

Public Benefit and the Prevention or Relief of Poverty: Summary of consultation responses

About this summary

This document summarises the feedback received by the Charity Commission in response to its consultation on draft supplementary guidance on *Public Benefit and the Prevention or Relief of Poverty*.

The draft guidance has now been revised and published under the title *The Prevention or Relief of Poverty for the Public Benefit*. This document explains how we have responded to the consultation comments, and signposts relevant sections in the published guidance.

Background information

The Charity Commission is established by law as the independent regulator and registrar of charities in England and Wales.

To be recognised in law as a charity, an organisation must have charitable purposes which are for the public benefit. This is known as the 'public benefit requirement'. Although all charities already have to meet this requirement, the Charities Act 2006 highlights it by explicitly including public benefit in the definition of a charitable purpose. It retains the current law on public benefit but creates a level playing field by requiring all charities to demonstrate, explicitly, that their purposes are for the public benefit; previously the law presumed this to be the case for charities which advance education or religion or relieve poverty.

The Act does not contain any new definition of public benefit or suggest how charities should meet that requirement. It does give the Charity Commission the new objective of promoting awareness and understanding of the operation of the public benefit requirement, and requires the Commission to issue, and consult on, guidance on public benefit, to which charity trustees are required to have regard when running their charity.

In January 2008 the Commission published its general guidance on public benefit, *Charities and Public Benefit*, following a four-month public consultation on draft guidance, which generated nearly 1,000 responses. Following publication of that guidance, the Commission launched a series of consultations on draft supplementary guidance on the public benefit of those charities most directly affected by the changes in the Act – that is charities established for the prevention and relief of poverty, the advancement of education, the advancement of religion and also fee-charging charities, which were highlighted during debates on the Charities Bill.

The consultation process

On 29 February 2008 we published draft supplementary guidance on *Public Benefit and the Prevention or Relief of Poverty* for consultation. The consultation period was 16 weeks, ending on 30 June.

We sought to raise awareness of the consultation in a range of ways including: publication on our website; direct mailings by post and email; routine contact with charities and their representative organisations; a press release and media work; provision of speakers at a number of external events; a small external discussion group and one-to-one engagement meetings with interested charities and others.

We have engaged with numerous MPs and peers to raise their awareness of our approach to public benefit, including our consultations on draft supplementary public benefit guidance, through a series of events as well as written briefings, individual meetings and appearing before Parliament's Public Administration Select Committee.

Responses to the consultation on Public Benefit and the Prevention or Relief of Poverty

We received 58 responses in total.

All the responses we received have been recorded, analysed and taken into consideration. We are grateful to everyone who took the time to respond.

In view of the number of responses we received, and the detail and complexity of many of them, this document summarises the key themes and issues that emerged from our analysis of the responses, rather than summarising what each response contained.

Anyone who wishes to see a full list of responses, or copies of individual responses, should contact Charity Commission Direct on 0845 300 0218.

General comments about the draft supplementary guidance

- Overall, general comments on the draft guidance were positive, with responders making complimentary comments about its clarity, helpfulness and style.
- However, responders also said that the guidance would benefit from being simplified and shortened.

Actions taken:

We have simplified and shortened the guidance, whilst retaining all the key elements. For example, we have moved some of the more detailed examples into an annex.

We have also re-structured the sections on public benefit around the key questions for charity trustees set out in section G8 of *Charities and Public Benefit*. This has the advantage of retaining the links to the principles of public benefit whilst allowing greater freedom when drafting the guidance to focus on the particular issues that are relevant to charities covered by the supplementary guidance.

Signpost - See sections D and E and Annex A

- Particular issues on the overall guidance raised by some responders were:
 - concern about the amount of guidance on public benefit responders perceived that charity trustees would have to have regard to;
 - questioning of whether our draft supplementary guidance properly formed part of the Commission's statutory guidance on public benefit to which charity trustees must have regard;
 - a call for even greater clarity about which aspects of the draft guidance represent a legal requirement and those aspects which are best practice advice.

Actions taken:

Although all of the guidance contained in *The Prevention or Relief of Poverty for the Public Benefit* is of relevance for charities whose aims include preventing or relieving poverty, not all of the material in that guidance is statutory guidance on public benefit.

We have therefore clearly identified which sections of the guidance are supplementary public benefit guidance to which trustees of charities whose aims include preventing or relieving poverty must have regard.

In addition, we use the term 'must' when referring to a specific legal or regulatory requirement and we indicate throughout the guidance which sections contain a legal or regulatory requirement. Those sections are marked with the symbol. We use the term 'should' when referring to items we regard as minimum good practice.

Signpost – Sections D, E and F are supplementary public benefit guidance.

- A few responders disliked our use of the term 'aims' when referring to an individual charity's purposes, although they recognised that this term is defined in our guidance as meaning a charity's individual purposes.

Actions taken:

We have continued to use the term 'aims' when referring to an individual charity's purposes, as we think it is important to be able to distinguish clearly in the guidance between an individual organisation's purposes and the descriptions of purposes in the Charities Act 2006. We have also clarified our definitions of the terms 'purposes' and 'charitable purposes'.

Signpost – See section B6 for definitions of the terms 'aims', 'purposes' and 'charitable purposes'.

Comments about our draft supplementary guidance on public benefit and the prevention or relief of poverty

- Many responses, particularly from poverty charities working internationally, advocate a wide interpretation of poverty (beyond just financial hardship), or a wide interpretation of what charities can do under the prevention or relief of poverty, in order to reflect the broad range of activities undertaken by them which are directed (ultimately) towards the prevention or relief of poverty (such as addressing human rights, environmental, or governance issues for example).

Actions taken:

The guidance now acknowledges, upfront, the breadth of the meaning of poverty, in both a domestic and an international context, and its interdependence upon social and economic conditions. It also acknowledges the broad range of activities charities for the prevention or relief of poverty, particularly charities working internationally, can undertake, ranging from direct financial assistance to wide ranging projects tackling root causes of poverty. This is also reflected in the examples of ways in which charities preventing or relieving poverty might express their aims in their objects.

Signpost – See sections C1 and C7.

- Our draft supplementary guidance suggested that poverty and financial hardship are the same. Some of the responses considered that there is a difference, in which may be that poverty is a condition that people experience on a longer-term basis, whereas financial hardship can be a temporary condition. A person might experience financial hardship but might not be classed as poor. For example, someone who is asset rich but cash poor (such as an elderly person who owns their own home but cannot afford to heat it).

Actions taken:

We recognise that poverty and financial hardship can be, but are not necessarily the same. In most cases we will treat them the same.

Signpost – See section C1.

- Although recognising that the Charities Act now allows charities to focus on the prevention of poverty (tackling its root causes) without also having to relieve it or its consequences, there seems to be a general view that it is difficult in practice to distinguish between the prevention of poverty and the relief of poverty.

Actions taken:

Our guidance explains that, generally, the prevention of poverty includes its relief, and the relief of poverty includes its prevention. It also recognises that they can be undertaken, independently, as separate charitable aims.

Signpost – See section C2.

- The responses recognise that there are many different ways of preventing or relieving poverty which are not necessarily about providing financial assistance, (e.g. providing education), or which are concerned with tackling the consequences of poverty (e.g. ill-health).

Actions taken:

Our guidance acknowledges the broad range of activities a charity for the prevention or relief of poverty can undertake, ranging from direct financial assistance to wide ranging projects tackling root causes of poverty. We have consolidated examples of some of the ways in which charities might prevent or relieve poverty into one Annex. We have also introduced a new section on how charities preventing or relieving poverty might express what they do as a charitable aim. This section reflects, in the example objects we have listed, the breadth of charitable activity that can be undertaken in connection with the prevention or relief of poverty.

Signpost – See Annex A and section C7.

- There were a number of concerns expressed by occupational benevolent funds. The guidance suggested that they be treated in the same way as single employer benevolent funds. It considered the circumstances in which the restricted beneficial class of such funds would be a sufficient section of the public; many benevolent funds also have activities that extend beyond poverty, such as addressing health and welfare issues. Those responders asked for clarification, for benevolent funds, on this aspect of the public benefit requirement.

- There was little support in the responses for retaining the current anomaly within charity law that allows poverty trusts to be set up for members of a particular family; although some responders also recognised that the Charities Act did not explicitly change this anomaly.

Actions taken:

Our guidance includes examples of different types of personal connection that have been held as being capable of defining beneficiaries of a charity for the relief of poverty, including family and employer connections. However, that does not mean that every restriction will still be capable of this.

Our guidance states that we intend to produce separate guidance for benevolent funds. We accept that there are important differences between occupational benevolent funds and single employer benevolent funds.

Signpost – See section E3.