

**CHARITY COMMISSION: PUBLIC BENEFIT AND EDUCATION****Response by the Wellcome Trust**

July 2008

**Public Benefit and Education**

1. The Wellcome Trust (the “**Trust**”) is the largest charity in the UK. It funds innovative biomedical research, in the UK and internationally, spending over £600 million each year to support the brightest scientists with the best ideas. The Trust supports public debate about biomedical research and its impact on health and wellbeing.
2. The Trust is pleased to have an opportunity to comment on the “Public Benefit and the Advancement of Education Draft supplementary guidance for consultation” (“**Draft Guidance**”).
3. The Trust is aware that ‘research’ as an activity can fall, directly and/or indirectly under a number of the ‘charitable purposes’ introduced by the Charities Act 2006 (the “**Act**”). The Trust’s objects and activities may therefore fall under a number of the ‘charitable purposes’ introduced by the Act, including ‘the advancement of education’, ‘the advancement of health or the saving lives’, ‘the advancement of the arts, culture, heritage or science’, ‘the advancement of animal welfare’, ‘the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage’ and ‘other purposes currently recognised as charitable and any new charitable purposes which are similar to another charitable purpose’.
4. As a medical research-funding charity, which, amongst other things, advances education, the Trust has an interest in the Draft Guidance. On the whole, the Draft Guidance does not raise any material issues of concern for the Trust. The Trust has focused its comments on the main areas where the Draft Guidance may be relevant to the Trust and its charitable subsidiaries. The most relevant issue for the Trust is around incidental private benefit and how this relates to the commercial exploitation of research results (see the response to Question 15 below).
5. There are also a number of sections of the Draft Guidance where the Trust has suggested some minor clarifications. The Trust only wishes to respond in relation to the Consultation questions referred to below.

**Question 1****Do you agree with our understanding of education? Are there other aspects we should include?**

6. The Trust agrees with the broad definition of education as described in section C1, and is pleased that the definition includes “research and adding to collective knowledge and understanding” .

**Question 4****Are there other types of organisation that advance education?**

7. The Trust agrees with the examples provided in the box at C6. The Trust would also suggest that specific reference is made to those charitable organisations providing funding by way of

grants or other mechanisms to educational establishments, and in particular to the funding of research.

#### Question 6

**Do you agree that professional education is capable of being charitable in a similar way to vocational education?**

8. The Trust agrees with the Draft Guidance that professional education is capable of being charitable in a similar way to vocational education but awaits the draft guidance on professional bodies and professional education in order to comment further. For example, the Trust funds the continuing professional development (CPD) of science teachers and other educators. Whilst provision of such CPD benefits an individual teacher attending CPD courses, such course attendance will have great benefits to the public at large.

#### Question 7

**Do you think we have accurately described 'education', the advancement of which can be charitable if it is also for the public benefit? If not, please let us have your comments supported by examples where possible.**

9. The Trust agrees that the Commission has accurately described (within the accepted case law) 'education the advancement of which can be charitable if for the public benefit'. The Trust would suggest that the Draft Guidance could include further examples which demonstrate that 'education' within the charity law context can be wider than the dictionary definition and the conventional understanding of education. In particular, the Trust would suggest including a reference to the *funding* of 'research' as a means to advance education.

#### Question 8

**Do you agree with what we say about how organisations can clearly show the benefit of the education they provide? If not, please explain your reservations. Are there any other examples that you think it would be helpful for us to include to illustrate the need to show the benefit of education?**

10. The Trust welcomes the Commission's acknowledgement that some benefits are more difficult to define or measure. The Trust has previously stated its position in regard to identifiable benefit and broadly speaking the Trust believes it is important that there is not an over-emphasis on short-term public benefit. As has been recognised by the Commission, the outputs and impact of biomedical research can at first focus on the gathering of knowledge and skills, which in themselves are identifiable benefits, but there will often be a very long time before there is an impact on human or animal health, the second type of identifiable benefit from biomedical research.

#### Question 15

**Is it clear enough how private benefit might jeopardise the aims of the organisation being for the public benefit?**

11. The Trust notes the definition that the Commission provides in regard to 'private benefit' and the example provided in regard to "Research Bodies".
12. The Commission issued draft publications on "Charities and Research" in 1995 and 2000, but withdrew both without adopting final versions of either draft. The Trust has found the Commission's 2000 draft particularly useful and would encourage the Commission to produce guidance, in consultation with the charity research sector, to clarify the position of charities undertaking and/or funding research, ***whether they are established to advance education or for other charitable purposes.***

13. The Trust has particular concerns about the charity law of charity-funded research where that research is undertaken by a public benefit body in collaboration with a for-profit company. The Trust believes that where a research charity (including universities) undertakes research in collaboration with a for-profit company, where the charity believes that the public benefit can only realistically be achieved or would be most effectively achieved, through such collaboration the charity's involvement in such research should be treated as charitable. This would be on the proviso that the charity had put in place measures to ensure that the benefits of the research did indeed accrue to the public and that any private benefit accruing to the for-profit company would remain incidental to the overall public benefit by requiring that the charity receive a reasonable share on any income or equity of the company.
14. When considering whether private benefit to a for-profit company is legitimately incidental to public benefit, in the Trust's view, it should not be the actual quantum of the private benefit which is considered, as this could in some cases be substantial but still legitimately incidental. For example, where a charity funds research into a new cancer drug and licences that drug to a pharmaceutical company, the pharmaceutical company may well make a quantitatively substantial private profit, perhaps millions of pounds, but, in the Trust's view, so long as the drug benefited patients and the charity received a reasonable return on any profits made by the company, the private benefit to the company would be legitimately incidental.
15. Any commercial exploitation of Trust-funded research has to be consented to by the Trust, in advance of any such exploitation, as the best way in which to further the Trust's charitable objects. If it is deemed appropriate, a likely condition of granting such consent is that the exploiting entity gives a share of any income or equity to the Trust to ensure that any private benefit arising from the exploitation remains incidental to the overall public benefit to be achieved. This would of course depend on the initial input of funds provided by the Trust and would be proportionate to any funds or commercial input provided by any commercial collaborator. Where a commercial collaborator has made a proportionately significant contribution, an income or equity share might not be necessary or appropriate.
16. We would like to stress that when research by a charity generates inventions which are capable of protection by IPRs, that charity should be able to decide on a case by case basis whether protection by filing IPRs or publication is the best way to achieve public benefit.
17. The Trust would also like to know how the Charity Commission will seek to ensure that charity law regulators in the UK will take a consistent approach to what is a legitimate incidental private benefit in the context of charities and research, given that English, Welsh and Scottish universities each have different charity law regulators and that it is anticipated that Northern Irish universities will shortly be in a similar position.

**Wellcome Trust**

**10 July 2008**