

## 'PRIVATE ACTION, PUBLIC BENEFIT' - SPORT ENGLAND'S RESPONSE

### Introduction

Sport England welcomes this report. Sport is clearly moving up the political agenda, as evidenced by the recently published joint Strategy Unit/DCMS report on sport – '*Game Plan*'. In that report the Prime Minister said "...Sport is a powerful and often under-used tool that can help Government to achieve a number of ambitious goals. We have to ensure that we are well equipped to do that." In that context, '*Private Action, Public Benefit*' will play an important role.

A review of charities and the wider not-for-profit sector was well overdue and the Strategy Unit has done a very good job in identifying the issues and making sensible recommendations for reform. We wholeheartedly endorse the majority of these and therefore do not propose to comment on all of them. We would, however, like to offer the following observations on specific aspects, insofar as they affect sport.

### New charitable purpose

As might be expected, Sport England fully supports the Strategy Unit's contention that the advancement of amateur sport should, for the first time, be explicitly recognised as a charitable purpose, on the grounds that sports organisations can, and often do, exhibit all the characteristics (listed in paragraph 4.7 of the report) that are indicative of public benefit. This would remedy a long-standing and anomalous omission from the current definition of charity, one that has perplexed a number of observers, whether from sport or not.

We accept that the test of charity should be the extent to which, and the methods by which, an organisation is fulfilling or intends to fulfil public benefits deriving from the stated purpose ('the advancement of amateur sport'). We would argue, however, that the characteristics of public benefit listed in the report are not all mutually inclusive – some may be achievable only at the relative expense of others, depending on circumstances.

### The public benefits of sport

Sport is a catalyst in the continuous development of healthy lifestyles and socially inclusive communities. The report itself acknowledges that "sports clubs play an important role in society. They provide health benefits to participants, giving them a better quality of life, and they can be effective in encouraging participation in civil society, reducing anti-social behaviour and forging stronger communities". We would go further and argue that **Sport** is a critical part of the fabric of society because:-

- **Sport** improves both physical and mental health – physical inactivity costs the nation £2billion each year;
- **Sport** can have a positive impact in raising standards of educational attainment;
- **Sport** cuts across the traditional divides of social class, gender, ethnicity and culture. It brings people together and helps to develop community cohesion;
- **Sport** impacts on behavioural attitudes and can be influential in reducing youth crime and drug abuse;

- **Sport** offers opportunities for hundreds of thousands of volunteers to participate actively in their communities and encourages active citizenship;
- **Sport** provides a sense of purpose and achievement and improves confidence and self-esteem, especially among young people;
- **Sport** at the higher levels of performance inspires the disaffected, instils pride and passion, and encourages those with talent – and those without – to improve their standards of personal performance;
- **Sport** is at the heart of community life and by common consent provides public benefit. Confirmation of this was provided in the ‘*Game Plan*’ report.

### **Scope of the new charitable purpose**

The Charity Commission, as part of its Review of the Register, decided in November 2001 to adopt a more enlightened interpretation of the existing legislation and case law by recognising “the promotion of community participation in healthy recreation by the provision of facilities for playing particular sports” as a charitable purpose. We welcomed this as a step in the right direction but the Strategy Unit report “proposes to build on the Charity Commission’s work by explicitly recognising amateur sport as a charitable purpose”.

As ‘healthy sport’ can already be regarded as charitable, we trust that the report takes this further and, as argued above, accepts that the public benefits accruing from sport extend beyond its health-enhancing properties. This is not clear because the report also refers to sport being defined as “encompassing activities involving physical skill which promote and maintain health”. Clearly, we would be no further forward if the health benefit was the sole determining factor. We agree that the proposed new categories of charitable purpose should not by definition entail the presumption of public benefit, and accordingly sports organisations would not qualify automatically, but ***we contend strongly that demonstrable public benefit should not be confined to health aspects and we seek assurances in that regard.***

### **Definition of “sport”**

The report suggests that “sport” should be defined generically as activities involving an element of physical skill and which promote and maintain health, rather than by reference to a list of eligible activities. By contrast, Schedule 18, s.58 (part 6) of the Finance Act 2002 designated eligible sports by Treasury order, and the ensuing Statutory Instrument 2002 No.1966 invoked the list of recognised activities that is maintained by the National Sports Councils. In turn, this list (which is reviewed from time to time) derives from an assessment of the extent to which each activity meets a comprehensive set of criteria. These include physical skills and effort, accessibility to the community, essential purpose, strategy and tactics, physical challenge and risk. Fuller details can be provided on request. ***We believe, therefore, that it is unnecessary to redefine “sport” specially for the new charitable purpose when an adequate test is in place already. Furthermore, a new generic definition could conflict with the eligibility test applied by the National Sports Councils.***

### **Definition of “amateur”**

Charitable status would be confined to amateur sport and the background discussion paper implies that the definition of “amateur” adopted by HM Treasury in their consultation document ‘Promoting Sport in the Community’ would be appropriate. This was amplified in Schedule 18, s.58 (part 1) of the Finance Act 2002, but the

purpose of that legislation was specifically to introduce tax reliefs for Community Amateur Sports Clubs. The detailed definition of “non-profit making” in the Act correlates closely with the generally understood meanings of “charitable” and “not-for-profit”. However, the Act then narrows the scope to Community Amateur Sports Clubs through its definition of “organised on an amateur basis”, which encompasses less relevant matters such as the “ordinary benefits” a community sports club might provide to its members. **Although community sports clubs would form the majority of the organisations applying to register, we contend that charitable status should not be restricted to such organisations**, for the reasons outlined above (Sport’s contribution to society in general). We accept unreservedly, though, that members should in all cases be precluded from deriving personal financial benefit either during the existence of the organisation or upon its dissolution (except in proper payment for goods supplied or services rendered).

### **Other criteria**

We are delighted that the report recommends that sports clubs would still be eligible for charitable status even if they select their members on the basis of ability/aptitude, or set a minimum standard of fitness or competence for membership, or have social members. We accept that subscriptions and charges need to be set at a level that ensures reasonable access to a wide cross-section of the community, subject to the safety and physical capacity of the club’s facilities. However, **we do have concerns that a narrow interpretation of accessible public benefit might preclude organisations and not-for-profit companies that provide facilities and services for high performance athletes in training**. If charitable status recognises variations in ability (as above) then it should also recognise that the need for facilities and services differs according to levels of performance. In many cases, there will be opportunities for shared use but at mutually exclusive times. This does not make the provision of benefits any less charitable.

### **Trading activities**

Dispensing with the need to operate separate trading subsidiaries is another welcome recommendation, as the current regulatory framework militates against charitable fundraising. However, we acknowledge the need for trustees to think carefully about how risks to charitable assets can be managed effectively (though this should not have to entail commissioning costly professional advice – we would like charities to have access to a publicly-funded advisory service).

### **Campaigning**

The recommendation to relax controls on campaigning might enable some of the governing bodies of sport to achieve charitable status. Their activities are certainly aimed at the advancement of amateur sport but they are less directly involved in providing opportunities and/or facilities for participation. Official recognition of their campaigning role would be welcomed.

### **New legal form**

The introduction of a new legal form (the Charitable Incorporated Organisation) specifically tailored to meet the needs of charities is long overdue, for the reasons spelt out in the report. The majority of sports organisations operate on a not-for-profit basis and have increasingly turned to the Company Limited by Guarantee form of incorporation to protect their interests and limit the liability of members. Incorporation entails regulation under the Companies Acts but charitable status

would impose further regulation, not always compatible, by the Charity Commission. ***We feel sure that sports organisations opting for charitable status would enthusiastically embrace an alternative legal form with clearer structures, limited liability for members, unitary regulation and explicit, non-conflicting fiduciary responsibilities.***

### **Report on performance**

We share the concerns expressed in the report about 'league tables' for charities, which would be rendered meaningless by the wide variation in, and accuracy of, key performance indicators. However, we also think it will prove something of a challenge to elicit meaningful information in just two sides of A4. Some charities would struggle to be so succinct, whilst others would find any self-assessment difficult without practical help (and a template). Nevertheless, we support the principle of a simple Standard Information Return and endorse the recommendation of an advisory service on performance improvement as part of Government support for capacity building.

### **The Charity Commission's role**

In Sport England's experience, the Charity Commission has made great progress recently in modernising its approach to charity regulation, and the material published on its website demonstrates honest intentions to help rather than hinder its customers and stakeholders. We believe that this should be encouraged further and, although regulation and accountability is essential to secure public confidence, it should be applied with as light a touch as possible (but with stiff penalties for deliberate and blatant transgression). We would urge the Charity Commission to work more closely with sectoral interest groups in order to achieve pragmatic solutions. We also support the free advisory role the Commission performs and would like to see this extended as one of its statutory functions, complementary to that of regulator, and in cooperation with other bodies such as (in sport) Sport England, the Central Council of Sport & Recreation and the National Playing Fields Association.

### **Registration**

We think it makes sense for the threshold for registration to be the same as the threshold for (active) annual monitoring, but we believe that, in the absence of an option to register voluntarily, "Small Charities" should enjoy some form of official accreditation or recognition provided it is accessible with minimal administration.

**Sport England**

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