

Lessons from the Public Benefit Requirement

**A thematic report from the Charity Commission
for Northern Ireland**



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The Charity Commission for Northern Ireland

The Charity Commission for Northern Ireland is the regulator of charities in Northern Ireland, a non-departmental public body sponsored by the Department for Communities.

Our vision

To deliver in partnership with other stakeholders in the charitable sector “a dynamic and well governed charities sector in which the public has confidence, underpinned by the Commission’s effective delivery of its regulatory role.”

Further information about our aims and activities is available on our website www.charitycommissionni.org.uk

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Introduction

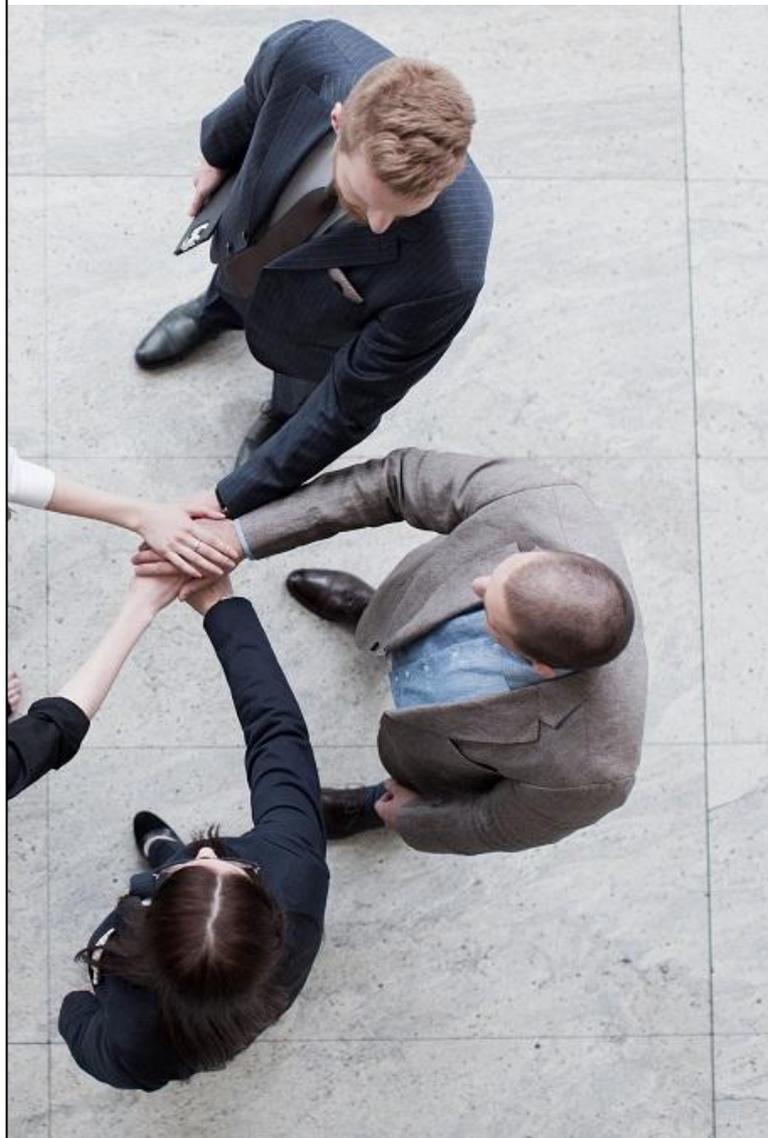
Since registration commenced in December 2013, over 5,500 charities have been registered with the Charity Commission for Northern Ireland and now feature on our register of charities. We recognise that for those organisations there has been a period of adjustment, as additional requirements are placed on charity trustees to comply with the legislation under the Charities Act (Northern Ireland) 2008 (the Act).

During the registration application process there is a requirement for potential charities to outline the public benefit flowing from their purposes. Under the Act there is no presumption of public benefit. The Commission has produced statutory guidance 'The Public benefit requirement' to assist applicants along with a number of other support documents and a toolkit.

While the vast majority of organisations (around 96%) that start the registration process successfully become registered charities and are entered onto the register of charities, poorly defined public benefit statements often delay the registration process.

Through the publication of this thematic report we hope to provide further guidance on the public benefit requirement through real examples.

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The public benefit

Background

Section 1 of the Charities Act (Northern Ireland) 2008 (“the Act”) defines a charity as an institution which is established for charitable purposes only. The Act goes on to define a charitable purpose as having two elements. It must firstly be a purpose listed at section 2(2) in the Act and, secondly, it must be for the public benefit.

Although being for the public benefit has always been a requirement for qualifying as a charity, up to the introduction of the Act it was presumed rather than demonstrated.

To be a charity, an institution now has to show that its purposes are exclusively charitable and that there is public benefit from each of those purposes. At the same time as introducing the public benefit requirement, the Act also established the Charity Commission for Northern Ireland. The Commission is required by section 4 of the Act to issue guidance in pursuit of its public benefit objective.

The Commission issued its guidance in July 2013, in time for the first twenty test applications to be assessed before registration was opened to all charities in December 2013. The guidance is entitled *The public benefit requirement* and is accompanied by twelve supporting documents, one for each of the twelve descriptions of charitable purposes as set out in section 2(2) of the Act.

The public benefit guidance is designed to assist applicants for charity registration to demonstrate how their purposes are charitable and for the public benefit. Applicants must demonstrate how their purposes meet the public benefit requirement by giving a public benefit statement. This statement assists Commission staff to make a decision as to whether or not the applicant satisfies the requirements to be registered as a charity, and will appear on the register of charities to allow the public to read and understand what the charity’s public benefit is.

Purposes and Public Benefit Toolkit

Applicants use an online application form, and completing a public benefit statement is part of the application process. Following the evaluation of the first registration applications, and in response to feedback from those going through the process, the Commission put together a *Purposes and Public Benefit Toolkit*.

The toolkit suggested a method for drafting a good public benefit statement. Having set out how to identify the organisation's purposes, the toolkit provides the applicant with a table to help with putting together a statement.

The table is divided into two sections, the "benefit element", and the "public element".

In the benefit element table, the applicant is first directed to write down one of the organisation's purposes (or the only purpose if that is the case). The applicant is then advised to make a statement about the benefits which flow from that purpose. As a benefit to the public has to be clearly evident, the table guides the applicant to state how the benefit flowing from the purpose can be demonstrated. A charitable purpose must not be harmful, and the table addresses this by directing the applicant to either state that there is no harm from the purpose, or, where there may be harm or potential harm, how that is outweighed by the benefits flowing from the purpose.

In the public element table, the applicant is directed to state who benefits from the charity's purpose. Furthermore, the applicant's attention is drawn to the requirement to highlight any private benefit which individuals may gain from the charity's purpose. While some may gain a private benefit, that benefit must be an indirect, or incidental, benefit. The onus of highlighting private benefit rests with the applicant, and the table assists them to highlight private benefits and to demonstrate if these private benefits could be incidental.

The toolkit draws applicants' attention to the requirement to provide a statement for each of the organisation's purposes, and that each purpose has to have a statement which draws out both the public and the benefit elements of that purpose.

The toolkit goes on to provide examples of how a public benefit statement should look when the application for registration is made.

A good public benefit statement will contain the following elements:

- It will be composed on each of the charity's purposes.
- It will identify the benefit from the purpose.
- It will give evidence as to how that benefit can be identified.
- If there is any harm resulting from a purpose being carried out, it will address how that harm is outweighed by the benefits.
- It will show who benefits from that purpose, and
- If there is a private benefit to any individual, the statement should highlight how that benefit does not directly flow from the charity's purpose, but is one which is incidental to the purpose, or it is a necessary benefit to allow the organisation to carry out its purpose.

Where an application for registration as a charity is evaluated by the Commission, the applicant's purposes and public benefit statement are the two most important elements in the application which will lead to a decision as to whether or not the organisation satisfies the legal requirements to be registered as a charity. The casework officer will evaluate the public benefit statement against the same headings set out in the toolkit, that is, what are the benefits from each purpose, and who will benefit from that purpose.

Since registration began for all charities in December 2013, the Commission has evaluated over 5,500 applications and public benefit statements. We have found statements which have ranged from the very good, to those where we have concluded that there is no public benefit statement at all, although there may be text provided in the application form under that particular section.

In many cases, the casework officer has written to the applicant's contact to point out how the public benefit statement requires improvement. Often this is an effective method of bringing the public benefit statement up to a satisfactory standard, but it delays the process of registration and creates additional work for both parties.

Revisions to the online application system

The Commission introduced some revisions to the online application system in May 2016. Part of this was designed to draw out more direct statements from applicants about how the organisation meets the public benefit requirement. This has been done by separating some of the elements of a good statement and asking for that information as a direct question. Rather than making one public benefit statement which addressed the "benefit" element and the "public" element, as in the pre-revised application system, applicants are now asked the following separate questions:

- What are the direct benefits flowing from your organisation's purposes?
- How can the benefits identified above be demonstrated?
- Is there any harm arising from any of the purposes?
- Who are the charity's beneficiaries?
- Is there any private benefit flowing from any of the purposes? Is it incidental and necessary?

Four public benefit statements as written in the original applications, are reproduced in this report to demonstrate what makes a bad public benefit statement and what makes a good one.

Examples of good public benefit statements

Case study one

A charitable organisation made its application with the following purposes:

“The objects of the Company shall be to promote the benefit of the inhabitants of [] and its environs (hereinafter described as the area of benefit) without distinction of sex, race or political, religious or other opinions and in particular to:

- (i) provide facilities in the interests of social welfare for recreation and other leisure time occupations with the object of improving the conditions of life for the said inhabitants;
- (ii) promote and improve the efficiency and effectiveness of charities and organisations whose purposes are charitable in direct pursuit of their objects by the provision of office accommodation and ancillary facilities;
- (iii) promote the conservation, protection and improvement of the physical and natural environment.”

The organisation gave the following public benefit statement:

“The public benefits that flow from purpose (i) are:

- (a) an enhanced quality of life and sense of well-being through engagement with and participation in activities and events that bring people together, leading to improvements in physical and emotional well-being, quality of life and a more stable and cohesive community;
- (b) increased opportunities to engage in new activities that bring people together, leading to greater social cohesion and fulfilment;
- (c) enhanced active citizenship and involvement in community life.

The direct benefit that flows from purpose (ii) is the increased efficiency and effectiveness of the community and voluntary groups and organisations that use the facilities, resulting in enhanced outcomes and service delivery and, consequently, and improved quality of life for those who benefit from the work of these groups and organisations.

The public benefits that flow from purpose (iii) are:

- (a) an enhanced environment, leading to improved health and a better quality of life for the public;
- (b) raised awareness of environmental issues.”

The charity went on to state that no harm arose from the purposes, the beneficiaries are the general public and locally-based community and voluntary organisations, and that no private benefit arises from these purposes.

“The benefits can be identified through feedback from the participants, evaluations of []’s work, and impact and evaluations of those community and voluntary organisations that make use of the facilities offered by the Association.”

This was a good public benefit statement as the applicant had stated what benefits flowed from each of its purposes, and the statement linked the benefits to the itemised purposes. The beneficiaries are clearly identified, and the harm and private benefit questions are both addressed.

The casework officer was able to accept this statement without suggested amendments.

Case study two

Another charity has provided the following two charitable purposes:

- 1.** To enhance the development and education of young children by encouraging parents/guardians to understand and provide for the needs of their children by:
 - (a) Offering appropriate play and educational facilities, with the right of the parents/carers to take responsibility for and to become involved in the activities of [], ensuring that [] offers opportunities for all children, regardless of ability, religion, culture, race or means;
 - (b) Encouraging the study of the needs of such children and their families and promoting public interest in and recognition of the needs of such children and their families in the local community;
 - (c) Providing the necessary facilities for the daily care, recreation and education of children during out of school hours and school holidays;
 - (d) Advance the education and training of the persons who provide such care, education and recreational facilities.
- 2.** To promote such other charitable purposes as may from time to time be determined.

The organisation gave the following public benefit statement:

The directors believe that both our purposes satisfy both elements of the public benefit requirement.

The direct benefits that flow from purpose one include:

Parents and families benefit from a 'One Stop Shop' with a flexible affordable service tailored to their needs: half or full day care, Playgroup, After Schools Club, wrap around care, Nursery/School drop offs/pickups where required and holiday care.

Children are provided with inclusive, sensory, fun & stimulating learning experiences which support and nurture all areas of learning & development. Their confidence and skills are enhanced thereby building foundations for a happy, secure childhood.

Staff benefit from training opportunities that enable them to develop individual capabilities, competences and understanding to support the children's learning & development.

Students benefit from training placements enabling them to develop practical skills in Childcare.

To date we have not undertaken any activities under purpose two.

The benefits from purpose one are evidenced through the increasing demand for places in [] and from both verbal and written feedback from parents/carers and staff. Many parents/carers have provided feedback through writing cards and letters. These have been collated in an album which is on display in the foyer. An annual Family Questionnaire provides more structured feedback. Benefits are also evidenced through an annual Social Services inspection. Written observations of children provide evidence of their individual progress towards developmental milestones and age appropriate transitions.

To date we have not undertaken any activities under purpose two.

The charity went on to state that no harm arose from purpose one, and that to date it had not undertaken any activities under purpose two. The beneficiaries of purpose one are children aged 0 to 11, parents/carers and staff/students as adult learners, irrespective of ability, religion, culture, race or means. There were no beneficiaries as yet from purpose two. There was no private benefit under purpose one, and, again, purpose two had not yet been implemented and so there were no private benefits from that. The trustees went on to declare that they would ensure that any further action would be for the public benefit and will be exclusively charitable in line with Charity Commission guidance.

This was a good public benefit statement as the applicant had clearly differentiated between purposes one and two, and had listed the benefits flowing from each purpose. The applicant understood that, as it had not undertaken any charitable activity under purpose two, it was important to make that clear and not to make statements which could not be correct. The beneficiaries are clearly identified and categorised (both children and adults), and the harm and private

benefit questions are both addressed, again, highlighting the fact that there could be no private benefits or harm arising from purpose two.

The casework officer was able to accept this statement without suggested amendments.

Examples of poor public benefit statements

Case study three

A charitable organisation made its application with the following purposes:

The Group is established to promote play based learning environments for all children under statutory school age (hereinafter referred to as the beneficiaries) without distinction of age, gender, religion, culture, race or means, by associating the statutory authorities, community and voluntary organisation and the inhabitants in a common effort to advance education, and in particular:

A) to advance the education of the beneficiaries by the provision of safe and satisfying group play, with the right of parents/carers to take responsibility for and to become involved in the activities of the group; and to promote the preservation of health of the beneficiaries; and

B) to support the values and principles of [].

The organisation stated that the benefits which flowed from its purposes were:

All children have access to organisation regardless of gender, religion, culture and race.

This statement borrows a phrase from the organisation's objective and does not spell out the benefit which comes from that objective. It tells us about how children have access, but it does not tell us what they have access to.

In answer to the question about how the benefits can be demonstrated, the organisation said this:

Regular evaluation by staff. Staff support and supervision. Leader Reports at committee meetings. [] Specialist reports. 3 year development plan. Inspections by ETI and NHSCT.

Although the statement might have been better phrased, this answer does address how the benefits are demonstrated and did not require further enquiry from the casework officer.

In answer to whether there was any harm arising from any of the purposes, and whether there was any private benefit flowing from the purpose, the applicant replied "None" to both questions.

The applicant identified the beneficiaries as "Children and their parents".

Overall, this public benefit statement did not provide any information about the benefits from the purposes, nor did it address the harm or private benefit questions. The information about the how the benefits can be demonstrated was just about acceptable.

The casework officer had to enter into correspondence with the applicant to bring the statement up to a standard where the Commission could accept that the applicant had demonstrated the public benefit requirement. This meant that registering the organisation took longer and involved more work for both parties.

Case study four

A charitable organisation made its application with the following purposes:

The promotion of charitable deeds and good works in the [] vicinity, Northern Ireland and the UK & ROI through supporting charities and trusts in their efforts.

This support may come in the form of promoting and encouraging, raising money for and awarding grants to those charities and Trusts, providing their purposes are charitable in nature.

To carry out any other charitable good works that the Trust decides.

The organisation stated that the benefits which flowed from its purposes were:

Providing funding sources for charitable organisations at a time when other sources of funding have proven increasingly difficult to access due to austerity cuts. For example, both [] and the [] were able to keep services going that may have disappeared.

This statement tells us about what the charity does, but it does not tell us about what benefits flow from its purposes.

In answer to the question about how the benefits can be demonstrated, the organisation said this:

Feedback from the two organisations mentioned above was given to the Trustees. Nearly 8,000 people received preventative mental health training from [] resulting in a number of referrals for help. Over 300 people were helped with advocacy by the [].

This answer does address how the benefits are demonstrated and did not require further enquiry from the casework officer.

In answer to whether there was any harm arising from any of the purposes, and whether there was any private benefit flowing from the purpose, the applicant replied "no" and "none" respectively. This required follow-up by the casework officer before the public benefit requirement could be accepted as having been met. This follow-up delayed the registration of the charity and caused more work for both the charity and the Commission.

The applicant did make a statement about who the charity's beneficiaries were.

Conclusion

The introduction of compulsory registration for organisations which are charities has brought challenges for the sector and the Charity Commission. On the one hand, charities are being asked to respond to new legislative requirements and to focus their minds on what benefits their organisations deliver. On the other hand, the Commission has been obliged to guide and support charities in complying with new legal obligations. The publication of the public benefit toolkit, and the revised registration application system, are the part of the Commission's response to help charities to meet these new challenges.

As the task of registering all of Northern Ireland's charities continues, the Commission will continue to seek ways of helping charities to make good public benefit statements. However, as this report demonstrates, there are many examples of good public benefit statements already on the register of charities. This is a testament to good trusteeship within the sector and we hope to see this trend of good accountability continue.

Further Reading

The public benefit requirement toolkit is an essential resource for anyone who wishes to understand the public benefit requirement when making an application to register a charity. It can be found at:

<http://www.charitycommissionni.org.uk/manage-your-charity/register-your-charity/the-public-benefit-requirement/>

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