



CHARITY COMMISSION
FOR ENGLAND AND WALES

GUIDANCE

Public benefit: running a charity (PB2)



SEPTEMBER 2013
New format January 2017

Contents

Part 1: About this guide	2
Part 2: Carrying out purposes for the public benefit	5
Part 3: Providing benefit	7
Part 4: Managing risk of harm	8
Part 5: Deciding who benefits	9
Part 6: Managing personal benefits	11
Part 7: Not carrying out a purpose for the public benefit	12
Part 8: Further information	13
Annex A: Benefits accessed through membership	14
Annex B: Physical access to a charity's facilities	15
Annex C: Charging for services	16
Annex D: Technical terms used in this guidance	19

Part 1: About this guide

This guide explains public benefit in the context of running a charity.

Legal requirement: all charities must have purposes that are for the public benefit. When running their charity, the charity trustees must carry out the charity's purposes for the public benefit.

This guide is relevant for charity trustees when running their charity. It will also be of interest to you if you are thinking of applying to the Charity Commission to register a charity, so that you understand what it means to carry out your charity's purposes for the public benefit.

Charity trustee duties generally

Legal requirement: charity law says that once a charity has been set up, its trustees must operate it as a charity in accordance with charity law and the charity's purpose.

For more on operating in accordance with a charity's purpose see:

- **Furthering charitable purposes only** (This does not form part of the commission's public benefit guidance)

This guide is not concerned with charity trustees' duties generally. For more on this see:

- **The essential trustee: what you need to know (CC3)** (This does not form part of the commission's public benefit guidance)

This guide deals only with the trustees' duty to carry out their charity's purposes for the public benefit.

Other public benefit guidance

This guide is part of the commission's set of 3 public benefit guides.

Issues relating to whether your organisation's purposes are charitable and public benefit in the context of charity reporting are dealt with in other public benefit guides:

- **Public benefit: the public benefit requirement (PB1)** - This guide explains the public benefit requirement. This requirement affects whether or not an organisation is 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 the commission's public benefit guides see:

- **Public benefit: an overview**

Having regard to our 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 the commission's 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.

Its 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 the 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'

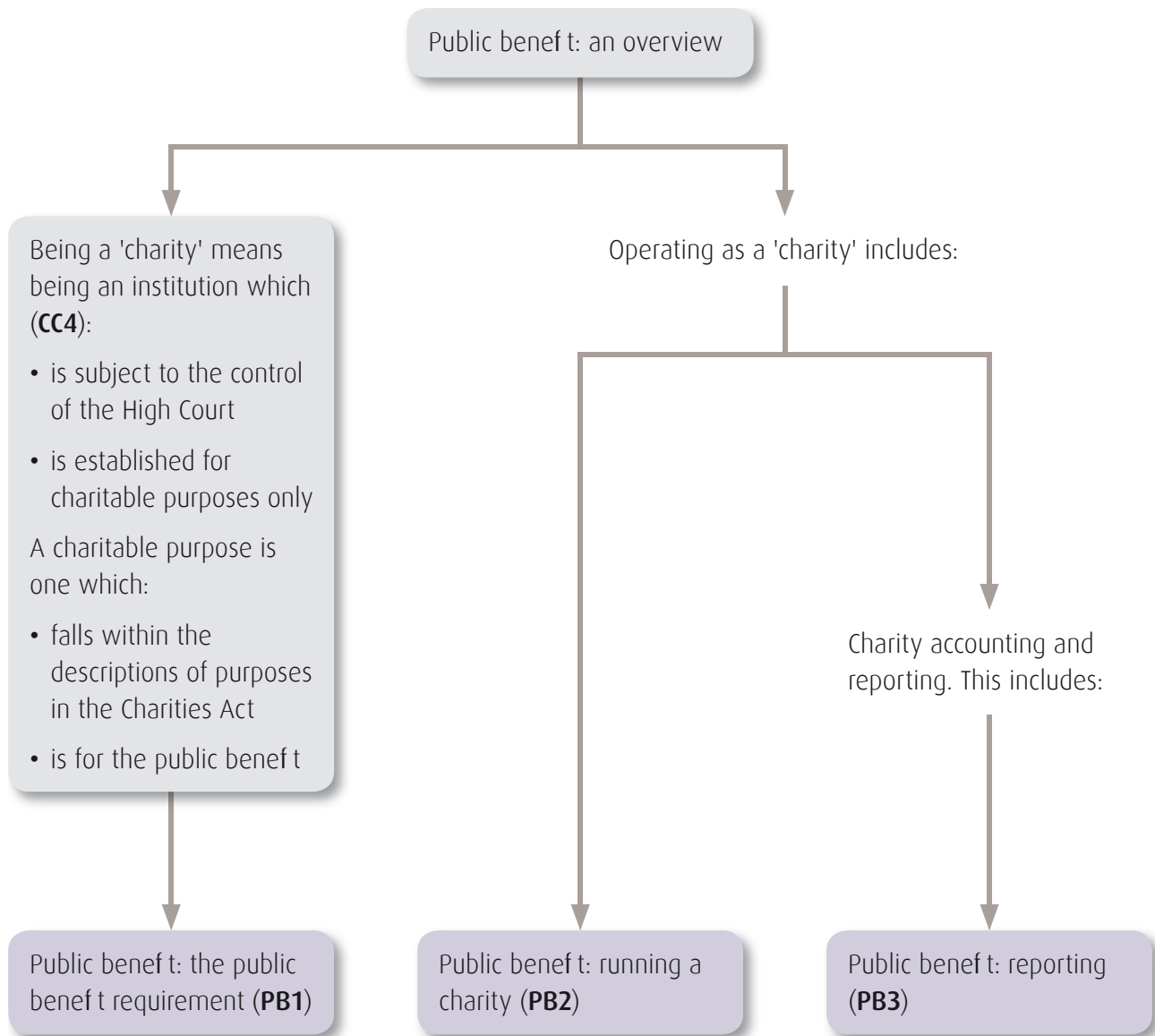
The word 'must' is used where there is a specific legal or regulatory requirement that you must comply with. 'Should' is used for minimum good practice guidance you should follow unless there's a good reason not to.

Also offered is less formal advice and recommendations that trustees may find helpful in the management of their charity.

The public benefit framework

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

Public benefit framework



Part 2: Carrying out purposes for the public benefit

Trustees' duty

Legal requirement: charity trustees must carry out their charity's purposes for the public benefit.

Usually this will be straightforward.

To carry out their charity's purposes for the public benefit, charity trustees should know what their charity's purposes are and understand how each purpose is for the public benefit.

A charity's purpose and its public benefit

Legal requirement: for a purpose to be a 'charitable purpose' it must be 'for the public benefit'.

A charity's purpose is what it is set up to achieve. It is usually stated in the objects clause of its governing document (the legal document that creates the charity and says how it should be run).

The public benefit of a purpose varies from purpose to purpose, and in the context of an individual charity's circumstances.

Understanding the public benefit of each of your charity's purposes means understanding how each purpose satisfies the two aspects of public benefit:

- the 'benefit aspect'
- the 'public 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
- any detriment or harm that results from the purpose must not outweigh the benefit

The 'public aspect' of public benefit is about who 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
- not give rise to more than incidental personal benefit

For more on this see the public benefit guidance:

- **Public benefit: the public benefit requirement (PB1)**

Running a charity

Not every decision that charity trustees make when running their charity impacts upon their duty to carry out their charity's purposes for the public benefit.

What are relevant are decisions made by the trustees which impact on:

- the way in which people benefit from the charity's purpose
- who can benefit from it

That means making decisions:

- that ensure that your charity's purpose provides benefit (see part 3 of this guide)
- that manage risks of detriment or harm to the charity's beneficiaries or to the public in general from carrying out your charity's purpose (see part 4 of this guide)
- about who benefits in ways that are consistent with your charity's purpose (see part 5 of this guide)
- that make sure any personal benefits are no more than incidental (see part 6 of this guide)

Making 'the right' decision

When making decisions about how to carry out their charity's purposes for the public benefit, many trustees are concerned about what is 'the right' decision. In many situations there is no one 'right' decision to be made.

Legal requirement: however, trustees must make decisions that are within the range of decisions that trustees could properly make in those particular circumstances.

Provided that the trustees make a decision within that range, then they will have made a 'right' decision.

It is not for the courts or the 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)
- is for the public benefit
- has regard to the commission's public benefit guidance where relevant
- is in accordance with the general framework for trustee decision making - for more on this see **It's your decision: charity trustees and decision making** (This is not part of the commission's public benefit guidance)

Part 3: Providing benefit

Carrying out purposes for the public benefit

The way in which a charity's purpose is beneficial is part of what makes it charitable.

When running a charity, the charity trustees do not have repeatedly to demonstrate that the purpose continues to satisfy the benefit aspect of the public benefit requirement.

For example, once the benefit to the public of a purpose to preserve a particular building of historical or architectural importance has been demonstrated, the trustees do not have to keep demonstrating the historical or architectural merit each year.

However, when making decisions about how to carry out your charity's purpose for the public benefit you should:

- understand how your charity's purpose is beneficial
- carry out the purpose so as to benefit the public in that way

For example, in running a historic building charity the trustees would simply have to make sure the public benefits from the preservation of the architectural or historically important building, and report on that in their trustees' annual report.

Part 4: Managing risk of harm

Carrying out purposes for the public benefit

Carrying out a charity's purposes for the public benefit includes managing risks of harm to the charity's beneficiaries or to the public in general that might result from carrying out the purpose.

When making decisions about how to carry out your charity's purpose for the public benefit you should:

- identify risks of harm
- minimise risk of harm and
- make sure any harm that might arise is a minor consequence of carrying out the purpose

Part 5: Deciding who benefits

Carrying out purposes for the public benefit

When making decisions about how to carry out your charity's purpose for the public benefit you should:

- know who can potentially benefit from your charity's purpose
- give proper consideration to the full range of ways in which you could carry out your charity's purpose

When making decisions that affect who can benefit, you may choose to focus on certain beneficiaries. You can do this provided that:

- you have proper reasons for doing so
- you do not exclude the poor from benefit
- the smaller group of people you wish to focus on is a sufficient section of the public for your charity's purpose
- you make decisions in accordance with the framework for **trustee decision-making** (This does not form part of the commission's public benefit guidance)

Making decisions about who benefits doesn't just involve identifying individual people or organisations to benefit. There are other factors which can have the effect of limiting who can benefit. Such factors include:

- benefits accessed only through membership
- physical access to a charity's facilities, such as opening hours
- charging for a charity's services

Benefits accessed only through membership

Legal requirement: A charity must not be set up to provide benefit only to the organisation's members unless:

- a sufficient section of the public can access those benefits by becoming members
- the membership structure is a suitable way of carrying out the charity's purposes for the public benefit

For more on this see Annex A: Benefits accessed through membership.

Physical access to a charity's facilities

Where a charity provides facilities for the public, its trustees can limit the amount of access the public has to those facilities, such as by having limited opening hours. This is provided that:

- this helps to carry out the charity's purpose in a better way
- the amount of access overall is appropriate in the charity's circumstances

For more on this see Annex B: Physical access to a charity's facilities.

Charging for services

Charities can charge for the services or facilities they offer.

Legal requirement: however, where a charity's charges are more than the poor can afford its trustees must run the charity in a way that does not exclude those who are poor.

For more on this see Annex C: Charging for services.

Part 6: Managing personal benefits

Carrying out purposes for the public benefit

Legal requirement: a charity can provide personal benefit if this is 'incidental' to carrying out its 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.

When making decisions about how to carry out your charity's purpose for the public benefit you should make sure personal benefits are no more than incidental.

Examples of personal 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)

Part 7: Not carrying out a purpose for the public benefit

It is for charity trustees to decide how to carry out their charity's purposes for the public benefit.

Where trustees are not carrying out their charity's purposes for the public benefit, the commission expect the trustees to address and resolve this.

If it considers that the trustees are not complying with their duty to carry out their charity's purposes for the public benefit, it will consider this. Read **how the Commission will assess any concerns** (This is not part of the commission's public benefit guidance). It will decide how much time it can give the trustees to make any necessary changes and whether it needs to take any regulatory action to put things right.

In rare cases, where it is no longer, or never was, possible to carry out a purpose for the public benefit, this would suggest that it is the purpose itself that is not for the public benefit.

If possible, the commission will assist a charity's trustees to redefine their charity's purpose. In extreme cases, where it is not possible for the trustees to put right the difficulties with the organisation's purpose, this would mean that the purpose is not charitable and so the organisation is not a charity.

For more on this see:

- **Public benefit: the public benefit requirement (PB1)**

Challenging a decision made by the commission

If the commission decide to take action in relation to any breach of the trustees' duty to carry out the charity's purposes for the public benefit, and the trustees 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 8: 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: 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.

- Legal requirement: **Public benefit: the public benefit requirement (PB1)**

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

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 its public benefit guidance
- some key points to know about the law relating to public benefit

- **Furthering charitable purposes only**

This explains the duty of charity trustees to further (or carry out) their charity's charitable purposes only.

- **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.

Annex A: Benefits accessed through membership

When membership provides public benefit

Legal requirement: a charity must not be set up to provide benefit only to the organisation's members unless:

- a sufficient section of the public can access those benefits by becoming members
- the membership structure is a suitable way of carrying out the charity's purposes for the public benefit

All those who might benefit should be able to apply to join and there should be objective criteria for deciding membership.

Often membership is limited to people living in a particular geographical area. Often there are practical reasons which dictate a limit upon membership numbers, such as where there is limited access to recreational facilities for health and safety reasons.

In these cases it is acceptable to have a waiting list for membership provided the next available membership is offered on a 'first come, first served' basis.

It is not possible to provide an exhaustive list of circumstances in which membership can be used to limit benefit to a section of the public. Ultimately it depends on the individual circumstances of a charity.

When membership does not provide public benefit

Legal requirement: to carry out a charity's purposes for the public benefit, trustees of charities which have a membership must ensure that any changes to membership provisions do not have the effect of turning the charity into a private members' club.

For more on this see:

- **Public benefit: the public benefit requirement (PB1)** (Part 5)

Annex B: Physical access to a charity's facilities

Where a charity provides facilities for the public, its trustees may restrict physical access to those facilities for reasons of:

- security of property
- lack of resources
- the condition of, and need for, preservation of land, buildings or artefacts
- the better administration of the charity

Legal requirement: charity trustees must ensure that they comply with the law regarding access to facilities.

Legal requirements: for example, where appropriate, trustees must have regard to the provisions of the Equality Act regarding the provision of physical access to buildings for people with disabilities.

Limiting opening hours

There is no set requirement for opening hours. However, as a matter of good practice, trustees should ensure that access is available frequently enough to cater for all types of visitor given the nature of the facility provided by the charity.

This might include, for example, being open at weekends as well as normal business hours, Monday to Friday. If a charity cannot stay open every day, for example for reasons of cost, the trustees will need to decide the days on which it will close.

Subject to any circumstances outside the trustees' control which restrict how the charity can operate, they should normally make arrangements for the charity to open on the days when the people for whom the facility is provided are more likely to be able to visit.

Annex C: Charging for services

Charities charging for services

Charities may charge for the services or facilities they offer. This will usually be because:

- the charity's services or facilities are expensive to provide
- unless the charity makes charges, it will be unable to operate at all

Examples of charities that often charge for their services include:

- educational organisations (such as schools and universities)
- hospitals
- care homes
- recreational charities (such as sports or leisure centres, recreation grounds or village halls)
- artistic, preservation and conservation charities (such as theatres, museums and stately homes)
- charities that charge for membership
- charities that charge for publications

Charges that the poor cannot afford

Legal requirement: one aspect of the trustees' duty to carry out their charity's purposes for the public benefit is that they must not run the charity in a way that excludes the poor from benefit. That could happen if the charges a charity makes for its services or facilities are of a level that the poor cannot afford.

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.

Legal requirement: if a charity charges for the services or facilities it offers, the charity's trustees must consider whether their charity's charges are more than the poor can afford.

This might depend, for example, on:

- the nature of the service and the frequency or regularity with which such a service is likely to be used or needed, and
- the consequent financial commitment likely to be required by beneficiaries

However, in general, it will usually mean charges that someone of modest means will not find readily affordable.

Examples of charges that the poor can usually afford include:

- membership fees of a few pounds paid by local residents to hire out a village hall
- small entry fees to attend events at a community centre or visit an historic house or site
- the annual cost of a library card
- low ticket prices to see a production by an amateur dramatic society
- low hourly fees to use a charitable public internet terminal
- small subscription or membership fees to join a playgroup, scouts, guides, youth club or after-school club, sports club or leisure centre
- mobile units (such as medical boats, food and clothing vans) touring deprived areas in developing countries providing services, equipment, goods or facilities at low cost for local people

Legal requirement: 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.

Making provision for the poor to benefit

Legal requirement: the level of provision that trustees make for the poor must be more than minimal or token.

Legal requirement: 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.

Legal requirement: trustees must make decisions that are within the range of decisions that trustees could properly make in those particular circumstances.

This might be demonstrated, for example, by making decisions in accordance with the framework for **trustee decision making**. (This guidance is not part of the commission's public benefit guidance.)

There are no objective benchmarks for trustees to follow regarding what is more than minimal or token provision for the poor. This is a matter for the trustees to decide, taking into account all the circumstances of their charity.

It could include a reduction in charges for people who cannot afford the full cost, or by providing benefit in other ways, such as by supporting the delivery of similar services by a state-run organisation.

Trustees can take into account the availability of other sources of funding from outside the charity which assist the poor in accessing the benefits of the charity. This might include, for example:

- scholarship funds provided by other charities
- local authority funding to pay towards the cost of residential care
- government loans for students attending university

In deciding how to make provision for the poor to benefit, trustees may find it helpful to look at some **examples** that have been set out. (These examples are illustrative only and are not part of the commission's public benefit guidance.)

The Upper Tribunal set out some factors which may be relevant to whether a charitable fee-charging school was making appropriate provision for the poor to benefit. Trustees of all fee-charging charities considering this issue may find these helpful. Those factors include:

- the level of fees charged
- the charity's financial situation and business plans (including the level of salaries for professional staff and their required level of qualification)
- how the charity operates on the ground
- whether the charity provides a 'luxury' service and what facilities it offers
- whether the charity has any endowment funds (the funds which the trustees are legally required to invest or keep and use for the charity's purposes. Endowment may be expendable or permanent)
- the charity's geographical location and other relevant local factors (such as whether it is in an area of social deprivation)

Trustees of charitable fee-charging independent schools may also find it helpful to look at how the Upper Tribunal answered some **hypothetical questions** put to them by the Attorney General about making provision for the poor. (These questions and answers are not part of the commission's public benefit guidance) To understand these questions and answers in context, some trustees may wish to view the **full judgment of the Upper Tribunal**.

Annex D: Technical terms used in this guidance

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): the term '**purpose(s)**' is used 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: this term is used 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.