

THE REVIEW OF THE
REGISTER OF CHARITIES

Charities for the Relief of Unemployment

March 1999



The Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public confidence and trust. Most charities must register with the Commission, although some special types of charity do not have to register. There are some 180,000 registered charities in England and Wales. In Scotland the framework is different, and the Commission does not regulate Scottish charities.

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

Contents

About this publication	2
Unemployment	2
Tests for charitable status	2
Further information	2
Annex - Guidance on the charitable status of bodies for the relief of unemployment	3
Charities relieving unemployment	3
Public benefit	3
Acceptable activities	4
New charitable objects for the relief of unemployment	5
Existing charities	5

About this publication

1. This publication summarises the Charity Commission's views on the extent to which the relief of unemployment is charitable. We have considered this as part of our Review of the Register of Charities. We are very grateful to all those who contributed to the public consultation that has led to the formation of our detailed guidance in the Annex.

Unemployment

2. Many charities already help unemployed people. However charities have not been able to have an express object of helping unemployed people. Instead their objects have been advancing education, relieving poverty, or other long established charitable aims.
3. The courts recently recognised that securing gainful activity for unemployed people is charitable in its own right. This publication sets out the criteria which will enable us to accept for registration as charities organisations which aim to relieve unemployment. It also sets out a list of those activities in which charities aiming to relieve unemployment may engage.

Tests for charitable status

4. We have concluded that, in order to be charitable, an organisation for the relief of unemployment will need to demonstrate that:
 - it is set up for the primary purpose of relieving unemployment for the public benefit;
 - its activities are directed to the relief of unemployment generally or to a significant section of the community in a way which can be demonstrated objectively; and
 - any benefit to private interests must be strictly incidental to its primary purpose.
5. Within this an unemployment charity may engage in all or any of the following activities:
 - the provision of advice and training to unemployed individuals concerning employment, self employment and the establishment of co-operative enterprises and the provision of CV writing, job search and job club facilities for them;
 - the provision of practical support to unemployed people by way of accommodation, child care facilities or assistance with travel;
 - the provision by charities of land and buildings at below market or subsidised rents to businesses starting up;
 - the provision of capital grants or equipment to new businesses;
 - the payment by a grant-making charity to an existing commercial business to take on additional staff from unemployed people.

We will develop this list of acceptable activities in line with our experience of unemployment charities.

6. A possible object which covers these activities is:
"the relief of unemployment for the public benefit in such ways as may be thought fit, including assistance to find employment".

Further information

7. If you are interested in setting up a charity to relieve unemployment, please contact us through our website www.charitycommission.gov.uk.

Annex - Guidance on the charitable status of bodies for the relief of unemployment

Charities relieving unemployment

- A1.** A charitable organisation which relieves unemployment must satisfy all the following criteria:
- it must be set up for the primary purpose of relieving unemployment for the public benefit;
 - its activities must be directed to the relief of unemployment generally or to a significant section of the community in a way which can be demonstrated objectively; and
 - any benefit to private interests must be strictly incidental to its primary purpose.
- A2.** The circumstances in which these criteria will be satisfied will vary from organisation to organisation. We will therefore need to know from each applicant for registration how the promoters consider that the organisation satisfies the criteria.
- A3.** Organisations will therefore need to be able to show a clear link between the criteria in A1 and their proposed beneficiaries. This reflects the court's reaffirmation in **Joseph Rowntree Memorial Trust Housing Association v Att.-Gen [1983] 1 All ER. 288** that any assistance had to be directed to the relief of a charitable need and that the level of assistance should be commensurate with that need. This will normally involve showing that the organisation is set up for the benefit of persons seeking employment but who are unable to obtain work because of one or more of their lack of job opportunities, their youth, age, infirmity or disablement, poverty, social or economic circumstances. In some cases it may be that the potential beneficiaries' situation is so bad that they are socially excluded and not actively seeking work. We will however clearly exclude from the relief of unemployment cases where a potential beneficiary is not currently unemployed but simply wishes, for example, to become self employed.

Public benefit

- A4.** The criteria set out at A1 above reflect public character as an essential feature of charity. They also acknowledge, however, that the conferral of private benefits on individuals does not disqualify an organisation from charitable status provided that such benefits are truly incidental to the attainment of a charitable object. Whether any private benefits arise only as a necessary means of achieving an overall charitable purpose will have to be determined in each case. For example, in **IRC v Oldham Training and Enterprise Council [1996] STC. 1218** the court decided that the provision of support services and advice to new businesses allowed the organisation to promote the private interests of individuals regardless of whether there would be any consequential benefits to the wider community. Consequently, the benefit to the community was too remote from this activity to be charitable.
- A5.** The judge in the Oldham TEC case regarded the relief of unemployment within the "fourth head of charitable purposes" (within Lord Macnaghten's classification in **Income Tax Special Purposes Commissioners v Pemsel [1891] AC 531**). Under this "head" of charity benefit to the community is not assumed and must be proved. Unemployment charities need therefore to demonstrate that they are tackling unemployment either generally or for a significant section of the community. This should not exclude smaller locally based groups who are already active in providing support to unemployed people within their communities from seeking charitable status as an unemployment charity. While organisations set up to relieve unemployment in particular roads or small estates will not qualify as they would not encompass a significant section of the public, many groups however operate over a slightly wider geographical area or district which would normally be sufficient to satisfy this requirement. A number of the activities listed at A8 below will fall well within the capabilities of smaller locally based organisations.

A6. It may be that the people living in a particular area of high unemployment belong predominantly to a particular racial, ethnic, religious or other group, and this group will inevitably be the main beneficiary of the organisation's activities. This is unobjectionable in terms of charity law **as long as** the benefits are not additionally **restricted** solely to members of that group. This would constitute a "class within a class", and is too small a beneficial class for charities set up to relieve unemployment.

Acceptable activities

A7. The list of activities which we currently regard as acceptable is set out below and we have coupled these with some points which promoters and trustees will need to bear in mind when formulating an application for registration as a charity or considering whether or not to engage in any additional discrete area of activity. The activities are:

- the provision of advice and training to unemployed individuals concerning employment, self employment, and the establishment of co-operative enterprises and the provision of CV writing, job search and job club facilities for them - *for the level of private benefit to be acceptable trustees of charities which provide "one to one support" to the newly self employed need to have a mechanism for the withdrawal of that support, for example, on a time limited or income achieved basis;*
- the provision of practical support to unemployed people by way of accommodation, child care facilities or assistance with travel - *trustees of charities which provide financial support of this type will need to ensure that any sums paid are linked to the costs of the support provided. They will also need to have a mechanism for the withdrawal of that support, for example, on a time limited or income achieved basis or upon the completion of a previously unemployed person's probationary employment period;*
- the provision by charities of land and buildings at below market or subsidised rents to businesses starting up - *trustees will need to be able to explain how they will determine whether or not the provision of land on favourable terms is appropriate in a particular case so as to demonstrate the requirement for public benefit. They will also need to be able to show that they have considered whether a lease or licence would be most suitable to provide the kind of assistance required, the terms of that lease or licence and how to prevent tenants who no longer qualify as beneficiaries from obtaining security of tenure under Part II of the Landlord and Tenant Act 1954.*

In addition the trustees' consideration should extend to the possibility of prohibiting the assignment of any lease and for its surrender in certain circumstances, such as the tenants ceasing to qualify as beneficiaries. The trustees will need to address the protection of the charity's interest in the property in the event of a tenant's insolvency. Trustees will also need to consider the mechanism for increasing rents over the years in relation to a tenant business's increasing ability to pay more up to a market rental.

*We would regard any such dispositions to "business start ups" as being to beneficiaries of the charity, in furtherance of its objects. They will therefore be covered by sub-section 36(9)(c) of the Charities Act 1993. This means that they will not have to be authorised by order of the Commissioners (see also the guidance in our publication *The Promotion of Urban and Rural Regeneration (RR2)*).*

The trustees will need to consider how any land is to be treated for accounting purposes ie whether it will fall to be treated as functional property or investment property. This might not be clear if, for example, the property has been used for both purposes.

- the provision of capital grants or equipment to new businesses - this includes providing a wide range of equipment to new businesses. Trustees of charities which provide such support will need to ensure that it is suitable for the business in question and that no warranty is given that such support will be repeated. Of course as with any of the activities, support will not be available under this category to individuals who have quit employment to start their own businesses - by definition this could not amount to the relief of unemployment.
- the payment by a grant-making charity to an existing commercial business to take on additional staff from among unemployed people - trustees of charities will need to agree with the commercial business how to calculate the economic cost of employing and training such staff. The trustees must not pay more than that economic cost. We accept that the economic cost in such cases may vary considerably given the disparate nature both of commercial employers and of the jobs which they will provide.

A8. We expect to develop this list of acceptable activities in the light of the experience. Trustees of any charities set up for the relief of unemployment who wish to undertake “new” activities which are not included in this list (as amended from time to time) must approach us for (free) formal advice under section 29 of the Charities Act 1993 before undertaking them.

New charitable objects for the relief of unemployment

A9. Organisations may wish to adopt a single object to cover a number of general strands in their approach to relieving unemployment. We suggest this could be:

“The relief of unemployment for the public benefit in such ways as may be thought fit, including assistance to find employment.”

A10. We do not want to be over prescriptive. Individual organisations, which do not wish to adopt such a “broad brush” approach, may prefer to develop alternative formulations. We will be happy to consider these.

Existing charities

A11. There is no need for any existing charity to change its objects as a result of this guidance. If however the trustees of an existing charity do want to change the objects of that charity then please contact us through our website www.charitycommission.gov.uk.

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