

Development in Public Benefit Assessments

The Radlett Lawn Tennis and Squash Club – fails the test

Background

The Charities Act 2006 (“the Act”) for the first time required all charities to demonstrate that they are for the “public benefit”. Not all charities are going to meet that test. Particular problems arise in demonstrating public benefit where access to the benefits is limited to membership or where charges must be paid.

The public benefit requirement is not a new requirement for charities. However, the Act highlights this requirement by explicitly including public benefit in the definition of a charitable purpose. In addition, the presumption that some kinds of charity are for the public benefit have been removed. The Charity Commission was given the job of promoting the public benefit test and issuing guidance as to how that test can be met. Trustees must have regard to the Charity Commission’s public benefit guidance. The Commission has now published a report on their website highlighting some of the issues the Commission will consider in determining whether charities are meeting the public benefit requirement.

The Charity Commission recently assessed The Radlett Lawn Tennis and Squash in respect of its public benefit capabilities and found that it did not pass the test. The benefits from recreation and leisure activities are wide ranging and can include:

- Improving health
- Reducing social exclusion
- Improving education
- Providing facilities that improve the conditions of life in the interests of social welfare where no, or no adequate facilities, exist

The Club’s aims are concerned with the provision of facilities for the playing of amateur tennis and squash. In common with many recreation and leisure of charities, the benefits attributed by the Club to playing tennis and squash were mainly concerned with the improvements of physical and mental health that result from participation in physical exercise.

Membership Structures

One of the key principles in assessing public benefit is to ensure that where the benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted.

From its assessments the Charity Commission found that it is important that trustees of charities whose benefits are primarily delivered by a membership structure are able to demonstrate that membership is sufficiently open, including considering what restrictions on who has the opportunity to benefit might arise in practice as a result of any cost or conditions of membership.

The majority of the benefits delivered by the Club are accessed through membership. Although the Club has an open membership policy, welcoming players of all ages and ability to join, the Club's benefits are mainly accessed through obtaining annual membership. The fees charged for annual membership has the effect of restricting benefit only to those who can afford the fee.

An important issue for fee-charging charities is the effect charging fees has on who has the opportunity to benefit from the services or facilities and, where relevant, whether or not there is sufficient opportunity to benefit for people who cannot afford to pay the full fees charged. It does not mean that all people who cannot afford the fees must actually benefit. What is important is that they must not be excluded from the opportunity to benefit, whether or not they actually choose to do so. The issues that arose from the Commission's programme of assessments were:

- Charging low fees
- The effect of membership fees
- Assessing the totality of opportunities to benefit

Where a charity's sole or main aim is to provide a facility for which it charges a membership fee, the level of fee it charges is significant when assessing whether the organisation carrying out those aims are for the public benefit.

Charities that charge low membership fees, or which offer significant opportunities to benefit that are not dependant on the payment of fees, present no public benefit difficulties in relation to fee-charging. However, for charities that charge high membership fees, particularly where this was the main way through which people access the benefits, the Charity Commission will look more closely at the totality of opportunities to benefit provided for people unable to pay the membership fees, including people in poverty.

With the Club the opportunity to benefit from the Club's facilities, which is the main way the Club carries out its aims, are largely limited to members who pay an annual subscription fee. Full membership provides access to all the Club's facilities at no extra charge, all the year round. The cost of full adult membership is currently £339 a year, a fee that many people can not afford.

The Club makes some concessions for specific types of members, such as families, students, juniors and people aged 60 and over. There is an opportunity to obtain "limited membership" at a reduced cost for use of the squash and table tennis facilities only. These

options are based on a person's ability to pay and will still be unaffordable to many people. The Commission therefore needed to look at the range of opportunities to benefit which did not depend on payment of a high membership fee.

When the Commission assessed the totality of opportunities to benefit it found that, for people unable to pay the membership fee, these opportunities were very limited.

As members of the community of Radlett interested in accessing the Club's facilities can only do so in a material way as a full subscribing member, which requires payment of a high fee, the Commission found that the effect of membership fees in this case was to place an unreasonable restriction on who could benefit. It therefore failed the public benefit requirement.

Possible changes to meet the requirements

However, there are a number of ways in which this Club, and others like it, could address this while still operating as a membership organisation. For example, they could consider one or more of the following:

- Using membership merely as an administrative means of managing the use of the facilities (for which only a nominal administration fee is charged) and offering "season tickets" for full, lower cost short term or occasional use – this would offer a wider range of options to people in the community with varying need of the facility and at range of levels of affordability
- Offering advertised, means-tested concessions on membership fees
- Offering the facility for members to "pay and play" on an occasional, low cost one off fee

Conclusion

It is important that charities whose benefits are delivered primarily via a membership structure, and charge a fee for membership, consider the effect of the fee on who may benefit. If a charity charges a high membership fee, it needs to consider how it will provide significant opportunities to benefit for those unable to afford the fee.

Charities that charge low membership fees do not exclude people from having the opportunity to benefit from the charity's services or facilities and so do not have to offer fee concessions or other opportunities to benefit.

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