

Assessing Public Benefit

The Charity Commission's approach to Care Providers

The Charity Commission has just published the results of its first assessments of whether charities in England and Wales meet the public benefit test. The Commission's reports into the 12 selected charities provide a useful insight into the way in which the public benefit test will be applied

The charities assessed included three care providers. Only one of the three passed the test: Cornwall Old People's Housing Society, which runs the Perran Bay Care Home for the Elderly. Charities providing care will need to give careful thought to the way in which they demonstrate public benefit and ensure their services are accessible to people on lower incomes.

The reports highlight a range of issues, including the need for charity trustees to:

- avoid 'mission drift' – the situation where a charity's activities differ from the legal objects set out in its constitution
- ensure that the charity's policy on assistance with

fees is clear, open and transparent

- establish a funding strategy (for example, through the setting of fees, use of reserves or fundraising, or a combination of some or all of these) so that the charity can demonstrate that it has a system for ensuring that its benefits are accessible to those

who cannot afford its fees, including those in poverty (It is not sufficient to provide places to people who qualify for means-tested assistance from

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local authorities)

- make available - and appropriately publicise - information about the possibility of assistance with fees
- periodically review the number of residents with funded places

You may wish to give some thought to how your charity would respond to a public benefit assessment. In preparing for the possibility of an assessment of public benefit, trustees will need to:

- identify specific examples of things the charity has done which show the frequency, regularity and extent of the charity's activities
- consider whether there are recent regulatory reports (from, for example, the Care Quality Commission) which will support the charity's position



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- establish a protocol for top-up fees (where local authority funding is inadequate) and where individuals do not qualify for local authority support
- review the content of the charity's web-site to ensure that it accurately reflects the charity's work and identify issues which are likely to prompt queries from the Commission
- present information clearly

The Commission takes a proportionate, risk-based, evidence-based approach to regulation. As such, the onus is on the trustees to demonstrate evidence of public benefit.

Once you have considered the issues above, you can ensure that the Trustees' Annual Report includes appropriate reference to the work done in order to support the charity's position.

The assessment reports also reinforce the need for charity trustees to consider how any conflicts of interest will be managed where, for example, trustees have relatives who are receiving care from the charity. Specifically, the Charity Commission says:

"It is important for charity trustees to familiarise themselves with the terms of their charity's governing document regarding the payment of trustees and other conflict of interest provisions."

If your charity is established as a company, you will

need to consider an under appreciated aspect of the Companies Act 2006. The Act includes a duty for the charity trustees/directors to avoid conflicts of interest. The duty is broadly framed and the effect on charitable companies appears not to have been a priority during the passage of the Act. The resulting provisions have caused confusion since they were introduced.

The definition of conflicts of interest is broad enough to include situations where:

- a trustee is related to a person who receives care from the charity
- a trustee is also a trustee of another charity in a related field
- a trustee is employed by a local authority or other funding body

Before the new rules came into force, the 'conflict of loyalties' arising from the latter two examples would have been managed by simply declaring an interest or, where appropriate, withdrawing from discussion. Under the new rules, trustees may only authorise one of their number to continue to serve in the event of a continuing conflict of interest if there are suitable provisions in the memorandum and articles of association of the charity.

The result is that charitable companies may need to amend their governing documents to clarify the manner in which such conflicts will be managed.

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