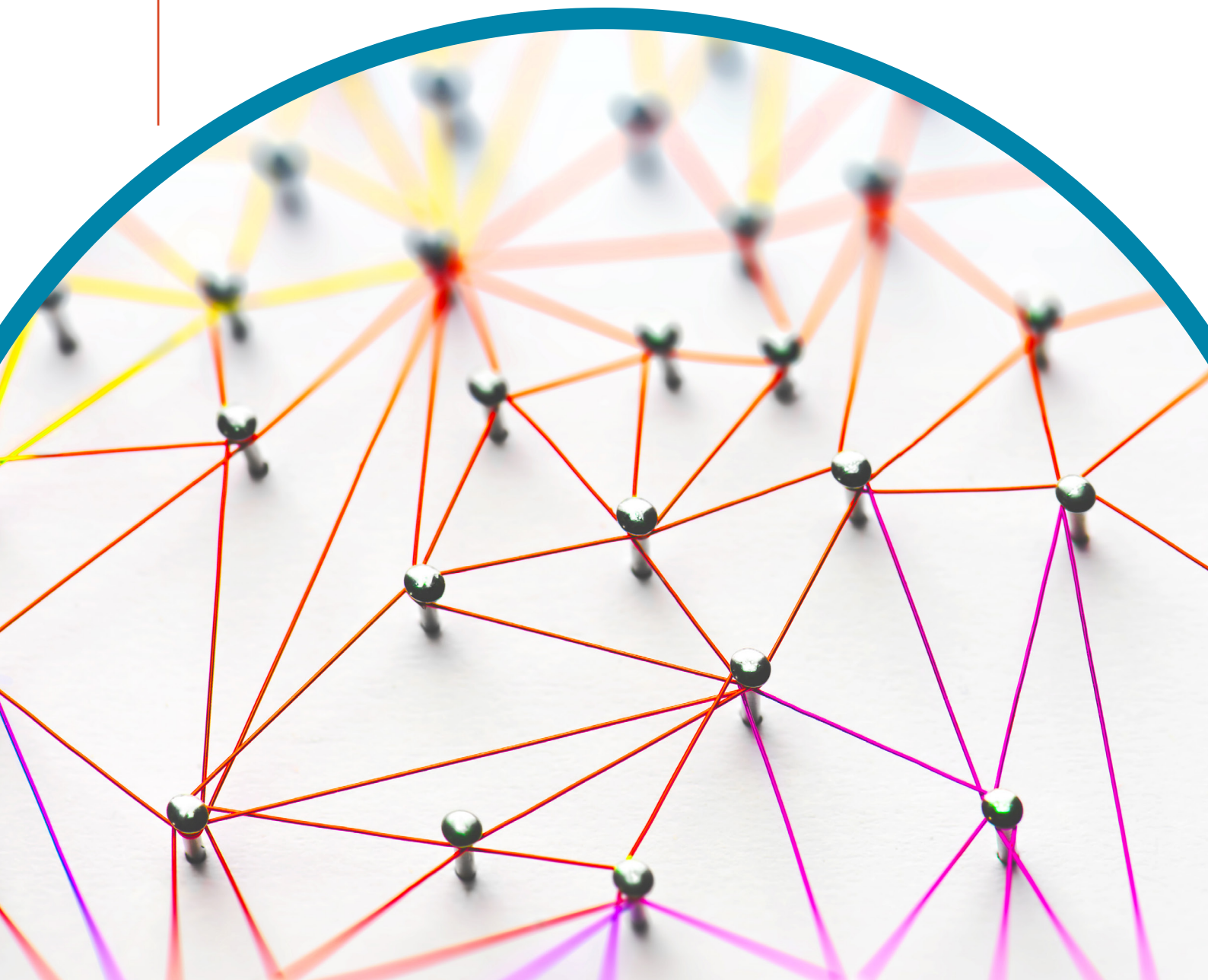




An Rialálaí
Carthanas

Charities
Regulator

What is public benefit?



Legal Disclaimer

This document is issued by the Charities Regulator under section 14(1)(i) of the Charities Act 2009 to encourage and facilitate the better administration and management of charitable organisations.

This document is not, nor is it intended to be, a definitive statement of the law and it does not constitute legal advice. The Charities Regulator recommends that charity trustees consult their governing document and obtain their own legal advice where necessary. The Charities Regulator accepts no responsibility or liability for any errors, inaccuracies or omissions in this document.

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What does this guide explain?

This guide explains what a public benefit is for the purposes of the **Charities Act 2009**.

Public benefit is one of the three main elements of how an organisation meets the 'charity test'. This guide:

- outlines the different elements of the charity test;
- explains what a public benefit is;
- explains what is not a public benefit; and
- provides case studies to help clarify what activities may or may not be of public benefit.

This guide does not explain how to set up or register a charity. Information about setting up or registering is available on our **website**.

Does your organisation pass the charity test?

The Charities Act, 2009 (the "Act") sets out the requirements that your organisation must meet to be considered a charity. This definition of a charitable organisation can best be illustrated using this simple graphic:



To pass the charity test and meet our registration requirements, your organisation must provide evidence that it:

- ✓ Is not an excluded body¹
- ✓ Exists for one or more charitable purposes (explained on pages 3-4)
- ✓ Promotes these charitable purposes only
- ✓ Carries out all activities to further these charitable purposes
- ✓ Requires all its property to be used to further its charitable purpose(s) according to its constitution
- ✓ Operates in the Republic of Ireland, exists to benefit the public or a section of the public in Ireland or elsewhere through its charitable purposes

What is a charitable purpose?

‘Charitable purpose’ is what a charity is set up to do. **The Act** sets out specific categories of charitable purposes. To satisfy this element of the charity test, your organisation’s purpose must fall within one or more of these categories:

- Prevention or relief of poverty or economic hardship
- Advancement of education
- Advancement of religion
- Any other purpose that is of benefit to the community (such as):
 - the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability;
 - the advancement of community development, including rural or urban regeneration;
 - the promotion of civic responsibility or voluntary work;

¹ The Charities Act 2009 sets out the legal requirements for a charity, which includes promoting a charitable purpose only. The “charitable purpose” is what a charity is set up to achieve, and the Act sets out specific categories of charitable purposes. The Act also contains a definition of ‘excluded body’. For example, a political party or a body that promotes a political party or political cause cannot register as a charity as its activities are not exclusively focused on the advancement of a charitable purpose. Trade unions and chambers of commerce are other examples of excluded bodies.

- the promotion of health, including the prevention or relief of sickness, disease or human suffering;
- the advancement of conflict resolution or reconciliation;
- the promotion of religious or racial harmony and harmonious community relations;
- the protection of the natural environment;
- the advancement of environmental sustainability;
- the advancement of the efficient and effective use of the property of charitable organisations;
- the prevention or relief of suffering of animals;
- the advancement of the arts, culture, heritage or sciences; and
- the integration of those who are disadvantaged, and the promotion of their full participation, in society.

Your organisation's governing document must set out your charitable purpose – that is, what the organisation is set up to achieve and how it intends to achieve this.

Does your organisation generate a public benefit?

The charitable purposes of an organisation must benefit the public or a section of the public in Ireland or elsewhere. These benefits must be identifiable. If an organisation has more than one charitable purpose, you must be able to identify the benefits associated with each purpose.

Public benefit is what makes charities different from other organisations. It is important to remember that a registered charitable organisation **must** provide a public benefit. If your organisation does not provide a public benefit, your purpose is no longer charitable.

There are two parts to public benefit. When we evaluate the public benefit of an organisation's activities, we consider:

- the value the charitable activity or charitable activities create, **and**
- who gets the benefit and value of those charitable activities.



For example, fundraising to cover the medical bills for one individual does not provide a public benefit, as it benefits only one individual. However, if you are fundraising to pay the medical bills of a class of people who have a particular illness, your fundraising is likely to meet the requirement for public benefit.

What qualifies as public?

A public benefit may benefit everyone – the general public – or a section of the public. Your organisation can meet the public benefit test even if the public it benefits is a small section of the public.

A section of the public can:

- be from a geographic location or a particular community, such as the deaf community or the Jewish community;
- be from a particular age group, such as young people or older people;
- share a common characteristic such as:
 - ill health;
 - disability;
 - disadvantage or poverty; or
 - a specific medical condition or disease.

Charitable Purpose	Protecting the natural environment	Promoting health including the prevention or relief of sickness
Activity	Keeping beaches litter free	Supporting people with a rare illness
Who benefits?	The general public: everyone	The people with the rare illness: a small group of people, but everyone in that group can benefit
Is there a public benefit?	 Yes	 Yes

What is a benefit?

Sometimes a charity that works for the benefit of a section of the public might also indirectly benefit the wider public. For example, a charity set up to provide education for children in a remote part of a developing country will indirectly benefit the wider community. The direct benefit is relevant when we assess public benefit. So, in this case, the direct benefit of the advancement of education is what matters.

Some benefits are easy to measure and understand, but others are not so obvious. In all cases, the benefit should be identifiable and capable of being described. There must be a direct link to the charitable purpose selected.

Your organisation must be able to identify and explain the benefit, who benefits, and link it to your charitable purpose and activities.

How big or substantial does our public benefit have to be?

A charity does not have to provide a specific level of public benefit. Many charities are very small or they are operating within a small section of the community, but they can still show that they are providing a public benefit.



What may interfere with the public benefit your charity provides?

When we assess an application to register as a charity or review a charity's activities as part of our compliance and enforcement work, we consider its activities. In particular, we consider if they cause harm, provide a private benefit that is not permissible, or unreasonably restrict or limit who can benefit from the charitable activity.

To pass the public benefit assessment, your organisation cannot:



Cause harm



Provide a private benefit that is not permissible



Unreasonably restrict or limit who can benefit from your activities

Causing harm

Harm is the opposite of benefit. Sometimes an organisation's activities can cause harm instead creating a benefit. Where there is a likelihood of harm occurring, we will take this into account and we will assess whether the public benefit outweighs the harm. In the Case Studies section, case study 7 looks at this issue.

Private benefit

A private benefit is a benefit that is gained by an organisation or an individual other than as a member of the public or section of the public from the activities of the charitable organisation. Some private benefits are permitted. For example, some permitted private benefits are staff salaries and payments made to third-party suppliers of goods and services such as office equipment, rent or accountancy fees.

For a private benefit to be permitted, the charitable organisation must demonstrate it is:

- ✓ Reasonable in all circumstances
- ✓ Ancillary* to the public benefit, and
- ✓ Necessary for achieving the public benefit

*Ancillary in this context means the private benefit is secondary or subsidiary to the public benefit.

Private benefit will always be assessed to determine whether or not it is permitted. The circumstances of each case will be relevant in assessing the private benefit. In general, there are two ways of looking at private benefit. One type is not permitted and the other is permitted.

- ✓ **An individual benefits directly. There is no benefit to a class of person, a section of the public or the general public.**

An organisation is set up to raise funds for a specific person to receive medical treatment overseas for a rare illness. Only that specific person benefits rather than a class of person. This organisation cannot register as a charity – there is no public benefit to their activity and the organisation does not meet the charity test.

- ✗ **An individual or an organisation benefits, but not as a member of the public or a section of the public that the charity claims to benefit.**

Charity B was formed to support people with a particular illness, and their families, by providing respite care at its city centre facility. Qualified and professional staff provide this care.

Charity B was able to show to us that it could not operate the centre and meet its purpose without professional paid staff. This satisfied us that the private benefit in the form of staff wages is necessary. Although employing paid staff may constitute a private benefit to the employees, Charity B is established to alleviate human suffering through respite care and not to provide employment. In this case, the private benefit is ancillary to the charity's purpose.

Charity B was also able to provide evidence that wages were benchmarked (compared) to similarly qualified staff in the health sector, so the wages were not inflated. This showed that the private benefit is reasonable.

Restrictions and limitations on who can benefit

If there are restrictions on who can access the public benefit of a charity, the charity should be able to show that the restrictions do not unreasonably limit who can benefit.

Example 1

An organisation is planning to make their services available to members only. The proposed charges for membership could have the effect of restricting the number of people who can avail of the services. The organisation must be able to prove that the charges are justified and reasonable in relation to their charitable purpose.

Example 2

A self-help or mutual assistance group provides a benefit only to the members of that group and membership is limited. This may be too narrow a section of the public to provide a public benefit.

Case studies:

Assessing public benefit

The eight case studies that follow are designed to help clarify what public benefit is and what can prevent a benefit from being a public benefit.

Some of these case studies are based on real issues that we have dealt with during registration or during compliance and enforcement work. Other examples have been developed to illustrate the requirements that are in the **Act**.

Some of the case studies mention charity trustees. Trustees are the people who ultimately exercise control over, and are legally responsible for, the charity. If the charity is a company, these people may also be known as board members. In an unincorporated association – an association that has a legal form with a governing document – they may be known as committee members.

In each case, we assess whether there is a public benefit and whether other factors in each case are reasonable, ancillary (that is secondary or subsidiary to charitable purpose(s)) and necessary to achieve that public benefit.

The areas and case studies are:

- **Permitted private benefit**
(Case study 1: Meals on Wheels) – page 11
- **Private benefit that is not permitted**
(Case study 2: Financial advice drop-in centre) – page 12
- **Demonstrating that the private benefit is reasonable or ancillary**
(Case studies 3 and 4: Dog rescue charity and Wheelchair access charity) – pages 14 and 16
- **No public benefit**
(Case study 5: Cancer treatment organisation) – page 18
- **A limited number of people benefit from public benefit**
(Case study 6: Medical research organisation) – page 19
- **Harm caused during a charitable activity**
(Case study 7: Beach clean-up charity) – page 20
- **The public benefit is not linked to the charitable purpose**
(Case study 8: Conflict resolution organisation) – page 22

Permitted Private Benefit

Case study 1: Meals on Wheels

A group is set up to provide a meals-on-wheels service for older people who are housebound and who live in the local area and get a social welfare payment. This group applies to register as a charity. A local supplier prepares meals. Once a day, volunteers deliver a meal to the service users. The group does not charge for the meals or for delivery, but service users are encouraged to donate what they can.

Volunteers are local people who use their own cars to make the deliveries. They can claim back a mileage allowance from the charity, which is set at a very low rate.

The group's charitable purpose is the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability.

Is there evidence of any public benefit?

Yes.

- The group is advancing its charitable purpose by delivering dinners to the homes of members of the community who cannot cook for themselves or go out to get food.
- The limitations on who can benefit are reasonable. Service users must be older people or people who are housebound and getting a social welfare payment, which is in line with the charitable purpose of the group.

Is there a private benefit and is it permitted?

Yes.

The mileage allowance provided to the volunteers is a private benefit, but the private benefit is permissible because it is reasonable – it is set at a low rate that only covers the cost to the volunteer. The benefit of the mileage allowance is ancillary to the charitable purpose, and the allowance is necessary because it enables the group to carry out their charitable purpose.

Is the public benefit element of the charity test met?

Yes.

Both the public benefit and the private benefit is such that the public benefit of the charity test is met.

Private benefit that is not permitted

Case study 2: Financial advice drop-in centre

An organisation is planning a drop-in financial budgeting advice centre and money management service in a large town. The organisation aims to provide budgeting and money management advice to people who are in debt and those who are at risk of being in debt. The service will be open to all members of the community and will be free of charge.

Two paid members of staff and a number of volunteers will run the service. Staff will be hired through open competitions. Full job descriptions and recent data on salary levels have been submitted with the application.

The organisation is proposing to rent a premises which it will use to provide services to the public and which it will operate as a drop-in centre.

Its charitable purpose is the prevention or relief of poverty or economic hardship.

Is there evidence of public benefit?

Yes.

The organisation is advancing its charitable purpose by providing specialist advice and assistance to people in financial difficulty.

The service is available to everyone in the town. There is no charge for the service and no other restrictions.

Is there private benefit and is it permitted?

There are two types of private benefit in this case: staff wages and rent for a premises.

Staff wages

The organisation will require a small number of paid staff. They will be recruited through open competition, and they will be paid wages in line with current market rates. Based on the nature of the services as described in the application, we determine that the wages are a permitted private benefit because they are reasonable. They are also ancillary to the charitable purpose, and the wages are necessary because it enables the organisation to carry out their charitable purpose.

Rent for a premises

The organisation needs to rent a premises for the centre. This will create a private benefit to the landlord. Rent can be a permitted private benefit, but the rent being proposed is much higher than the rent being charged for similar properties in the area. Additionally, the organisation has not looked for other premises.

While the rent is ancillary to the charitable purpose and enables the organisation to carry out its charitable purpose, the private benefit to the landlord is not reasonable. This is because the proposed rent is well in excess of market rates and other rental options were not explored by the organisation. This means that the organisation is providing a private benefit that is not permitted.

Is the public benefit element of the charity test met?

No.

In this case, the private benefit is not reasonable and means that the public benefit element of the charity test is not met.



Demonstrating that the private benefit is reasonable or ancillary

Case study 3: Dog rescue charity

A registered charity providing dog rescue, medical treatment, training and rehoming services has been in operation for many years and has successfully rehomed hundreds of unwanted puppies and adult dogs. The charity has a good reputation and is well supported by the community.

Due to its success, the charity's trustees have decided that they need to move to larger premises to meet demand and ensure best practice in providing cage space for the dogs during the rehoming process.

The charity currently rents a premises but one of the trustees has offered the use of a large shed and some land on her farm at the same rent they are already paying. The charity will need to pay to connect mains electricity and water, fit out the shed and fence off the land, but they believe they can do this at a reasonable cost.

Its charitable purpose is the prevention or relief of suffering of animals.

Is there evidence of public benefit?

Yes.

The charity furthers its charitable purpose by taking in stray and unwanted dogs, providing medical treatment and training with a view to rehoming them. It is recognised that looking after animal welfare is of benefit to humanity generally in that it encourages kindness in humans. Therefore, the activities of this charity are of benefit to the community it operates in.

Is there private benefit and is it permitted?

It depends.

The paying of rent to a landlord is a private benefit. Spending charitable funds on fitting out and developing a rented premises may also provide the landlord with additional private benefit.

In this case, there is a clear need for more space for the dogs, and renting a larger premises for them may be considered **reasonable**, **ancillary** to their charitable purpose, and **necessary** for the charity to further its charitable purpose of preventing or relieving suffering of animals. However, whether this particular private benefit is permitted will depend on a number of factors.

In this case, the charity would be adding value to the shed and land by installing electricity, water and fencing, which is a private benefit to the property owner. The charity trustees must make sure and be able to show that the private benefit that occurs is reasonable, ancillary and necessary for its charitable purpose.

In this case, the property owner is one of the charity trustees, so there is also a possible conflict of interest. For example, will the charity damage its reputation if it enters into a rental agreement with one of its trustees? Is the rental agreement in the best interests of the charity?

Is the public benefit element of the charity test met?

It depends.

In this case, the charity trustees would have to carefully consider the private benefit associated with renting a larger premises from one of their own trustees. In making its decision, the charity trustees would need to make sure that any private benefit is a permitted benefit.

Case study 4: Wheelchair access charity

An organisation is set up to improve access for wheelchair users to commercial premises such as shops and cafes in rural towns in the Munster region.

The charity intends to do this by providing a financial incentive to local businesses to install ramps and other assistive aids.

Its charitable purpose is the integration of those who are disadvantaged and the promotion of their full participation in society.

Is there evidence of public benefit?

Yes.

- The charity is advancing its charitable purpose by improving wheelchair access to shops, restaurants and other businesses. This helps wheelchair users who cannot access these buildings to more fully participate in business and social activities.
- The people who benefit are a small but defined section of the public, and all wheelchair users will potentially benefit from the activities of the charity.

Is there private benefit and is it permitted?

It depends.

There is a private benefit for the businesses that get the incentive as it will enhance their business premises and help more customers access those businesses. However, this is ancillary and necessary to furthering the charitable purpose. Nevertheless, the charity must make sure that the private benefit gained by the commercial entities is reasonable. While it may be considered reasonable to offer this incentive to small businesses that would otherwise be unable to afford to carry out these works, it may not be reasonable to offer the same financial incentive to larger businesses that have the financial capacity to improve access without the assistance of the charity.

Is the public benefit element of the charity test met?

It depends.

The organisation needs to provide evidence of how it proposes to ensure that the private benefit is reasonable. For example, the organisation can develop a policy and assessment criteria about who gets the payment. Only businesses that cannot afford to do the work will be able to get the payment. This may address any concern about the private benefit.

No public benefit

Case study 5: Cancer treatment organisation

An organisation that claims that it has developed a new treatment for cancer applies to register as a charity. The new treatment involves the patient stopping all conventional approved treatments such as chemotherapy and radiotherapy, and instead eating only certain foods and supplements. These will be determined by the charity based on the age, height and weight of the patient.

The organisation claims that it has a very high success rate in treating cancer, and many patients have been completely cured. However, the application does not explain exactly what the treatment involves, and it does not include any independently verified scientific evidence about the treatment.

Cancer patients are invited to apply online for this treatment and will only have to pay a small fee.

Its charitable purpose is the promotion of health, including the prevention or relief of sickness, disease or human suffering.

Is there evidence of public benefit?

No.

- The organisation has not provided a detailed explanation of what its treatment involves.
- The organisation has not showed by reference to independent scientific evidence that its specific treatment is capable of helping cancer patients in the way that it claims. The organisation did not supply any evidence that the treatment is effective other than its own assertions.
- To use the organisation's treatment, patients must stop all conventional therapy and treatments. This may be harmful, particularly if they had been responding well to conventional treatments.

Is the public benefit element of the charity test met?

No.

The public benefit element of the charity test is not met. The applicant has not showed how its activity advances its stated charitable purpose and is of public benefit.

A limited number of people benefit from public benefit

Case study 6: Medical research organisation

An organisation does research into the causes of a disease that is so rare that there are only two known cases in Ireland. The organisation plans to publish its research findings free of charge.

Its charitable purpose is the promotion of health, including the prevention or relief of sickness, disease or human suffering.

Is there evidence of public benefit?

Yes.

- The organisation's research will benefit people in Ireland and other countries who have the disease.
- The organisation intends to freely share its research findings, so there is no limit on who may benefit from the proposed research.

Is the public benefit element of the charity test met?

Yes.

The applicant has showed how its activity will advance its stated charitable purpose and how it is of public benefit.

Harm caused during a charitable activity

Case study 7: Beach clean-up charity

A registered charity organises groups of volunteers to regularly remove litter and waste from a local beach. Over recent months, the volume of rubbish has risen so much that disposing of it has become challenging.

The charity trustees decide that gathering all the rubbish in one place on the beach and burning it would be the simplest solution.

The charity's charitable purpose is the protection of the natural environment.

Is there evidence of public benefit?

Yes.

The charity is advancing its charitable purpose by organising a regular clean up of the local beach. This makes the beach a cleaner and safer space for both wildlife and humans. The clean-up activities also reduce the risk to marine life, particularly from plastics.

Is the public benefit element of the charity test met?

No.

The charity trustees have not fully considered the harm that burning the waste in a bonfire will cause to the environment and the public. This harm is likely to outweigh the benefit that was gained by cleaning the beach. If the charity continues with burning waste, the charity will no longer meet the public benefit element of the charity test.



The public benefit is not linked to the charitable purpose

Case study 8: Conflict resolution organisation

An organisation has been set up to bring young Catholics and Protestants living in the border areas of Ireland together. The organisation will run activities to build mutual respect, tolerance and trust through positive shared experiences.

In its application to register as a charity, the organisation says that it intends to hold regular events such as kayaking, orienteering and rock-climbing at an outdoor pursuits centre. The centre has agreed to give the organisation a 50% discount on their standard rate. The organisation will advertise events on social media, and those attending will be asked to pay around €15 to take part.

During the registration process, the organisation was asked to provide information about its policy on who benefits from the activities. There were only two requirements – participants must live in a border area, and they must be 15 to 18 years old. It did not provide a policy or procedure for determining the religion of the participants.

The organisation's charitable purpose is the advancement of conflict resolution or reconciliation.

Is there evidence of public benefit?

Yes, but this benefit is not linked to the charitable purpose.

There is a benefit to young people being able to access these group activities at a reduced rate. But the organisation does not have any requirement or procedures for establishing the religion of participants to make sure that young people from the two communities are represented and mixing during its events.

Is the public benefit element of the charity test met?

No.

The applicant has not showed how the public benefit associated with its proposed activities would advance its purpose of advancing conflict resolution or reconciliation by bringing the two communities together.

Have a question?

If you still have questions after reading this guide, please [contact us](#).



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Document Reference: What is public benefit? – Rev 000

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