



# Public Benefit and Charitable Corporate Foundations: A Brief Report

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## Preface

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The University of Northampton has enjoyed a very productive relationship with Blueskies over the past two years. Much of that collaboration has often found expression in the FBL Challenge competition which both the University and Blueskies have been proud to partner on. We in the Faculty of Business and Law are very pleased to be able to take that collaboration a step further with the publishing of this brief report<sup>1</sup> to help inform the decisions of the Board of the Blueskies Foundation.

The Blueskies Foundation operates on the basis of a partnership between Blueskies, Albert Heijn and Waitrose. Its primary aim is to improve the livelihoods and well-being of staff, farmers and the communities where Blueskies operates.<sup>2</sup> Since its establishment in 2009, the Foundation has pursued its primary aim by carrying out a vast number of charitable projects in countries where its operations are based.

So far, the Foundation has implemented over a hundred projects which have benefited over a 100,000 people in Ghana, Egypt, South Africa and Senegal. These include over 42 educational projects such as the construction of classroom blocks for schools, 39 sanitation projects and well-being projects such as clinics and sports centres.<sup>3</sup>

The aim of this report is to address very specific questions raised by the Board regarding the operation of the Law of Charities in England and Wales. The information provided in this report will assist the Board in its deliberations as it considers how to further mature the legal framework of the foundation so as to enhance its transparency, accountability and functionality.

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<sup>1</sup> This report is meant for purely educational purposes only. The information contained herein is, at the time of its completion, and to the best knowledge of the authors, accurate. It is not the intention of the authors that this report be considered as legal advice, neither is the expectation of same that the reader would rely on the contents in this report as constituting legal advice. Any legal advice which is needed and deemed necessary on matters raised in the report should be sought separately.

<sup>2</sup> Blueskies maintains a significant proportion of its operating capacity outside the United Kingdom.

<sup>3</sup> Northamptonshire Chamber, <https://www.northants-chamber.co.uk/news/blue-skies-foundation-celebrates-100-projects-in-10-years>, accessed July 2020.

The report's first point of focus is to explain the Public benefit requirement within the Law of Charities. Questions surrounding the Public Benefit appear to have arisen following discussions which have centred around the option of registering the foundation with the Charity Commission as a charitable organisation (Charitable Corporate Foundation).

In addition, the report sets out an explanation of how Charitable Corporate Foundations work, the main requirements the Law demands they satisfy, and the financial advantages that accrues to charitable corporate foundations and charities generally.

Putting this report together in the midst of a pandemic has been challenging. Much disruption has been caused by the spread of virus to teaching, learning and research at the University since March – and it has therefore been extremely difficult to complete this report at precisely the same moment when students and staff have been adjusting to a novel and different way of working and learning.

Nevertheless, the commitment to which we hold our collaborative effort with Blueskies and the Blueskies Foundation is such that we have persisted through the challenges to provide this brief report with high hopes that it will prove useful to the Board.

One would be remiss if the opportunity were not seized to thank all the student researchers who have contributed to this report, and whose hard work has ensured its completion. Thanks go also to the Board of the Blueskies Foundation for giving us the opportunity to contribute, in a very small way, to its valuable work through this brief report.

The Foundation is a credit to humanity; undertaking vital work which touches the lives of hundreds of thousand across the globe – all in an effort to make more gentle, and much better, the often arduous life of this world. And we within the Faculty are very proud to be in the position to help provide some of the knowledge required to make ever more efficient, that noble and godly work.

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## Public Benefit

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There is a public benefit requirement which lies at the very heart of the operation of the Law on Charities. In specific terms, the Law requires that an organisation – if it is to be deemed charitable – must demonstrably show that its activities are beneficial to the public. It follows therefore that an organisation (including a corporate foundation) which applies to the Charity Commission for charitable status will have such application turned down if it cannot show that its activities satisfy the requirement of a public benefit.<sup>4</sup>

Despite the importance of this requirement to the Law on Charities and the strictness with which it is applied, there is yet no legal definition or test for ‘public benefit’. The Charities Act 2011<sup>5</sup> represents the most recent example where Parliament neglected to take up the opportunity to introduce additional certainty into this area of the Law by providing a single definition of ‘public benefit’.

The absence of a uniform statutory test for public benefit has compelled the courts to establish a series of tests within the case law – the application of which is contingent on the kind of charitable purpose at issue.

To illustrate; the public benefit test for charitable purposes or activities which are directed towards the advancement of education is the *Oppenheim* test as established in *Oppenheim v Tobacco Securities Trust*.<sup>6</sup> In answering the question of whether there was a public benefit, the court in *Oppenheim*, the court sought to determine whether *a) the number of possible beneficiaries of the given charitable activity/purpose was negligible, and, b) whether there was a personal nexus between donors and beneficiaries.*<sup>7</sup>

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<sup>4</sup> Graham Virgo, *The Principles of Equity & Trusts*, Oxford University Press, 2012, p.177-179

<sup>5</sup> The Charities Act 2011 entered into force in 2012 and was preceded by the Charities Act 2006. The 2011 Act consolidated and codified the various statutory provisions and case law principles related to the charities. Neither the 2006 or 2011 Acts provide a general definition or a uniform statutory test for ‘public benefit’.

<sup>6</sup> [1951] AC 297

<sup>7</sup> See also *Re Compton* [1945] Ch.123

The approach taken by the courts – as demonstrated in *Oppenheim* – in determining whether there is a public benefit in instances where the given charitable activity is directed towards the advancement of education, is markedly different from the approach adopted in instances where the charitable activity is directed towards other purposes.

One need not look further than the House of Lords decision in *Dingle v Turner*<sup>8</sup> to find an example which demonstrates the difference. In *Dingle*, the House of Lords were seized with determining, amongst other things, a test for public benefit in an instance where the charitable activity was directed towards the relief of poverty.

Unlike in *Oppenheim*, and unlike with those instances where the charitable activity is directed towards the advancement of education, the House of Lords in *Dingle* opined that where the charitable activity is directed towards the relief of poverty, the issue of whether there is a public benefit to that activity ought to be resolved by a purposive approach which asks the question of whether the donor has a genuine intention to relieve poverty.<sup>9</sup>

The differences in approach in determining a test for public benefit – as seen in both *Oppenheim*<sup>10</sup> and *Dingle*<sup>11</sup> – demonstrates how the courts have been compelled, because of the absence of a uniform statutory test for public benefit, to adopt a series of differing tests contingent on the nature of the charitable purpose or activity at issue.

Despite the slight and albeit limited differences in approach taken by the courts in determining whether there is a public benefit to a given charitable purpose or activity, the differing tests and approaches all have at their heart, the requirement that some tangible benefit to a significant section of the public be demonstrated.

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<sup>8</sup> [1972] 2 WLR 523

<sup>9</sup> The public benefit test adopted in *Oppenheim v Tobacco Securities Trust* [1951] AC 297 to apply in cases where the charitable activity is directed towards the advancement of education, is more stringent and more strictly applied than the public benefit test seen in *Dingle v Turner* [1972] 2 WLR 523 which was established to apply in cases where the charitable activity is directed towards the relief of poverty.

<sup>10</sup> *Ibid* 3

<sup>11</sup> *Ibid* 5

The activities undertaken by the Blueskies Foundation have a clearly identifiable public benefit. The social intervention projects undertaken by the Foundation – whether in the form the construction of school blocks, the undertaking of water and sanitation projects, or the provision of toilets and boreholes – all provide a benefit to the public at large, or at the very least, a significant section of the public in the countries in which those projects are undertaken.

The benefits to the public of these projects can be seen in the well documented improvements the projects have made to the lives of the people in the communities in which they have been undertaken. The clearest evidence of this can be seen in the results which followed the completion of the Amanfrom toilet project in Ghana.<sup>12</sup>

Ghana is a country which suffers frequent Cholera outbreaks. The outbreaks occur mostly because of poor sanitation practices which flow primarily from the lack of toilet facilities and other installations required for the sanitary disposal of waste.<sup>13</sup> It is estimated that 41,732 cholera cases occur in Ghana annually with an average case fatality rate of 3.8%.<sup>14</sup>

If taken as an example, the Foundation's project in Amanfrom saved lives and contributed towards the advancement of the health of the people in that community by providing toilet facilities - the use of which is open to all members of the public and the benefits of which are derived by the same, thus helping to stem the outbreak of cholera in Amanfrom; a clear demonstration of a public benefit.

The location of the Foundation's charitable activities has no bearing on the public benefit threshold. The Law of Charities in England and Wales does not require that the benefit to the public of a charitable activity or purpose be one that it is derived by the general population of England and Wales alone.

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<sup>12</sup> Blueskies, <https://www.blueskies.com/alistairs-story/>, accessed August 2020.

<sup>13</sup> WHO, <https://www.afro.who.int/news/who-provides-technical-support-fight-cholera-outbreak-ghana>, accessed August 2020.

<sup>14</sup> Charles Noora, Kofi Issah, Ernest Kenu & others, *Large Cholera outbreak in Brong Ahafo Region, Ghana*, Bio Med Central, Online publication, 2017.

In every instance therefore, the general populace living in any geographical area – whether national or international – are regarded in the eyes of the Law as being ‘the public’. It is thus the case that an organisation which is headquartered in England and Wales can function as charity under the Law, even if its purposes or activities benefit a populace that is outside of England and Wales entirely.<sup>15</sup>

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<sup>15</sup> Charity Commission Guidance, Public benefit requirement, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/588234/PB1\\_The\\_public\\_benefit\\_requirement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/588234/PB1_The_public_benefit_requirement.pdf), accessed August 2020, p. 8-9.



## Charitable Corporate Foundations

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Charitable Corporate Foundations are charitable organisations which are founded by commercial companies to support charitable activities. In most cases, a charitable corporate foundation will typically receive most if its income from the company under whose auspices it has been created. This may be in the form of investment income originally given by the company, regular donations from the company, a gift of shares etc.<sup>16</sup>

Whiles the above-named sources of income are amongst the most commonly associated with charitable corporate foundations, it is, nevertheless, important for one to note that charitable corporate foundations are not limited to these sources of income or prohibited from accepting donations from outside the commercial company under whose auspices they have been established. Like all other charitable organisations, charitable corporate foundations must be registered with the Charity Commission and meet the public benefit test to be formally recognised as such.

There are currently over one hundred legally recognised charitable corporate foundations currently operating in England and Wales. These organisations carry out a vast array of exclusively charitable activities which benefit the public in England and Wales as well general populations around the world.<sup>17</sup>

The transparent legal and organisational framework together with the focus on corporate giving which these organisations enjoy as a result of their charitable corporate foundation status, allows them to excel in the charitable causes they have set themselves on championing.

Many corporate foundations are high-profile – very often sharing the name of company which established them - and tend have a significant amount of exposure in the media which bring immense reputational benefits for the company/companies associated with the foundation.<sup>18</sup>

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<sup>16</sup> Charity Commission Guidance, Charitable Corporate Foundations, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/351134/corporate-foundations-guide.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/351134/corporate-foundations-guide.pdf), accessed September 2020.

<sup>17</sup> *Ibid*

<sup>18</sup> *Ibid*

In order to be fully recognised within the Law as a Charitable Corporate Foundation, a given corporate foundation must apply to the Charity Commission for charitable status. In applying, the corporate foundation must appoint a number of trustees and must demonstrate that the corporate foundation operates in an independent manner and is not at all influenced by the company/companies to which it is linked.<sup>19</sup>

Furthermore, Charitable corporate foundations must ensure, amongst other things, that no conditions are attached to the income they receive from the company/companies to whom they are linked which would cause the trustees to act outside of the foundation's purposes. A common example of this would be where the condition to select certain beneficiaries who are linked to certain key clients is attached to one donation the other.<sup>20</sup>

## Tax Advantages

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As fully recognised charities, charitable corporate foundations enjoy largely the same financial tax advantages available to all other charities. As a general rule, the Law in England and Wales exempts charities from paying taxes on most of the income they receive provided that the income is used for charitable purposes, or what is known as charitable expenditure.

This tax exemption applies to donations, profits from trading (if the trading in question is of such nature that it can be described as 'primary purpose trading'<sup>21</sup>), investment income etc. This means, amongst other things, that charities are allowed in ordinary settings to make certain investments to grow their capital without having to pay certain taxes which would otherwise be payable.

In addition to above-mentioned tax exemptions on income, Charitable Corporate Foundations, like most charities, are permitted to make tax-free donations to another charity for its use in an exclusively charitable venture which meets an aim or aims of the both charities.

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<sup>19</sup> *Ibid*

<sup>20</sup> *Ibid*

<sup>21</sup> This is where a charity trades to make money to facilitate the achievement of its charitable aims and objectives.

## Conclusions

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This report has focused – in the main – on the workings of the public benefit requirement within the Law of Charities, as well as Charitable Corporate Foundations. The benefits of adopting the legal framework of a fully recognised Charitable Corporate Foundation are -as this report has highlighted – very substantial and exclusive.<sup>22</sup>

The publicity and media attention that full recognised Charitable Corporate Foundations enjoy enhances their prestige and amplifies the importance of the work they undertake. The company/companies to whom they are associated also derive benefits from the good publicity in the form of an enhanced commercial reputation and good standing in the eyes of the public.

Furthermore, the act of registering with - and being recognised by - the Charity Commission enhances transparency within the foundations dealings. As the regulator of all Charities headquartered in England and Wales, the Charity Commission always ensures that Charitable Corporate Foundations are being run properly in undertaking projects which benefit the public – and the Commission also works strenuously to hold the Trustees of all Charitable Corporate Foundation to a very high standard of accountability and probity.

It is therefore the case that members of the public are more likely to trust, partner with or contribute to the activities of Corporate Foundations who have acquired charitable status from the Charity Commission and are therefore regulated by it.

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<sup>22</sup> The legal and financial benefits derived from charitable status and of the nature described in this report are not available under other legal structures such as an Unincorporated Association, Community Interest Company or Tripartite Agreement.

The report has also highlighted the financial benefits which charitable status brings to the workings of a corporate foundation in the form exemptions and relief on tax which would otherwise be payable. In many cases, these financial benefits will be crucial to advancing the financial sustainability of the foundation and its activities in the long term.