CHARITIES AND RESEARCH

The Commission has prepared a consultation paper on Charities and Research. A copy of this paper is attached. Its purpose is to give information and advice about the scope of research as a charitable activity and the requirements which have to be met. It is produced for the benefit of charity trustees, those who support charities which conduct research and those who deal with charities in the conduct of research such as researchers, educational institutions and commercial organisations who may sponsor research.

Of particular interest may be those paragraphs which deal with the dissemination of research and its results, particularly where a charge for published material is to be made (paragraph 5), obligations on trustees where they give publicity to or otherwise promote the results of research (whether in addition to or in place of formal publication of research papers) (paragraph 9) and the treatment of intellectual property rights which might arise as a result of research (paragraph 10).

If you have any observations and representations to make about the leaflet please send them to

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August 1995

CHARITY COMMISSION

CHARITIES AND RESEARCH

1. Introduction

Research is a vital and increasingly important element in the advancement of knowledge and its application and the resolution of contemporary scientific, medical, technological and economic and social problems, issues and dilemmas, which are faced by modern society.

The conduct and funding of research by charities is an important part of charitable activity. Any charitable purpose may be furthered by research. Principal examples include the advancement of education both generally and in particular fields such as medicine, science and the social sciences, the relief of the poor, old, sick handicapped or of other socially disadvantaged persons, and the advancement of religion. Many charities both large and small are involved in research.

The purpose of this leaflet is to give information and advice about the proper scope of research conducted as a charitable activity and the requirements that need to be met. It is produced for the benefit of charity trustees, those who support charities working in this area and those who deal with charities in the conduct of research, principally researchers, universities, other educational research institutions and commercial organisations who may sponsor research.

The issues which will be addressed include the public benefit aspects of charitable research, guidance on how trustees can best discharge their duties and responsibilities in carrying out or funding research work and the obligations trustees have with regard to the dissemination of the results of research and towards any intellectual property rights which might arise.

2. Ways in Which a Charity May Carry Out Research

The principal ways in which a charity may carry out research are -

- by carrying out research work itself by researchers employed or engaged by the charity.

- by commissioning research for the charity from independent researchers or research or educational institutions.

- by carrying out research as above but in conjunction with a non charitable commercial sponsor or under a joint venture under a contractual arrangement.

- by funding research to be carried out and published by an independent researcher or research institute, including a non charitable research facility.

Before the
event –
not after ?

3. **Research as a Charitable Activity - Public benefit**

To be charitable, research carried out or funded by a charity must both fall within its objects and powers and be for the public benefit. This implies that the research must -

- be in a subject which is of real value and calculated to enhance our knowledge and understanding of the natural and social world
- be undertaken with the intention that the useful knowledge acquired from the research will be disseminated to the public and others able to utilize or benefit from it and so advance charitable purposes
- be justified and undertaken exclusively for the public benefit arising and not for self interest or for only private or commercial consumption.

4. **The subject matter of the research**

Deciding what is of real value and calculated to improve knowledge and understanding in any particular case is the responsibility of the trustees to be exercised by them at their discretion. This discretion must be exercised in a reasonable way. Where trustees do not have the expertise to carry out an adequate evaluation from within their own number or by the staff they employ, they are expected to draw on external advice from suitably qualified persons. They may in any event wish to do this as it may be invaluable to provide assurance that the decision taken has been properly reached.

5. Dissemination of the Results of Research

The knowledge gained from research required to be made available to the public is usually referred to as the "useful" results of research. In determining what are the useful results of research it is necessary to take a broad view. Material, which, although of no intrinsic value in itself because it amounts to research which has failed to produce any significant outcome, may have value to researchers and others because it is of benefit to know that such research has been carried out and its results. Trustees will need to consider in these cases whether the results should be made publicly available in some form.

The obligation to disseminate and make publicly available the useful results of research may be met by trustees in a variety of ways. Dissemination can take the form of formal publication of papers in learned journals or the issuing of other published material covering the research and its results. These other publications may take the form of books, booklets, magazines, articles, papers or summary notes. Such material may exist in electronic form.

These publications need not be made available free of charge. However, any charges levied should normally be consistent with the requirement that the charity make the material publicly available and be calculated principally with regard to what is reasonably required to produce, publish or otherwise promulgate the material. That is to say on a not for profit basis. However, if the results are of value and can be turned to account for the benefit of the charity, trustees may charge at a level which includes a profit element, but this should never be at such a level that it deters public accessibility

to the research and its results. An example would be where the material is to be included in a commercial publication (including an academic journal or book) where an appropriate fee may properly be charged.

Trustees must ensure that the material is available to members of the public at large or to a sufficient section of the public, but where the results of the research are of a very limited interest the requirement for publication may be satisfied by allowing public access to the material. This may arise, for example, if the research is of very limited interest or nature because it is of little significance, or is esoteric or highly technical and so only a few would be interested in it. If so, restricted access through universities and other educational establishments to persons who have a sufficient reason to study the material would be acceptable. Such persons representing a sufficient section of the public. However, where public access as opposed to dissemination is intended, the existence of the material must be clearly catalogued and its existence be made publicly known. Again public access need not be free of charge, but such charges that are made should be calculated principally according to what is reasonably required to store and access the material and to catalogue it.

6. Dissemination in the case of Commercial Sponsorship and Joint Ventures

Where charitable research is carried out under contractual arrangements with non charitable sponsors or partners (sometimes referred to as contract research), those arrangements must make provision for the dissemination of the results or otherwise to make the results publicly available within a reasonable time or the conclusion of the

research work or when valuable outcomes occur. A time limit of 6 months to a year may not be unreasonable, although a short time or period should be aimed for and agreed.

Where the arrangements for publication are non existent or insufficient so that the requirement that the research is being carried out for the public benefit cannot be met, the research cannot be said to be a charitable activity and the use of the charity's resources in furtherance of the arrangements can only be justified on the grounds that it is an activity to raise funds. As it would then be an activity not carried on in pursuit of the primary objects of the charity, it will, if undertaken on a regular basis, represent a potentially taxable trading activity. Further, unless this activity is temporary and necessary in the charity's best interests, say for example to hold a valuable research team together or to cover laboratory overheads, it would be beyond the powers of the charity in any event. Such an activity cannot therefore be carried on indefinitely by a charity or in some cases at all unless it is viewed as a trading activity and carried on through a non charitable company owned by the charity (see paragraph 10 below).

7. Consideration to be Given by Trustees when Undertaking, Commissioning or Funding Research and in Relation to Dissemination of the Results of Research.

When considering research proposals, trustees must ensure that the scope and content of the research both falls within the charity's expressed objects, is potentially an effective means of carrying out those objects, and is otherwise within their powers to conduct or fund research.

Trustees must evaluate the research proposals with regard to -

(a) the academic qualifications or standing, qualities and abilities of the researcher and/or the research or educational institution to be involved in the research;

(b) the quality of the research proposals and their likelihood of leading to results which will improve knowledge and understanding;

(c) the suitability and practicality of the methodology by which the research will be carried out;

(d) the appropriateness of the level of funding which will be required taking into account both the likelihood of achieving the desired outcome of the research and the potential value of that outcome.

Although it is for the trustees to satisfy themselves as to these matters, where they do not have the expertise within their own number or on their staff to carry out an effective

evaluation of research proposals, they should seek external advice and recommendations on the proposals from appropriately qualified persons (peer review). Such persons should be independent of the researcher and, where practical of the research institution which will either carry out the work or will receive a grant to carry to the work.

Trustees should always consider whether any ethical considerations arise from the research proposals, in which case approval from the appropriate authority should be obtained before the trustees finally sanction the work or a grant to undertake the work.

Trustees are responsible for ensuring that the application of charitable funds to the research project are properly supervised and monitored and that work of a satisfactory quality is produced.

Trustees must accept responsibility for the proper evaluation of the results of the research before it is published. This may involve an evaluation by peer review of the quality of the work which has been undertaken on behalf of the charity and the results which have been produced. If the results are to be formally published in a reputable scientific or medical journal, trustees may rely on an evaluation of quality by the journal concerned.

Thereafter, trustees must ensure that the results are published in an adequate and timely way. If a charity wishes not to be directly connected with the results of research in relation to its conclusions, it should be made clear in the published material that the conclusions are not the views of the charity. The trustees should inform the researcher at the outset of their right to adopt such a course.

In the case of funded research (see paragraph 8 below) trustees' responsibilities with regard to evaluation of the results of the research, its supervision and its dissemination can be met by imposing similar obligations on the research institute or researcher carrying out the research.

8. Trustees' Responsibilities when Funding Research to be Undertaken by Independent Researcher or by a Research or other Educational Institution

Where trustees choose to fund research to be undertaken by others, they retain those responsibilities referred to above to ensure that, as far as is reasonable to do so, the research is carried out in an adequate and proper way and that dissemination aspects are properly dealt with. These responsibilities would normally be discharged through the existence of a written agreement entered into between the charity and the researcher or research or other educational institution conducting the research as a condition of making the funding available.

There should accordingly be a written agreement between the charity, the researcher and the research institution or other educational body receiving funds to undertake the research, setting out the terms and conditions of the grant. The written agreement should specify the responsibilities of the researcher and the research institution or other body with regard to the supervision of the research and the application of the charity's funds. Where a research institution or other body is to conduct the research, and unless otherwise agreed in writing, that body (referred to below as the employer) should

undertake responsibility for the supervision of the researchers who will conduct the research and for ensuring that all legal and ethical and contractual requirements relating to the research are met.

The agreement should provide for the trustees to be informed of the progress of the research, for example by requirement of progress reports consistent with the nature and length of the research. The agreement should provide also for the administration and monitoring of the funds for the research during the term of the agreement.

Trustees who have funded the research have a general duty to ensure that the useful results are disseminated. If the research institute receiving the grant is charitable their trustees are under a similar duty. Publication of scientific work, for example, is in any event part of the process of scientific discovery and is not an end in itself. Unless otherwise agreed in writing, those who carry out the research have a right to publish results of their work. It is recognised that this is an important aspect of academic freedom.

It is the responsibility of the researcher and his employer to ensure that the work is of adequate quality. If the research is to be presented for formal publication it will be for the publisher to decide whether to publish. As discussed, results may be properly evaluated by peer review or by acceptance by a reputable scientific journal. Where trustees themselves are to be the original publisher of the results of research the responsibility for evaluation of the results rests with them.

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For these reasons, trustees should satisfy themselves, by provision in the agreement with the researcher, research or other educational institution, that the outcome of the research will be properly evaluated by peer review or otherwise and that best endeavours will be made and appropriate care will be taken by the researcher and his employer to disseminate the work of adequate quality and/or importance in an appropriate way.

Trustees should keep a record of all grants made for research purposes and must take reasonable steps to ensure that the general results of research are recorded and to ascertain whether a research paper (or papers) was ultimately published or the results otherwise disseminated. Where the research institute receiving the grant is a charity, trustees may rely on the records of that body for a record of the results of the research and its dissemination.

9. Trustees giving publicity to or promoting the results of research

Where trustees wish to give publicity to or to promote the results of the research or in any other way to assist in its dissemination short of formal publication, they must satisfy themselves that the results are soundly based. This applies to both internal or commissioned research and to funded research. In the case of funded research this will apply even where the employer and the researcher have already evaluated the results either themselves or by peer review or by acceptance in a reputable journal.

How this obligation is discharged will depend on the extent to which the trustees seek to ally themselves with the findings of the research. Where they merely wish to act as a

vehicle for publicity they must bear in mind the likely impact that their involvement will have on the way the research is received in the wider (non scientific) community and take such assurance measures which are commensurate with the need to preserve the charity's reputation and the impact of the work on the charity's beneficiaries. Where they wish to actively promote the results, then, in addition, they should take independent steps to assure themselves that the research is of adequate quality.

10. Intellectual Property Rights (IPRs) Arising Out of Charitable Research

Internal or Commissioned Research

Charitable research may or may not result in discoveries which are commercially exploitable. If a charity in the course of the research carried out on its own account or commissioned for its benefit makes a discovery which is commercially exploitable then the trustees are under a duty to protect any IPRs which may arise as a result of the research by patenting them or otherwise asserting and protecting those rights. IPRs may arise in the form of copyright or patents. As with any property owned by a charity which is not required to be applied for its charitable purposes, IPRs should be exploited for the full financial benefit of the charity. This may be done under licensing or other arrangements.

If, however, the IPR could be applied functionally, that is to say for the purposes of the charity, then the charity may apply the IPRs in furtherance of its objects. The extent to which it may do this will depend on the objects of the charity and the nature of the IPR

and the proposed method of exploitation. In those circumstances the charity is not required to charge a full value (or exceptionally any value) provided that such application falls within the objects and powers of the charity and is clearly expedient in its interests.

Where the IPRs are commercially exploited, in the normal way this should be done through a licensing arrangement with a commercial company or through the medium of a non charitable company wholly owned by the charity. The IPRs can only be made available to the company (either by way of transfer or license) for a proper market consideration except in those cases where the use of the IPR in the hands of the non charitable company where owned by the charity can be said to be an application in furtherance of the charitable purposes of the charity and that application is enforceable under an agreement between the two parties.

Where a charity is carrying out charitable research on behalf of a non charitable body or under a joint venture, then it should normally ensure that this is on terms that it at least shares the right to jointly own and exploit research IPRs. As a general principle, therefore, the trustees will need to adopt an arm's length approach with any sponsor to ensure that the contract yields a proper return to the charity taking into account the value of the sponsorship, what proportion of the research budget it represents, arrangements for ownership of the IPRs, the likely cost of development to a marketable product and the ultimate academic and functional benefit of carrying out the research.

Funded Research

Where trustees fund research to be carried out by an independent researcher or research or other educational institution they should consider how IPRs arising from funded research should best be protected and otherwise dealt with. This matter should be deal with in the agreement.

When IPRs arise they must be patented and protected in the appropriate manner. Whether this is done by the trustees and the IPRs owned by the charity or by the researcher or research institute in their own name will depend upon the extent to which trustees wish the charity to become directly involved in the ownership and exploitation of IPRs. However, where it is agreed that such rights should be held and protected by the researcher or research or other educational institution conducting the research, the consent of the charity should normally be required under the agreement before the IPRs are commercially exploited so that the charity can require a share of the financial benefits which should be made a condition of their exploitation. The extent of the charity's share will depend on its level of funding or other contribution to the costs of the research project overall.

11. Research undertaken not as a charitable activity

Research undertaken not as a charitable activity arises when a charity undertakes research, either jointly with or on behalf of a non charitable body under an arrangement where either inadequate or no dissemination or public access to the results of the

research is agreed or can be said to exist (see paragraph 6. above). Such research is a non charitable activity and, subject to the observations made above, can only be undertaken, if at all, as a means of fund raising and would certainly amount to trading if undertaken on a continuing basis. Where such research is conducted by charities, trustees should ensure that it does not prejudice their other charitable activities, particularly those of an educational nature. In the normal way, such research should only be undertaken by a non charitable company owned by the charity.

Such a trading company cannot be established or financially supported by the charity, either by way of venture capital, general investment or by loan guarantees unless the charity has powers to incorporate a company and has adequate powers of investment and (subject to necessary professional advice) such investment or support is considered by the trustees to be prudent and in the interests of the charity. To act otherwise would be an application of charitable sources for a non charitable purpose.

Any research resources of the charity can only be made available to such a company at a proper market value and under a formal "arms length" arrangement. However, the charity should not agree to make research resources available even on this basis if doing so would undermine or unduly prejudice the continuing charitable work of the charity.

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