

CHARITY COMMISSION
DECISION OF THE CHARITY COMMISSIONERS
FOR ENGLAND AND WALES MADE ON 15 SEPTEMBER 2003

APPLICATION FOR REGISTRATION OF
COMMUNITY SERVER

1. The issue before the Commissioners

The Commissioners considered an application by a not-for-profit company limited by guarantee called “Community Server” for registration as a charity. If the company was established as a charity it should be entered on the Central Register of Charities under section 3(2) of the Charities Act 1993.

This decision has been made by the Commissioners in a review under the Commission’s review procedures.

2. Decision

The Commissioners:

- having considered the case which has been put to them by Community Server, including legal submissions and full supporting evidence; and
- having considered and reviewed the relevant law and the governing document and activities of Community Server and the social and economic environment in which it intends to operate

concluded that in providing the proposed computer and internet access facility and educational activities on information technology Community Server is established for exclusively charitable purposes, namely providing a recreational facility meeting the requirements of the Recreational Charities Act 1958, advancing education for the benefit of the public and providing a public amenity.

In consequence, Community Server should be registered as a charity.

3. The objects and activities of Community Server

3.1. Community Server, registered on 6 June 2002 as a company limited by guarantee with Memorandum and Articles of Association, was established with the following objects:

“.1 the provision of facilities for recreation and other leisure time activity in the interests of social welfare for persons living in the Area of Benefit who have need by reason of their youth age, infirmity or disablement, poverty or social and economic circumstances with a view to improving the conditions of life of such persons.

.2 The advancement of the education of the public through the use of information technology.

.3 The maintenance, improvement or provision of public amenities for the public benefit in the Area of Benefit.

The Area of Benefit for the purposes of ... [this clause] means the London Borough of Croydon.”

- 3.2. The Commissioners noted that Community Server described its activities as providing and operating a cyber café to provide computer and internet access facilities for the local community, targeting users who would otherwise be less able to access the equipment, resources and training that the facility would provide.
- 3.3. Alongside the traditional cyber café facilities, Community Server would offer a range of educational activities on information technology. They would be targeted at particular groups, such as the elderly and were likely to consist of introductory courses on using computers, on subjects such as word-processing and spreadsheets.
- 3.4. The facilities would generally be open to anyone to use except for when the facilities were being used to provide the educational activities. Community Server intended to charge a small fee for use of the facilities. Community Server would also provide refreshments to users, an outside seating area and public conveniences.
- 3.5. The Commissioners noted the particular characteristics of the community for whom the facilities were intended. Although the area of benefit was described as the London Borough of Croydon, the location of the facilities was such that it fell within two wards (Fieldway and New Addington) which were in the lowest ten per cent of wards for deprivation by reference to indicators such as income, education and child poverty.
- 3.6. The Commissioners also noted that Community Server had received grants from the local authority and from the funding programmes “Neighbourhood Renewal Fund” and “Communities Against Drugs”.

4. The framework for the issues considered by the Commissioners

- 4.1. The first object was a purpose which could be charitable by virtue of the Recreational Charities Act 1958 (the “1958 Act”). The 1958 Act accepts that some recreational facilities can be charitable. For the purposes of this review, the Commissioners had to consider whether the provision of the cyber café as proposed by Community Server was a recreational facility which was charitable under the 1958 Act.
- 4.2. The second object considered was the advancement of education.

4.3. The Commissioners also considered whether the provision of the cyber café as proposed by Community Server was charitable as a public amenity under the common law.

5. **Consideration of whether the provision of the cyber café was a facility provided under the Recreational Charities Act 1958**

5.1. The Commission's approach in considering whether a facility would be charitable under the 1958 Act is set out in greater detail in RR4 "The Recreational Charities Act 1958". In determining whether an organisation providing facilities or organising activities for recreation or other leisure-time occupation is charitable under section 1 of the 1958 Act the Commission needs to be certain that three key elements are satisfied. These are that: -

5.1.1. the organisation provides or assists in the provision of facilities for recreation or other leisure time occupation;

5.1.2. those facilities are provided in the interests of social welfare (the "social welfare requirement"); and

5.1.3. the public benefit requirement is met.

5.2. ***The organisation provides or assists in the provision of facilities for recreation or other leisure time occupation.*** The Commission interprets widely whether or not any facility can amount to a facility for recreation or other leisure time occupation. It potentially extends to any activity which people undertake for their own enjoyment outside work. They noted that accessing information on the internet and electronic mailing could facilitate mental stimulation and social contact and was undertaken by many people outside the work environment, including for enjoyment purposes. The Commissioners concluded that the cyber café proposed was capable of being a recreational facility for these purposes.

5.3. ***The social welfare requirement.*** The 1958 Act provides that the social welfare requirement will not be met unless:-

(1) the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended; and

(2) either those persons have a particular need for the facilities (for instance because of their social and economic circumstances) or the facilities are available to the public at large ("the statutory requirements").

In addition, as explained further in RR4¹, the social welfare requirement also implies elements of altruism and social obligation.

5.4. ***The statutory requirements.*** The Commissioners considered the role which information technology and the internet has in modern society. For example, more services such as banking and travel are being delivered online. Indeed, the government has set a target that, by 2005, the delivery of government

¹ Paragraphs A13 –A17

services should be capable of being provided electronically². The Commissioners also noted the government's policy to make access to the internet more widely available. As part of the work done in deciding how to achieve that aim, the Policy Action Team's³ report on information technology explored the barriers that inhibit access to new technologies and the benefits they bring.

5.5. The Commissioners noted the geographical location of the cyber café and considered the characteristics of the local community for whom the facilities were intended. The Commissioners concluded that the dominant feature in providing the facility was to reduce exclusion, improve education and increase participation in activities which many people in this community would not otherwise have opportunity to access. The Commissioners were satisfied that the facilities were provided with the object of improving the conditions of life of those who were primarily intended to use them and that the facilities were capable on an objective basis of doing so. The first of the statutory requirements was therefore met. The second requirement was also met. The facilities were available to the public at large. Furthermore, the persons for whom the facilities were primarily intended had a particular need of them by reason of their social and economic circumstances as well as, on occasion, other factors listed in s1(2)(b)(i) of the 1958 Act.

5.6. *Altruism and social obligation.* The Commissioners accepted that the facility was established for altruistic purposes. The Commissioners considered the reasonable needs of the community as a whole including social contact and mental stimulation. The Commissioners considered that the geographical location, extent of public transport and alternative facilities at affordable prices and the size of the community were relevant factors in considering whether the facility was provided in response to the community's social needs. The Commissioners were satisfied that the facilities were set up to meet needs which it was reasonable to expect would be available to this community.

5.7. Accordingly, the Commissioners were satisfied that the social welfare requirement was met.

5.8. *the public benefit requirement is met.* The Commissioners were satisfied that the provision of the facility, which would increase opportunity to access and use information technology and the internet by people who would otherwise not be able to do so, did result in a benefit and further that that benefit accrued to a sufficient section of the public. They considered this was the case here where the facilities were being provided for people who were in need of the facilities by virtue of their social and economic circumstances as well as, on occasion, other factors listed in s1(2)(b)(i) of the 1958 Act.

² The target to ensure all services were available electronically (originally by 2008, but later brought forward to 2005) was set in the Modernising Government White Paper in 1999

³ Policy Action Teams were set up following the Social Exclusion Unit's Report "Bringing Britain Together; A National Strategy for Neighbourhood Renewal" 2001, to assist in the development of policy on issues particularly affecting deprived areas

6. **Consideration of Community Server's educational activities**

The second object was to advance the education of the public in information technology. The Commissioners were satisfied that the range of targeted educational activities which Community Server proposed on information technology were activities to be carried out in furtherance of this charitable purpose.

7. **Consideration of whether the provision of the cyber café was charitable as a public amenity**

7.1. Facilities such as libraries, public halls and reading rooms have long been recognised by the courts as charitable as public amenities⁴, as have other suitable facilities which are available to the public or a sufficient section of the public.

7.2. The Commissioners considered that the provision of the cyber café to be provided by Community Server for persons who would not otherwise have access to those facilities was, by its very nature and by virtue of being provided for and available to a sufficient section of the public, capable of being such an amenity.

8. **Conclusion**

8.1. The Commission was satisfied that in providing the proposed computer and internet access facility and educational activities on information technology in the wards of Fieldway and New Addington, Community Server is established for the purposes of providing a recreational facility meeting the requirements of the 1958 Act, advancing education for the benefit of the public and providing a public amenity. Community Server was therefore established for exclusively charitable purposes.

8.2. The Commissioners agreed to offer Community Server registration on the basis that, for the sake of clarity, the nature of the facility being provided should be expressly stated in the Memorandum of Association in the form of a power. Subject to this, Community Server should be registered as a charity pursuant to Section 3 of the Charities Act 1993.

⁴ Harrison v Southampton Corpn [1854] 2 Sm & G 387; re Spence [1938] Ch 96 and Re Scowcroft [1898] 2 Ch 638