

6 June 2007

Our ref: ICAEW Rep 49/07

Your ref: Consultation on draft public benefit test

Patrick Smidmore
Charity Commission Direct
PO Box 1227
Liverpool
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By email

Dear Mr Smidmore

CONSULTATION ON DRAFT PUBLIC BENEFIT TEST

The Institute of Chartered Accountants in England and Wales (the 'Institute') welcomes the opportunity to comment on the "*Consultation on draft public benefit test*" published by the Charity Commission in March 2007.

The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 128,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 700,000 members worldwide.

The Institute's Charity Committee is responsible for co-ordinating the technical considerations of the charity sector with respect to Chartered Accountants working within or for charities. Its membership represents practitioners, their clients and Chartered Accountants employed in financial roles within charities.

Comments on draft guidance

We note that in the draft guidance at J5 and J6 it is suggested that certain charities should disclose, within their annual reports, how the trustees consider that the charity meets the public benefit test. For charities which are limited companies, auditors report on the consistency of the trustees' annual report with the financial statements. This requirement is likely to be extended by regulation to charities which are not limited companies.

The implications of failing to meet the public benefit test are not yet clear, but could amongst other things involve tax liabilities and inappropriate accounts presentation. Except in extreme cases it is unlikely that the auditor will be in a position to assess



whether or not there is some sort of risk to the charity failing this test.

The Institute therefore seeks assurance about the effect of these two new statements on the person conducting the external scrutiny (usually this will be an auditor, but could be an independent examiner) In particular the auditor or examiner should not become the arbiter of whether or not the charity is meeting the public benefit test.

We recognise that the strict position for fourth head charities has not altered in law, but that the current emphasis on disclosure and intervention has changed the likelihood of regulatory intervention leading to financial misstatement.

We further note the suggestion that charities where the public benefit may not be immediately obvious should report on the public benefit they provide and equate this in some way to the tax breaks received. We believe that if this is to be done properly (and therefore meaningfully) in most cases it will require knowledge and judgement beyond many charities'/charity trustee's usual expertise. There is a likelihood that it will also add to the auditors' work in their review of the annual report, and therefore is likely to have some impact on charities' audit or compliance costs.

If this requirement is to be retained, then we recommend that the Commission publish both guidance on the fiscal impact of failing the public benefit test and some example annual report disclosures.

Any enquiries on the above should be directed to Caron Bradshaw, Secretary to the Charities Committee.

Yours sincerely

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Chair, Charities Committee

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