

FACULTY RESEARCH COMMITTEES

PUBLIC BENEFIT TEST

The University is a charity. To retain charitable status, research within the University must comply with the University's educational charitable objects. A part of this requirement is that research must be of public benefit. The University must now include within its annual financial statement confirmation that it has regard to the Charity Commission's guidance on public benefit and report on how it has delivered its charitable purposes for the public benefit.

The University has put in place an appropriate process within its research support processes with effect from 1st October, to ensure we are in compliance with the Charity Commission's requirement. The RS community has been informed, and members are asked to alert their academics accordingly. This document will shortly appear on the RS website under Policy and Performance, as well as under the Application Process for academic staff.

Purpose of this Guidance

This guidance is to assist those involved with the assessment as to whether a proposed research activity is charitable and in particular meets the requirement of the Public Benefit Test (PBT). These guidelines should be read in conjunction with the Charity Commission guidance in *Research by Higher Education Institutions* (June 2009) [http://www.charity-commission.gov.uk/charity_requirements_guidance/specialist_guidance/education/higherres.aspx]

This paper contains further background on the PBT, and the assessment criteria. There's also a Q&A section which will be added to over the next few months and in the attachment, the process involved in conducting the test and the respective responsibilities of academics and research support staff.

Background

The Charities Act 2006 provided for the appointment of Principal Regulators who work with the Charity Commission to ensure compliance with charity law and the public benefit requirement. On 1 June 2010 HEFCE became the Principal Regulator of HEIs (as exempt charities). As Principal Regulator HEFCE will be looking for:

- evidence of robust process for the authorisation of research contracts;
- evidence that funder terms and conditions were reasonable in relation to the circumstances that could be known to the University at the time;
- adequate records of the decision making process, in particular the recording of any exceptions to the HEI's normal pricing policy or terms and conditions.

Guidance from HEFCE as to how its regulatory role will be exercised is currently awaited.

It should be emphasised that few, if any, of the c1000 new research contracts awarded to the University of Leeds each year would be expected to fail the public benefit test (PBT). However, where there is any doubt the University must satisfy itself – and the Regulator – that the benefit to the public is the primary aim of the research.

Criteria

In order for research to be considered research for charitable purposes it must meet three criteria:-

1. **The subject matter of the proposed research is a useful subject of study.**
 - Useful research usually must increase knowledge and understanding in an area or produces other outcomes for public benefit whether or not these are immediate or of practical application. Research therefore does not need to be applied but if theoretical must have some likely value.
 - It can be largely assumed that the research being proposed is useful, however to this end the research must have defined likely outcomes that can be assessed as of value.

2. **It is intended that knowledge acquired as a result will be disseminated to others.**
 - Dissemination can be through publication or teaching. It can also be through giving papers at conferences.
 - Public registration of intellectual property rights e.g. filing of patents, can also be sufficient.
 - Ensuring public access, for example by lodging in a University Library (as long as it is catalogued).
 - A delay of up to 6 months after completion of a project before dissemination is generally acceptable. For any longer period further guidance should be sought from RS Contracts .
 - Confidentiality of any sponsors existing trade secrets or other sensitive business information may be respected.
 - Where a sponsor wishes to own all intellectual property rights arising from the research and does not allow for publication, this is generally not acceptable. There can be an argument that where there is to be an application of those rights later into a publicly available product, e.g. medicine, this is sufficient. However, further advice should be taken from the RS Contracts team in these circumstances.

3. **The research is conducted for the benefit of the public or a section of the public.**
 - Dissemination of results of the research must be within a reasonable period of time (see 6 months guide above).
 - The University's intellectual property rights must be suitably protected going into and after completion of the project (e.g. filing of patents and licensing arrangements)

4. **Any benefit to the sponsor is incidental**
 - The primary beneficiary of the research must be the University on behalf of the public. Full economic costs of the research may still be charged to sponsors as long as the benefit to the sponsor is incidental.

Any private benefits accruing to academics or others involved in the research must be incidental (e.g. additional private consultancy activity is not permitted and conflicts of interest declared and resolved)

Q&A

What about research funded by a commercial partner?

Research funded by a commercial partner will not fail the PBT just because it is commercially funded. The main potential areas of difficulty are the **dissemination** of findings and the **benefit gained by the funder**. The commercial funder may wish to restrict dissemination or may wish to own IPR in order to gain a commercial advantage. Ownership of the IP by the commercial funder doesn't render the project non-charitable in itself, but exclusive ownership with very restricted publication rights for Leeds might result in the project failing the PBT and rendering it non-charitable.

...Or where findings are confidential?

This might apply to certain government departments, where sensitive projects cannot be published at all. In these instances the research must be put through a University trading subsidiary.

My research project has failed the public benefit test. Is it still eligible for the REF?

The public benefit requirement does not affect REF eligibility. Research put through a subsidiary is returnable as long as it meets the REF definition of research.

Does the University have to pay tax on non-compliant projects?

Yes, income of research which does not pass the public benefit test is taxable.

I'm unsure whether to pass or fail a project

Please contact research-support@leeds.ac.uk and a member of the RS Contracts team will contact you.

Frances Cameron/Lorraine Bate - Research Support

Attachment - Public Benefit Test: the decision process

The Director and the Policy and Performance Manager of Research Support have the authority to sign all research and related contracts on behalf of the University. This authority has been delegated to Faculty Research Managers for standard approved sponsors. On these standard approved sponsors, criteria (ii) and (iv) (see below) already conform to the PBT criteria.

For all research projects, the FRM seeks confirmation from PI that the project conforms to criteria (i) and (iii) at the initial costing stage. The confirmation is recorded by FRM on the RGM3. The FRO will be responsible for alerting the RS contracts team where the project doesn't conform to these criteria.

For all non standard sponsors, the RS Contracts Team will, following the review and negotiation of the contract, confirm compliance or otherwise on the risk assessment form (RGM1) or RGM3 as appropriate.

If a project is assessed as non-compliant it must be reported to the Director of Research Support. Then either the research may be conducted outside the University (through Consulting Leeds) or changes must be made to the proposal and/or the terms and conditions to make it compliant with charitable purposes. If the project is conducted outside the university the RS contracts team will amend the contract to reflect the relationship between Consulting Leeds and the funder, rather than the University, and the contract will be vatable. Consulting Leeds will charge a fee on the total awarded value of 3% in line with their franchising policy. It is hoped that the majority of this fee will be covered by the change in chargeable vat to the funder, but in any case, the RS contracts team will endeavour to renegotiate the price with the funder.

