



## Public benefit consultation

# Summary of responses and action

## Index

1. Provide downloadable guidance
2. Improve navigation
3. Distinguish legal requirements
4. Identify guidance trustees must 'have regard to'
5. Shorten the public benefit guidance
6. Reduce and signpost hyperlinks
7. Provide searchable online guidance
8. Separate charitable purposes guidance
9. Confirm 'public benefit is usually clear'
10. Provide more examples
11. Provide more public benefit guidance for specific types of charities
12. Focus on the public benefit requirement
13. Separate public benefit guidance on the public benefit requirement
14. Separate guidance on carrying out charitable purposes for the public benefit
15. Emphasise public benefit reporting
16. Confirm 'it is for charity trustees to decide how to run their charity'
17. Align political purposes guidance with *Campaigning and Political Activity by charities* (CC9)
18. Clarify 'purposes', 'benefit' and 'activities'
19. Clarify evidence of benefit
20. Clarify types of benefit
21. Clarify who can benefit
22. Reduce emphasis on the Equality Act
23. Clarify 'harm'
24. Deal with ensuring 'the poor' can benefit outside of the public benefit requirement
25. Confirm that 'the poor', and 'charges that the poor cannot afford' are relative terms
26. Confirm trustees' decide whether charges are of a level that 'the poor cannot afford' and what provision must be made for 'the poor'
27. Clarify the poverty exception
28. Clarify the status of the supplemental guidance

### 1. You said can the guidance be downloadable.

#### Action:

We now provide our public benefit guidance in a downloadable format, for you to print off from our website.

### 2. You said can navigation be improved.

#### Action:

We have restructured our public benefit guidance into three separate guides:

- *Public Benefit: the public benefit requirement* (PB1)
- *Public Benefit: running a charity* (PB2)
- *Public Benefit: reporting* (PB3)

We provide:

- a chart in each guide showing you where that guide sits in the framework of what it means for an organisation to be a charity, run as a charity and report on a charity's work
- an explanation of the structure and main features of our guidance in *An overview of the Charity Commission's public benefit guidance*
- a contents list in the left-hand margin of each public benefit guide with active links to other sections of the guide

### 3. You said can legal requirements be clearly distinguished from good practice.

#### Action:

We have identified the sections which contain a legal or regulatory requirement by using the **L** symbol at the beginning of the relevant paragraph.

We have used:

- **'must'** to indicate a specific legal or regulatory requirement affecting trustees or a charity
- **'should'** to indicate something we regard as good practice, but not a specific legal requirement

#### 4. You said can the public benefit guidance trustees must 'have regard' to be clearly identified.

##### Action:

We explain in part 4 of *An overview of the Charity Commission's public benefit guidance* that trustees must have regard to each of our 3 public benefit guides.

We also state in Part 1 of each guide:

*"charity trustees must 'have regard' to our public benefit guidance 'when exercising any powers or duties to which the guidance is relevant'".*

#### 5. You said can the public benefit guidance be shorter and deal only with public benefit.

##### Action:

We have restructured our public benefit guidance into a set of three shorter self contained guides, each addressing public benefit in the context of:

- being a charity (the public benefit requirement)
- running a charity
- reporting

Related issues, such as what are charitable purposes, are dealt with in separate guidance.

#### 6. You said can the hyperlinks to other web areas be reduced and clearly signposted.

##### Action:

We have reduced the number of links to other guidance.

We now state in our public benefit guides where a link will take you outside the public benefit guidance.

#### 7. You said can the guidance be made searchable online.

##### Action:

We have provided our public benefit guidance online in a searchable format.

#### 8. You said can guidance on charitable purposes be separated from guidance on public benefit.

##### Action:

We now provide separate guidance on charitable purposes in *What makes a charity* (RG1). This does not form part of our public benefit guidance.

### 9. You said can we confirm in the guidance that public benefit is “usually clear”.

#### Action:

We have stated in *An overview of the Charity Commission’s public benefit guidance*, part 2 ‘How understanding public benefit helps charities’:

*“The law on public benefit can be complex and the language used about public benefit in charity law may be unfamiliar.*

*However, whether you are planning to set up a charity, or are running a charity or are reporting on how you have carried out your charity’s purposes, for most charities public benefit is quite straightforward”.*

We have also stated in *Public benefit: the public benefit requirement (PB1)* part 2 ‘What ‘for the public benefit’ means’:

*“Charity trustees must carry out their charity’s purposes in a way that provides public benefit. Usually this will be straightforward.”*

### 10. You said can there be more illustrative examples in the public benefit guidance.

#### Action:

We have decided not to include more illustrative examples in our public benefit guidance, in order to keep the guidance applicable to all charities and as short as possible.

We will consider providing illustrative examples in other more tailored guidance, aimed at specific types of charity.

### 11. You said can there be more public benefit guidance for specific types of charities.

#### Action:

We are not planning to prepare detailed public benefit guidance for specific types of charities. We are planning to write new guidance on the descriptions of purposes in the Charities Act.

When we write this, we will be looking at whether it might be helpful to include guidance on public benefit for specific types of charities.

### 12. You said can the public benefit guidance trustees must have regard to focus solely on the public benefit requirement.

#### Action:

Our set of three public benefit guides includes a guide that focuses solely on the public benefit requirement.

We have also, as part of our public benefit objective to promote awareness and understanding of the operation of the public benefit requirement provided:

- separate public benefit guidance to assist charity trustees to carry out their charity’s purposes for the public benefit
- separate public benefit guidance to assist trustees with public benefit reporting

Trustees must have regard to all our public benefit guidance when exercising any powers or duties to which the guidance is relevant.

### 13. You said can there be public benefit guidance dealing only with the public benefit requirement.

#### Action:

We now provide:

- separate guidance on the public benefit requirement only in: *Public Benefit: the public benefit requirement*
- a Public Benefit Framework chart showing where the public benefit requirement fits

### 14. You said can guidance on carrying out charitable purposes for the public benefit be separated from guidance on the public benefit requirement.

#### Action:

We now provide separate guidance on carrying out charitable purposes for the public benefit in:

- *Public Benefit: running a charity*

### 15. You said can the public benefit guidance have more on the public benefit reporting requirement.

#### Action:

We now provide separate guidance on public benefit reporting in:

- *Public Benefit: reporting*

This guide deals exclusively with public benefit in the context of charity reporting. It says that reporting on public benefit can be addressed naturally in a Trustees' Annual Report and sets out some benefits of reporting on public benefit.

### 16. You said can the public benefit guidance contain clear statements confirming that "it is for charity trustees to decide how to run their charity for public benefit".

#### Action:

We have stated in *Public Benefit: running a charity* (PB2), part 2 'Providing public benefit':

*"It is not for the courts or the Charity Commission to tell trustees which decision to make where there is a range of decisions open to them.*

*This means that, as a charity trustee, you generally have a choice about how to carry out your charity's purpose, provided that you exercise your discretion in a way which:*

- *is in accordance with your charity's purpose (so not operating outside of that purpose)*
- *provides public benefit*
- *has regard to our public benefit guidance where relevant*
- *is in accordance with the general framework for trustee decision making - for more on this see Trustee decision making (This is not part of our public benefit guidance)"*

### 17. You said can the guidance on political purposes be clearly aligned with what we say in *Campaigning and Political Activity by Charities (CC9)*.

#### Action:

We provide guidance on political purposes in *What makes a charity*, annex B, 'About political purposes'. This complements our existing guidance on *Campaigning and Political Activity by Charities (CC9)*.

### 18. You said can the difference between purposes, benefit and activities be clarified.

#### Action:

**Purpose and Charitable Purposes** - We have explained 'purposes' and 'charitable purposes' in *What makes a 'charity'* part 2, 'About charitable purposes'.

**Benefit** - We have explained 'benefit' in *Public Benefit: the public benefit requirement (PB1) Part 3* 'Beneficial purpose'.

**Activities** - In *What makes a charity* our chart in annex C on 'How the law decides what is a charitable purpose' we have explained:

*"Where it is not clear or self-evident that the purposes fall within the descriptions of purposes, or are for the public benefit, then **evidence of activities** that the organisation has been, or will be, carrying out and **relevant background information** can be looked at."*

### 19. You said can the circumstances when it might be necessary to provide evidence of benefit be clarified.

#### Action:

We say in *Public Benefit: the public benefit requirement (PB1) Part 3* 'Beneficial purpose':

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

*Where it is not clear that a purpose is beneficial, we may need to ask for evidence of this."*

### 20. You said can types of benefit and benefit that counts for public benefit be clarified.

#### Action:

We have explained benefit and what counts in *Public Benefit: the public benefit requirement Part 3* 'Beneficial purpose'.

We have stated:

**L** *"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*

*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."*

We no longer make the distinction in our guidance between different types of benefit.

### 21. You said can who can benefit be clarified on the basis of existing case law.

#### Action:

We have clarified who can benefit on the basis of existing case law in *Public Benefit: the public benefit requirement* (PB1), Part 5 'Benefiting the public or a sufficient section of the public'.

### 22. You said can the emphasis on the Equality Act be reduced.

#### Action:

We have reduced emphasis on the Equality Act.

Our main references are in *Public Benefit: the public benefit requirement* Part 5 'Benefiting the public or a sufficient section of the public'

and in

Annex A 'Different rules for poverty charities'.

### 23. You said can "harm" and how it affects public benefit be clarified.

#### Action:

We have stated in *Public Benefit: the public benefit requirement* (PB1), part 4 'Detriment or harm':

*"A purpose cannot be a charitable purpose where any detriment or harm resulting from it outweighs the benefit.*

*We 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"*

### 24. You said can ensuring that 'the poor' can benefit in the context of 'charges that the poor cannot afford' be addressed separately from the public benefit requirement.

#### Action:

We have addressed the issue of ensuring that 'the poor' can benefit in the context of 'charges that the poor cannot afford' separately from the public benefit requirement. We address this as an aspect of the trustees' duty to carry out their charity's purposes for the public benefit in:

- *Public Benefit: running a charity* (PB2), Annex C 'Charging for services'

**25. You said can the guidance confirm that the terms ‘the poor’, and ‘charges that the poor cannot afford’ are relative in meaning.**

**Action:**

We say in *Public Benefit: running a charity* (PB2), Annex C ‘Charging for services’:

*“There is no universal definition of ‘the poor’ in this context, and there is no universal definition of the charges that the poor cannot afford.”*

Charity law recognises that ‘the poor’ is a relative term, which depends on the circumstances in individual cases. However, ‘the poor’ does not just mean the very poorest in society and it can include people of modest means.

**26. You said can the guidance confirm that it is for a charity’s trustees to decide:**

- whether charges are of a level ‘the poor’ cannot afford

and if this is so,

- what provision to make for ‘the poor’ in the context of their charity

**Action:**

We have stated in *Public Benefit: running a charity* (PB2), Annex C ‘Charging for services’ that:

*“If the trustees consider the charges their charity makes are of a level that the poor cannot afford, then they must ensure that the poor can benefit.”*

**L** *“The level of provision that trustees make for the poor must be more than minimal or token.”*

**L** *“It is for a charity’s trustees to decide, taking into account all the circumstances of their charity, what provision (in addition to what would be more than minimal or token provision) to make to enable the poor to benefit.”*

**27. You said can the poverty exception be clarified.**

**Action:**

We have clarified that there are different rules for poverty charities in *Public Benefit: the public benefit requirement* (PB1) Annex A ‘Different rules for poverty charities’.

**28. You said can the status of the supplemental public benefit guidance on *The prevention or relief of poverty*, *The advancement of education* and *The advancement of religion* be clarified.**

**Action:**

We have confirmed that the supplemental guidance will remain temporarily available, until we publish replacement guidance on the descriptions of charitable purposes. The replacement guidance will not form part of our public benefit guidance to which charity trustees must have regard.

We have stated that the supplemental guidance is under review and we indicate where sections have been withdrawn.