

# RR13 - The promotion of the voluntary sector for the benefit of the public

(Version 09/04)

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## What is this guidance about?

1. The Charity Commissioners have accepted the promotion of the voluntary sector for the benefit of the public as a charitable purpose in its own right.

2. This guidance explains the characteristics organisations involved in promoting that purpose need to possess to enable them to be recognised as 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 led to this guidance.

3. We consider below what is the ‘voluntary sector’ in this particular context. In general terms, by ‘voluntary sector’ we mean bodies which are “formally constituted, independent of (central and local) government, self-governing, not profit distributing, primarily non-business and that benefit from voluntarism”<sup>1</sup> and that are not party political organisations. This guidance concerns organisations which provide services and assistance to a wide range of bodies, not only to charities but also to non-charitable voluntary organisations which form the voluntary sector, with the aim of promoting the voluntary sector for the benefit of the public.

4. Other bodies also provide services and assistance to charities and the wider voluntary sector but their aim is to promote the efficiency and effectiveness of charities or the effective use of resources for charitable purposes. These bodies may also be charitable and they are the subject of separate guidance **Promoting the efficiency and effectiveness of charities and the effective use of charitable resources (RR14)**.

## Background

5. We recognise that the voluntary sector is an important part of today’s economy and has an important role to play in the nation’s life:

*“The voluntary and community sector has a vital role in society as the nation’s ‘third sector’, working alongside the state and the market. Through its engagement of*

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<sup>1</sup> Kendall & Knapp call this the “Broad Voluntary Sector” in *The UK Voluntary Sector*, Manchester University Press, 1996

*volunteers, the services it provides and the support it gives to individuals and groups, its contribution to community and civil life is immense, invaluable and irreplaceable”<sup>2</sup>.*

6. We receive a number of applications for registration as a charity from voluntary organisations which provide services for the benefit of other voluntary organisations, both charitable and non-charitable. A difficulty with recognising such service providers as charities in the past was that they could benefit non-charitable as well as charitable bodies in the voluntary sector. Some of these bodies carry out some charitable activities, others do not. For instance they may benefit economic development bodies, which are not charitable as they benefit private business, and credit unions or other mutual organisations which are not charitable as they are established for the benefit of their members only rather than the public at large.

7. However, we believe that promoting the voluntary sector for the benefit of the public is capable of being a charitable purpose. Some of the organisations which provide services to both charitable and non-charitable voluntary sector organisations may therefore qualify as charities as they further charitable purposes.

### **Charitable objects**

8. Voluntary sector service providers serve a wide range of voluntary organisations and carry out a wide range of activities, although they do not usually carry out “front line” activities themselves. Some voluntary sector service providers have, in the past, adopted a long list of recognised charitable purposes in an effort to try and encompass in their objects the range of organisations which they serve and their range of activities. As a result, some voluntary sector service providers have multiple purposes to relieve poverty, to advance education and religion, to provide recreational facilities, to protect and preserve health and so on. In fact, these objects do not reflect the voluntary sector service providers’ real activities and overall purpose, which is to provide advice, support and assistance to the voluntary sector, or that these voluntary organisations seek to assist the non-charitable as well as the charitable voluntary sector.

9. Our view is that charities should adopt objects which accurately reflect their activities. Our recognition of the promotion of the voluntary sector for the benefit of the public as a charitable purpose in its own right means that charitable organisations working in this field can now adopt objects that more accurately describe the work they do.

10. Charitable objects need to be sufficiently certain for the Court and the Commission to be able to regulate them. An objects clause to promote the voluntary sector for the benefit of the public will therefore need to define what is meant by ‘the voluntary sector’. As the purpose of this definition will be to set out the boundaries of the voluntary sector that it might be charitable to promote, the definition we have chosen may vary from definitions used for other purposes<sup>3</sup>.

11. The definition of ‘voluntary sector’ which we have accepted for this charitable purpose is as follows:

“‘The Voluntary Sector’ means charities and voluntary organisations.

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<sup>2</sup> Compact on Relations between Government and the Voluntary & Community Sector in England - Cm 4100 – November 1998

<sup>3</sup> Such as the definition adopted by the Welsh Council for Voluntary Services

- **Charities** are organisations, which are established for exclusively charitable purposes in accordance with the law of England and Wales.
- **Voluntary organisations** are independent organisations, which are established for purposes that add value to the community as a whole, or a significant section of the community, and which are not permitted by their constitution to make a profit for private distribution. Voluntary organisations do not include local government or other statutory authorities.”

12. In addition, given the nature of the purpose, we believe that the objects clause must include the principal activities by which the object will be achieved. These will need to be adjusted for each individual organisation according to its activities. It will be a matter for us to decide in each case whether the activities of the organisation are such as to have a direct effect on the furtherance of the object and whether the objects are being furthered in a manner appropriate for a charity.

### **Benefit to the public**

13. Recognition as a charity concerned with the promotion of the voluntary sector for the benefit of the public requires promotion, in the broad sense, of the voluntary sector as a whole or a sufficient section of it.

14. What constitutes ‘a sufficient section of the public’ will need to be carefully considered. Provided that the part of the voluntary sector with which the organisation is concerned is recognised as discrete and of value in serving a social and economic need, then it would be charitable to promote it. On this basis, for example, minority ethnic organisations would constitute a sufficient section of the voluntary sector to make promotion of that sector charitable. Equally, it may be possible to say that an organisation that promotes the voluntary sector in a particular geographical area is charitable.

### **What do we mean by voluntary sector service providers?**

15. The services provided by these organisations are described in more detail below, but they include co-ordinating voluntary organisations that work in a particular field, giving them advice, and providing them with a network of relevant information. Such an organisation provides services that enhance the quality and work of bodies that operate within the voluntary sector, both charitable and non-charitable.

16. Those organisations which provide services to both charitable and non-charitable voluntary sector organisations will qualify as charities if their work and objects demonstrate that they promote a sufficient section of the voluntary sector for the public benefit.

17. The kind of services provided by voluntary sector service providers in the charitable and non-charitable voluntary sector often include some or all of the following:

- liaising between charities, voluntary organisations, government agencies and other groups on relevant issues;
- providing training, conferences and seminars on subjects relevant to the efficiency of the voluntary sector;
- identifying needs in the voluntary sector and establishing projects or policies to address them;

- assisting in the administration of funding programmes to charities and voluntary organisations, monitoring for grants, recommending grants, assisting in applications for grants;
- providing information to the press and the public on the operation of, or problems encountered by, the voluntary sector;
- providing services such as legal, accountancy and management advice services to the voluntary sector;
- providing advice and information on fund-raising techniques appropriate for voluntary organisations and charities;
- acting as a representative of the voluntary sector in relation to government policies and legislation;
- advising businesses on charitable giving and encouraging employees to participate in voluntary work.

18. In addition, voluntary sector service providers might be involved in providing advice and information to the public and to existing organisations on how to establish charities and voluntary organisations.

### **General requirements for registration with this charitable purpose**

19. Where a body applies to be registered as a charity for promoting the voluntary sector, the assessment of the application will consider:

#### ***a) The activity being conducted and the positive and advantageous effects on voluntary organisations and/or the wider community***

20. The key issue in assessing activities is whether benefit to the public can be shown and whether there is any more than incidental private benefit. In general the activity/activities being conducted by the applicant organisation, and their effect on the voluntary organisations to which the applicant provides its services, must have a significance which goes beyond the benefit to the particular organisations who receive the services. The benefits to the individual bodies receiving the service should be incidental to the achievement of the charitable object. This means the applicant organisation must either:

- facilitate the creation of new voluntary organisations to meet unmet need; or
- extend the activities of the voluntary organisations to whom services are provided into new areas of activity which benefit the public; or
- extend the participation in the voluntary sector of sections of the community who are under-represented within the sector; or
- improve the services of voluntary organisations in terms of efficiency, effectiveness and quality.

#### ***b) Where the applicant provides services only to part of the voluntary sector, whether that part of the sector serves a social and economic need or is otherwise of significant value to the public***

21. Again we will adopt a flexible approach. But in general the organisations comprised in the relevant part of the voluntary sector must have an impact or be likely to have an impact (a) on the operation of, or the perception of, the voluntary sector in a

particular geographical area or area of activity or among a sufficient section of the public or (b) through that sub-sector upon the wider community.

22. Impact is measured either by the number of organisations concerned or by the significance of the activities within a particular area of activity or among a sufficient section of the public.

***c) Benefits to individual bodies incidental to the furtherance of the charitable purpose***

23. It will be important that any possible benefit to an individual voluntary organisation is properly incidental to the furtherance of the charitable purpose. The objects of applicants to whom this purpose applies will need to make quite clear the activities they are conducting to promote the voluntary sector for the public benefit. Any charity promoting the voluntary sector must be able to demonstrate that any private benefit of such activities is incidental to the furtherance of the charitable purpose.

***d) Whether the organisation will be operating overseas***

24. If the organisation intends to operate overseas, it should satisfy us that it is able to identify the voluntary sector in the countries concerned using the definition given above in this guidance or a different definition which is acceptable to us.

***e) Services provided exclusively to members***

25. If the organisation provides some or all of its services only to its members, it should satisfy us that all who might benefit can join and that there are open and objective criteria for deciding membership.

**Examples of charitable voluntary sector service providers**

26. Some examples of the kind of work charitable organisations promoting the voluntary sector might do include:

- a resource body which co-ordinates gay and lesbian organisations within a particular area may have an impact in making the voluntary sector in that area more representative of lesbian and gay people and more effective in meeting their needs;
- an organisation providing training for voluntary organisations in fundraising may be able to show it has an impact of the kind referred to above;
- clearly an organisation which is identifying needs in the voluntary sector and establishing projects or policies to address them is positively extending the voluntary sector to meet unmet need;
- similarly, a resource body which liaises between charities, voluntary organisations, government agencies, and other groups on relevant issues may extend the influence of the voluntary sector and increase the beneficial impact of the voluntary sector in that area;
- an organisation providing a publicly available comprehensive database of information about the activities and finances of charities established in the UK

and which enabled donors and funders to more effectively make donations to charity or more effectively target their grant making may improve the efficiency, effectiveness and quality of the services of voluntary organisations.

### **Effect of this guidance on existing charities**

27. There should be no need for existing charities to change their objects as a result of this guidance. However, existing charities concerned with promoting the voluntary sector, or a part of it, may consider amending their objects to this new purpose if it would more accurately describe the work that they do.

28. If trustees of registered charities are in doubt as to the application of this guidance, or have any other queries, please contact us on 0870 333 0123.

### **Effect of this guidance on grant-making charities**

29. This guidance has relevance for charities that make grants to organisations concerned with promoting the voluntary sector. Such charities include those established with wide 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 voluntary sector service providers.

## **ANNEX A - The legal background to the new charitable purpose**

A1. In order to accept the promotion of the voluntary sector for the benefit of the public as a charitable purpose in its own right, we needed to be satisfied that:

- such a purpose is analogous to an existing purpose already accepted as charitable; and that
- the purpose is also beneficial to the public.

A2. We formed the view that the purpose is sufficiently analogous to purposes which have already been recognised as charitable in law, both in the preamble to the Statute of Elizabeth I<sup>4</sup> and in subsequent decisions of the courts<sup>5</sup>. In forming this view the Commissioners have taken a constructive approach to seeking an appropriate analogy in accordance with their policy.<sup>6</sup>

### **Analogy with existing charitable purposes**

A3. The charitable nature of this object, promoting the voluntary sector for the benefit of the public, derives from the fourth head of Lord McNaghten's classification in **Income Tax Special Commissioners v Pemsel [1891] 1 AC 131** as being for purposes beneficial to the community. **IRC v White [1951] All ER 528** is authority for the proposition that benefits do not need to be direct.

A4. We consider that the purpose can be regarded as being analogous to charitable purposes which promote a whole category of the social and economic life of the community, such as

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<sup>4</sup> 43 Eliz, c4

<sup>5</sup> Barralet v Attorney general [1980] 3 AER 918, 926j per Dillon J

<sup>6</sup> Commissioners' Report 1985 paras 24-27

the promotion of commerce and industry for the public benefit<sup>7</sup> and the promotion of individual industries for the public benefit such as agriculture<sup>8</sup> or horticulture<sup>9</sup>. It may also be charitable as furthering the mental and moral welfare of the community and promoting good citizenship.

A5. The promotion of agriculture is charitable because “Agriculture is an industry not merely beneficial to the community but vital to its welfare”<sup>10</sup>. The Yorkshire Agricultural Society was said to be charitable as promoting agriculture because “it was formed for the purpose of the improvement of agriculture as a whole, and not for any confined purpose of benefiting only the particular members of the Society or those resident in the locality to which its name attached it, and for a purpose which may bring advancement and improvement to the benefit of the community at large”<sup>11</sup>. Promotion of the voluntary sector for the benefit of the public is analogous to the promotion of agriculture, as the voluntary sector is also vital to the welfare of the community. It accounts for a significant section of the economy; the total expenditure of the charitable sector is estimated at £24 billion. We assume that the expenditure of the voluntary sector is considerably greater and it is commonly referred to as the third sector of the economy. Its diversity and flexibility allow it to respond to the needs of the community in a more efficient and focused way than can government and statutory services. It also promotes social stability and respect for the rule of law by offering an essential safety valve for social pressures.

A6. The charitable essence of promoting commerce and industry for the public benefit lies in the preservation or enhancement of the quality of products or services for the public benefit, which was contrasted with promoting the interests of those concerned in the manufacture and sale of particular products and services which is not charitable. Organisations which might be said to promote the voluntary sector for the public benefit, also preserve or enhance the quality of services provided by the voluntary organisations they assist by providing “support, advice or information” and “identifying new needs and appropriate responses”<sup>12</sup>. They provide training in specific skills and act as a spokesperson for the sector. In view of the size and importance of the voluntary sector, to preserve and enhance the quality of its services is likely to be for the public benefit, rather than for the private benefit of the individual voluntary organisations, and of the same value as that of the promotion of commerce and industry for the public benefit.

A7. The purpose can also be regarded as analogous to promoting the mental and moral welfare and improvement of the community, which the courts have previously decided is a charitable purpose<sup>13</sup>, given that the voluntary sector is a medium through which such a

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<sup>7</sup> **Crystal Palace Trustees v Minister of Town and Country Planning [1951] Ch 132**. In addition, in **Clerkenwell Green Association for Craftsmen [1980] TR 155** the provision of workshops for craftsmen was held to be a valid charitable purpose as it advanced the object of the Association to promote any charitable purpose which would encourage the expertise and maintain the standards of crafts both ancient and modern and to preserve and improve craftsmanship. The promotion of the voluntary sector could equally be said to be encouraging and maintaining the standards of the voluntary sector.

<sup>8</sup> The legal basis for accepting the promotion of agriculture generally (as opposed to furthering the interests of the people engaged in it) is **IRC v Yorkshire Agricultural Society [1928] 1 KB 611**.

<sup>9</sup> The legal basis for the promotion of horticulture is **Re Pleasants (1923) 39 TLR 675**.

<sup>10</sup> Lawrence LJ in **IRC v Yorkshire Agricultural Society** at page 635

<sup>11</sup> Lord Hanworth MR in **IRC v Yorkshire Agricultural Society** at page 623

<sup>12</sup> The Deakin Report para 2.4.2

<sup>13</sup> The legal basis for accepting as charitable organisations which have as their object the promotion of the mental and moral welfare and improvement of the community are **Re Scowcroft [1862] 2 Ch 638** (furtherance of Conservative principles and religious and moral improvement); **Re Hood [1931] Ch 240** (promotion of temperance other than by political means); **Re Price [1943] Ch 422** (carrying on the teachings of Rudolph Steiner); **Re South Place Ethical Society [1980] 1 WLR 1565**.

purpose could be said to be achieved; “voluntary and community activity is fundamental to the development of a democratic, socially inclusive society<sup>14</sup>”. Many voluntary organisations rely heavily on volunteers and thus “enable individuals to contribute to public life and the development of their communities”<sup>15</sup> which is likely to be for the public benefit. Equally the process of volunteering is likely to promote the mental and moral welfare of the community for the benefit of the public as it engages people in what is fundamentally a philanthropic act. Volunteering is likely to foster a general spirit of generosity and social inclusion. We have already applied this aspect of charity law in accepting as charitable the promotion of ethical standards of conduct and compliance with the law in connection with the charity Public Concern at Work. Also, in connection with the Payroll Giving Association, we have recognised as charitable the promotion of charitable purposes by promoting payroll giving as a means of procuring resources for charities<sup>16</sup>.

A8. The promotion of the voluntary sector for the benefit of the public might also be said to be charitable by analogy with promotion of good citizenship which was accepted as charitable for the Boy Scouts Association<sup>17</sup>. To volunteer for a voluntary organisation could be said to be a philanthropic act of good citizenship. As the Deakin Report<sup>18</sup> put it “In a democracy, voluntary action is a badge of citizenship”.

### **How the new charitable purpose benefits the public**

A9. On the question of benefit to the public, the test of public benefit for organisations furthering a purpose beneficial to the community was considered recently by the Commissioners<sup>19</sup>. The Commissioners recognised that charity law requires that the tendency of such an organisation should be towards tangible and objective benefits but that, in the case of any intangible benefits, their benefit to the public must be accepted by a common consensus of opinion amongst people who are fair minded and free from prejudice or bias.

A10. There is a substantial benefit to the public in having an effective voluntary sector. Even those who do not receive direct assistance personally from a voluntary organisation or charity would probably agree that society as a whole derives a significant benefit from the activities of the voluntary sector.

A11. The importance of the voluntary sector and the contribution it makes to a healthy society has been recognised by the government. The White Paper on “Charities: A Framework for the Future”<sup>20</sup> remarks that voluntary effort has been of enormous importance in the history of this country. The voluntary sector engages in an immense range of activities and plays a crucial role in engaging and directing the efforts of individuals who wish to help those in need both at home and overseas.

A12. The Home Office Report<sup>21</sup> “*The efficiency scrutiny of government funding of the voluntary sector*” of 1990 describes the voluntary sector as “an important force.... From the Government’s point of view, voluntary bodies add to the quality and quantity of what the

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<sup>14</sup> Compact on Relations between the Government & the Voluntary and Community Sector Cm 4100 Nov 98 para 4

<sup>15</sup> Cm 4100 Nov 98 para 5

<sup>16</sup> See Decisions of the Commissioners Vol 2 pages 7-10

<sup>17</sup> Re Webber [1954] 1 WLR 1500

<sup>18</sup> The Report of the Commission on the Future of the Voluntary Sector Para 1.3.16

<sup>19</sup> In relation to an application for registration by the Church of Scientology See Decision of the Commissioners published in December 1999

<sup>20</sup> Cm 694, Paras 1.1 - 1.4

<sup>21</sup> para 3.1

state can provide.” In the same report, the NCVO<sup>22</sup> estimated that the total number of voluntary bodies was double the number of registered charities, though there were no precise figures indicating the size of the sector.

A13. The Deakin Report recognised that the voluntary sector makes a substantial contribution to the health of society and recognised that intermediary bodies are an important force, fulfilling four main functions: development; services to other organisations; liaison; and representation<sup>23</sup>.

A14. Organisations which promote the voluntary sector provide some tangible benefits to those organisations and individuals which receive its help directly. We are therefore satisfied that organisations which provide services to promote the voluntary sector do result in tangible public benefit.

A15. In addition, the Voluntary Sector service providers provide a number of intangible benefits to the public who receive assistance from the voluntary sector and to society at large. Such benefits include:

- encouraging altruism in society;
- fostering closer association between members of the public and charities and charity beneficiaries;
- identifying and supporting the voluntary sector in its increasingly significant role in relieving the disadvantaged in the community;
- facilitating the work of charities, to enable them to operate more effectively with Non-Government Organisations and Not for Profit organisations.

A16. We are accordingly satisfied that the promotion of the voluntary sector also results in intangible benefit to the public.

### **Public v private benefit**

A17. In each case we will need to consider if this tangible and intangible benefit to the public is sufficient to outweigh any private benefit to the organisations, or individuals who are beneficiaries of such organisations, and whether such private benefit is a legitimate incidental to the pursuit of the object of promoting the voluntary sector for the public benefit. The legal principles that underpin this principle of legitimate incidental benefit are set out in our guidance **RR8: The Public Character of Charity**. Voluntary organisations that receive services from voluntary sector service providers will themselves benefit, by, for example, a more efficient management structure or a more appropriate grant form to complete to apply for money from government, as may individuals who receive services from these voluntary organisations, by receiving say more appropriate and timely services. This private benefit to the organisations who receive assistance from voluntary sector service providers in furtherance of an object to promote the voluntary sector would generally seem to be incidental and necessary to the overarching public good of the promotion of the voluntary sector, but this would need to be examined in the light of the circumstances of each prospective charitable voluntary sector service provider.

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<sup>22</sup> para 2.1

<sup>23</sup> Paragraph 2.4.1. See also para 2.4.15 for some general considerations which the Deakin Report made about intermediary bodies.

A18. In **IRC v Oldham Training and Enterprise Council**<sup>24</sup> an organisation with certain objects and activities which were charitable was held not to be charitable because the second main object, namely promoting trade, commerce and enterprise, and the ancillary object, of providing support services and advice to and for new businesses, was considered to enable the organisation to promote the interests of individuals engaged in trade, commerce or enterprise and provide benefits or services to them. It was not a charitable object because it would have permitted private benefit which was not legitimately incidental to the furtherance of a charitable purpose. This case emphasises the importance of any benefit to an individual voluntary organisation being properly incidental to the furtherance of the charitable purpose.

A19. In summary, we consider that there is no obstacle in law to the promotion of the voluntary sector for the benefit of the public being a charitable purpose in its own right.

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<sup>24</sup> [1996] STC 1218