

## Meeting the Charity Test: draft guidance for consultation

### Response of the Scottish Council of Jewish Communities

#### **Section 3: Do you have any comments on our guidance as regards the charitable purposes?**

Although it is not strictly our concern, we are aware that a significant number of elderly members of our community play sports such as bowls, and are therefore concerned by the statement that sport, in the context of this purpose, must involve physical skill **and** exertion so that such activities may not satisfy the definition. The consultation paper states (p.8) that: "*the advancement of public participation in sport is included as a charitable purpose mainly because of the health benefits that it can provide*" and we would draw attention to the fact that health benefits can include mental health, and not merely the development of muscles.

#### **Are there any purposes for which you think expanded guidance would be helpful?**

##### ***The advancement of religion***

Advancement of religion should be defined to include not only "*religious instruction and dissemination of religious texts*", but also the provision of faith-specific services such as burial arrangements and upkeep of cemeteries.

##### ***The advancement of the arts, heritage, culture or science***

Heritage should be defined more widely than "*as part of a country's location or national history and traditions*" to include ethnic and religious identity. That definition in fact arguably discriminates against minorities, which also have heritage and culture. As far as our own community is concerned, there are organisations promoting Jewish Arts, preserving Jewish heritage including historic buildings and artefacts, studying Yiddish and Hebrew languages and culture, and promoting a whole variety of cultural activities. It is surely not suggested that these should have their charitable status revoked?

#### **Section 5.1: Is our guidance on the issues around Scottish and English and Welsh definitions of 'charitable' sufficiently clear?**

No.

#### **If not, how could it be clarified?**

We presume that the second example on p17 relating to the distribution of assets of "*a body established under the law of England and Wales*" refers either to a charity established prior to the 2005 Act, or else to a charity registered in England or Wales that has a branch occupying and/or operating out of premises in Scotland (as per section 14 of the Act). However, that is not apparent from the guidance, and the example may therefore be unclear to anyone unaware of OSCR's powers under the Act in such circumstances. The example should be reworded to clarify the justification for OSCR's intervention in the affairs of a charity registered in another jurisdiction.

**Section 5.2: Is our interpretation of ministerial control sufficiently clear?  
Do you have any comment on the mechanisms we have listed as indicating control?**

It is not clear why OSCR has interpreted the power to dismiss trustees as indicating more control over an organisation than the power to appoint trustees. The mere dismissal of the current Trustees does not imply any control whatever over the affairs of the body, since the new Trustees would remain free to exercise their own judgement. If the implication is that the latter would be subservient to the will of the appointing Minister, then it is the appointment, not the dismissal, that constitutes control.

**Are there any mechanisms of which you are aware?**

No

**Do you have any further comments on this section?**

No.

**Section 5.3: Is our guidance on party political purposes and campaigning activities sufficiently clear?**

We welcome the clarification that charities may, in furthering their charitable purposes, campaign to change the law or the policy of public bodies.

**Are there areas where further guidance is needed?**

No.

**Section 7.5: Do you have any comment on our interpretation of disbenefit as "harm"?**

The lack of any dictionary definition of 'disbenefit' remains problematic, and we welcome efforts to develop a working definition that will enable OSCR to demonstrate that decisions are being made on an objective basis. We agree that disbenefit should be regarded as being "*equivalent to harm*" i.e. that it is neither simply the absence of benefit, nor merely inconvenience or drawback.

**Is our approach to recognising and assessing disbenefit sufficiently clear?**

Yes.

**Section 7.6: Do you have any comments on our approach to assessing undue restriction?**

No.

**Are the principles guiding our decision making on fees and charges clear and applicable across the charitable sector?**

Yes.

**Section 7.7: do you have any comments on our overall approach to decision-making on public benefit?**

Public benefit should be defined to include the development of "social capital". For example, activities undertaken in community organisations include a wide range of activities and opportunities for participation which promote social networks, mutual responsibility and cultural identity. A more restrictive interpretation of public benefit that discounted these as private benefit, because they benefit the members of the community itself, would undermine work which is essential to communities in Scotland.

**Final: Do you have any comments on the clarity, style, format and language overall of the draft guidance?**

We are concerned that the terms "benefit" and "public benefit" are sometimes used interchangeably, and in particular, that "public benefit" is sometimes used to mean "of benefit to the public", and at other times as a specific, and specifically defined qualification for charitable status. This is likely to cause confusion. For example the guidance states (p21): *OSCR is required to make a judgment on the whole balance of public benefit versus any private benefit or any disbenefit ...* ". This is inaccurate, since, in terms of the Act, "public benefit" is not a counterweight to private benefit and disbenefit, but is the outcome of an equation which balances direct and indirect benefit (to the public in general or to a defined sector thereof) with private benefit and disbenefit.

**Are the examples used clear and helpful? Are there any others you would wish to see included?**

We dispute the premise of the second example which is intended to illustrate indirect benefit (p23), which states that "*providing support and counselling to victims of racial attacks ... indirectly benefits society as a whole **by encouraging racial harmony***" (our emphasis). The provision of support and counselling to victims of any criminal activity is a laudable, and potentially charitable activity. However, it is irresponsible to imply that victims of racial attacks are responsible for the lack of racial harmony in society, and thus indirectly responsible for having been attacked. This attitude typified the police investigation into the murder of Stephen Lawrence, and was roundly condemned as institutional racism in the Macpherson Report.

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Note: The Scottish Council of Jewish Communities is the representative body of all the Jewish communities in Scotland comprising Glasgow, Edinburgh, Aberdeen and Dundee as well as the more loosely linked groups of the Jewish Network of Argyll and the Highlands, and of students studying in Scottish Universities and Colleges.

In preparing this response we have consulted widely among members of the Scottish Jewish community.