

NATIONAL FEDERATION OF ARTISTS' STUDIO PROVIDERS:**THE CHARITIES ACT 2006: GUIDANCE NOTE FOR MEMBERS WHO ARE (OR ARE CONSIDERING APPLYING TO BECOME) REGISTERED CHARITIES:****May 2010 Update**

This note updates the previous Guidance note issued in 2009 summarising the main changes brought about by the Charities Act 2006 in the area of 'public benefit' and the Charity Commission's Public Benefit Guidance. The new Act made some important changes to the tests that existing and new charities need to meet in order to gain, or retain, charitable status.

It has been updated to take account of the recent experience of several NFASP members who have applied for registered charity status, and incorporates the advice of a leading charity law barrister whose advice the Federation has taken.

The note is intended to provide general advice to help NFASP members and their management committees and Boards assess whether there is any action they need to take to retain or obtain charitable status. Members may need to take advice from their own professional advisers, and this note is not intended to be a substitute for such advice.

1. NFASP Members considering applying to be a registered charity: the new 'public benefit' test

New charities have to satisfy the Charity Commission that their activities, or proposed activities, meet the tests laid down in the Commission's Guidance on Public Benefit, set out on the Charity Commission's website (for link, see *Note 1* on page 3). The main principles of Public Benefit are set out in the Appendix below.

Information forwarded by NFASP members that have applied for charitable registration, shows that the Commission is interpreting the Guidance strictly and raising numerous questions, focussed in particular on the following areas:

- Benefit to artists: how the trustees can show that any benefit to artists (studio space, facilities,) is incidental to the benefit to the wider public generated by the organisation's activities.
- How artists are selected for studios; criteria for selection and the terms on which the artists occupy the studio spaces, including what obligations there are to participate in or present events (e.g. participate in open studios).
- Artistic merit: what criteria are used for selecting work for exhibition (e.g. quality, style, media, evidence of professional status or track record).
- Activities involving the public: the frequency of workshops, lectures, open-days and other community activities; the experience/qualifications of the people presenting the event; how the events are publicised; whether there are any charges for participants; the fees paid to artists.
- Whether the public face of the organisation (as evidenced in their publicity or website), gives a clear indication of the wider public benefit being at the core of the organisation's purpose and activities.

The following guidance is informed by the experience of NFASP members who have applied to the Charity Commission, and the advice of a leading charity law barrister:

- The provision of studio spaces must be seen as only one of the means by which the organisation delivers a wider public benefit, not the sole means.
- Organisations whose focus is primarily on the provision of studio spaces, who may nonetheless hold occasional open studios and workshops, will not be regarded as providing sufficient 'public benefit'. The Charity Commission is likely to regard these organisations as conferring mainly 'private benefits' on studio artists. The focus of the organisation's activities must instead be seen to be the production of art for public exhibition or educational activities, or other purposes for the benefit of the wider public.
- Organisations who carry on (or intend to carry on) a range of wider 'community benefit' activities such as educational and outreach activities, or workshops involving specific community groups, may be eligible for charitable status, provided that the provision of studios is not one of the main Objects and is seen as one of the means by which 'public benefit' is delivered and not an end in itself.
- Members applying on the grounds of 'relief of poverty' (through providing affordable studios for artists who are in need) are unlikely to satisfy the Charity Commission that this alone demonstrates a sufficient degree of public benefit. The organisation must have robust criteria as to what would be defined as 'poverty', with reference (for example) to an index of average income and would probably need to incorporate means testing for its artists. They would also be well advised to adopt artistic 'quality' (aptitude) criteria. An application may stand a greater chance of success if the selected artists are younger, and thus more in need of education and training.

The recent experience of NFASP members suggests that any application to register as a charity is likely to be problematic; any members wishing to apply must be prepared to answer the Charity Commission's detailed inquiries and engage in protracted correspondence and may need to take professional advice, preferably before making an application to the Charity Commission.

2. Existing charities: Public Benefit compliance and reporting in Annual Reports

The two main changes introduced by the Act are:

1. A **new legal obligation** on charity trustees to demonstrate on an ongoing basis that their charity operates for the public benefit, having regard to the Charity Commission's Public Benefit Guidance.
2. A new **reporting requirement** which means that each charity will have to report on its public benefit activities in its Trustees' Annual Report to the Commission.

There has always been a legal requirement for Charity trustees to include in their annual report:

- A summary of the charity's objects; and
- A summary of the main activities and achievements of the charity in relation to its objects.

To comply with the law, Trustees' Annual Reports to the Charity Commission which covers any period starting **on or after 1st April 2008** must now include:

- A Statement by the Charity Trustees as to whether they have complied with their statutory duty (section 4 of the Act) to have regard to the Charity Commission's Public Benefit Guidance.
- A brief summary of the main activities undertaken in relation in order to carry out the charity's aims for the public benefit.

According to the Charity Commission guidance:

- *The Trustees have wide discretion as to how to report on public benefit, and how much detail to include, based on what they consider proportionate and appropriate to each charity's circumstances*
- *According to the Charity Commission, 'the report needs to be styled in such a way that the reader can ascertain how, through the activities and achievements of the charity, the charity's aims are carried out for the public benefit.'*
- *Where the Commission thinks that there is a risk that the aims of the charity, or the way in which the aims are being carried out, does not meet the public benefit requirement, they will undertake a public benefit assessment, where they consider this proportionate and appropriate.*

When considering how best to comply with the new reporting requirements on Public Benefit, we recommend that charity trustees take account of the points made at 1 above, in particular the need to demonstrate that the charity is involved in wider activities involving the public such as exhibitions, open studios, workshops, and residencies, of which the studio lettings are only a part.

The Charity Commission website gives examples of annual reports showing how different types of charity might comply with the new reporting requirements (for link, see *Note 2* below)

For reporting purposes organisations may wish to make use of the Public Benefit Toolkit produced by the NFASP (and available to members on its website) as a means of identifying the categories of activity which can be regarded as delivering public benefit and the extent of activity provided by studio organisations and, collectively, by their individual studio-holders; the Toolkit could also assist Boards in deciding whether to apply for charitable status, as well as providing information relevant to any subsequent application.

May 2010

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Notes:

1. For the full text and a Summary of the Charity Commission's Guidance on 'Charities and Public Benefit' and the Supplementary Guidance on Charities for the Relief of Poverty and Educational charities, see:

<http://www.charity-commission.gov.uk/publicbenefit/default.asp>

2. For examples of 'public benefit' reporting in Annual Reports, see:

http://www.charity-commission.gov.uk/Charity_requirements_guidance/Accounting_and_reporting/Preparing_annual_reports/Example_Annual_Reports_index.aspx

APPENDIX

The Charity Commission's Public Benefit Guidance

The Guidance states that there are **two main Principles** of Public Benefit (see below).

It also suggests that trustees and professional advisers of existing charities might find the following questions useful as a means of self-assessing the charity's public benefit, and provide information that will help the Commission to assess whether or not an organisation's aims are for the public benefit:

Principle 1: There must be an identifiable benefit or benefits

1. *What are the benefits that arise from your organisation's aims?*
2. *Is there any detriment or harm that, in your view, might arise from carrying out your organisation's aims? Are you aware of any widespread views among others that such detriment or harm might arise?*

Principle 2: Benefit must be to the public, or a section of the public

3. *Who do your organisation's aims intend to benefit?*
4. *If the benefit is to a section of the public, how are the beneficiaries defined or what restrictions are there on who can have the opportunity to benefit?*
 - **For geographical restrictions:** *what is the geographical area that defines who can benefit?*
 - **For restrictions based on charitable need:** *what is the charitable need shared by the beneficiaries that is being relieved or addressed?*
 - **For restrictions based on personal characteristics:** *what defining characteristics are used to decide who benefits? How do those characteristics relate to the charitable aims?*
 - **For restrictions based on access to facilities:** *are there restrictions on what is available for access, or on who can have access, or limited opening times?*
 - **For restrictions based on eligibility for membership:** *does someone have to be a member to benefit? If so, is it open to anyone interested to join? If not, who can join and how?*
 - **For restrictions based on trustees' discretion:** *what criteria will the trustees use to decide who can benefit? What is the justification for that restriction?*
 - **For restrictions based on ability to pay any fees charged:** *what does your organisation charge for its services or facilities? How are charges set? Is everyone charged the full rate? What opportunities do people who cannot afford to pay those fees have to benefit from your organisation's aims? How do people in poverty have the opportunity to benefit?*
5. *Does anyone receive any private benefits from your organisation, other than as a beneficiary? If so, what benefits do they receive? Are those benefits incidental?*