



A BioSciAcademy briefing

New Charity Commission Public Benefit Guidance

This briefing has four parts. First, it summarises the key points that learned society trustees need to be aware of in the new guidance on public benefit, and also highlights some points that have potential implications. It then summarises briefly the supplementary guidances on the Advancement of Education for the Public Benefit and on Public Benefit and Fee-charging. Lastly, there are some comments on the action that societies may wish to take to ensure compliance.

Background

For most of the long history of charity law in England and Wales, there have been four 'heads of charity': the advancement of education; the relief of the poor, the handicapped and the aged; the advancement of religion; and other purposes beneficial to the community not falling under the other three heads (eg the relief of the sick, the mentally ill or physically handicapped, and the disabled). Most learned societies have been registered under the head of education, with research being included within education.

The new guidance produced in 2008 seeks to update and clarify the interpretation and implementation of charitable public benefit, but does not actually change the law as such. The new Charities Act removes the automatic assumption of public benefit for educational charities. This does not mean that there are any threats to educational organisations that provide public benefit, but simply that educational charities will have to demonstrate that they comply with the two principles of public benefit below, in the same way as other charities.

The Charity Commission produced a draft guidance document in early 2007, on which it carried out a consultation. The Biosciences Federation (BSF) convened a Working Group, led by Sue Thorn, which submitted a detailed response that can be seen at http://www.bsf.ac.uk/responses/CharityCommission_Jun07.pdf. It was considered important to respond, as learned societies differ in very many ways from the more 'traditional' charities and the draft, as worded, could have been open to interpretations that could have been detrimental to the activities and/or the charitable status of learned societies. In addition, the guidance is likely to be in place for some years so it was considered important to minimise the probability that different, and potentially negative, interpretations could be introduced at some future point – for example, if the anti-vivisection lobby were to gain greater influence.

The final guidance was published in January 2008 and it is reassuring to note that this revised guidance takes into account a number of the points that the BSF had raised as being of specific concern to learned societies. This guidance was followed in December 2008 by sector guidances on the Advancement of Education for the Public Benefit; and on Public Benefit and Fee-charging.

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1. Charity Commission Guidance on Charities and Public Benefit

Defining 'public benefit' and 'charitable purposes'

The report defines public benefit as the legal requirement that every organisation set up for charitable aims should be able to demonstrate that its aims are for public benefit (rather a circular definition, perhaps). It defines charitable purposes as those that fall within the descriptions of charitable purposes set out in the Charities Act and that are for public benefit. The Charities Act sets out a new list of 13 descriptions of charitable purposes that is better suited to learned societies' needs. The list includes:

- The advancement of education
- The advancement of health or the saving of lives
- The advancement of ... science
- The relief of those in need, by reason of ... ill-health, disability ...

Key principles of public benefit

There are two key principles:

- There must be an identifiable benefit or benefits
- Benefit must be to the public or a sector of the public

The guidance states that charity trustees must:

- Ensure that they carry out their charity's aims for the public benefit
- Have regard to guidance on public benefit
- Report on their charity's public benefit in their Annual Report

In addition, trustees must be able to show that they are aware of the guidance, that they have taken it into account when making decisions, and that they have good reasons if they depart from it at any point. This report is aimed at explaining the main points in the guidance, but trustees should ideally also read the full report, which is available at www.charitycommission.gov.uk/Library/publicbenefit/pdfs/publicbenefittext.pdf.

Principle 1 – there must be an identifiable benefit or benefits

There are three sub-points defined for this principle:

- a) It must be clear what the benefits are
- b) The benefits must be related to the aims
- c) Benefits must be balanced against any detriment or harm

For principle 1a, examples given of benefits include giving grants, giving medical care, and promoting the efficiency of other charities. The last of these could be especially useful to learned societies as it includes the work we do to support the work of universities and research institutes that have charitable status, and also the work of some societies with non-specialist groups such as patient support organisations.

The guidance states that the benefits to the public 'should be capable of being recognised, identified, defined or described', but it accepts that they will not always be 'capable of being quantified or measured'. This deals with our point that whether a specific grant does actually improve a subject in general, let alone a particular scientist's work, is not measurable for some years, if at all.

For principle 1b, the guidance points out that benefits can only be taken into account if they are in furtherance of the charitable objects. Thus, an activity that was generically

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capable of being defined as charitable would not count in assessing a society's public benefit unless it also furthered their charitable aim, eg advancing public education. An example of this might be a society preserving its historic headquarters and the artworks within it, which would not contribute to the society's fulfilment of its public benefit requirement if it were not included in its charitable objects.

For principle 1c, the main potential challenge might be from animal rights activists. The draft guidance made clear that this would not be a valid challenge. In the final guidance this depends on accepting that the benefits of research outweigh the detriment to the animals used. However, the wording makes reasonably clear that a challenge would need to demonstrate a very clear excess of detriment over benefit.

Principle 2 - benefit must be to the public or a sector of the public

There are four sub-points defined for this principle:

- a) The beneficiaries must be appropriate to the aims
- b) Where benefits are restricted to a section of the public, the opportunity to benefit must not be unreasonably restricted by geographical or other restrictions, or by ability to pay fees charged
- c) People in poverty must not be excluded
- d) Any private benefits must be incidental

These points in the draft guidance caused a great deal of concern as it was not clear whether 'scientists', 'physicians', 'students' or 'teachers' qualified as potential beneficiaries, or whether they were just conduits to providing benefit to the wider community. If they were not themselves beneficiaries, then there was a risk that all grants and many other benefits of membership would be considered private benefits. This point was made strongly in the Biosciences Federation response to the consultation. Fortunately, the Commission has taken our point on board and there are several reassuring new pieces of text in the final guidance.

Most learned societies can classify their beneficiaries as various sections of the public as well as society generally. Some generic examples include:

- Basic and clinical scientists, who need fora in which to present and publish their research, to obtain peer feedback and to network
- Postgraduate students and fellows, who need education and support to establish their careers and realise their potential
- Schoolchildren and undergraduates, who need educational materials and also information to assist their studies and their future career choices
- The public, who need educational information on subjects such as diseases, ecology, etc
- Society at large, which benefits from improved education and from the advances in science and health that result from that education

Additional groups for biomedical societies may include:

- Physicians, especially medical students, trainees and new consultants, who need training in their speciality, and other forms of support, to establish their careers and maintain their continuing professional development
- Nurses, who need training and continuing professional development
- Patients and their carers, either directly by the treatment they receive from well-trained doctors and nurses, or via patient support groups, who need accurate and impartial information

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The point about restrictions under 2b above is intended to ensure that potential beneficiaries are not excluded by unreasonably high charges, etc, but it accepts that many charities are not intended to benefit everyone. One example given is a village sports facility, which might be reasonably restricted to people from that village, but which should not have such high fees that only the wealthy can use it, nor should it exclude the disabled.

Under this heading the guidance makes clear that, where a charity has membership, there will be an increased burden of proof of public benefit. However, it uses the words 'closed, inward-looking and exclusive', and one would hope that most scientific and medical learned societies can demonstrate that none of these terms apply to them. However, each society should assess itself critically about this.

There is now a whole section on benefits that are delivered through a membership structure, with a new example given, which is reproduced below in full, as it is extremely reassuring.

For example, in the case of a professional body or learned society, membership may be restricted to members of a particular profession or to people who have certain academic qualifications. Where people are able to benefit from learned articles published by a society for example, or from the application of the knowledge gained by the professional from being a member of the professional body, the restriction on membership does not affect public benefit since membership is not the only, or main, means by which people generally can benefit.

As regards not excluding people who cannot pay high fees, most learned societies comply with this in several ways, for example: by having reduced membership fees for trainees and free membership for retired members; by providing reduced or free registration fees and grants for events; by providing personal and member subscription rates to journals and other publications; and by providing substantial amounts of free material on web sites, including much journal content.

The guidance also specifically mentions the provision of 'medical training to nurses or doctors at an NHS hospital which benefits the non-fee-paying patients at that hospital'. By implication, this should also be capable of extrapolation to cover provision of support and education to teachers and researchers at state universities, which benefits the students at those universities.

Another section of the original draft that had caused concern was the loose definition of private benefits. It was not clear whether the medals, grants and prizes awarded by societies would be defined as private benefits – in fact, it seemed most likely that they would – and, as any private benefits can only be incidental, this could have been very problematic. However, the final guidance is reassuring. Apart from making it clearer that scientists, doctors and nurses can be defined as beneficiaries, it also states unequivocally that 'the benefits of receiving an education, medical treatment, or a charitable grant' are not classified as private benefits. It also states clearly that where 'people benefit from a charity through a membership structure that is not unreasonably restricted, then the private benefits to the members are benefits they receive as a beneficiary, and so are regarded as a necessary result of carrying out the charitable aims'.

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Five questions about public benefit

The guidance poses five questions that trustees should be able to answer satisfactorily regarding the two principles.

Principle 1 – There must be an identifiable benefit or benefits

1. What are the benefits that arise from your organisation's aims?
2. Is there any detriment or harm that, in your view, might arise from carrying out your organisation's aims? Are you aware of any widespread views among others that such detriment or harm might arise?

Principle 2 – Benefit must be to the public, or a section of the public

3. Who do your organisation's aims intend to benefit?
4. If the benefit is to a section of the public, how are the beneficiaries defined or what restrictions are there on who can have the opportunity to benefit?
 - a. For geographical reasons: what is the geographical area that defines who can benefit?
 - b. For restrictions based on charitable need: what is the charitable need shared by the beneficiaries that is being relieved or addressed?
 - c. For restrictions based on personal characteristics: what defining characteristics are used to decide who benefits? How do those characteristics relate to the charitable aims?
 - d. For restrictions based on access to facilities: are there restrictions on what is available for access, or on who can have access, or limited opening times?
 - e. For restrictions based on eligibility for membership: does someone have to be a member to benefit? If so, is it open to anyone interested to join? If not, who can join and how?
 - f. For restrictions based on trustees' discretion: what criteria will the trustees use to decide who can benefit? What is the justification for that restriction?
 - g. For restrictions based on ability to pay any fees charged: what does your organisation charge for its services or facilities? How are charges set? Is everyone charged the full rate? What opportunities do people who cannot afford to pay those fees have to benefit from your organisation's aims? How do people in poverty have the opportunity to benefit?
5. Does anyone receive any private benefits from your organisation, other than as a beneficiary? If so, what benefits do they receive? Are those benefits incidental?

Reporting on public benefit

The guidance covers reporting requirements in detail. Most societies will already be complying with the requirements for the Trustees' Report and accounts.

2. Supplementary guidance on the advancement of education for the public benefit

This guidance, which can be seen on the Charity Commission web site at www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbeductext.pdf, sets out what the Commission understands by the meaning of 'advancement of education' and then goes through the points associated with the two principles dealt with above specifically in the light of educational charities. The guidance is clearly largely intended to deal with organisations such as private schools, which may in the past have provided benefit only to a narrow and wealth-restricted section of the public.

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The definition of education includes “to give knowledge to, or develop the abilities of, somebody by teaching, training or instruction”. It is defined as including “training (including vocational training) and life-long learning; research and adding to collective knowledge and understanding of specific areas of study and expertise; the development of individual capabilities, competences, skills and understanding”. To ‘advance’ education is defined as “to promote, sustain and increase individual and collective knowledge and understanding of specific areas of study, skills and expertise”. All of this is reassuring for societies in that it includes CPD, research and training.

The guidance adds a few additional points for clarification:

- Education has to be deliberate. The educational nature of the experience must be intended. It gives the example of the difference between a botanical lecture that takes part as a walk in a wood, and a walk with a friend who knows a bit about botany and tells you the names of some plants. The first can be educational; the second can't
- Education has to be structured, but the degree of formality can be appropriate to the type of education and an example is given of “meetings of highly educated people” that “might depend for their structure largely on the knowledge and experience of those attending who are familiar with educational process and capable of ensuring sufficient rigour to their discussions”
- Education does not have to be “value free and completely neutral”, but the values it enshrines or promotes must be “generally supported by objective and informed people”
- Campaigning can be a legitimate charitable activity, but it is not educational of itself. If an educational charity decides to focus resources on campaigning, then they must ensure that this does not become an end in itself

The description of types of charity that are capable of advancing education includes:

- “organisations supporting the work of educational establishments, or associated with them, such as ... prize funds, standard-setting organisations, teacher training organisations ...”
- learned societies
- “organisations which fund people’s education”
- “organisations that educate the public in a particular subject, for instance in ... climate change, physics ...”
- “information media, such as the internet ... libraries ... university presses, seminars, conferences and lectures”

The draft guidance then goes through the two principles and the associated sub-points. Under the principle that there must be identifiable benefits, it makes a number of additional helpful comments: that education leads to innovation and advances that are of benefit to everyone; that an individual’s intellectual development is of value to the individual and also to the “health and well being of the society around them”; that “benefit to the public should be capable of being recognised, defined or described but that does not mean it should also be capable of being quantified or measured”; and that benefits to students are not private benefits because they are what the charity exists to deliver.

The guidance also states that the support a student union gives can improve the learning ability of students and therefore has public benefit. This is encouraging for our support activities, ie those that do not directly deliver educational benefit, but that facilitate our educational work.

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When discussing principle 2, that benefit must be to (a section of) the public, it confirms that “the beneficiaries of research are the public”, and expands on this by saying that “research is only charitable if its useful results are made available to the public. This does not mean that research has to be presented in a way that is understandable by everyone. It might only be understood by experts in the field. What is important is that it is published and made publicly available so that everyone who is capable of understanding it has access to it, and its benefits or usefulness are widely available to everyone”. It also recognises that the beneficiaries of a seminar or lecture may be not just the attendees, but also the wider public with whom they interact. It gives the example of a GP who provides better support to a patient by having attended a lecture about a ‘medical panic’ story. This is particularly relevant for learned societies as it is probably the only place where the guidance makes explicit that an improvement in public health, while not within an educational object in itself, is nonetheless an acceptable final objective for an educational charity.

Regarding private benefits and education, the guidance makes clear that benefits received as beneficiaries are not private benefits. Private benefits include fees paid to suppliers, but there is also a useful example of reduced fees at a private school for children of staff if this is designed to attract better teachers. This could be extrapolated to cover learned society benefits such as free registrations for officers, career support and so on that enable us to attract the best quality volunteers to advance our charitable work.

Lastly, there is a useful clarification that, when making a grant to another charity, trustees do not need to evaluate how the receiving charity complies with the public benefit requirement.



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3. Supplementary guidance on public benefit and fee-charging

This is a substantial document that clarifies principles 2b and 2c. It can be seen at www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbfeechatext.pdf, and is clearly aimed in large part at charities that charge high fees for their services, such as private schools, opera houses, and so on.

Whilst much of the guidance is actually concerned with the accessibility of charities' services to "people in poverty", it is also concerned that "the opportunity to benefit must not be unreasonably restricted by ability to pay". The guidance makes clear that this includes primary trading and also membership fees. It also states that fees charged to those who are not beneficiaries are not covered, and it gives examples of sponsorship and other fundraising activities, and non-charitable trading company activities.

The guidance gives examples of ways charities can comply, such as offering reduced-price or free services, and most learned societies can easily demonstrate compliance with this. It is worth reviewing activities to check this is in place and ensuring that the trustees' report makes reference to it.

It also recognises that not all fees need to be low. It gives a very helpful example of a training course for surgeons, where the way the public benefits is not from attending the course, but from the improved skills and knowledge that the surgeons apply to treating their patients.

Lastly, it makes clear that services sold to those who are not beneficiaries are not covered by any fee restrictions.

4. Assessing a society's public benefit

Most learned societies should be able to satisfy the requirements of the new guidance as regards providing identifiable benefits to a sector or sectors or the public. However, it is recommended that all societies review their strategy, aims and activities to ensure that they have this focus. In addition, it is probably wise to review all reporting, such as Trustees' Reports and public Annual Reports, to ensure that they are structured and worded to make clear that the society is satisfying the requirements. It is recommended that this be discussed and minuted at trustee level.

Note

This report is a personal interpretation of the guidance document and is provided by BioScientifica for the general information of trustees and staff of learned societies. It is not intended to provide legal guidance. Each society should seek advice from its own professional advisors where appropriate.

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