



CHARITY COMMISSION
FOR ENGLAND AND WALES

GUIDANCE

Public benefit: the public benefit requirement (PB1)



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Part 1: About this guide

Legal requirement: this guide explains the legal requirement that a charity's purposes must be for the 'public benefit'. This is known as the 'public benefit requirement'.

This requirement affects whether or not an organisation is a charity.

This guide is relevant to you if you are thinking of setting up or registering a charity. It is also relevant if you are a trustee of an existing charity wishing to change your charity's purpose.

It is written to advance the Charity Commission's ('the Commission's') statutory public benefit objective which is 'to promote awareness and understanding of the operation of the public benefit requirement'.

Other public benefit guidance

This guide is part of the Commission's set of 3 public benefit guides. It is about whether your organisation's purposes are charitable.

Issues relating to carrying out those purposes for the public benefit, or when reporting on that, are dealt with in other public benefit guides:

- **Public benefit: running a charity** (PB2) - This guide explains public benefit in the context of running a charity
- **Public benefit: reporting** (PB3) - This guide explains the trustees' duty to report on how they have carried out the charity's purposes for the public benefit

For more on our public benefit guides see:

- **Public benefit: an overview**

Having regard to the Commission's public benefit guidance

Legal requirement: the Charities Act says that charity trustees must 'have regard' to the Commission's public benefit guidance 'when exercising any powers or duties to which the guidance is relevant'.

'Having regard' to its public benefit guidance means charity trustees should be able to show that:

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

References to other guidance

In some places in this guide links are provided to other relevant guidance to which readers of this guide may find it helpful to refer.

Where that other guidance does not form part of the Commission's set of public benefit guides, and so is not guidance to which charity trustees must 'have regard', it says so.

The law relating to public benefit

The Commission's public benefit guidance is not the law on public benefit. The law on public benefit is contained in charities' legislation and decisions of the courts.

The Commission's public benefit guidance is high level general guidance, written for charity trustees, to explain what the law says on public benefit and how it interprets and applies that law.

It makes decisions about public benefit in individual cases based on the law as it applies to the facts of the particular case, and not on this high level guidance. This is because its general guidance cannot cover all the complexities of the law relating to public benefit.

For more information about the Commission's view of what the law says on public benefit see:

- **Analysis of the law relating to public benefit**

This analysis of the law may be of interest to charity trustees who wish to know more about the legal basis of our guidance. However, it does not form part of the Commission's set of public benefit guides, and so is not, as such, guidance to which charity trustees must have regard.

Use of 'must' and 'should'

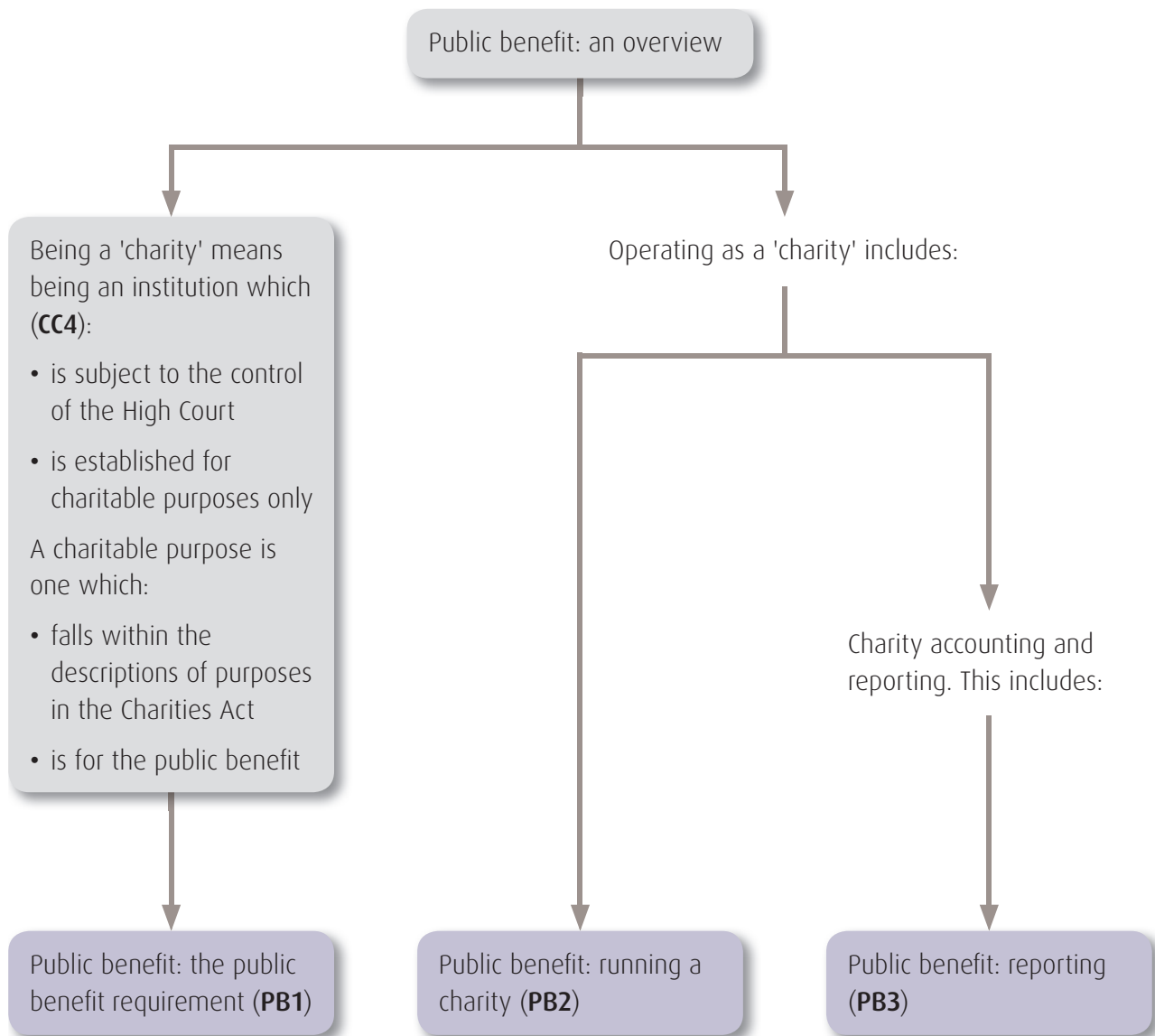
The word 'must' is used where there is a specific legal or regulatory requirement that you must comply with. 'Should' is used for minimum good practice guidance you should follow unless there's a good reason not to.

The Commission also offer less formal advice and recommendations that trustees may find helpful in the management of their charity.

The public benefit framework

The following chart shows you where the public benefit requirement sits in the overall framework of what it means for your organisation to be a charity, to operate as a charity and to report on your charity's work.

Public benefit framework



Part 2: What ‘for the public benefit’ means

The ‘public benefit requirement’

The Charities Act gives a legal definition of the meaning of the term ‘charity’.

Legal requirement: part of that definition says that for an organisation to be a ‘charity’ it must have only ‘charitable purposes’.

A charity’s ‘purposes’ are what it is set up to achieve.

Legal requirement: part of the Charities Act definition of a ‘charitable purpose’ says that it must be ‘for the public benefit’. The Charities Act calls this the ‘public benefit requirement’.

This guide explains the public benefit requirement.

For more on the other aspects of the definition of a charitable purpose and on what makes a charity see:

- **What makes a charity** (CC4) (This does not form part of the Commission's public benefit guidance)

The aspects of public benefit

There are two aspects of public benefit:

- the ‘benefit aspect’
- the ‘public aspect’

Legal requirement: in general, for a purpose to be ‘for the public benefit’ it must satisfy both the ‘benefit’ and ‘public’ aspects. However, if the purpose is to relieve or prevent poverty, different rules apply.

For more on this see: Annex A - Different rules for poverty charities

The ‘benefit aspect’

The ‘benefit aspect’ of public benefit is about whether the purpose is beneficial.

Legal requirement: to satisfy the ‘benefit aspect’ of public benefit:

- a purpose must be beneficial (see part 3 of this guide)
- any detriment or harm that results from the purpose must not outweigh the benefit (see part 4 of this guide)

The ‘public aspect’

The ‘public aspect’ of public benefit is about whom the purpose benefits.

Legal requirement: to satisfy the ‘public aspect’ of public benefit the purpose must:

- benefit the public in general, or a sufficient section of the public (see part 5 of this guide)
- not give rise to more than incidental personal benefit (see part 6 of this guide)

The Commission's decisions about public benefit

Each of a charity's purposes must be for the public benefit.

Many charities have more than one purpose. Where that is the case, the Commission will look at each purpose on its own to decide if it is for the public benefit. The public benefit of one purpose cannot be used to offset any lack of public benefit in another.

As the courts would, the Commission will weigh up all the relevant factors and evidence to decide whether each purpose on its own:

- is beneficial
- benefits the public in general, or a sufficient section of it

In most cases this is likely to be clear.

The two aspects of public benefit can overlap. A factor can frequently be regarded as having an impact on both aspects.

Sometimes the Commission might need to consider the relationship between what is beneficial and what is harmful, and public and personal benefit.

Some cases require fine judgment to consider whether all the factors, taken together, result in a purpose that is for the public benefit. The Commission consider all cases in their own context.

In the majority of cases, it will be clear that an organisation's purpose is for the public benefit. Where this is not clear, the Commission will let the trustees or applicant for registration know where any difficulties lie.

In rare cases where it is not possible for the trustees or applicant to put things right and the Commission decide that the organisation's purpose is not for the public benefit, this would mean that, in its view, the organisation is not a charity.

Where it decides this is the case for an organisation applying for registration, it would decline to register it.

Where it decides this is the case for an existing charity, the charity trustees will need to consider changing the purpose and should seek advice.

For information about changing your charity's governing document see **Change your charity's name or governing document** (This does not form part of the Commission's public benefit guidance).

In the very rare case where changing the purpose is not possible, the Commission would have to remove the organisation from the register of charities.

For more on what happens when we decide this see:

- **Maintenance of an accurate register** (RR6) (This does not form part of the Commission's public benefit guidance)

Challenging a decision made by the Commission

If the Commission decline to register an organisation, or decide to remove an organisation from the register, and the trustees or applicants think its decision is wrong, they may be able to challenge it.

For more on this see:

- **Complaining about a decision we have made** (This does not form part of the Commission's public benefit guidance)

Part 3: Beneficial purpose

What is beneficial

Legal requirement: for a purpose to be charitable it must be beneficial in a way that is identifiable and:

- capable of being proved by evidence where necessary
- not based on personal views

Providing evidence of benefit

In some cases the purpose is so clearly beneficial that there is little need for trustees to provide evidence to prove this.

For example, the trustees of an organisation whose purpose is to provide emergency aid in the context of a natural disaster would not need to provide evidence that the purpose is beneficial.

Where it is not clear that a purpose is beneficial, the Commission may need to ask for evidence of this.

For example, the Commission may need to ask for evidence of:

- the architectural or historical merit of a building preserved under an advancement of heritage purpose
- the artistic merit of an art collection displayed under an advancement of art purpose
- the healing benefits of a therapy provided under an advancement of health purpose
- the educational merit of a training programme offered under an advancement of education purpose

Measuring what is beneficial

It should always be possible to identify and describe how a charity's purpose is beneficial, whether or not that can be quantified or measured.

For example, developing a person's artistic taste by viewing works of art can be beneficial even though it is difficult to quantify or measure.

Not beneficial

If it cannot be shown that an organisation's purpose is beneficial (based on evidence that a court could accept where necessary) then it will not be a charitable purpose.

Part 4: Detriment or harm

How detriment or harm might affect the public benefit requirement

Legal requirement: a purpose cannot be a charitable purpose where any detriment or harm resulting from it outweighs the benefit.

Evidence of detriment or harm

The Commission take detriment or harm into account where it is reasonable to expect that it will result from the individual organisation's purpose. This will be based on evidence, not on personal views.

Where the benefit of a purpose is obvious and commonly recognised, there is an even greater need for evidence of detriment or harm to be clear and substantial, if it is to outweigh that benefit.

Part 5: Benefiting the public or a sufficient section of the public

The public

Legal requirement: for a purpose to be charitable it must benefit either:

- the public in general or
- a sufficient section of the public

What 'the public in general' means

This means that all of the public can benefit from the purpose.

The benefit of the purpose is not limited to people with a particular need or who have to satisfy some other criteria.

If a purpose does not specify who can benefit, it will generally be taken to mean that it will benefit the public in general.

An example of a purpose which is for the benefit of the public in general is one which is concerned with conserving an endangered species.

What a 'sufficient section of the public' means

Legal requirement: a charitable purpose can benefit a section of the public, but the section must be appropriate (or 'sufficient') in relation to the specific purpose.

A sufficient section of the public are called a 'public class' of people.

There is not a set minimum number of people who have to benefit in order to be a 'public class'.

Whether a section of the public is or is not a 'public class' is not the same for every purpose. What is sufficient for one purpose may not be sufficient for another.

Defining who can benefit on the basis of where people live

In most cases people living in any geographical area (local, national or international) will be a sufficient section of the public.

An example of circumstances in which it might not be sufficient is where the geographical area is too narrowly defined (such as people living in a few named houses).

The geographical area does not have to be in England and Wales. An organisation that is set up and registered in England and Wales can be a charity, even if its purpose is to benefit people entirely outside that area.

Defining who can benefit as people or communities with a particular charitable need

This is often a sufficient section of the public.

Defining who can benefit by reference to 'protected characteristics'

Legal requirement: the Equality Act permits charities to benefit people defined by reference to a 'protected characteristic', provided the restriction of benefits to people having that characteristic is justified in relation to the purpose.

The following are 'protected characteristics':

- age
- disability
- sex
- sexual orientation
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race or nationality
- religion or belief

For more on the charities' exception in the Equality Act see sections B and C of:

- **Restricting who can benefit from charities** (This is not part of the Commission's public benefit guidance)

Defining who can benefit by reference to a person's skin colour

Legal requirement: charities must not define their beneficiaries by reference to their skin colour. The law does not allow this.

Where a charity's purpose defines who can benefit by reference to their skin colour, the purpose will be read as if that reference to skin colour did not exist.

Defining who can benefit by reference to a person's occupation or profession

This can be a sufficient section of the public depending on the circumstances.

An example of a charity that could define who it benefits by reference to occupation or profession is a charity whose purpose is to relieve the sickness and disability of serving, former and retired teachers and their dependents.

Defining who can benefit by reference to a person's family relationship, contractual relationship (eg employment by an employer) or membership of an unincorporated association

Legal requirement: in general, a charity must not have a purpose which defines who can benefit by reference to:

- their family relationship
- their employment by an employer
- their membership of an unincorporated association

The law allows this only where the purpose is the relief (and in some cases the prevention) of poverty.

For more on this see Annex A: Different rules for poverty charities.

Defining who can benefit by reference to other sorts of personal characteristic, such as their employment status

Whether this is a section of the public depends on the purpose that will be advanced and the specific circumstances.

For example, 'people who are unemployed' can be a sufficient section of the public where the purpose is the relief of unemployment or the relief of poverty. But it may not be a sufficient section where the purpose is to advance religion.

Deciding what is a 'sufficient' section of the public

This is decided on a case by case basis.

Decisions about this are informed by what the courts have or have not accepted in other cases.

For example, the courts will generally accept that a purpose benefits a sufficient section of the public if its beneficiaries are defined by:

- where they live
- a charitable need
- a 'protected characteristic'

Legal requirement: charities must not define their beneficiaries in the following ways as these will not benefit a sufficient section of the public:

- a purpose which defines who can benefit on the basis of a 'protected characteristic' but which does not satisfy the requirements of the Equality Act
- a purpose which defines who can benefit by reference to their skin colour
- a purpose which defines who can benefit on the basis of a personal connection (unless the purpose is for the relief, and in some cases the prevention, of poverty)

- a purpose which excludes the poor from benefiting - charity law recognises that 'the poor' is a relative term which depends upon the circumstances. However, 'the poor' does not just mean the very poorest in society and can include people of modest means
- a purpose which is confined to a closed religious organisation
- a purpose where all the potential beneficiaries (now and in the future) are named, such as an individual or individuals or a fixed group of individuals
- a purpose where the number of people who can benefit (now and in the future) is numerically negligible (unless the purpose is for the relief, and in some cases the prevention, of poverty)
- a purpose which defines who can benefit in a manner which, when related to the purpose, is 'capricious' (eg wholly irrelevant, irrational or without good reason)
- a purpose which benefits members of a mutual benefit society
- (unless the purpose is for the relief, and in some cases the prevention, of poverty) a purpose which exists for the benefit of an organisation's members only unless:
 - a sufficient section of the public can access those benefits by becoming members and
 - the membership is a suitable way of carrying out the charity's purpose for the public benefit

A private (or 'self-regarding') members' club generally exists for the benefit of its members only, and so cannot be for the public benefit. Even if it has an open membership, an organisation that is 'inward-looking', supported by its members for the purpose of providing benefits for the members, does not benefit a public class of people and so cannot be a charity.

If it is not clear whether your organisation's purpose benefits the public, or a sufficient section of it, you will need to explain who may benefit and why that is a section of the public.

The Commission will make a decision in each such case on the basis of its own facts.

If it remains unclear that the purpose will benefit the public, or a sufficient section of it, the Commission cannot recognise your organisation as a charity in law, as the 'public benefit requirement' will not have been met.

Part 6: Personal benefit

Legal requirement: a charitable purpose may only confer personal benefits if these are 'incidental' to carrying out the purpose.

What 'personal benefit' means

A 'personal benefit' (sometimes also called a 'private benefit') means a benefit that someone receives from a charity. That 'someone' might be an individual or an organisation.

What 'incidental' means

Personal benefit is 'incidental' where (having regard both to its nature and to its amount) it is a necessary result or by-product of carrying out the purpose.

The possibility that a purpose may provide incidental personal benefit does not prevent the purpose being for the public benefit.

For examples of types of personal benefit which might arise from a charity's purpose, or from running a charity, see:

- **Examples of personal benefit** (This is not part of the Commission's public benefit guidance)

Personal benefit in other contexts

For more on personal benefit where it arises:

- because of the way in which an organisation is constituted - see our guidance **Charity types: how to choose a structure (CC22a)** (This is not part of the Commission's public benefit guidance)
- as a consequence of the way in which the charity is being run (such as a decision by the trustees to pay a trustee for providing services to the charity) - see the public benefit guidance **Public benefit: running a charity** (PB2)

Part 7: Further information

This part provides links to other guidance which you may find of interest in relation to this guide.

The following are included in the Commission's set of public benefit guides:

- Legal requirement: **Public benefit: running a charity** (PB2)
This guide explains public benefit in the context of running a charity.
- Legal requirement: **Public benefit: reporting** (PB3)
This guide explains the trustees' duty to report in their trustees' annual report on how they have carried out their charity's purposes for the public benefit.

The following are not included in the Commission's set of public benefit guides:

- **Public benefit: an overview**
This guide gives an overview of the Commission's public benefit guidance. It explains:
 - how understanding public benefit will help a charity's trustees
 - the trustees' duty to 'have regard' to the Commission's public benefit guidance
 - some key points to know about the law relating to public benefit
- **Analysis of the law relating to public benefit**
This analysis is a summary of the Commission's view of the law relating to public benefit.
- **What makes a charity** (CC4)
This guide explains what the law requires for an organisation to be a charity according to the law in England and Wales.
- **Start up a charity**
General guidance on setting up and registering a new charity.
- **Descriptions of purposes**
Guidance on the scope and meaning of the 13 descriptions of purposes in the Charities Act.

Annex A: Different rules for poverty charities

What is required for a purpose to prevent or relieve poverty to be 'for the public benefit'

Legal requirement: in general, for a purpose to be charitable it must satisfy both the 'public' and 'benefit' aspects of public benefit.

However, if the purpose is to prevent or relieve poverty, the position is different.

In the case of charities for the relief (and in some cases the prevention) of poverty the courts consider the public benefit requirement can be met by satisfying the 'benefit' aspect only. In these cases there is no separate consideration of the 'public' aspect.

Legal requirement: only charities with a purpose to relieve (and in some cases to prevent) poverty can define who can benefit by reference to:

- their family relationship (that means their descent from one individual)
- their employment by an employer
- their membership of an unincorporated association

Legal requirement: a charity must not have a purpose which is for the benefit of named individuals, whether or not they are poor. This is so even if the motive is to relieve poverty and the named individuals happen to be poor.

Providing a service to people with a 'protected characteristic'

In general, charities for the relief (and in some cases the prevention) of poverty may be able to benefit a more narrowly defined section of the public than may be the case for charities with other purposes.

Legal requirement: however, even in the case of 'poverty charities', where the purpose is to provide a service only to people defined by a 'protected characteristic' in the Equality Act (such as age, gender, disability, race) the requirements of the Equality Act must still be met. That means that limiting the service only to those people must be justified.

For more on this see:

- **Restricting who can benefit from charities** (This is not part of the Commission's public benefit guidance)

Annex B: Technical terms

The following terms are used in this guide, and should be understood as having the specific meanings given below:

The Charities Act: the Charities Act 2011.

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

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

Objects: A charity's 'objects' are a statement of its purposes. Usually these are found in the 'objects clause' of a charity's governing document. However, not all charities have a governing document with an objects clause.

Usually a charity's objects clause means the same as its purposes, but sometimes they are slightly different, such as when:

- the objects clause does not adequately or fully express the organisation's purposes
- the clause contains more than just the objects, such as powers

Public benefit requirement: the legal requirement that, to be a charity, an organisation's purposes must each be for the public benefit (legal requirement).

Purpose(s) and charitable purpose(s): we use the term 'purpose(s)' to mean the purpose(s) of an individual organisation. A charity's purpose is what it is set up to achieve.

To be a '**charitable purpose**' a purpose must fall within one of the descriptions of purposes in the Charities Act and be for the public benefit. This has to be demonstrated in each case (legal requirement).

The courts: we use this term to mean, collectively, the Tribunal, the Upper Tribunal and the courts.

The Tribunal: the First-tier Tribunal (Charity) is the first level of appeal against the decisions of the Commission set out in Schedule 6 of the Charities Act.

The Upper Tribunal: The Upper Tribunal (Tax and Chancery Chamber) is the second level of appeal against decisions of the Commission set out in Schedule 6 of the Charities Act.