Small Charities Coalition

David Membrey, Charity Finance Group

Lord (Andrew) Phillips of Sudbury

Ann Phillips, Stone King LLP (and Chair of the Charity Law Association)

Dr Andrew Purkiss OBE (former Board Member of the Charity Commission)

William Richardson, The Headmasters and Headmistresses Conference

An additional, short interview was held with the leader of an organisation concerned with religious issues who is not named at their request.

Workshop participants

Three workshops held in Cardiff, London and Sheffield attracted 28 participants including charity chief officers, trustees and their professional advisers.

Appendix D Topic guide for interviews and workshops

The interviews and workshops were semi-structured. We used the questions below to guide our discussions. However, we sought to encourage rounded discussions where participants could speak freely and follow their own ideas.

Context

1. Could you very briefly explain your role/your work/the organisation you represent and what has been your main involvement/interest in the issue of and the renewed emphasis on public benefit (just in a couple of sentences)?

If I said to you, what do you feel has been the impact of the renewed emphasis on public benefit, what would be your gut reaction?

Awareness

Can we begin with some general questions about awareness of the public benefit requirement?

2. Do you think there has been a shift in awareness, amongst charities and their trustees, of the public benefit requirement following implementation of the Charities Act 2006? If so, what is the nature of this shift, and what explains it?

Prompts if needed:

- (a) Has the change in awareness been big or small?
 - (b) Do you see this change in awareness of public benefit as good or bad?
 - (c) What do you think is the cause of this change in awareness (dissemination of Commission guidance, media coverage, Charity Tribunal etc)?
 - (d) If charities are still unaware of the requirement, what are the main reasons for this?
3. Overall, how well do you feel that people involved with charities – primarily trustees, but also staff, volunteers and supporters – understand what it means to say that a charity must be ‘for the public benefit’?

Prompts if needed:

- (a) Perhaps some people feel it is an issue that affects some charities, but not others?
- (b) Do you think that levels of awareness differ between:
 - (i) charities in different sectors
 - (ii) larger and smaller charities?

Behaviour

Now I'd like to ask what, in your opinion, has changed as a result of the public benefit requirement for individual charities. It would be very helpful here if you are able to give some specific examples.

4. Do you think that the renewed emphasis on public benefit has led charities to do things differently (since the 2006 Act took effect in April 2008)? If so, can you give some examples?

Prompts as needed:

- (a) Any cases where charities have actually changed their focus on their beneficiaries or what they are doing for them?
 - (b) Any cases of charities changing the criteria on who can access their services (e.g. to be sure that the range of potential beneficiaries is clearly wide enough to be classed a 'section of the public')? E.g. fee charging charities.
 - (c) Or is it more of a technical issue which just affects those running charities? Has the impact been mainly on trustees? Or staff? Or has it been more an issue for professional advisers – for example when supporting the formation of new charities or advising on preparation of trustees' reports and accounts?
 - (d) Have you seen any instances of charities feeling obliged to do things they do not really see as essential or desirable because of perceived concerns around the public benefit requirement?
 - (e) Perhaps you know of charities that have even had fears about losing charitable status? If so, how were these concerns addressed?
5. You will recall that under the 2006 Act the Charity Commission was *required* to issue formal guidance on the public benefit requirement and that trustees have a *duty* to 'have regard' to it. Without getting into a detailed discussion about the content of the guidance, what do you feel has been the role of the Charity Commission's formal guidance on some of the behaviour change?

Prompt: If needed:

- (a) Do people read it and understand it?
 - (b) Has it clarified things for charities or, on the other hand, created confusion?
6. One of the things the Charity Commission would like to get out of this research is a better understanding of how best to support charities to deal with the public benefit requirement. Overall, how effectively do you think the Commission has enabled trustees to meet their legal duties in relation to public benefit so far? How could this be improved, if at all?

Prompt: If needed:

- (a) What more is needed, if anything, to boost awareness of, and adherence to, the public benefit requirement in the charity sector?

Consequences

Now can we think more generally about the consequences of the public benefit requirement for the charity sector?

7. What do you see as the consequences of this renewed emphasis on public benefit for the sector as a whole both now and in the future?

Prompts:

- (a) Has it affected charities' transparency and accountability at all, for example by making charity reporting on public benefit more explicit?

- (b) More broadly, has it clarified general understanding, on the part of the public as well as charity trustees, about the boundary between charitable and non-charitable organisations, or not?
 - (c) Do you feel it has affected the registration process for new charities? If so, in what ways? What have been the consequences of this?
8. What, if any, expectations did you have when the renewed emphasis on the public benefit requirement was introduced in the Charities Act 2006? To what extent have these been realised?

Prompts:

- (a) Do you feel the Act, and the Commission's implementation of it, has been sufficiently clear on the public benefit requirement for charities?
- (b) *If they feel it has not been sufficiently clear* – what do you feel should be done?
- (c) Are there big differences, do you feel, between the *intended* consequences and the *actual* consequences of the changes brought about by the renewed emphasis on public benefit?

Conclusion

9. Are there any other issues around the public benefit requirement which you feel we should consider in this study?