

THE REVIEW OF THE  
REGISTER OF CHARITIES

## Museums and Art Galleries

*August 2002*



## 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.

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## About this publication

1. Museums and art galleries form a vital contribution to the nation's culture and heritage. From the national institutions to the regional and local museums and art galleries, they are popular and highly valued. But besides being places of education, they are there to be enjoyed. The Charity Commission conducted its review to promote discussion and exchange ideas about the educational value of museums and art galleries and practical issues arising when considering their charitable status.
2. We are keen to encourage the philanthropy of donors and the verve and acumen of the public and private sectors, on which the arts sector in large part is reliant. Our guidance should not be seen as detracting from our encouragement even where we set out issues with regard to independence and private benefit.
3. This publication provides guidance, in particular our views on the need for a museum or art gallery to satisfy a criterion of merit in order to be recognised as charitable. We are very grateful to all those who contributed to the public consultation that led to this guidance.
4. This guidance does not cover collections which are dedicated solely for research purposes nor collections which are dedicated to the advancement of political ideas and propaganda.
5. This guidance does not make any comment about the number of museums and art galleries in any one area or the number of museums and art galleries concerned with the same subject. These matters are for each organisation, though clearly they may wish to consider if their charitable purposes could be achieved more efficiently or effectively by working together as one to avoid duplicating effort and wasting resources.

## Objects

6. The establishment and maintenance of a museum and/or art gallery for the benefit of the public is a charitable object. The promotion of art and the advancement of education are also both clearly charitable objects. The expressed object must accurately reflect the purposes of an organisation. An organisation might therefore express its object in any of the following ways<sup>1</sup> depending upon its purposes:
  - "to establish and maintain a museum and/or art gallery for the benefit of the public".
  - "to promote art by the establishment and maintenance of a [museum] [art gallery]".
  - "to advance education by the establishment and maintenance of a museum"<sup>2</sup>.
  - "to advance education in the arts by the establishment and maintenance of an art museum or art gallery"<sup>2</sup>.

## General requirements

7. We have concluded that in order to be charitable, museums and art for charitable status galleries will need to demonstrate that their collections or exhibits -

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1 or such other ways as accurately reflect the purposes to be carried out.

2 It would also be acceptable to state the object as the advancement of education or the promotion of art with a furtherance power to provide and maintain a museum or art gallery, as the case may be.

- (i) **are set up for the benefit of the public**, that is:
- they provide sufficient public access;
  - any private benefit gained by individuals is incidental and properly regulated;
  - they are not used for non-charitable purposes, such as trading<sup>3</sup>; and
- (ii) **they satisfy a criterion of merit**, that is, there is sufficient evidence that the collections and exhibits and the use made of them either will educate the minds of the public whom the museum or art gallery intends to serve, or at least will be capable of doing so. What is conveyed to the public is an idea, emotion or experience which is enlightening and which is, or is capable of being, of value to them.

## Art

8. We take a broad and inclusive view of the meaning of art in considering whether the criterion of merit is met. By 'inclusive' we mean liberal and open. Art includes abstract, conceptual and performance art. Media for the communication of art may include computer, video and multi-media.

## Gauging merit

9. If the intrinsic characteristics of an exhibit or a collection raise an "experts" assumption of merit, our staff will be able to ascertain the merit criterion without the need for expert evidence; the circumstances dictate that the criterion of merit is met. Examples of organisations which fall within this "obvious" band or category are those holding collections of established and acknowledged artists. Where there is controversy among informed opinion over the merits of a particular work, artist or collection, we will take an inclusive view.
10. A museum or art gallery is likely to be registered under the Registration Scheme for museums and art galleries in the United Kingdom which sets out minimum standards for museums and art galleries in terms of collection, care, public services and management. Museums and art galleries might also be members of the Museums Association or other umbrella bodies connected with the museums and arts sectors. Museums and art galleries which are registered under the Registration Scheme will fall within the "obvious band".
11. There may be other cases where our staff would be able to ascertain whether the merit criterion is met without the need for expert evidence. In these cases where the collection concerned does not obviously meet the criterion of merit, there will be some further attributes or material information which will be sufficient to satisfy us that the criterion is met. An example would be institutional membership of the Museums Association referred to above. Again, where there is controversy among informed opinion over the merits of a particular work, artist or collection, we will take an inclusive view.
12. Where an application is not immediately obvious or ascertainably obvious, we must rely on expert evidence. The qualification and selection of experts is dealt with in paragraphs A9 to A14 of Annex A to this document.

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<sup>3</sup> We have issued practical guidance in our publication **CC35: Charities and Trading**. See also later in this document at paragraph A31. Also, the Inland Revenue has produced a booklet which explains their tax exemptions on non-charitable trading. They can be contacted at IR Charities Inland Revenue, St John's House, Merton Road, Bootle, Merseyside, L69 9BB, Tel: 0151 472 6293/4 (leaflet IR2001 requests), Tel: 0151 472 6043/6046 (charity trading enquiries), 0151 472 6036 (general enquiries).

## Effect of this guidance

- 13.** There should be no need for existing charities to change their objects as on existing charities a result of this guidance. However, trustees should review the museum's or art gallery's methods of operation. In particular the trustees should note the merit criterion to which we have referred and what we say in our guidance in Annex A concerning:
- public access; and
  - the involvement of individual and other bodies where there may be a conflict of interest such as where the independence of the charity trustees is restricted or where private interests may predominate.

## Effect of this guidance on grant-making charities

- 14.** This guidance has relevance for charities that make grants to museums and/or art galleries. Such charities include those established with wide charities charitable objects and general grant-giving powers. In order to satisfy itself that it is fulfilling charitable purposes, any charity in this position should take this guidance into account when giving grants to or purchasing property for museums and art galleries.

## Annex A - Further guidelines

### General guidelines

- A1.** Upon receiving an application from a museum or art gallery for registration as a charity we will ask the following questions and apply the following principles:
- Are the collections or exhibits set up for the benefit of the public? That is:
    - (a) there must be sufficient public access (see later at A19);
    - (b) any private benefit gained by individuals must be incidental and properly regulated (see later at A37); and
    - (c) they must not be used for non-charitable purposes, for example, predominantly trading (see later at A34).
  - Do the collections or exhibits satisfy a criterion of merit?

### Identifying merit

- A2.** The criterion of merit is expressed in paragraph 7 above. In the case of a museum not concerned with art, for example a science museum, we need to be satisfied that the collection(s) and the use made of it/them educate the visitor, or is/are capable of doing so.
- A3.** In the case of an art museum or gallery, the educational benefit may take the form of broadening or deepening the minds of visitors or by developing their powers of insight, perception and appreciation.
- A4.** Our approach will not be prescriptive and the standards for identifying merit will be broad based and inclusive. They will include traditionally-based methods and innovative or experimental approaches. Work in any established media will be considered for registration.

### Obvious merit

- A5.** In considering applications for registration as a charity from museums or art galleries we may be able to find that the collection(s) and its/their intended use in exhibition to the public raise an assumption of merit. Where there is controversy among informed opinion over the merits of a particular work, artist or collection, we will take an inclusive view.
- A6.** Subject to the matters which generally arise upon applications, we will accept any museum or art gallery exhibiting collections of acknowledged artists; or any museum or art gallery which is registered under the Registration Scheme for museums and galleries in the United Kingdom administered in England by Re:source<sup>4</sup>, and administered in Wales by the appropriate body. We will ignore **ancillary** non-charitable activities carried out by museums and art galleries. By 'ancillary' activities we mean activities which are incidental and subservient to achieving the charitable object of the museum or art gallery concerned.

### Ascertainable merit

- A7.** If we cannot assume merit, it may be possible to ascertain the merit of the museum's work or intended work by other means, for example, by reference to its membership of the Museums Association or the Association of Independent Museums. Membership of other organisations may also be relevant. The merit criterion may also be ascertained by reference to applications made to Area Museums Councils and accompanying correspondence. Again, where there is controversy among informed opinion over the merits of a particular work, artist or collection, we will take an inclusive view.

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<sup>4</sup> whose formal name is the Council for Museums, Archives and Libraries.

## Neither obvious or ascertainable merit

- A8.** If we are unable to assume or ascertain that the merit criterion is met in the ways already described, it will be necessary to rely on the assistance of an “expert”, in order that we can properly satisfy ourselves that the criterion is met.
- A9.** In some cases the expert evidence may focus wholly or partly on the way in which the collection is exhibited to the public (including any interaction and outreach), in order to show that the method or process of exhibition in itself provides an educational benefit. In such cases, we may be able to accept the stated purpose as charitable even if the individual items exhibited do not have any particular intrinsic merit.
- A10.** If there is no method of exhibition which we can accept as educational, the expert evidence must enable us to satisfy ourselves that the exhibits or collections are of such intrinsic merit that their display without anything further would be sufficient to meet the criterion.

## The application for registration

- A11.** We would expect that an application for registration will be for registration accompanied by a statement from the promoters or trustees and/or the curator. This statement, which will tell us about the collection or collections and the educational use to be made of them and how they will be exhibited to the public, will assist us in determining whether the merit criterion is obvious or ascertainable.

## “Expert” evidence

- A12.** Where we need the assistance of an expert in order to be satisfied that the criterion is met, the expert must be suitably qualified.

## Qualifications of “experts”

- A13.** The essential qualifications for an expert are -

- (1) that by academic qualification or work experience (or both) relevant to the collection in question, the expert can show that he or she is competent to speak authoritatively on the collections which are the subject of application for registration, and the merit criterion.
- (2) he or she must in material terms be independent, that is, impartial. He or she must be able to speak objectively in a non-partisan way about the collection; this means that he or she must have no material interest or family connection with the promoters, trustees, the organisation or the collection. This does not of course prevent an expert from taking a committed view on the artistic or other merits of the collection he or she is assessing<sup>5</sup>.

- A14.** Without the need for a relevant academic qualification, museum staff, such as curatorial staff, having relevant working experience with collections of the type concerned may act as “experts”. In all cases a short description of their qualification or experience should accompany the application<sup>6</sup>.

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5 Being the creator of a work or works of the same type as a collection under consideration may be accepted as qualification or authority and competence. But we would ensure that he or she was not partisan. With regard to the remote possibility that two or more creators of the same type of work may confirm the merit of each other's work, the opinion/advice would not be independent within the above definition.

6 The curator of a collection under consideration would not, of course, be independent.

## Selection of “experts”

- A15.** Subject to these constraints, the promoters/trustees of the museum will have the freedom to select an expert and we will normally be able to accept his or her report without anything further being required. In cases of controversy we will take an inclusive view. We reserve the right to verify the suitability of an expert selected by the promoters.
- A16.** For verification, we would seek the views of an appropriate body such as Re:source or the relevant Area Museums Council. We are concerned to ensure that we hear from the right expert for the collection or collections being considered and in the case of a more local museum, a local expert may be more appropriate than a national expert and provide the more useful opinion.
- A17.** We do not envisage having to intervene in this way except in the rarest cases; but on every application we will reach our own conclusions on merit, based on the criterion and we will take the views of the promoter and the independent expert advice into account in doing so.

## New museums and art galleries

- A18.** In the case of a museum or art gallery being planned, the organisation will not necessarily have a collection. This will not be a bar to registration as a charity. We will require the production of material which demonstrates that the collection when acquired and the use to be made of it will meet the merit criterion and that the proposed activities are accurately reflected by the governing document of the organisation.

## Public benefit and public access

- A19.** The question of public benefit will in the majority of museums and art galleries be confined to determining whether the exhibition of the collection or collections of the museum in question meets the criterion of merit because, generally, museums and art galleries are accessible to the public at large. We take the view that access is fundamental to charitable status. Arbitrary restrictions on access unconnected with the material or purposes of the museum or art gallery are unacceptable<sup>7</sup>.
- A20.** Whilst there is no minimum requirement for “opening hours”, the principle to be adopted is that the collections should be available frequently enough to cater for all types of visitors. This includes being open at weekends as well as normal business hours, Monday to Friday. If a museum or art gallery cannot stay open every day, for example for reasons of cost or inadequate staffing, its governing body must decide the days on which it will close. Subject to circumstances outside their control restricting their operation, we would expect them to open on the days when members of the public are more likely to be able to visit.
- A21.** We accept that good reasons can be advanced for opening on fewer days but the fewer those days are, the greater the concern that public benefit is not present. As a matter of policy we would expect even small museums and art galleries to be open for at least half of the year.
- A22.** Where the trusts or trustees impose any restriction on public access, the restriction must enable the better achievement of the charitable purpose and only be imposed to the extent necessary (and no further) in the interests of furthering the charitable object. For example, physical access may be restricted for reasons of security of property, lack of resources, the condition of and need for preservation of the collections or for the better administration of the charity.

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<sup>7</sup> It is assumed that, like all public institutions, charitable museums and art galleries will comply with legislation ensuring inclusiveness such as the race relations and disability discrimination legislation.

**A23.** In considering an application for registration as a charity, we will ask for details of the intended access provisions where this is not apparent in the documents provided. Where there is an express limitation of public access, we will enquire into the reasons for the limitation. If unjustified restrictions are expressed in the trusts they could taint an otherwise charitable purpose.

## Membership structure

**A24.** In exceptional cases there may be a need for a restriction on physical access by the public which may be met by affording controlled access through a membership structure; for example, problems of security and/or the condition of the collections and exhibits. Where a membership structure is imposed we will make enquiries to ensure that the only reason for the imposition is to further charitable purposes. Furthermore, we would be looking for express safeguards to ensure that the membership was restricted only to the extent necessarily dictated by the characteristics of the collection concerned and the purposes being furthered; and that the museum's rights to refuse and terminate membership were subject to oversight and exercisable only for good cause.

## Loans of collections

**A25.** There are three other points about physical public access. The first is that where the charity itself cannot provide for physical public access due to lack of resources, we will enquire of the promoters/applicants what their attitude is to promoting public access by loan of the collections and exhibits to institutions which do have the resources.

## Charging for admission

**A26.** The second point is charging. Whilst it is the Government's policy that museums and art galleries should afford free access, we recognise that some may have to charge. Where the application is silent, we will enquire whether charges are to be made and will apply the principles with regard to charging which are set out in our publication **RR8: The Public Character of Charity**. We will therefore look to see that the charges are reasonable, appropriate to the overall purposes of the organisation and set at a rate which balances the current and future activities of the organisation and are not set at a level which excludes a substantial proportion of the public.

## Storing of exhibits

**A27.** The third point is the gathering together of collections which exceed the exhibition capacity of the museum or art gallery so that a part or parts are put into storage. There is no objection to storage of exhibits for good reasons but there comes a point where "storage" becomes hoarding if there is no reasonable expectation that they can or will be exhibited. Where a museum or art gallery runs into this sort of difficulty we would expect the trustees to consider whether their holding of such collections is for the public benefit if access to the public, or interested sections of it, is in practice negligible or non-existent<sup>8</sup>.

## Other means of access than physical

**A28.** Physical access is not the only way that the public character of a charity can be measured although it is the most obvious and if physical access is not possible, the museum or art gallery must find other ways of satisfying the public benefit test such as the internet; publication of videos or literature; lectures; the loan of exhibits to organisations which could exhibit them to the public (subject to there being nothing in the trusts which forbid this); and TV and radio coverage.

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<sup>8</sup> And as this document makes clear, we accept access is possible by a variety of means, not necessarily involving either loan or permanent public exhibition.

**A29.** These other methods of affording access are indicators of possible appropriate means to use the collection or collections to benefit the public and do not provide an exhaustive list. We will consider any other appropriate means of satisfying the public benefit requirement.

## Access details in annual reports

**A30.** We would echo our recommendation made in our publication **RR9: Preservation and Conservation** that it would be good practice for museums and art galleries which are charities to disclose, either in their annual report or elsewhere:

- the numbers of people who visit the museum or art gallery and, where appropriate, the numbers who have enquired but been unable to visit;
- the arrangements to publicise either nationally or within the locality;
- where physical access is limited or not available, the justification for continuing such policy, with details of alternative methods of exploiting the collection or collections to benefit the public and attempts to lend collections to other bodies for exhibition to the public (subject to there being nothing in the trusts preventing the loan); and, following on
- where there is a membership, the numbers of people who have applied for membership and the numbers refused with reasons. A statement of the membership policy will also be helpful;
- if there are exhibits which have not been displayed to the public, an explanation of the problems and any plans for display in the future.

**A31.** Where such information is not in the report itself, we recommend that the report should explain how to obtain the document which contains the information.

## Independence

**A32.** Ideally we want to see a body which is established with independent trustees, who are subject to no conflict of interest; and which is provided with sufficient funds to enable it to obtain its own professional advice and to develop freely its own views and policies. We expect to see that any funding or leasing arrangements preserve the trustees' fundamental discretion as to the provision of services, and do not require that the trustees simply give effect to policies and wishes of a non-charitable nature.

**A33.** If a museum or art gallery is to be charitable, its purposes must be directed solely towards education or promoting art, as the case may be, in a way which the law accepts. Conditions laid down by providers or benefactors of newly established organisations may raise concerns about the independence of the governance of those organisations and private benefit accruing to individuals who are not proper objects of charity but this does not mean that we will refuse registration where we see a potential conflict of interest. Where the provider of a collection wants to continue involvement in the governance of the organisation, we will expect the applicants to demonstrate that the involvement is in the interests of the charity and that any conflict of interest situation can and will be managed<sup>9</sup>.

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<sup>9</sup> Those in the Commission considering the application for registration as a charity will apply the principles, insofar as they are appropriate, explained in our publication **RR7: The Independence of Charities from the State**.

## Trading

- A34.** We recognise that museums and art galleries are being encouraged to become self financing as far as possible. Where a museum or art gallery is a charity and has or is to have a trading company, we expect all arrangements between it and its trading company to be negotiated at arm's length. Where we are satisfied that the purpose of an organisation is charitable, but it is conducting trading activity outside the permitted extent, we will assist it onto the register by offering advice so that its arrangements meet charity requirements as well as the requirements of other regulators<sup>10</sup>.
- A35.** We also recognise that museums and art galleries may wish and are encouraged to work with the tourism sector. We see the museum or art gallery as co-operating with a view to furthering education or promoting art and the co-operation represents a way of reaching a wider public.

## Secondment of staff

- A36.** Museums and art galleries also "export" their resources such as the seconding of experts to other museums and art galleries at home and abroad to instruct and pass on knowledge. We recognise that by so doing, the secondees train and develop others better to maintain and exhibit collections of educational, artistic or other merit which is of public benefit. Objects of the "seconding" museum or art gallery may be framed to make such an activity permissible. However, objects which are confined to the exhibition of a collection in a specified local area will not allow the secondment of its curator to another museum without a commensurate return to the museum (which may be in the form of the training and experience he or she receives).

## Funding and conditional grants

- A37.** We recognise that museums and art galleries like many other charities are usually dependent upon external funding. This represents no problem. Such funding by a provider/benefactor can be by way of grant or by entering into contractual arrangements with the funder. We will enquire where grant conditions or contractual arrangements are such that the governing body of the museum or art gallery is restricted in its independence of operation. We will enquire to the extent necessary in order to satisfy ourselves that any restriction is not imposed for a purpose which is non-charitable<sup>11</sup>.

## Public versus private benefit

- A38.** Concern over private benefit being derived from a gift arises when a provider/benefactor will continue to be directly interested in the organisation or its collections or exhibits. The common thread running through the issue of public versus private benefit is that a charitable museum or art gallery, like any other charity, must carry out exclusively charitable purposes and the introduction of a non-charitable purpose represents a fundamental problem. We do not examine the motive for the gift. What we look at is the actual purposes that are being or will be carried out in accordance with the provisions of the governing document.

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<sup>10</sup> We have issued practical guidance in our publication **CC35: Charities and Trading**. See also footnote 3 above.

<sup>11</sup> We will apply the principles so far as relevant which are set out in our publication **RR7: The Independence of Charities from the State**.

**A39.** We are keen to encourage philanthropy. We accept that the continued involvement of providers/benefactors in collections and exhibits which they give can be a positive benefit and enhance the work of the museum or art gallery concerned. This may also be the case with members of the family of a donor, depending upon the circumstances. If a provider/benefactor of a collection wants to continue an interest such that some private benefit may arise, registration will not necessarily be rejected but we will want to satisfy ourselves that the benefit falls within the principles which we have already settled<sup>12</sup>.

**A40.** Where individuals who are not objects of the charity are benefiting, the general principle which we apply and regard as law is that a private benefit (that is a benefit received by an individual other than by way of being an object of the charity) is legitimately incidental if it arises as a necessary but incidental consequence of a decision by the trustees which is directed only at furthering the organisation's charitable purposes and the value of the benefit is reasonable. The benefit is ancillary but subordinate to the charitable purpose being achieved. It follows that the benefit arises or occurs as a result of administration of a charity but that the method of administration giving rise to the benefit is an appropriate way of carrying out the charitable purpose concerned.

**A41.** Examples of where we will enquire if and insofar as the application is silent, is where:

- The provider/benefactor makes a gift of a collection or exhibits reserving rights or interests; for example, if a collection is subject to the right to "use" it or certain of the exhibits on certain private occasions<sup>13</sup>.
- The provider/benefactor provides for a remunerated position for himself or herself and/or a member of his or her family.
- Collections or exhibits are merely loaned to the organisation. We will want to satisfy ourselves that if any benefits are gained by the provider/benefactor, they are incidental. We will therefore make enquiries, for example, concerning the maintenance/preservation and insurance arrangements as well as any other terms of the loan.
- The provider/benefactor will display one or more of his or her own works.
- In any of these examples, whilst the principles applied remain the same, the facts are complicated where the collections or exhibits are the work of a living artist or if the artist has died and the private benefit passes to his or her estate or family. This problem is further exacerbated if the individual concerned or family members is or are also to be trustees.

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<sup>12</sup> We will apply the principles, insofar as they are appropriate, explained in our publication **RR8: The Public Character of Charity** [paragraphs 16 and following and in Annex C] and **RR9: Preservation and Conservation**.

<sup>13</sup> However, we accept that it is open to the provider/benefactor to give less than his or her whole interest in any property so that if no ulterior purpose is intended, the gift may be accepted as charitable.

## Annex B - Summary of the relevant law relating to museums and art galleries

### Education

- B1.** The law of charity, and within it the concept of education, is a developing one. It is accepted that:
- “the educated man’s ideas about education are not static, but moving and changing. Both change with changes in ideas about social values. In particular in applying the law to contemporary circumstances it is extremely dangerous to forget that thoughts concerning the scope and width of education differed in the past greatly from those which are now generally accepted”*<sup>14</sup>.
- B2.** The court has also accepted that education is not confined to formal instruction and training<sup>15</sup>.
- B3.** Education, so far as charity is concerned, extends to “the improvement of a useful branch of knowledge and its public dissemination”<sup>16</sup>. Another description of education is “the acquisition of knowledge and skill....both by abstract study and by the exercise of the art....and they are capable of covering both the discovery of new knowledge, which is the fruit of research, and the learning of existing knowledge either by students who are qualifying or by [the qualified] who are desirous of improving their knowledge and skill...”<sup>17</sup>. Education, (that is, non-physical education) therefore, is understood by the court to involve a process of edification of the mind, that is, a building up or cultivation of the mind.
- B4.** Within charity it is accepted that education is a wide term but it must enlighten, train or instruct the mind in useful knowledge. Education extends to the provision of opportunities for the public to examine the work of craftsmen who lived long ago<sup>18</sup> and to learn about their art and practices<sup>19</sup>.

### Education and art within the ambit of charity

- B5.** The court has long accepted that museums may be charitable as advancing education<sup>20</sup>.

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14 Per Lord Hailsham in *IRC v McMullen* [1981] AC 1, 15.

15 *Re Shaw’s Will Trusts* [1952] Ch. 163; *Re Webber* [1954] W.L.R. 1500. And see also *Royal Choral Society v IRC* [1943] 2 All ER 101.

16 *Incorporated Council of Law Reporting for England and Wales v Attorney General* [1972] 1 Ch. 73, 102.

17 *Royal College of Surgeons of England v National Provincial Bank Ltd.* [1952] A.C. 631.

18 *Re Cranstoun* [1932] 1 Ch. 537.

19 *CIR v White (re Clerkenwell Green Association for Craftsmen)* [1980] I.R. 155.

20 *Thompson v Shakespeare* [1859] Johnson’s Reports 612; [1860] 1 De G.F. & J. 399; *British Museum v White* [1826] 2 Sim & St 594; *Re Allsop* [1884] 1 T.L.R. 4; *Re Holbourne* [1885] 53 L.T. 212; *Re Spence* [1938] Ch. 96. The traditional view of museums and art galleries accepted as charities is that they were places where their only publicly visible activity was to show objects of a high standard of educational value or artistic worth. The courts adopted a view concerning museums and art which reflected this and is now regarded as narrow. The Commission has long recognised that museums and art galleries and art have markedly developed since the court had occasion to consider their charity, either as educational or as furthering other purposes for the benefit of the public. Now museums and art galleries are more likely to hold and preserve collections (which may have no intrinsic value in themselves) which are used in a process which is educational --in other words the focus has moved away from the value or non-value of the exhibits in themselves to the use which is made of them in a display or exhibition to the public. This process may sometimes be referred to as interactive or experimental or may make up part of an outreach programme.

- B6.** The pursuit of learning and science for the benefit of the public is charitable<sup>21</sup>. The court accepts that education extends beyond the study of academic subjects in an educational establishment to such subjects as the arts of social intercourse<sup>22</sup> and the principles of discipline, loyalty and good citizenship<sup>23</sup>. The promotion of art is charitable. "I think 'education' includes ...not only teaching, but the promotion or encouragement of these arts and graces of life which are, after all, perhaps the finest and best part of the human character"<sup>24</sup>. Trusts to establish and support museums and art galleries are charitable<sup>25</sup>. A gift to an established museum is charitable<sup>26</sup>.
- B7.** Of course, there are some boundaries. Also, a museum that has amassed a collection which in effect is a cabinet of curiosities serving merely to amuse or entertain will not be a charity<sup>27</sup>. But this does not mean that pleasure, entertainment or amusement taints an otherwise charitable purpose<sup>28</sup>.
- B8.** The court has held that experience alone cannot be accepted as charitable<sup>29</sup>. A purpose or activity which is essentially amusement or entertainment is not made charitable because it has an educational or beneficial effect<sup>30</sup>.
- B9.** However, it would appear that the younger the intended beneficiaries are, the more liberal the court is in its interpretation of education<sup>31</sup>. The game of chess has an educational value so that tournaments for young people may be charitable for the advancement of education<sup>32</sup>.

## The intention must be to educate that is to enlighten the mind

- B10.** The principles explained in the Choral Society<sup>33</sup>, Cranstoun<sup>34</sup> and Clerkenwell Green<sup>35</sup> cases can be applied by analogy to organisations and institutions concerned with museums and art galleries. By pursuing the charitable purposes, the organisation is capable of educating:
- the members of the organisation if a membership structure is appropriate. [It is recognised that one can raise artistic taste (or train) by presenting or exhibiting works of merit]; and
  - members of the public.

21 Incorporated Council of Law Reporting for England and Wales v Attorney General [1972] 1 Ch. 73, 92.

22 Re Shaw's Will Trusts [1952] Ch. 163.

23 Re Webber [1954] W.L.R. 1500.

24 Re Shaw's Will Trusts [1952] 1 Ch. 163, 172 Vaisey, J.

25 British Museum v White [1826] 2 Sim & St 594; Re Allsop [1884] 1 T.L.R. 4; Re Holbourne [1885] 53 L.T.212; Re Spence [1938] Ch. 96. And see Tudor on Charities 8th edition pg.46.

26 British Museum Trustees v White [1826] 2 Sim. & St. 594.

27 See Re Pinion [1965] 1 Ch. 85.

28 Royal Choral Society v IRC [1943] 2 All ER 101.

29 IRC v Baddeley [1955] AC 572, 585.

30 See IRC v McMullen [1981] AC 1,15.

31 See Re Ward's Estate [1937] 81 Sol Jo 397, Re Dupree's Deed Trusts [1945] Ch. 16, and Re Lopes [1931] 2 Ch. 130

32 Re Dupree's WT [1945] Ch. 16. (The judgement refers to boys and young men.)

33 Royal Choral Society v IRC [1943] 2 All ER 101.

34 Re Cranstoun [1932] 1 Ch. 537.

35 CIR v White (re Clerkenwell Green Association for Craftsmen) [1980] I.R. 155.

**B11.** It is also recognised that the training may be gradual and those members of the public who visit may do so with the idea of being amused or entertained; but it is not the state of mind of those who would be amused or entertained which is important. It is the purpose of the people who perform or exhibit, who provide the “entertainment” [if entertainment is how it is perceived by the attendees] which is important. The pleasure derived is a by-product of the real purpose of the organisation which is charitable<sup>36</sup>. The universal acceptance of the Choral Society case<sup>37</sup> decision is a clear indication that the court would accept collections and exhibits of varying educational or artistic merit, provided that, when they are experienced as a whole, they involve an educating or elevating process appropriate to the visiting public at which they are aimed.

## Overlap between advancement of education and purposes which provide benefit to the public

**B12.** The court has accepted gifts for museums and art as charitable for the advancement of education<sup>38</sup> or for a purpose which is of general public benefit which the court can accept as charitable. For example, a personal collection is not necessarily educational; it is the exhibits themselves which must be considered. However, if the collection belonged to a famous person or was linked to important events, even mundane items may be worthy of preservation and display as they may be of educational value or be of artistic or other merit serving to educate or enlighten the mind. Or it is conceivable that there may be collections or exhibits which may be worthy of preservation and exhibition for some other purpose which is of benefit to the public. For example, they may serve a memorial function or they may be such that it serves the public that they are preserved.

**B13.** In the Cranstoun case<sup>39</sup> the provision for the public of opportunities to examine the work of craftsmen who lived long ago is charitable. The Court accepted these purposes as being of general public utility for the benefit of the public. Whilst this may be so, the purposes may equally be accepted as for the advancement of education<sup>40</sup>. The Clerkenwell Green case<sup>41</sup> shows that the provision for the public of opportunities to learn about the art and practices of craftsmen is charitable. The court in that case accepted the preservation and improvement of fine craftsmanship as a charitable purpose for the benefit of the public.

## Public Benefit

### Subject matter must be useful or otherwise beneficial

**B14.** The education or art must be beneficial ie of educational or other merit to the community and the benefits must be available to the public [or a sufficient section of the public]. So, there are two aspects to public benefit. The first is educational or artistic or other merit. The second is public access.

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36 Royal Choral Society v IRC [1943] 2 All ER 101. These principles were expressed in connection with the appreciation of music but by analogy they have been extended to the purposes of museums and galleries.

37 Royal Choral Society v IRC [1943] 2 All ER 101. The court approved the involvement of persons in a practical application of an educating process for themselves as well as for others.

38 Public benefit is presumed where the purposes are educational.

39 Re Cranstoun [1932] 1 Ch. 537.

40 Tudor 8th edition, page 46.

41 CIR v White (re Clerkenwell Green Association for Craftsmen) [1980] I.R. 155.

## Gauging quality – Evidence of educational or artistic merit

- B15.** Where the purpose is obviously beneficial to the public, the court need inquire no further<sup>42</sup>. Where the purpose is to advance education, public benefit is presumed unless there is something to rebut that presumption. Where the educational character of the gift is questioned and cannot be answered by reference to the terms of the gift, the court [and therefore the Commissioners when exercising their functions<sup>43</sup>] may resort to expert evidence to refute or confirm the presumption that the gift is charitable, being for the advancement of education<sup>44</sup>. Where the purpose is to advance art or other public benefit, the public benefit must be demonstrated. (In our guidance we adopt a process of banding of collections to identify those which are obviously of merit such as to call for no question, those whose merit is not obvious but may be ascertainable without expert opinion and the remainder where an expert would be required to assist the Commission staff.) We take an inclusive view of art and accept that it will include representational and figurative art, abstract, conceptual and performance art, provided that such work can be demonstrated to add to or enhance the understanding and experience of the visitor in terms of the promotion of art for the public benefit.
- B16.** Where the quality is not obvious or discernible applying set criteria, precise independent expert opinion is needed<sup>45</sup>. The question whether a gift operates for the public benefit is answered by the court by forming an opinion upon the evidence before it<sup>46</sup>. “A gift to found a public museum may be assumed to be charitable as of public utility if no one questions it”<sup>47</sup>. “The mere fact that a person makes a gift of chattels to form a public museum cannot establish that its formation will [our emphasis] have a tendency to advance education in aesthetic appreciation or in anything else”<sup>48</sup>.

## Access

- B17.** Like all charities, a charitable museum or art gallery must be carried on for the benefit of the public. Its benefits must be available to the public or a sufficient section of the public. Where public access is restricted, we look closely at the circumstances in order to determine what the real purpose of the museum or art gallery is<sup>49</sup>.

## University and society collections

- B18.** The legal position of collections of universities and other educational institutions which are held as part of the general property of the institution and which are used in furthering its educational purposes is different from that of a collection which is held on trust for the students and/or academic staff of an educational institution<sup>50</sup>. However, the students and/or academic staff of an educational institution (the benefits of which institution are available to a sufficient section of the public) constitute a sufficient section of the public<sup>51</sup>.

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42 In *Re Shaw's Will Trusts* [1952] 1 Ch. 163, 169.

43 under s.3 Charities Act 1993.

44 Wilberforce, J., in the first instance hearing of *Re Pinion* [1965] 1 Ch. 85.

45 There are experts equipped with the conceptual resources to detect such things as form, patterns, modulations, harmonies, significances, associations and correspondences.

46 In *re Hummeltenberg* [1923] 1 Ch. 237.

47 In *re Pinion* [1965] 1 Ch. 85, 105 – Harman L.J.

48 In *re Pinion* [1965] 1 Ch. 85, 108 – Russell L.J. “Inquiry must first be made. .... The judge cannot conduct that inquiry on his own, unless the matter is so obvious as to call for no hesitation. .... He is entitled to the assistance of people expert in such matters, and to arrive at a conclusion based on such assistance”.

49 The Disability Discrimination Act 1995 provisions, when they come fully into force, may apply. Under the Act, occupiers of buildings which members of the public are permitted to enter must enable the building to be used by disabled people, so far as is reasonable.

50 In the latter case the charity may not be exempt even though the university or educational institution is.

51 *Re Mariette* [1915] 2 Ch. 284 (book prize for classics); *Re Gott* [1944] Ch. 193 (to Leeds University for a post graduate scholarship).

**B19.** In the same way, the purposes of a collection held on a separate trust for the benefit of an educational society having a membership and which is itself a charity would be accepted as charitable.

**B20.** It is possible for a museum or gallery to confer its benefits through a membership structure<sup>52</sup>. The Commissioners have in practice accepted this principle for many years. The test whether the imposition of a membership structure is acceptable is whether the imposition is necessary for the better administration of the charity. The membership must, of course, be open to the public or a sufficient section thereof.

## Armed forces museums and collections

**B21.** Armed forces museums and collections are distinct in that they may be charitable as tending to promoting the efficiency of the forces by imbuing a sense of pride/esprit de corps [inspiring loyalty; encouraging recruitment] and/or as promoting education of the public or another purpose for the benefit of the public, for example, a memorial function.

**B22.** The museums and collections may be housed in premises belonging to the Ministry of Defence which also makes grants and may provide the curator and other staff.

**B23.** Where the museum or collections are open to the public, admission fees may be charged. Such museums and collections may be sited outside Ministry of Defence property and may be taken to fulfil both educational and efficiency purposes. However the smaller regimental museums may be on Ministry of Defence properties so that the public only has limited access, if at all. Where there is public access, it is usually available at selected times or by appointment with the agreement of the Commanding Officer of the unit concerned<sup>53</sup>.

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52 IRC v Glasgow Police Athletic Association [1953] AC 380. It has been accepted that confinement of benefits to members of a police force is not of itself a bar against status.

53 If public access is limited we expect to see evidence of promotion of esprit de corps or some other evidence of promotion of the efficiency of the armed forces.

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