



## not for profit | public benefit

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### what is enough?

The Charities Act 2006 became law on 8 November 2006 and resulted in all charities having to demonstrate explicitly that their aims are for the public benefit, rather than that fact being presumed, as was previously the case for those charities advancing education, religion and relieving poverty. This means charities need to pass the public benefit test.

The Charity Commission issued and consulted upon draft general guidance on public benefit and supplementary sub-sector guidance which included guidance for charities for the advancement of education and fee-charging charities. Following the publication of its final guidance, the Commission undertook a series of 12 pilot assessments late last year to examine whether the aims of the charities selected were capable of being charitable and for the public benefit and to assess the extent to which the charity is currently fulfilling that requirement.

### the results

The pilot assessments included five independent schools. Details of those selected are given below with their results:

Manchester Grammar School	pass
Pangbourne College Limited	pass with good practice recommendations
Manor House School Trust Limited	pass with good practice recommendations
Highfield Priory School	fail
S. Anselm's School Trust Limited	fail

Not only did two of the schools fail the public benefit test, the Commission also highlighted that whilst Pangbourne and Manor House were operating for the public benefit, the following additional steps should be taken to ensure they comply with good practice:

- publicising more clearly details of means tested awards
- increasing the level of higher percentage awards
- reviewing the extent to which opportunities to benefit are taken up by people who are unable to afford the fees, including those in poverty.

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The Charity Commission plans to review Manor House's, but not Pangbourne's, progress in complying with best practice within 18 months.

In the meantime, the two schools that failed to meet the public benefit test must produce a plan to show how they will ensure there is sufficient opportunity to benefit in a material way for those who cannot afford fees, including those in poverty. The Governors of each school will need to confirm to the Charity Commission within three months that they intend to address the issues raised and then provide a plan for agreement within a further nine months.

### what we think

The Charity Commission has come under intense criticism over the results of the pilot assessments and many feel that they are out of their depth. Previous guidance explained that schools should be creative in displaying public benefit; but the results of the pilot assessments indicate that the focus is on means-tested bursaries. Without a material level of means-tested bursaries being made available, it appears that a school will not pass the public benefit test.

Unhelpfully, the Commission has not provided a benchmark of what is deemed enough, however based on the pilot assessments it appears that means-tested bursaries of 5% of fee income is considered the level schools currently need to achieve. As well as providing a material level of means-tested bursaries, schools must make available higher level awards, including 100% awards.

### food for thought

Highfield Priory is a small preparatory school near Preston, Lancashire which made surpluses of £17k in 2008 and £9k in 2007. The school is supported by a number of donations; excluding such income the school would have made deficits of £28k and £40k, in 2008 and 2007 respectively. In 2008 the school had net assets of £826k, but excluding fixed assets the school had net liabilities of £275k. This is clearly not a wealthy school – they keep their fees low to provide access to as many pupils as possible. The school appears to have followed the Commission's advice and has an extensive programme of providing facilities to other schools and groups of young people and sharing knowledge, skills and experience with other educational providers. Despite this, the school appears to have failed the public benefit test because it does not provide enough bursaries.

It is possible that the school is not at capacity and so it could offer means-tested bursaries at limited cost to the school. If it doesn't have spare capacity or capacity is limited to certain year groups, the school may have to turn away fee paying students in order to provide bursary places. As a result, it is likely current parents would suffer fee increases to fund these places, and in doing so make the fees too high for some. Ultimately this could affect the long term viability of the school.

The decision by the Charity Commission to fail this school indicates the hard line they are taking, contrary to their promise of a proportionate approach. It means that irrespective of a school's financial position it will need to offer means-tested bursaries.

## actions

Prior to the announcement of the pilot assessments we had recommended our clients maintain a record of and report on public benefit activities, but to delay making any costly changes until their publication. Certain umbrella bodies are now advising schools to continue with this approach.

The Charity Commission appear to consider best practice to be for schools to:

- set up a bursary scheme as follows:
  - have a **means-tested fee assistance scheme** which sets an income level below which full funding can be offered, and a sliding scale above this where part-funding is provided. The Commission report a wish to see a focus on higher level awards
  - set **budgets and targets** for the number or amounts of fee assistance that can be offered (it may be necessary for you to raise fees to do so)
  - offer a **significant level** of bursaries, although take-up can be less
  - **publicise/advertise** your bursary scheme ensuring it will reach those who might not be able to afford the fees and clearly indicate the opportunities to benefit that are available - working with local schools and nurseries will increase awareness of your scheme, as well as advertising in the local press and on your website
  - having **dedicated funds** for fee assistance
  - undertake **fund-raising campaigns** to create funds for fee assistance
- continue with other public benefit activities which could include the following:
  - **teacher exchanges** and **collaborative working** with state schools
  - allowing **use of facilities** by state schools and groups of young people, including those from overseas
  - **hosting events** with other schools
  - **sharing expertise**, such as training and mentoring PGCE students, acting as examiners and assessors for exam boards and helping teaching assistants with their PGCE applications
  - providing state sector students with the opportunity to **access** lessons and other educational events
  - being an **academy sponsor**.

Keep a record of and report upon such activities, but bear in mind that these will not be enough on their own.

It is also important to ensure the other activities undertaken are in line with your objects and aims, otherwise they will not count towards public benefit.

A template for a public benefit financial audit can be obtained from us on request.

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## reporting

There are two parts to meeting the public benefit requirements, firstly compliance and secondly to report on public benefit appropriately in the financial statements.

For accounting periods commencing on or after 1 April 2008 the Governors' Report must include:

- confirmation that Governors' have paid due regard to the Charity Commission guidance on public benefit in deciding what activities the charity should undertake
- explanation of significant activities undertaken in order to carry out the charity's aims for the public benefit, as well as their aims and strategies
- explanation of the charity's achievements measured by reference to the charity's aims and the objectives set by the Governors.

The Charity Commission has produced an example set of school accounts, 'Alltown School Foundation', which incorporates the public benefit reporting requirements. A copy can be found on the Charity Commission website.

Many schools have been reporting on their public benefit activities in their Governor's Report over the last few years but this has generally been in a separate section. The Charity Commission guidance now available suggest it should be integrated within the report. Similarly, we recommend increased reporting on public benefit throughout the Summary Information Return.

## the future

Fortunately this is still not the end of the story. We will only learn whether any of this guidance, or indeed the removal of the presumption of public benefit, will stand up when a case goes to the Charity Tribunal (or even, on a point of law, to the High Court). Only then will we have a definitive yardstick against which schools can measure themselves and perhaps put an end to the some of the unfortunate publicity and the uncertainty affecting the sector.

## about haysmacintyre

**haysmacintyre, is a leading advisor to the independent schools sector and our portfolio includes over 100 schools throughout the UK and many of the governing bodies and professional associations. We support the sector through the conference and seminars we provide for governors, heads and bursars, our annual benchmarking survey and other publications.**



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