House of Commons
Committee of Public Accounts

The Charity Commission


Report, together with formal minutes, oral and written evidence

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Committee of Public Accounts

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Summary

This is the fifth time that we, or our predecessors, have examined the Charity Commission (the Commission) since 1987. Charities play a vital role in promoting the health, well-being and resilience of our society, and the Commission is responsible for ensuring public trust and confidence in the sector. We are therefore dismayed to report yet again that the Commission continues to perform poorly and is still failing to regulate charities effectively. The Commission is a reactive rather than proactive regulator, and has yet to use its powers properly in registering, monitoring, or intervening in charities. It has not always been clear whether the Commission sees its primary purpose as supporting the voluntary sector or protecting the public interest. The Commission is seeking to change its culture and approach, but we are not convinced it has the leadership capability to tackle its significant failings and transform its culture.
Conclusions and recommendations

1. The Commission is the independent regulator of some 165,000 registered charities in England and Wales. It is funded entirely by, and is directly accountable to, Parliament. Its budget for 2013-14 is £22.7 million. The contribution charities make to our society is hugely important to all of us and the Commission has a key role in preserving public trust in charities. The annual income of the charitable sector is around £60 billion, and charities deliver around £14 billion worth of public services annually, funded through central and local government grants and contracts. The Commission’s statutory objectives include increasing public trust and confidence in charities and regulating their compliance with charity law.

2. The Commission has no coherent strategy for delivering clearly defined priorities within its broad remit. The Commission does not know how much its activities cost and has not focused its resources on its priorities. Lacking strong leadership and a strategy for effective and efficient regulation of the charity sector, the Commission has been buffeted by external events. It has responded to budget cuts by salami slicing its activities rather than radically rethinking its purpose. It has therefore failed to fulfil its duties to register, regulate and intervene in charities effectively.

Recommendation: The Commission should develop a clear strategy detailing how it will deliver its responsibilities as a regulator effectively, and set out how it will use its budget to implement that strategy. If it is being asked to do too much with too little it should clearly set out its case for additional resources to Government.

3. The Commission has not regulated the charity sector effectively. The Commission has placed insufficient emphasis on the monitoring and investigation of charities relying mainly on receiving information from others, rather than actively generating its own information and intelligence to identify risks in individual charities. The Commission is too willing to accept what charities tell it, without verifying or challenging the claims made, and it does not appropriately prioritise its limited resources to investigate the most serious cases of potential abuse of charitable status. In the last 3 years, the Commission has not removed any trustees, it has only suspended a trustee twice and it has only restricted charities from entering into specific transactions 17 times when it is responsible for overseeing 165,000 charities. The Commission has continued to make poor use of its powers, its internal processes and whether, for example, with the Cup Trust or the Afghan Heroes investigations are too slow and inefficient, and when faced with clear cases of abuse, it has failed to act promptly and robustly, or use the full range of powers to intervene that it has available.

Recommendation: The Commission needs to use its statutory powers to regulate charities more effectively. This should include making better use of the intelligence it already holds on charities to identify risks, improving how it prioritises the use of its resources, and responding more quickly to serious concerns in individual charities.
4. **The Commission’s leadership has consistently failed to tackle poor performance and ongoing weaknesses in the organisation.** In response to critical reports from this Committee, and our predecessors, over the past 26 years, the Commission has repeatedly said that it will get things right. In practice, it has failed to implement our recommendations, its performance has not improved, and the Board has not exercised adequate oversight of the Commission’s leadership when it failed to deliver the necessary changes. The Commission’s strategic review in 2011 failed to achieve a fundamental transformation of the organisation, and it remains weakest in identifying deliberate wrongdoing by charities and in taking effective action. The Board is searching for a new Chief Executive and that person will need to bring about the much needed radical change in the Commission’s culture and operations, to restore confidence in the organisation’s ability to regulate charities effectively.

5. **Recommendation:** The Commission needs to introduce a determined and focused new leadership to radically transform the Commission’s culture and operations, and the Board needs to have sufficient grip on the Commission’s performance and operations to hold the executive effectively to account.

6. **We have little confidence in the Commission’s ability to put right its problems and failings.** Nothing we heard convinced us that things have changed significantly since we last examined the Commission, and we are concerned that it does not possess the capability to put right its problems and address its failings. The Board is developing a change management plan, with the intention of tackling its engrained problems. We intend to return to review the Commission’s progress in a year’s time.

7. **Recommendation:** The Commission needs to act decisively to finalise and put into action a robust change management plan to tackle effectively its enduring failings.
The Commission’s strategy and leadership

1. In March 2013, we examined the Charity Commission (the Commission) and HM Revenue & Customs, about their regulatory response to the Cup Trust charity. We concluded that the Cup Trust had been set up as a tax avoidance scheme and that it did not meet public expectations of a charity. We found it unacceptable for the Commission not to have been able to stop this abuse of charitable status.¹ On the basis of two subsequent reports by the Comptroller and Auditor General, we took evidence from the Commission on its regulatory effectiveness and leadership.² This has been the fifth time that we, and our predecessors, have examined the Commission since 1987.³

2. The Commission is the independent regulator of some 165,000 registered charities in England and Wales.⁴ It is a non-ministerial department funded entirely by, and directly accountable to, Parliament. Its budget for 2013-14 is £22.7 million. The Commission’s core regulatory activities include registering, monitoring and investigating charities; using its powers where there is mismanagement or misconduct in charities; and providing guidance to trustees of charities. Charities make an important contribution to UK society and the Commission has a key role in preserving public trust in charities. The annual income of the charitable sector is around £60 billion, and charities deliver around £14 billion worth of public services annually, funded through central and local government grants and contracts. The Commission’s objectives include increasing public trust and confidence in charities, and regulating their compliance with charity law. Its objectives, functions and duties are set out in the Charities Acts 2006 and 2011.⁵

3. The Commission’s budget will fall from £32.6 million in 2007-08 to £20.4 million by 2015-16, a reduction of 48% in real terms.⁶ In response to its declining budget, the Commission carried out a strategic review in 2011. It told us that it had consulted a broad range of external stakeholders including the charity sector, the Government, Parliament and the public about whether the Commission was carrying out any activities that it should not be doing. However, this consultation did not enable it to identify any significant activities which it could discontinue or pass to other bodies.⁷ A key conclusion of the review was that the Commission should focus on what only a regulator can do.⁸

² C&AG’s Report, The regulatory effectiveness of the Charity Commission, HC 813, 2013-14, 4 December 2013 (hereinafter referred to as the C&AG’s Report); The Cup Trust, National Audit Office, HC 814, 2013-14, 4 December 2013
⁴ Qq 77, 120
⁵ C&AG’s Report, paras 1.1-1.2, 1.8, 1.10
⁶ C&AG’s Report, para 1.12
⁷ C&AG’s Report, para 1.15
⁸ Qq 1, 4, 18, 33
4. The Commission’s strategic plan for 2012-15 reflects its new approach to focus its activities on accountability and compliance. The Commission restructured and put new processes in place aimed at improving efficiency and reducing demand for its services. However, its approach to restructuring did not involve an assessment of the costs, benefits and risks of different models for regulating charities and meeting its statutory objectives.\(^9\)

The Commission accepted that its strategic review had not been radical, and had not produced a fundamental transformation of the organisation. It acknowledged that this would have required a whole range of options to have been on the table, including a fundamental look at its processes and their costs.\(^10\)

5. The Commission aimed to cut spending in two areas. The first was to seek to change the thresholds above which charities are required to seek formal permission from the Commission, before undertaking certain actions, with the long-term objective of removing some of this activity entirely.\(^11\) The second was to stop providing advice and guidance to individual charities. The Commission told us that over the previous three years it had sought to reduce pressure on its resources by encouraging charities to use its online advice and guidance. As a result, the number of incoming calls, e-mails, and letters had reduced by around a third. However, the Commission acknowledged that it still had a long way to go in focusing its reduced resources on its accountability and compliance functions.\(^12\)

6. The Commission accepted that it has been under severe financial pressure and told us that it did not have the resources to do the job which Parliament requires of it. It considered that it had been asked to do too much with too little. Despite this, the Commission acknowledged that it had not determined a figure for the resources it needs to deliver what Parliament requires. It described its approach as aiming to do the best possible job with the resources it has.\(^13\) The Commission considered that it would not be worth determining how much funding it needed as this would be unlikely to lead to any change in resources. It felt that this would be like trying ‘to challenge an overwhelming tide of austerity’. As a result, its approach had been to aim to cope within the amount it had been given.\(^14\)

7. The Commission does not know how much it spends on each of its key functions, and it does not have a system for recording the time spent by staff on different activities.\(^15\) The Commission agreed that it needed to develop unit cost data for each of its key processes such as registration, compliance checks and visits. It confirmed that accurate cost data would be essential to inform any proposals for a radical transformation of the Commission to ensure that all recommendations were properly costed. It would also help the Commission determine the total resources required to deliver its functions under each alternative option for the effective regulation of charities. The Commission recognised that cost data were also necessary to understand which of its activities could be more efficiently

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\(^9\) C&AG’s Report, paras 1.14-1.16
\(^10\) Q 34-35
\(^11\) Q 33
\(^12\) Q 33
\(^13\) Q 12, 82-84
\(^14\) Q 81
\(^15\) C&AG’s Report, para 1.20
provided by other bodies, whether through outsourcing by the Commission, or directly by
different organisations. The Commission told us that it was still at the very early stages in
costing its activities, and had only just started this work. So far, it had established a steering
committee which was exploring ways to generate cost data and it was trying to bring in
outside expert advice, as it does not possess the skills internally.

8. The Commission recognised that there was significant scepticism about its leadership
and its current capability to achieve its objectives. The current Chief Executive’s term is
coming to an end and the Commission has sought external help in its search for a new
Chief Executive, whom it hopes to have in place by Spring or Summer 2014. The
Commission told us that there were three characteristics it would seek in a new Chief
Executive, namely someone who: could examine situations strategically; had successfully
delivered business transformation elsewhere; and would be able to secure support from the
Commission’s stakeholders and staff for the organisation’s transformation.

9. In 2013, the Commission gained a new Board, which is leading the development of a
change management plan to tackle the Commission’s engrained problems. The
Commission considered that its Board was very focused on holding the current Executive
to account. The Commission said it was clear that it had to transform its culture and
change its tone with charities, by taking a more rigorous approach in its investigations, and
recognising and dealing swiftly and decisively with abuse of charitable status. It is also
implementing all the recommendations in the National Audit Office Report. However,
the Commission acknowledged that changing its culture would be difficult and would take
time.

16 Qq 34-35
17 Q 35
18 Qq 35, 65, 127
19 C&AG’s Report, para 1.10
20 Qq 14, 120
21 Qq 2, 18, 34
The Commission’s regulation of charities and use of its powers

10. The Commission considered that its focus on charity registration had left its investigations and compliance functions short of resources, with only 23% of its staff allocated to investigations. The Commission accepted that the overall number of investigations it undertook was small, but highlighted that it had made tangible improvements during 2013 when it had opened 26 new inquiries between 1 April and 30 September. This compared with fewer than 20 statutory inquiries annually over the last five years. The Commission emphasised that it needed to make sure that carrying out a greater number of investigations was sustainable, given its reducing resources.

11. The Commission’s use of its statutory powers has declined since we previously reported in 2002. In the three years to 31 March 2013, the Commission did not remove any trustees, it suspended only two trustees and it used its powers to restrict charities from entering into transactions on only 17 occasions. The Commission told us that it needed to shift its focus towards investigations and the use of its powers and it felt that it needed to up its game very considerably. The Commission stated that following its 2011 strategic review, it had begun to put the building blocks in place to improve its investigation of abuse and wrongdoing within charities.

12. The Commission’s internal processes and investigations are slow and inefficient. The average time taken to complete a statutory inquiry almost doubled in the five years to 2011-12, reaching 700 days. In some cases, the Commission has also been slow to take strong action and to escalate its response when investigating the most serious regulatory concerns. Several months have passed in some cases during which the Commission took little or no action, for example by its failure actively to follow up the issues under investigation with trustees. In one example, significant delays were caused by the Commission’s inaction when the case-officer working on the case retired and it was transferred between offices. In a second case, it took the Commission nine months to arrange a meeting with the trustees of the charity. We also heard from a correspondent who told us he had written to the Commission in July 2013 to raise concerns about the charity Afghan Heroes, yet had heard nothing from the Commission beyond an acknowledgement of this letter. After our hearing the Commission told us it had opened a statutory inquiry into Afghan Heroes on 22 November 2013.

13. The Commission considered that there were a number of reasons for the long time it took to conclude investigations and that there was no single answer to remedy this. It

22 C&AG’s Report, para 1.20
23 Qq 21, 23, 26, 64-65; C&AG’s Report, para 3.8
24 C&AG’s Report, para 15, Figure 21
25 Q 3
26 C&AG’s Report, paras 3.8, 3.10
27 C&AG’s Report, paras 3.10, 3.17
28 Qq 87, 99-100 and Ev 20 (Commission follow-up memo of 7 January)
considered that its culture was a factor in the slow rate of progress, and that it had become very process oriented, overly procedural and risk-averse in its work. It admitted that, in some cases, it had more people involved in investigations than it needed, and that it used people who were involved in multiple investigations simultaneously, which slowed down overall progress. In what the Commission admitted to be a short-term solution to completing highly sensitive cases, it now had non-executive directors on its board actively involved in case work. The Commission accepted that it had been weakest in identifying deliberate wrongdoing and escalating that effectively into action. The Commission told us that it had been pressing its staff to be bolder and more confident about identifying cases and raising them quickly for investigation.

14. The Commission also recognised that it needed to measure the impact and outcomes of its investigations, even though these were intrinsically more difficult to measure. It told us that it had made a start in evaluating the outcomes from its serious investigations and enforcement, to assess what form of protection its interventions work provided, but accepted that it needed to do more.

15. The Commission’s approach to charities is too trusting. It has frequently relied on assurances from trustees that they have taken action, or would take action to address its concerns, rather than checking directly whether trustees had actually taken the required action. The Commission allows its staff to make their own judgements about whether trustees can be relied upon. The Commission accepted the National Audit Office’s findings that Commission staff sometimes make decisions without evidence, and often make decisions based on information they have been provided by charities, without checking its accuracy. It believed it was often necessary to make judgments about whether to trust statements from trustees and it considered that its planned intelligence hub and risk profiling of charities would help inform those judgements. It also recognised that it could be quicker, or better, at recognising when something may be wrong in charities.

Following our hearing in March 2013 on the Cup Trust, the Commission reviewed the register of charities to identify similar charities to the Cup Trust. As a result of that review, it identified 13 charities for further examination and opened operations compliance cases on each. Three of these cases have subsequently been closed. However, only since the National Audit Office report in December 2013, has the Commission incorporated tax avoidance into its risk framework. It now considered tax avoidance to be a key concern and acknowledged that it had not previously given this prominence.

16. The Commission does not profile charities to identify those most at risk of regulatory breaches and it has not taken tough enough action in some of the most serious cases. It has reduced its monitoring of charities where there is a high risk of mismanagement or misconduct, and been slow to modify its approach when evidence suggests trustees may be

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29 Qq 32, 94, 98
30 Qq 60, 64
31 Q 32
32 C&AG’s Report, para 3.16
33 Qq 12, 31, 39, 77
34 Q 50; C&AG’s Report para 1.26
intent on abusing charitable status.\textsuperscript{35} The Commission considered that its system to assess the risk that a charity might be used for non-charitable purposes as red, amber or green, and to follow up all red cases, has helped in examining those charities about which its staff had the most concerns.\textsuperscript{36} The Commission told us that its strategic review had led to it having a greater relative focus of resources on investigations at the most serious end of the spectrum. However, due to the significant reduction in funding, it could not leave this area immune from spending cuts. It acknowledged that it still has a long way to go in investigating serious cases, but believed it was making progress.\textsuperscript{37}

\textsuperscript{35} C\&AG’s Report, paras 17, 19
\textsuperscript{36} Q 12
\textsuperscript{37} Qq 33, 40-41
Draft Report (The Charity Commission), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 16 read and agreed to.

Conclusions and recommendations agreed to.

Summary agreed to.

Resolved, That the Report be the Forty-second Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Monday 3 February at 3.00 pm]
Witnesses

Monday 16 December 2013

Nazo Moosa, Non-executive member of the Charity Commission Board and Sam Younger, Chief Executive and Accounting Officer, Charity Commission

List of printed written evidence

1  The Charity Commission
List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

**Session 2013–14**

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| Third Report | Department for Communities and Local Government: Financial sustainability of local authorities | HC 134 |
| Fourth Report | HM Revenue &amp; Customs: tax credits error and fraud | HC 135 |
| Fifth Report | Department for Work and Pensions: Responding to change in jobcentres | HC 136 |
| Sixth Report | Cabinet Office: Improving government procurement and the impact of government's ICT savings initiative | HC 137 |
| Seventh Report | Charity Commission: the Cup Trust and tax avoidance | HC 138 |
| Eighth Report | Regulating Consumer Credit | HC 165 |
| Ninth Report | Tax Avoidance – Google | HC 112 |
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| Eleventh Report | Department of Health: managing hospital consultants | HC 358 |
| Twelfth Report | Department for Education: Capital funding for new school places | HC 359 |
| Thirteenth Report | Civil Service Reform | HC 473 |
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| Sixteenth Report | FiRe Control | HC 110 |
| Seventeenth Report | Administering the Equitable Life Payment Scheme | HC 111 |
| Eighteenth Report | Carrier Strike: the 2012 reversion decision | HC 113 |
| Nineteenth Report | The dismantled National Programme for IT in the NHS | HC 294 |
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| Twenty-first Report | Police Procurement | HC 115 |
| Twenty-second Report | High Speed 2: a review of early programme preparation | HC 478 |
| Twenty-third Report | HM Revenue &amp; Customs: Progress in tackling tobacco smuggling | HC 297 |
| Twenty-fourth Report | The rural broadband programme | HC 474 |
| Twenty-fifth Report | The Duchy of Cornwall | HC 475 |
| Twenty-sixth Report | Progress in delivering the Thameslink programme | HC 296 |
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Committee of Public Accounts: Evidence

Oral evidence

Taken before the Committee of Public Accounts
on Monday 16 December 2013

Members present:
Margaret Hodge (Chair)
Mr Richard Bacon
Guto Bebb
Chris Heaton-Harris
Meg Hillier
Mr Stewart Jackson
Fiona Mactaggart
Ian Swales

Amyas Morse, Comptroller and Auditor General, Gabrielle Cohen, Assistant Auditor General, Marius Gallaher, Alternate Treasury Officer of Accounts, and Vikki Keilthy, Director, National Audit Office, were in attendance.

REPORTS BY THE COMPTROLLER AND AUDITER GENERAL

The regulatory effectiveness of the Charity Commission (HC 813)
The Cup Trust (HC 814)

Examination of Witnesses

Witnesses: Nazo Moosa, Non-executive member of the Charity Commission board, and Chair of the Audit Committee, and Sam Younger, Chief Executive and Accounting Officer, Charity Commission, gave evidence.

Q1 Chair: Welcome. Thank you very much. Ms Moosa, I know that you travel a lot, and we had some difficulty in finding a date, so I am grateful to you for facilitating this evidence session. I am going to start with a simple question. Mr Younger, do you feel that you are the friend of the charity sector, or are you its policeman?

Sam Younger: That is a very good question, Madam Chair. If I may go back a little, when I came into the organisation in September 2010 we had the major funding cut and we had a major consultation. One of the questions we asked in the consultation was, “On whose behalf is the Commission there?” Interestingly, in the first instance quite a lot said that it is there for charities, but as the debate went on they increasingly said, “No, the Commission is there for the public interest in the integrity of charity, not for the charities themselves.” That informed the subsequent discussion in our strategic review, which finished up by saying that the Commission needs to focus on what only the regulator can do, which is above all compliance and developing the self-reliance of the sector. So it is a very good question, and the answer, from my angle, which is now entirely shared by the staff of the Commission, is that we are there for the public interest in the integrity of charity, not for charities themselves.

Q2 Chair: Do you agree with that, Ms Moosa?

Nazo Moosa: I think that that is for the most part correct—Sam did put that at the core of the changes he brought about, but, as you well know, changes such as those are quite difficult to put through an organisation and they take time.

Q3 Chair: If you agree that you are more the policeman than the friend, which I take that answer to be, do you agree that the way in which you then register and regulate charities is vital to secure public interest and to increase the public trust and confidence in charities?

Sam Younger: It is absolutely vital, Madam Chair. That was the implication of our strategic review, and we began to put the building blocks in place then for a shift in the focus of the Commission and a shift in the way that it carried out, in particular, the investigatory role in terms of abuse and wrongdoing. However, one thing that I think is clear in the NAO study, and we would acknowledge it, is that we need to up our game very considerably in that area.

Q4 Chair: My problem is that the NAO has done it now, and it did it in 1988—I don’t think even Richard goes back as far as that.

Mr Bacon: I think it was earlier than that, but certainly in 2001.

Chair: I’ve got 1988, 1991, 1998 and 2001 as the four prior reports, all of which concluded that you were failing in the regulatory role on registration, monitoring and intervention. In 2015–16 your budget will have been cut by almost 50%. What confidence can you give to a sceptic like me that, with half the money, you will do something that you failed to do when you had plenty of money around?

Sam Younger: Well, I do think, Madam Chair, that even with half the money, the changes we have put in place since 2011 and the changes we are putting in place now are giving us a much greater focus on that area.

Q5 Chair: The evidence is not there, Mr Younger. There is no evidence in any of the stats incorporated in the Report that anything has changed on regulation or even, dare I say it, on registration. We will come
to them in detail, but there is no evidence here at all, even looking beyond 2011—the Report takes you right up to date. On any of the potential within the existing statutory framework for you to intervene, there is no evidence at all that you are doing better.

Sam Younger: I think that that is right in the early days after 2011, but we have actually made a great effort to turn around the culture, which, as Nazo says, takes a long time to do. But people are becoming bolder. What we came into was something where there was, if you like, an element of risk aversion. There was, if I could put it like this—

Q6 Chair: “We came into”—how long have you been there?
Sam Younger: I’ve been there for three years. I came in at the end of 2010, and the review—

Q7 Chair: So you have had three years in which there should have been a demonstrable difference. Look at any of the indicators that you want: you have started only 15 statutory inquiries; you have refused registration to only 36 organisations; no trustee has been removed since 2009—10—two have been suspended. Given all the opportunities there are for fraud and abuse of the use of charitable money or for the abuse of Gift Aid, that level of intervention just seems too weak.

Sam Younger: May I take up two or three of those? With registration it is important to note that, although out of the total number that reply there is a small number that is formally refused, for about 20% we go back and ask a good deal more questions, and those don’t go through to registration. I think that that needs to be taken into account.

Q8 Chair: That is not the evidence in the Report, Mr Younger.
Sam Younger: It is.
Chair: It is not the evidence in the Report.

Q9 Fiona Mactaggart: The Report shows that if you go and ask more questions, you accept what you are told.
Sam Younger: Not always, but again, I—

Q10 Fiona Mactaggart: But what do you do if you don’t accept what you are told?
Sam Younger: Well, then we go back and ask more questions, and if we—

Q11 Fiona Mactaggart: Exactly, and then you accept what you are told. You do not seem to have a monitoring process that happens at that point early on. As I understand it, that role in the Commission has been eradicating. Having some kind of early investigation and monitoring before you reach the point of a formal legal investigation seems to be the bit of the Commission that has gone, and it seems a very odd thing for a regulator to do.

Sam Younger: No, what I would say is that that area of going back and questioning is contained not in the numbers that are finally refused, although that is one element of it, but in the 20% where, because we ask more questions, they don’t come forward to register. That’s at registration.

Q12 Chair: Mr Younger, look at figure 11 on page 26, which is the evidence we have from focus groups that the NAO undertook. These are the quotes: “I’m making decisions sometimes without evidence, making decisions based on information they’ve provided” and “I would like…to sit down and look at the ones you know are going to be a bit iffy and you’re not quite sure about and really focus on ‘Is this a genuine charity?’.” But they do not have the time. That is the evidence. Whatever you come and tell us, the evidence is something else.

Sam Younger: That does come from staff, and I respect that. We do have a system to try to make sure we have a proper distinction between red, amber and green risk, and a lot of cases—all those that go into red—will be followed up. The ones that go into amber are often ones that require more information. But I do accept we are an organisation that has been under severe financial pressure, and I would like to have a greater resource to be able to put into that area.

Q13 Chair: Answer my original question. You failed to do it. We have been critical of you four times in the past. We are critical of you today, or the NAO is critical of you in the Report today. You have half the money you had before. How on earth can we have any confidence whatever that you are likely to do it better, with half the money and a failure over—this is since 1988—25 years?

Sam Younger: I think, going back to all those previous reports, there are a number of themes in those reports and many of them, I think, were addressed. If I may just say something about the—

Q14 Chair: Just answer the question, Mr Younger. What is different to make us have any confidence that where you failed in the past, you will succeed in the future? What is different?

Sam Younger: In this area, the confidence must be in the fact that if you look at, for example, all the recommendations in the National Audit Office Report, there are actions already happening on them, and in the use of the powers and the opening of inquiries. You can see, in the first six months’ figures for this year, that those have begun to increase very significantly, and I would expect that to continue. Added to that, we have a board that is very focused on holding the executive’s feet to the fire and making sure that we do complete the culture change at the very important end of the spectrum that is about recognising and dealing swiftly and decisively with malpractice.

Chair: That is far too general for me and not specific enough.

Q15 Ian Swales: Can I just ask how many people you employ, for the record?
Sam Younger: It is approximately 310.

Q16 Ian Swales: How many of those were there when you arrived?
Sam Younger: There has been a relatively low turnover. I imagine that, since I have arrived, we
I understand the budget cuts, but witness note: 23% of the Commission's staff costs are spent there are 11 qualified accountants working for.

That is not very strong. In terms of the 20 that you have I am told that you have only three or four. The accountants are a discrete group how many work on investigations? Do you have performance management? So if, out of your 310, 290 were. We have a performance management I asked that question because there is a. I am sure that we will talk more in terms of people who operate absolutely full time in investigations. Chair: That is not very strong.

Q21 Chair: How many work on investigations? Sam Younger: All together, investigations has roughly just under a quarter of the staff as a whole. 2

1 Witness note: There are 11 qualified accountants working for the Charity Commission on operational and policy issue, as well as those working in the Commission’s own finance department.
2 Witness note: 23% of the Commission’s staff costs are spent on investigating concerns in charities.
your answers, in terms of how proactive and almost risk-taking people are in making this work.

Q26 Chair: I am taking that as a comment. I am going to ask Ms Moosa to comment on that exchange.

Nazo Moosa: I wanted to address the comment about changes in culture. Change, as we know, unfortunately happens very slowly. It is the slowest part of a business transformation. However, I would disagree that the only way to change culture is a wholesale removal of people. Change happens in many different ways and one of the very specific things that has happened within this organisation is that a new board has come in. We have had the opportunity to bring in a new board, and the best way that I can describe it is that it is an activist board that clearly understands the need for change.

That said, there needs to be incremental change as well as very radical change in order to make this happen. This is not a simple problem to try to address. One of the first things that the board did was to meet senior management and staff. We certainly encountered some of the problems that are highlighted in the NAO Report, in terms of culture and the historically split identity, if I can put it that way, between friend and regulator. But we also found a regulatory model that had emerged, which I can only call a sort of de facto regulatory model. It focused on certain functions at the expense of others. One has been registration, because it was the area where you have the most volume. The areas where you have had the most volume are permissions and registration, and they are what has been fed. The areas that have been left hungry, if I can continue that analogy, are areas such as investigations, compliance work and so on. Unfortunately, those are also areas that historically have been the weaker parts of the Commission.

Q27 Mr Jackson: We will come on to the issue of the details of the regulatory regime later. Ms Moosa, you will know that the Report finds that performance indicators are not linked clearly enough to the statutory objectives of the Commission. What are you going to do specifically to tackle that? I have a question to both of you. One striking issue is that you trust them, but nobody trusts you. A lot of the trust goes to the charities. You trust them to react when you say something is wrong. You trust them to give you the right information. You trust this, that and the other, but you never check, and therefore we are not trusting you.

Sam Younger: I am not sure what I mean by that is that the way that trust indicator currently works is that we ask people to give us their sense of trust in the charity sector as opposed to in the role of the Charity Commission in enhancing that level of trust. Clearly that is what we must measure. That is what has to change as we go forward. We have committed to having a revised set of indicators. What we have asked Sam and his team to deliver for us—

Q29 Chair: Stewart makes a really important point in his remark. At the moment, the feeling here is that you trust them, but nobody trusts you. A lot of the trust goes to the charities. You trust them to react when you say something is wrong. You trust them to give you the right information. You trust this, that and the other, but you never check, and therefore we are not trusting you.

Sam Younger: The issue in the measures we currently have on public trust and confidence is not charities' confidence in charities, but public confidence in charities. What we need to add, and we acknowledge this from the NAO Report, is some form of measure of the role the Commission plays in that public confidence, which is not easy to do.

Q30 Chair: Do you accept Stewart’s thesis? You trust them and we don’t trust you.

Sam Younger: I am not sure what that referred to, because it is right that we should measure overall public trust and confidence in charities. It seems to be right that we should do that, but we need to add to it something more specific to public trust and confidence in the whole of the Charity Commission.

Q31 Chair: I think you are missing the point. The whole Report is full of how the way in which you carry out your regulatory role is by trusting the sector—the charities. You are trusting too much that when you tell them to do something they will do it. You are trusting that the information they give you is correct without checking. That is therefore damaging trust in you and, by default, that links into the charitable sector.

Chair: Not measure. We’re telling you that that is where you are.

Sam Younger: And we need to change.

Q32 Mr Jackson: To be helpful, it might be appropriate to recalibrate the balance between quality and speed of processing. I think that is quite important. It comes out in the Report.
Sam Younger: I think it is right. When we compute the measures we have, they have been very process oriented. Impact and outcome are intrinsically more difficult to measure, but nevertheless, we need to measure them. I think it is fair to say that our serious investigations area—an investigations enforcement—has made a start on that in terms of what form of protection has been provided by the interventions. A new customer relationship management system, which goes online in April, will have those same kind of closure codes that will allow the measurement across all the work we do, and I think that is very important. They are unbalanced at the moment; I think that is right. We have attempted to get an outcome and have begun to get there through our quality measure. We have an increasingly consistent quality evaluation system across the organisation. We validated that, corporately, as to whether it is being fair, but we need to do more in that area.

Q33 Mr Jackson: To be helpful to Ms Moosa, I suppose what I was saying was that, if you went to the trouble of having a strategic review, as you did in 2011, one would have thought that what informed that strategic review at the beginning was an analysis and a scrutiny of the legislation under which you were expected to operate, and that everything flows from that. The Report shows that, effectively, it has not happened. A corollary of that is that you also therefore make a value judgment as to what your core objectives are as a body, and then work out a budget around that. You seem to have failed to do that. Apart from shuffling a few people around, what was actually achieved by the strategic review in 2011?

Sam Younger: In the strategic review, there were two things. First, we had quite an immediate budget cut coming up, so we needed to resolve things quickly. It was not going to be possible to change the legislative underpinning before we had to get to making the cuts, so that was one of the pressures. We went out and talked to a very wide range of stakeholders and really attempted critically to ask them whether there were things that the Charity Commission currently does that it should not be doing. Most organisations and most people said that they wanted more of the same, apart from shuffling a few people around. We picked on two areas that we said we were going to move away from—willy-nilly, because of the requirements—but we were not going to be able to do this immediately. We were going to seek to change both the thresholds in those things for which charities require formal permission from the Commission, and, in some cases, take them out of the Commission’s purview altogether. That is currently being taken up by the Law Commission, but that was going to be a longer burn.

The other area that we were looking at was to move away. That was not popular in the sector at the time, because the sector had got used to a degree of hand-holding from the Commission—individual advice and guidance—and we had to pull out of that altogether.

We still have a good deal of advice and guidance that we have to give, whether it is generic guidance on compliance with the law or statutory advice that we have to give, as well as the statutory permissions, but we pulled out of those, and alongside those we made a very big push, which has been successful over the last three years, to reduce incoming demand by pushing people online, whether for transactions or for guidance. We have managed it. If you look at those figures now, in terms of incoming calls, e-mails, letters, we have managed something like a 35% cut across the board.

It is important to note the core activities of the Commission. There was no indication in the review that we did in 2011 that there was any appetite to change these: the core commitment to register, which is a demand-led area; the core guidance that we have to give; the maintenance and development of the public register; investigating fraud and abuse; and the consents that we are required to give, which are also demand-led. We have made a start on that in terms of what form of demand reduction by restructuring entirely and focusing our resources on investigations at the most serious end of the spectrum. I acknowledge that we still have a long way to go in that area, but I do think that we have made progress.

Q34 Mr Jackson: My final point is that the Report is quite emphatic in paragraph 1.16. “The Commission’s approach”—which would have cost quite a bit of money in terms of the strategic review—“to restructuring did not involve an assessment of costs, benefits and risks of different models for regulating charities and meeting its statutory objectives.” That is a big omission and a missed opportunity, one might suggest.

Sam Younger: Two things. First, in resource terms and in time terms, we did need to move quickly. We decided to use the board and senior staff to go and talk to other regulators, to charities and to many others. We looked at a number of different ways of doing it. We came up in the end up with a very different way of doing it, which was really to try to squeeze the front end and turn around the vast majority of business that was relatively small scale and low risk, and then focus our resources and our people on that more serious end. I think that is beginning to show dividends now. It has taken some time but I really think it does.

Nazo Moosa: I certainly believe what Sam is saying about triage and demand reduction has been very valuable. In fact, the way that I would probably describe the level of work that has been undertaken in the past—of course, I was not there as I joined the Charity Commission as a non-executive in May of this year—is that it has been very responsive. They have been resourceful in certain areas but there has not been anything that resembles, to use NAO language, radical. There has not been a fundamental review, if you will.

This is really the opportunity that we have. You talk about the longer stream of work. It is about looking at the work streams of the Charity Commission to see which parts of it can perhaps be handled better by other bodies; perhaps taking a look at seeing delivery mechanisms, to see which parts can be delivered through outsourcing, and ensuring that whatever recommendations come through really are properly costed out and we have a sense of the resources that are required to deliver that.
Q35 Chair: It would be helpful to us if you fleshed out a little bit. What do you mean by radical? I think we probably agree with you. What is it? Mr Younger described the cuts exercise, just snipping away, salami slicing. What do you mean by radical?

Nazo Moosa: Could I just finish one additional point? One of the troubles that the Charity Commission has had and will continue to have unless something changes, is that it is a small entity. The independence that it cherishes works against it perhaps when it comes down to process of budgets and strategic reviews. That is something that we have got to address separately.

Coming back to your question about what do I mean by radical, I think a whole range of options has got to be on the table. They need to include a fundamental look at the processes that the Charity Commission delivers: registration, compliance, visits. We need to ensure that we have a unit cost for each of those. Most importantly, we need to ensure that we understand what we mean by proactive regulation, in order to be able to define what that means down to a cost level to make that sort of recommendation.

That is what we are going to undertake. That part of it sounds very good. The difficult part in that is that we are at the very early stages in the delivery of that. We have just started that work. We have put together a steering committee that is looking at ways of exploring that. We are trying to bring in outside advice to help us with that. This is not something that you do every day and, therefore, you need expert advice in this matter. That is what we are committed to delivering over the next 12 months.

Amyas Morse: This work parallel to ours builds on the excellent points that Stewart was making about the cost of doing it properly, and the very good detail that you were setting out about what that might be. At the end of the day, you are going to find yourself talking to the Treasury and saying, “We have these options but we have got to have enough money to do the job properly. Otherwise we just can’t do it at all.”

At some time, you are going to have to put a business case to the Treasury. You are going to have to convince them that they need to allow you—if it is partly done by moving functionality, or whatever it may be at the end of the day you are going to have to convince them that you have got enough of a handle on this that they should back you to do the job in the way that will allow you to be successful, I guess.

That is going to mean a very convincing business case, particularly if it involves more money. I am listening to everything you are saying. What are the components that are not there now that are going to make the difference, to tip over the Treasury—I am not looking at you, Marius—into saying, “Right, we find this convincing. We are going to back it”? I think it is worth asking you that because it is a big challenge.

When you come round to it, at the end of the day everything you are talking about is only going to be possible if you have funding. Perhaps when you are answering that you might take a moment to talk about the leadership style you want. We recognise that Sam has been involved for three years and is moving on, so what are you looking at as the key characteristics of a leader that you would be bringing in, as part of that future picture that you are putting together?

Nazo Moosa: I suppose those are two separate, related questions. In terms of additional funding, when we talk about the 12-month process, we clearly have to make sure that we are in consultation with the Cabinet Office and with Ministers, because we can, of course, go off and run this exercise, but that does not mean that it will be accepted, nor does it necessarily mean that we are operating under the right parameters.

As the first part of that, we need to make sure that we have had the right consultations and, as I said, that we have the right parameters around all this. Ultimately, there needs to be a broader debate about whether the role of a proactive regulator is important in this sector and if we all believe that that is the case. What we are looking to do is to find the most efficient means for delivering that, and I have mentioned a few areas that we will be exploring.

I take your point—I wish that it was just down to us and that we could come back in 12 months and present the case, but there clearly needs to be a far broader debate. That has been recommended in many corners—the PAC has also stated that there needs to be a discussion on that topic.

On your second point about the chief executive, as you know, Sam’s term is coming to an end. He has extended it to make sure that there is a smooth hand-off with the new executive. We have started the search for the new executive. External recruiters are helping us in that process. We are probably about a third of the way there. We have a good long list.

You asked specifically about the characteristics that we are looking for. We have really highlighted three in particular. The first one is to make sure that we have somebody who is quite broad-minded, given everything we are talking about—somebody who can look at a situation strategically—so that is foremost in our thinking. The second one is that this is—make no bones about it—very much a business transformation, so we need to make sure that we have somebody in here who knows how to do that and has done it successfully in the past. Thirdly, and perhaps this does not get picked up enough, we need to make sure—this is something that Sam has done very well—that we bring everybody else, including all the stakeholders and the staff, with us in that process. That is one of the things that often gets missed as you go down a change process like this.

Q36 Mr Jackson: I think we are getting a bit strategic here, instead of tactical.

Amyas Morse: Sorry.

Mr Jackson: Can you address this particular issue? Two years on, the Report says: “The Commission does not know how much it is spending on each of its key activities, in part because it does not have a system for recording the time spent by staff on different activities.” It also says that it does not “identify significant areas of work that it could discontinue or pass to other bodies.” That is today, two years on from the strategic review, so in terms of the organisational or operational efficiency of the Commission, before we get into culture change, just in time and all these other management ideas, it might
be better to look at the organisational efficiency. What is your response to that particular issue?

Naze Moosa: As I mentioned, there are two streams of work. The first one is to directly address the issues that we have got today—perhaps it would help if I gave a few examples of what we are doing right now. The key issue we have right now is investigations. The NAO Report has highlighted that things take too long and that decisions are possibly overly conservative and overly risk averse, so one of the things we have done is make sure that the board of directors is involved in some of these highly sensitive cases. That is really on the ground, on a week-by-week basis, to ensure that when decisions are made, they are made in the right way.

Secondly, we have made sure that the audit committee and the board are operating in a different way, so that the audit committee is very involved in some of these change initiatives. By that, I mean very specifically looking at issues such as unit costs. To give you an example, one thing that the audit committee has recently asked for is a third-party review of IT. The Commission has spent considerably in the last two years on IT, and yet we have heard that a few issues have come up, even in the cases in IT. We need to make sure that we have had value for money in IT and also that we have got the IT systems, especially as we look forward.

One of the recommendations that we are making—is this really directional again and I do not want to sit here and pretend that we have the answers—and one of the paths we are pursuing is to make sure that investigations and intelligence come to the core of this Commission. You cannot do that without having the right IT system. Some of the work we are doing, I hope you can sense, is very tactical and very hands-on, as it leads to a longer term view for this Commission.

Mr Jackson: Talk to Mr Bacon—he is our expert on IT disasters, so he will tell you what not to do.

Fiona Maclaggart: I ought to say—we have always said this at previous hearings with the Charity Commission—that nearly every person on the Committee is a charity trustee or involved in the Charity Commission in some way. I thought I would make that clear.

Chair: Sorry, just to stop you there, we should all declare our interests as trustees. Apologies for that.

Q37 Fiona Maclaggart: I was trying to do that on behalf of us all, because I do not think that any one of us is not involved in some way. It is interesting to hear you, Ms Moosa, talk about trying to become a proactive regulator. Am I right in thinking, Mr Younger, that the Charity Commission knows more than anyone else about trustees who have behaved in bad ways in the past, or charities that have been corrupt or broken your regulations?

Sam Younger: Yes, I think that is fair.

Q38 Fiona Maclaggart: And am I right in thinking that you are not using that information when it comes to future regulations?

Sam Younger: You are absolutely right that that has been one of our biggest problems. One of the real bugbears is data. We have made some attempts, and I am the first to acknowledge that the attempts we have made so far to use our data better have not been successful. What we have decided now is that we have to get in a level of expertise that, frankly, we do not have internally, to give us the systems to enable us to meet that recommendation. I think that was in the NAO Report on us; it certainly was in the NAO Report on gift aid.

Q39 Chair: Which Report—the 1988 one?

Fiona Maclaggart: It has been in every Report.

Sam Younger: No, I am talking about the most recent Report, and in the gift aid Report, on HMRC talking about creating some risk profiling for charities. That is something that systems should allow us to do, but we have not had the expertise to do it. I think that and I think we should have put something of this resource into it a year or 18 months ago. We thought that we could do something ourselves, but, frankly, we could not. I think you are right there and I think we can make very rapid progress on that once we get that person in.

Q40 Fiona Maclaggart: It is not just that you have not done that; in paragraph 19, the Report points out that you have “reduced” your “monitoring of charities that are at high risk of causing serious harm and abuse.” Why?

Sam Younger: I am afraid to say that with a 35%, and now approaching 40%, cut in funding, no area can be immune. That said—

Q41 Fiona Maclaggart: But you stopped doing that and you have carried on doing a whole load of other things that have not been at the heart of regular recommendations from Committees such as this.

Sam Younger: That I would challenge. I do not think that we are continuing to do things that we do not have to do. What I set out was five specific areas, all of which I think we are absolutely required to do. In this, I would very much endorse what Mr Morse said: the point is coming at which we will have to say, “We can’t do all of this with the resourcing that we’ve got.” I think we have been helped by the success of our demand reduction in maybe, to some extent, not exactly concealing that but living with it. The only step I can see coming up next, which we are looking at in one area is, you will see, in terms of the staff numbers that we put in—just over 20% are actually used on permissions and consents. I would like to see that balance change and we are looking to see whether there is a degree to which we can more successfully automate low-risk consents—that is not to say no-risk consents. That is an area where I think we can make further progress, but it is becoming very difficult.

We do have to staff registration, which is demand-led. We still have to do those permissions. We must make sure our generic guidance is up to date and relevant and accessible for trustees. We must do our investigations and we must, actually, ensure that there is an up-to-date public register. All of the stuff we used to do—the nice-to-haves, in terms of hand-holding advice to charities and so on—has gone.
Q42 Fiona Mactaggart: But you do not need to have four offices.
Sam Younger: Four offices is a different issue.

Q43 Fiona Mactaggart: I know it is a different thing, but you are saying, “We are making hard decisions,” and I understand that you have to do that. My view is that you have made the wrong hard decisions, but, in law, you do not have to have as many offices and spend 10% of your budget on premises.
Sam Younger: No, we do not. And we have a very clear plan, which we will stick to, to halve the cost of our premises over the next five years. What I inherited, and were there long before, were long leases that we could not get out of. Also, when we asked whether there could be money for a new restructuring, as necessary, there could not. We have done a net present value calculation on closing one of the offices, and the return on that investment does not make sense; we would lose too many people. Having lost very many people and their skills and experience, I do not think it is the right decision to lose more.

We are looking to reduce the cost of premises and accommodation very considerably through more flexible working and significant reductions in space, rather than closing down a single site and effectively losing all the people who are in it and their skills and experience.

Q44 Fiona Mactaggart: Mr Younger, what we keep hearing is, “We are going to get this right”. What concerns me is that this Committee, the PASC and other Committees have been hearing the “We are going to get this right” account over not just years, but decades.
I completely accept that the financial pressure on the Commission has made it perhaps less easy to get it right, but I am profoundly concerned that the choices you have made have not focused on using that which you exclusively have, which is knowledge of corruption and fraud in charities, or staff we see that is nearly there, which is perhaps not actually breaking the law but right up against the edge of the law. You know that in a way that other people do not, and yet you have chosen not to use that information in your regular monitoring of charities. I simply don’t understand why.
If you are saying, “We are going to be a risk-based regulator”, I don’t understand why you haven’t done that very basic job. You are the only people in the country who know. Other things like giving advice to trustees—there are lots of other people who can do that.
Sam Younger: As I say, we do not give advice to trustees anymore, because we do not have the resources to do it.
Just on that point, as I said before, I entirely acknowledge that we have not been good at using our information. I think it is right, though, to make the distinction between the use of the intelligence we have in an individual case—in other words, something that comes into us and we engage with, we will have access—

Q45 Fiona Mactaggart: Comes into you? It’s all reactive, isn’t it?
Sam Younger: Yes, I know. That is the second half of what I was going to say. With the stuff that comes into us, where we have a case, we will be able to look at the history of the case and of the trustees involved and so on, and respond accordingly.

What we have been less good at—indeed have not been able to do, and what I am looking to happen now—is to pool that information together so that we can risk-profile more generically. That would help us to come up with types of charity that will be higher risk than others, and enable us to focus some of that proactive work, always assuming that the resource is there to undertake that proactive work.

On the monitoring of charities, I think it is one where, “No, it did have to take its hit, unfortunately, along with everywhere else”. You are right, Madam Chair; the strategic review was in many ways reactive and had to be. But in doing that, we did lose some of the monitoring capacity. That is beginning to creep up again now, and I think will go up considerably—

Q46 Chair: How can it creep up if your money is going down?
Sam Younger: Because we are reassigning resources to it.

Q47 Chair: Why didn’t you do that in the strategic review?
Sam Younger: What we did in the strategic review was make the best decision we could at the time on what we needed to do—
Chair: Why didn’t you do that in the strategic review?
Sam Younger: We have made some adjustments since.
Chair: Why did you not do that in the strategic review, when there have been so many PAC Reports suggesting that you should toughen up on the monitoring?
Sam Younger: The judgment we made collectively was that among all the things we needed to do, this had to take some cut. I think I would recognise that that was probably where we should have tried to protect more than we did, and we are now doing so.

Q48 Ian Swales: Can you define risk? You talked about risk monitoring. Can you just define the risk that you are now going to be doing more profiling on? What do you mean by that?
Sam Younger: The risk profiling, I would hope, would be to do with the characteristics of charities, for example: whether you have corporate trustees; where they are; whether their accounts have been qualified at some time in the past; whether they have been late in submitting their accounts; and whether they are operating in areas of some danger and risk. We need to build those up into a number of indicators.

Q49 Fiona Mactaggart: What powers do you have on the late submission of accounts?
Sam Younger: The powers are relatively limited. Our performance on the submission of accounts has improved immeasurably over 10 years. We are now...
With respect, Madam, I did not say Yes—someone has got Okay. So, in the last month tax has Committee of Public Accounts: Evidence Ev 9
16 December 2013 Audit Committee and Charity Commission
up to 86% of ... of the public register and in our first
contact of making sure we are able to handle what is
coming in to us.
Can you send a copy of this Well, I would say that our system of
There was a charity tribunal decision in Pay their tax?
The judge would not have made that okay, but don’t sit here saying that in
Can I just check something? At the
Then you don’t mean immeasurably, do
I think we started caring about tax—when did you suddenly start caring
The judge said that you—the Commission—were
on. The judge said that you—the Commission—were
transfixed by its misconception that tax matters were not for it”, and the Commission’s decision to “sit back and await action by HMRC” was made in error. That was a judgment in October 2013. This magic “We care about tax”—when did you suddenly start caring about tax?
I think we started caring about tax under the impact of some of the things, including the interest of your Committee—
Okay. So, in the last month tax has suddenly become important because of the judge’s ruling?
No. Many of the characteristics in the risk framework have involved issues that are very relevant to this. It is simply that the judge—
The judge would not have made that ruling, Mr Younger, if he did not think you were not having regard to tax, and his ruling was in October this year—a month ago.
Yes, and the risk framework has been updated and is being updated further—
Okay, but don’t sit here saying that in the 2011 review we suddenly thought tax was an important risk factor, when we have a 2013 judgment that says that you have not had any regard to tax. That is not being entirely open with the Committee as to how you have been operating over the last couple of years.
With respect, Madam, I did not say that the 2011 risk framework had it. The risk framework had some things that were linked to tax or that might well be linked to tax, such as corporate trustees, trustees based abroad—
Can you send a copy of this framework to the Committee? I think it would be very interesting for us to see where you are up to.
Yes, certainly—by all means.
Chris Heaton-Harris: With a timeline of when things went on it—that would be quite useful, too.
First, I must declare an interest. I chair a board of trustees of a regional arts theatre and a couple of associated charities—so very arty, very worthy and all very good.
Chair: Pay their tax?
Chris Heaton-Harris: Yes—someone has got to do it. I am sure you saw conclusion 24, which says, “The Commission is not regulating charities effectively.” It is a fairly forthright statement. I have to say that after reading this Report and after what we have heard today, we know you need a new IT system and culture change, and that risk data is not being captured or used in a proper fashion. Was your strategic review of 2011 a bit of a failure?
I don’t think it was a failure. No. We had to react to what was facing us at the time, and I think we did so in a coherent way, which had an organisation that was still standing and still doing a job after it. That said, I think that in a number of areas the Commission has operated effectively, and I pay tribute to the professionalism of staff—
Could you point to one of those areas where the Commission has acted effectively, please?
Well, I would say that our system of operating a first contact unit—it is our biggest unit and it is where all the incoming traffic comes. It deals with and turns around 93% of what comes into the Commission—
But if I was appointed to the Charity Commission tomorrow because you were not doing a very good job, I would receive all those things coming in. That does not make me effective; that just makes up my work. Could you point to somewhere where you have been effective in the last couple of years?
I could point to a number of areas, yes. I would say that although—I have to say this and it is important that I do—some of the cases that have been looked at in the NAO Report have not been good, there are good cases as well. We have a huge work load and we do a great deal to help charities make sure they get things right.
Where we have been weakest is on identifying the deliberate wrongdoing and escalating that effectively into action. The Commission has been doing a good job in other areas, such as permissions and consents, the development of the public register and in our first contact of making sure we are able to handle what is coming in to us.
Q61 Chris Heaton-Harris: I would suggest that in the past couple of years since the strategic review, the Charity Commission has been damaged in the public eye, not just by what the judge said in October, but by what we said when you were before us last time. You have an ongoing, idiotic case with the Plymouth Brethren, which I am sure you are going to tell me is sub judice. For the life of me, I cannot see why, when you have managed to suspend only seven trustees in 2009–10, you are chasing a small religious-based charity. It is not surprising that you get a load of bad press. Can you tell us how many trustees were suspended in 2010–11, 2011–12 and 2012–13?

Sam Younger: I do have the figures for trustees suspended. It was none in 2012–13, one in 2011–12 and four this year, to the end of September.

Q62 Chris Heaton-Harris: So what happens with the number of registrations that you had in 2012–13? I see from the highlights of the Report that about a sixth of the applications have not been pursued. What do they have to do to be suspended as a trustee? How bad does it have to be for them to be noticed by the Charity Commission and for you to actually do something?

Sam Younger: This is something that is—

Q63 Chris Heaton-Harris: Apart from being the Plymouth Brethren.

Sam Younger: This is changing and has changed.

Q64 Chris Heaton-Harris: Can you tell me how it has changed, because I am not convinced it has? I believe what Ms Moosa says about cultural change coming forward, but nothing you have said today and nothing in the Report gives me confidence that it has changed. How has it changed?

Sam Younger: I would say that it has changed. If you look at the first six months of this year, the use of our powers has increased enormously. That is one thing. The second thing has been a significant plus for us. After having pressed for some years—unsuccessfully, as the Report points out—for changes so the powers make more sense for us, there is now a consultation out from the Cabinet Office that will have a significant effect if we get those changes in powers.

Even without those changes, there is an injunction on people not to give trustees as much slack as they have been given in the past—if I can put it that way. There are and will always be problems in charities, and it is right that we engage with trustees to help them get back on their feet. That will always be right in a high proportion of cases. Most of the evidence that we have from our compliance work shows that the vast majority of what goes wrong in charities happens because of ignorance, or—conceivably—negligence, at the higher end of the spectrum. The amount of deliberate wrongdoing is relatively limited.

As part of the culture change that I was talking about, we are pressing our staff to be bolder and more confident about clocking cases and escalating them quickly. That is now happening, and you can see that in the figures from the past six months. I expect that to continue, even without any changes in powers.

Q65 Chris Heaton-Harris: Ms Moosa, do you have any comments on that—especially on the number of trustees? How do you see the powers affecting that? Can you please tell us about the debate at board level on risk profile?

Nazo Moosa: First of all, on some of the changes that are under way, I fully appreciate that there is a huge amount of scepticism around the table here about whether this is achievable, what has been done already and what can be done. In the numbers that Sam is referring to—they were referred to in the NAO Report and the report on investigations and so on that was released last week by the Charities Commission—you see substantial movements. For example, if you look at investigations opened, you see dramatic movements. If you look at frozen accounts, there were 17 in the past three years and eight in the past six months. These are tangible movements. They are still very timid, because the multi-year trend has been going down, but you see in six months a trend in the right direction. We need to make sure that this is, first of all, sustainable, and that the board holds the management’s hand to the fire, and this trend continues; and, of course, that we have got the right measurements. These are really inputs and outputs; we need to make sure we can measure outcomes. So all of that is very important.

Q66 Chris Heaton-Harris: In your time on the board, has there been a board discussion about the risk framework and the risk profile?

Nazo Moosa: One of the key topics for us at the board—and so much of this work really now happens outside the board as well, because there is a need to be more engaged at this period in the transformation of the Commission—is this risk profiling, but we put it in a slightly larger context. For us it is really an intelligence hub that needs to be developed. This is not just about tax profiling. It is not just about having a database plus a data manager. This is really having an intelligence unit that works very closely with investigations. It is not just investigations; investigations are sort of the upstream work, but there is also downstream intelligence that needs to be fed into an organisation, like registration, which is dealing with a lot of volume, but it then needs to be fed with data that helps it do its work a lot better. So yes, it is a core area of our thinking, especially as we look ahead.

Q67 Chris Heaton-Harris: One final question, which is to you, Ms Moosa, if I may: knowing what you do now about the strategic review in 2011, the IT system, the culture and the organisation, the fact that the tax risk profile has just made it on to the list of things that the organisation is concerned about, was that strategic review a bit of a success or a bit of a failure?

Nazo Moosa: I think if that strategic review did not take place we would be sitting here talking about a whole string of other things. We would be talking about why aren’t charities being registered and why is it taking so long for charities to get registered. So I think we have to also recognise that there are, in making these decisions, trade-offs.
Certain trade-offs were made; we can go back and question these. I think the monitoring one you were right to question, especially when you have got a legal framework where it is really the purposes of a charity and then there is nothing there to really link it to activities. That is a clear vulnerability, so we can go back and question some of these, but I think there were trade-offs made, and I think the most important piece of it is that the Charity Commission did not have the chance, or did not take the opportunity, to look at this and say, “Look, we have got to do this radically differently, if not just incrementally differently.”

Q68 Meg Hillier: I should just declare that I am currently vice-chair of the War Memorials Trust and my husband has roles in various charities, of which I lost track. I am interested. You talked, Mr Younger, earlier about deliberate misuse of money, but I am looking to probe other uses of charitable funds. Given what you said about your resources, how well do you feel you are able to monitor what people might call improper use of charitable funds, and how would you assess what is improper for a charity—not illegal, but improper?

Sam Younger: We would be looking at “improper” in terms of what the requirements of charity law are: to operate, as it were, within your purposes and without private benefit, and so on and so forth. I think we have very much moved away from that sense of being a regulator that maybe might get further into, if you like, good practice or best practice. That is what we have had to pull away from and leave with umbrella bodies of the sector and others. We are very much on what you are required to do under charity law. We find that a high proportion of the cases we get involved with are in that area. I think probably one of the biggest areas is our guidance on conflicts of interest, which we are currently reworking—we have put it out to consultation. Of course, this underpinning guidance is very important, because if we are to take action against charities, the guidance must be very clear in order for us to be able to take action. Conflicts of interest has been a particularly strong area, and it is one that we are looking at.

Q69 Meg Hillier: So you would not routinely examine costly court action taken by a charity against an individual member of staff or an individual that has challenges with them, or against another organisation?

Sam Younger: No, we would not routinely. It is a very difficult line sometimes, and it is something I can feel very sympathetic to, when individuals perhaps come and make a complaint about a charity, trying to work out whether this was something that was within the trustees’ reasonable discretion—the courts have made it clear that it is not for the Commission to involve itself in the administration of charities in any way—or whether the trustees were guilty of mismanagement in a way that we ought to look into. Certainly it has been the case, and in a way I have been slightly surprised, that we have not had more formal complaints to the Commission in the last two years, because in resource terms we have not been able to take on as many cases, where people complain that what we are actually saying is that this is not something we are able to take on.

Q70 Meg Hillier: I have one case that I have been raising with you. I wanted to go back to the point about the risk factors that you are trying to identify in this review. Are there any risk factors that you identify with, say, repeated court action or particularly long or costly court action? Is that something you factor into that risk analysis?

Sam Younger: Do you mean general court action as opposed to charity tribunal?

Q71 Meg Hillier: If a charity is regularly taking people to court or being taken to court, would you factor that into your risk analysis?

Sam Younger: That should be able to go into our risk analysis—

Q72 Chair: Does it?

Sam Younger: It is difficult to know for sure. We don’t go to all the court records. There is a system—

Q73 Meg Hillier: What if someone raises it with you?

Sam Younger: If somebody raises it with us it will go on the record. Also, if it is the charity itself, which does happen, they should report such things to us as a report of a serious incident.

Q74 Meg Hillier: Can I just be clear on that? If I was running a charity and I took a costly court action, for whatever reason, I should report that to you?

Sam Younger: There is no absolute definition of a serious incident but I think we would say that anything that had put significant charity funds at risk would come under that rubric. Of course, we found historically that a lot of trustees have been reluctant to make that report. Those reports are on the rise but there are still not as many as should be coming in. But if they come in they are also recorded. To go back to the point about risk profiling for charities, if that kind of information comes in, it could be an indicator towards a broad risk profile. Even if the trustees had acted entirely appropriately, it would be an indicator of a reason to engage with that charity if something came up.

Q75 Meg Hillier: I have been dealing with one with the Society for the Protection of Ancient Buildings. If I were a member of the public making a complaint about a charity and I raised the use of charitable funds for something like a court action, what would you then do, given that you have pared back the services that you can offer?

Sam Younger: What we seek to do in those circumstances is in the first instance if it was a significant sum—

Q76 Meg Hillier: Say it was £100,000 to £150,000.

Sam Younger: That would be significant enough for us to say that we needed to engage with the charity and find out what was going on. This kind of thing with a court action for the most part will be within the trustees’ power to deal with. In most cases I
suspect that will be the answer. But when you engage you may discover something that enables you or pushes you to engage further.

Q77 Meg Hillier: The NAO Report talks about how you have taken the trustees’ word on things repeatedly. I recognise that you have limited resources, but if you ask me as someone running a charity or as a trustee and I say, “It is all fine. Don’t you worry, Mr Younger.” is that it?

Sam Younger: There is a matter of judgment to be made there. Remember we are dealing with a sector of 950,000 trustees, 165,000 registered charities and many others. You do have to make a judgment quite a bit of the time to trust what trustees are saying to you. The question is whether you can get better with your antennae at recognising when something may be wrong. That is also where I think risk profiling or the use of our intelligence base can help, because that can tell you whether there has been a previous issue. But sometimes with these things something will come to us, but we won’t necessarily do anything about it until the moment but it will be logged if something comes back subsequently. You can begin to build a picture which says that there is more risk in this organisation than we necessarily thought.

Q78 Meg Hillier: I appreciate the resource issue. I don’t know whether you can respond, but sometimes there are cases where you are dealing with something where, as you say, you may be building up a picture over time. But in that moment some individual or small organisation—perhaps a small supplier to the charity or a former employee or trustee—is having a personally difficult time as a result of something which could later be proved to be part of a pattern. But at that moment they are not going to get any help from the Charity Commission is what you are essentially saying.

Sam Younger: Just from what you describe, unless there were other indicators of a problem with the charity, my suspicion would be that probably we would not be able to take that on.

Q79 Meg Hillier: That can lead to a David and Goliath situation in which a charity is using charitable funds to take on one individual or a small organisation, and the other person may not have the resources to fight.

Sam Younger: Especially if it was a small charity taking on a high proportion—we would be going backwards more clearly in that case.

Q80 Guto Bebb: I just have a quick few questions. We have heard a lot about some of the reductions in monitoring staff. I think we have ended up with two full-time members of staff doing monitoring. The argument has been made that that is a resource issue. The concern that I have is that it is very difficult to see how you can make the argument that it is a resource issue if you have not identified how much resource you require to do your job properly. That brings me to the Public Administration Committee, which I have highlighted and which has been touched on in the Report. The Committee has highlighted the fact that they do not believe that the Charity Commission has the ability to deliver on the Charities Act 2006. If you have undertaken a strategic review, would it not have been a good opportunity to identify how much money you require to deliver a service in keeping with what the 2006 Act demands of you?

Sam Younger: You can say this judgment was wrong, but at the time, given the results of the 2010 spending review and what was visited on everybody across Government, the idea that it was worth using our time to say, “This is the amount of money we need,” in an environment where we knew what we were dealing with and knew we had to make cuts—

Q81 Guto Bebb: Is that not the definition of a strategic review?

Sam Younger: The strategic review looked at how the Commission could best carry out what it was supposed to do with the resources that it had been voted by Parliament. I felt, and I think the board agreed with me at the time, that effectively to try to challenge that overwhelming tide of austerity was not worth doing. We had to deal within the envelope we had been given. Whenever we went to a Select Committee, the Select Committee said—I think quite rightly—“Everybody’s in this boat. Don’t whinge about it; get on with it.”

Q82 Guto Bebb: In relation to the comments by the Public Administration Committee, do you believe that you have the resources to do the job as required of you by Parliament?

Sam Younger: No. I think the Public Administration Committee said that the Commission is being asked to do too much with too little, and I think that is right. My job, though, at any given time, is to make sure the Commission does the best possible job with what it has.

Q83 Guto Bebb: “No” was the answer I was expecting. My concern, then, is that you are saying no, but you have never done a review of what you require. That is a huge concern. I am generally of the view that if you are saying no, you must be basing that on some sort of figure which would be acceptable. It looks to me as if the failures have been blamed on austerity, but when you are asked how much money is required to do the job properly, you haven’t got a figure.

Sam Younger: No. I haven’t got a figure, because what I have been focusing on is coping within the resources that Parliament has voted me.

Chair: Salami-slicing, Mr Younger. We look across the whole of Government. Many sectors in Government have faced the same level of cuts that you have had to face, and it only works if you radically transform the way you do your business, even in 2010. You should have known that in 2009. It was clear then that that was what was going to happen.

Q84 Mr Bacon: Is not the crucial point about what Mr Bebb is saying that, even when you had twice as much money, you still were not doing it? If we were
to say to you, “Mr Younger, we’re going to double your budget,” you would be back to where you were before, but no one at the moment trusts on the evidence available that, were you to have your budget doubled tomorrow, you would be any more effective. When your budget was twice as large, you weren’t doing it. Surely that is the point.

**Sam Younger:** Looking forward—I am not going to say we are bidding for double the budget at the moment anyway—I would not describe what we put in place after the strategic review as salami-slicing.

Yes, everybody had to take some share of it, but we actually shifted the way we did things very considerably to enable us to cope with those budget cuts.

**Q85 Chair:** Let me test you with some examples. In the Report, on page 36, why does the note say it took you 2.5 years to open an inquiry on the Egyptian Community Association?

**Sam Younger:** I am certainly not defending the time it took to do things. There are a number of explanations why a number of these cases take a long time. Some of them are external to the Commission, but without doubt, some of them have been internal. Some of them we need to tighten up on, and indeed are tightening up on.

**Q86 Chair:** In one of them, it took you about six months to write a letter. It is another case in here.

**Sam Younger:** Yes. I am not going to defend that, and I think that is—

**Q87 Chair:** The problem is you talk about this in general, and every time you come to the specific it is awful. I have had a letter from somebody about a charity called Afghan Heroes which, in the last period, spent only 4% of its donations on charitable purposes. It ran a deficit on its trading activity, and its support costs—i.e. the money that went to the people employed—were totally disproportionate to its trading activity. It spent over half a million on support costs—£516,000—when trading activity was going down. In fact, in the three accounting periods, 49%, 41% and 38% of its trading activity was spent on support costs, all controlled by Mr and Mrs Harris, who wrote to you. They were supposed to find a property, which was supposed to act as a refuge for people who had been in Afghanistan. That property has now reverted to its original business.

Anyway, this man who wrote to me wrote to you on 4 July 2013. Clearly, things are going wrong here. Clearly just a quick look at the accounts would have told you: spending money on staff, taking money out of charitable donations to fund staff, only spending 4%, spending far too much on companies controlled by trustees. He wrote to you on 4 July. He gets an acknowledgement on 13 August, six weeks later, and has heard nothing since. To me this is really important. We all think the Afghanistan heroes ought to be properly treated and appropriately supported. People undoubtedly would have given money to this charity. It looks on the face of it as if it has been abused. You have done nothing for five and a half months.

**Sam Younger:** I can’t comment on the individual case; I don’t know, but I am very happy to—

**Q88 Chair:** But it is yet another example. The frustrating thing is I think these things should be in the public domain. I think all their accounts—we should have those published, so we can see what they are spending their money on; what tax they are paying and all those sort of issues. Yet every time we ask a question about an individual charity you say, “I can’t comment.” I think this is shocking. All I can do, Mr Younger—all that all of us round the table do—is respond to the actual specifics that we get. You can sit there trotting out the generalities till the cows come home, but it is the specifics that make us suspicious as to whether anything has changed. I hope you will write to me about this one please.

**Sam Younger:** I will indeed.

**Q89 Chair:** They wrote to you. You haven’t written back to them. They have written to me. Perhaps via me the guy who originally complained can have a response.

Let me ask you something else, about the Cup Trust, which was a terrible example of your failure to work with the intelligence that was available at the time. My understanding is that you then reviewed the accounts of 190 charities, where you had similar concerns, and that there were 17 that you decided you would look into further, and you opened 13 cases. I don’t know if that is correct. Perhaps you would like to tell me. These are 13 cases you would never have found if a little bit of good investigative journalism by *The Times* had not opened up this whole area. Can you inform the Committee, with these 17 cases, down to 13—maybe there are 17—what on earth has happened to this lot? Where are you in pursuing cases where it appears that people are abusing charitable status simply to misuse a really important tax relief—gift aid tax relief—to fill their pockets and not to give anything to charities?

**Sam Younger:** As I understand it, the number of charities you are talking about: we had information from HMRC of 12 charities that they were investigating for possible criminal prosecution—

**Q90 Chair:** What about you? I was told that you looked at the accounts of 190 charities. Is that wrong? Did you not do any work after the Cup Trust?

**Sam Younger:** No—we did. We looked at a number of cases coming out of this that are ongoing. ¹

**Chair:** I have got 17. I don’t know where I got that from.

¹ Witness note: Additional details on the Commission’s review following the Cup Trust case and work with HMRC will be provided in the supplementary memorandum.
Vikki Keilthy: The Report has 13. Bottom of figure 2 on the Cup Trust. You opened 13 operations compliance cases, of which three have been closed.

Chair: Where are we on this? Have we got charities exploiting their charitable trust status to use gift aid for a purpose that was not intended by Parliament and that undermines our gift aid regime?

Q92 Chris Heaton-Harris: Give us some confidence, Mr Younger. We need confidence in you. We would like to know that you are actually doing something about this.

Sam Younger: We are. We have been looking at this, and we have one inquiry which is open. One of the open compliance cases has been closed and a witness statement has been provided to HMRC to help them in what they are doing. We have also received additional intelligence from HMRC on four of the 12 charities that they are investigating. Intelligence cases have been opened and witness statements provided. We are waiting for additional information on two of those cases, and four of them have been referred to monitoring cases. Can I also give one example?

Chair: It just seems so ruddy weak—honestly, it just seems weak. A scandal emerges that undermines all confidence. Here we are at Christmas, and we are all being inundated with requests to give money to charities, which I have no doubt we all want to do. What we want is a little bit of confidence that our regulator, funded by us, is ensuring that the money that we give, whether it is to Afghan Heroes or charities that do the same as the Cup Trust, goes to the purposes intended and is not abused. It just sounds so weak.

Q93 Ian Swales: One of the reasons why we probably do not have the answers that the Chair is seeking is the length of time it takes. On the Cup Trust, I refer to appendix I of the Report, which shows the timeline. I was not here for the original hearing, so I will certainly not repeat all that, but I want to make a point about the time it takes. You have been doing various things on the Cup Trust for three years, it appears to me, but it only takes three minutes’ looking at a drawing of how it works to say, “This is wrong. This clearly can’t be right.” This is a horror story in terms of elapsed time. Just as an example, you decided on 14 December 2010 to get external legal advice, but it was more than two months later that you actually did it; then you closed the investigation after two years. This sounds incredibly weak as well. Either there is something seriously wrong with your process—no wonder you do not have much investigative resource to spare if this is how long it takes to do one absolutely blatant case—or there is something wrong with the regulations, and we politicians need to do something about it. Which is it?

Sam Younger: On the Cup Trust specifically, there is a number of things on which I think we acknowledge we got it wrong. One was not asking more questions at registration, but we will set that on one side, because that is not what you are specifically referring to. Secondly, when we started the investigation, the investigation that was done was thorough.

Ian Swales: But it is the time. I do not want to go into the details.

Chair: If you hadn’t had the hearing here, you would never have done it.

Q94 Ian Swales: You told them in April 2010 that you were starting an investigation. It was December before you even went and looked at their books. This is so blatant that I just do not understand what was going on. What was actually happening each day and each week from April to December in your organisation? What on earth could have been happening, other than just being kicked into the long grass or left on a shelf? It is hard to imagine what you were actually doing for that period.

Sam Younger: I don’t think it was kicked into the long grass or put on a shelf, but I think there is a question that perhaps more people were involved than needed to be, which slowed it down, and people were involved with multiple cases. That is something that we need to focus on, but the investigation was thorough. As the judge said on closing it when we did—I think the NAO’s view was that we should have turned it into a statutory inquiry—it is clear that we should have continued investigating. That we are now doing, and there is a statutory inquiry and an interim manager.

Vikki Keilthy: How can it be thorough when the statutory inquiry is now setting out to gather more evidence? That is one of the objectives of your inquiry. That suggests that you did not gather enough evidence the first time round.

Sam Younger: We gathered a lot of evidence the first time round, but we are gathering further evidence now and further evidence has come out in open court.

Q95 Ian Swales: How much do you need? Assuming the article in The Times is true, you only have to read it to see that there is a complete failure of regulation and total abuse going on. The numbers are absolutely staggering. Either something is very wrong with your organisation or there is something very wrong with the way we regulate this sector. Which is it? We ought to have regulations that stamp on something like that in days, not years. In other words, is it you, or is it us?

Sam Younger: Some of the time taken is us. I would put my hand up to that.

Q96 Ian Swales: All right, what is the other bit, then? If some of it is you, what is us? What needs changing?

Sam Younger: In terms of the Cup Trust itself, one of the things that has been a significant issue there is the nature of charitable law. The criteria for registration is one issue, and we have a purposes test, not an activities test. That purposes test meant that although we could have asked more questions at registration, it was difficult for us not to register the Cup Trust. We should have monitored it further.

Chair: Mr Younger, it was inexcusable that you registered it. Under existing law you could have discovered what they were really up to and not registered them. I do not accept that this was a weakness of the registration infrastructure, I really don’t.
Q97 Ian Swales: Even once registered, surely when it became obvious what they were doing, would the regulations not allow you to go straight in and effectively have them closed down, or take whatever steps you could take? Is there something we need to do in Parliament to give you the powers to stop that kind of abuse?
Sam Younger: Two things: first, on registration, it is not clear to say that we should not have registered it according to the existing law. Yes, there were further questions we could have asked, but the NAO Report acknowledges that we could have asked more questions—and should have asked more; I accept that—but we might still have had to register it.
Chair: What? He was not a fit person.
Q98 Ian Swales: The reason why I am pursuing this is that although I do not want a replay of the hearing that I did not attend, it is the principle of the thing. You will never have enough resource, but if it takes you three years to play around with a case like this, which is totally blatant, and you are still not at the end of it—if you need that kind of resource—then no wonder you can only do a handful of cases a year. So what do we need to do to make sure you can knock these things off a lot quicker? That is what I am talking about: not the detail of this, but the principle that if you see a charity that is doing the wrong thing—spending 100% of its money on itself, its own staff or whatever—how fast can you move? If you cannot move quickly, what else do we do?
Nazo Moosa: This is one of the key areas. We have actually had to get very involved as a board—probably overly so—to try to get a handle on what is causing this. Unfortunately, there is not one answer. Part of it is cultural. At every step it becomes overly procedural. They are regulators, so they must follow procedure, but it becomes overly procedural. At the right moments, the decision that is taken is based on the risk of doing something, as opposed to the risk of not doing something. What we have done—this is admittedly a short-term solution to ultimately getting to the answer—is make sure that the legal non-executive directors on the board, of which we have three, get involved in each one of the highly sensitive cases.
At this stage, there is a whole raft of issues that lead to something slowing down, so what we have to do immediately is make sure that we address it as it happens, over time recruit accordingly and make sure that the mindset changes over time, in order to make this a process within the Charity Commission. Today, it is clearly not—you see that across a number of cases.
Q99 Chair: Do you know about Afghan Heroes?
Nazo Moosa: Yes.
Chair: You do?
Nazo Moosa: We have heard about it at the board.
Sam Younger: I have just had a note here to remind me: there is a statutory inquiry which has been opened into it.
Chair: It would have been nice if you had told this poor man who had been moaning at you since August.
Q100 Mr Bacon: When was the statutory inquiry opened?
Sam Younger: I do not have the date, but I can give you it.4
Chair: Maybe someone behind you can tell you.
Q101 Mr Bacon: Is there anybody behind you who knows? Was it during this hearing?
Sam Younger: No.
Q102 Mr Bacon: Then you would be telling the truth. It was earlier than today.
Sam Younger: Earlier than today.
Q103 Mr Bacon: I think I am pretty sure in saying that. Can you write to us with the date?
Chair: You might get it during the hearing.
Sam Younger: Yes, indeed.
Q104 Mr Jackson: I think the word that comes across here is “credibility”. The commission has a problem with this word in some ways—I noticed you body-swerved Mr Heaton-Harris’s questions about risk factors, particularly reputational damage. You particularly body-swerved the issue of the Preston Down Trust which I am going to press you on a bit later.
Let me direct your attention towards Interpal. A very helpful Library briefing was published on 12 December on Interpal, which, among other things, is a specially designated global terrorist organisation on the US Treasury’s list, but has never been deregistered as a charity. You began to investigate in 2009, specifically arising from a BBC “Panorama” programme, which alleged that money collected by Interpal was going to educational projects that prepared children to be suicide bombers and that Interpal had organisational links to Hamas.
Surprise, surprise, you did not find sufficient evidence to conclude that the funds had gone to terrorist groups, but you criticised the inadequate checks on where its funds were going and you said that the trustees should have acted with greater diligence to satisfy themselves that the local partners concerned were not directly or indirectly supporting the promotion of terrorist ideology or activities. Fast-forward to last year, after all that and a follow-up inquiry, the commission is quoted as saying, “It was the responsibility of the trustees to continue to monitor the issues raised by the inquiry.”
I mention that because it stands in pretty stark contrast to your treatment of the Preston Down Trust. Mr Shawcross wrote to me on 11 November telling me that you had spent £18,084 of taxpayers’ money on hounding the Preston Trust on the question of public benefit. Can I have an acknowledgement that reputational damage is important too in terms of the Charity Commission, and can you tell me specifically where we are on the Preston Trust now? I do not want you to give me a legal opinion on it, because I understand that there is a charity tribunal case; just

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4 Witness note: The Commission opened a statutory inquiry into Afghan Heroes on 22 November 2013. Additional information on the inquiry will be provided in the supplementary memorandum.
give me a factual opinion. Perhaps you will both
direct your remarks to the importance of the
reputation of the commission in these very high-
profile cases.
Sam Younger: I absolutely agree. The reputation
of the commission is very important in these high-profile
cases. As we have acknowledged, we need to get
better at handling them and we will—going back to
the performance indicators point—be measuring our
effectiveness in that as time goes on.

On the question of the Preston Down Trust, this was
and still is a registration case that very much has been
acknowledged on all sides to be a matter of some
difficulty in terms of the relationship between religion
and public benefit, post the 2006 Act. We made a
decision that we did not think it came the right side
of the line. Back in 2012 this was appealed to the
tribunal, but during the course of the tribunal being
prepared, the Preston Down Trust—which is the
Plymouth Brethren Christian Church—came to us
and said that they wanted, if at all possible, to avoid a
tribunal case because of its costs, and we agreed with
them to enter without prejudice negotiations on what
was effectively a new application. Those discussions,
I gather, are nearing completion and there should be
something to be said. I think I am right in saying that
the tribunal case is currently stayed until 6 January,
and we should be in position to make an announcement at that time.

Q105 Mr Jackson: The reason I mention it is
because you mentioned the interesting word
“antennae”. You will know that unprecedented
numbers of Members of Parliament attended the
Westminster Hall debate where the Charity
Commission got kicked around the ballpark for an
hour and a half, by Members of all parties. That
seemingly had no impact whatsoever. To his credit,
Mr Shawcross came to a parliamentary meeting in
early October. He took it on the chin, but he had very
significant negative feedback, put it that way. I
wonder whether there is a point at which the board
says, “Look, this is causing significant collateral
damage to the reputation in general of the Charity
Commission, and we should look again.” The issue
raised by Mr Heaton-Harris of reputational damage
and the risk to the good name of the organisation is
very important. Perhaps you could also talk about
Interpal and the lessons you learnt from that case, if
you are familiar with it.
Sam Younger: Yes, although as it happens you’ve
described most of what I am familiar with in that case.
It seems to me that there we did the right kind of
investigation. We looked at it and didn’t find anything
which required further action, but it would continue
to be monitored.

Q106 Mr Jackson: Can’t you see the slight
discrepancy? You go after a religious organisation
which does lots of community outreach work, while
you consider it imprudent to withdraw the charitable
status of a proscribed terrorist organisation which is
allegedly encouraging children to blow themselves
up as operatives of Hamas in the middle east.
Those value judgments made by the Charity
Commission seem to me to be rather a strange
combination.
Sam Younger: A case is looked at on its merits. Once
a charity is established, the commission can’t just
close it down. We have to go in and say, “Are the
trustees operating as rational trustees would and are
the decisions that came out the decisions there?”
Preston Down Trust is a registration case, and the
2006 Act made it clear that there was to be no
imposition of public benefit for religion. This has
not been tested in the courts. A very thought-through
decision was made about the relationship between the
religion and public benefit when considering the
document of the Plymouth Brethren. There was a
consciousness of the desire of the Brethren themselves
not to go to a tribunal and incur those costs, and we
agreed to enter into new discussions with them. That
is what went on.5

Q107 Mr Jackson: I accept that but it’s nevertheless
a very narrow legal point. Anthony Collins Solicitors
provided a helpful briefing which states that “under
the current law the provision of services of public
worship which are genuinely open to anyone to attend
is in itself sufficient to satisfy the public benefit
requirement even if, in practice, the numbers attending
such services are small”. It continues: “there is no
difficulty in restricting access to the sacrament of
Holy Communion in accordance with denominational
requirements. Difficulties only arise if restrictions are
imposed upon access to the worship services of which
the sacrament forms a part”. If we accept that there
are many different religious faiths to which it applies,
yet you sought to single out only that particular trust
of this particular Christian denomination.
Sam Younger: There have been various legal opinions
on this. To be honest, I am hesitant about going into
too much detail, because we are having what was
billed on both sides as without prejudice discussions,
which I don’t think would be helped by a public
airing, with me saying something. We hope that those
discussions will come to a resolution.
Nazo Moosa: I do not have much else to add.

Q108 Mr Jackson: One last question, if I may. I
think this issue of reputation and risk is important.
For the record, do you envisage there being a satisfactory
conclusion of the without prejudice discussions to
which you alluded by the target date, which is the end
of the calendar year?
Sam Younger: Because I personally am not part of
the without prejudice discussions, I would only say
that there will be a resolution one way or the other.
Either there will be a decision that Preston Down
Trust can be registered or it will go back to the
tribunal for final determination.

Q109 Chair: I have Amyas and Meg to come, but I
want to take advantage of my position as Chair and
say here that Stewart Jackson mentioned one

5 Witness note: Interpal is under UK law neither a proscribed
nor a designated organisation, although it was designated in
the US. Additional information on the Commission’s
engagement with Interpal will be provided in the
supplementary memorandum.
potentially terrorist organisation, which allegedly took charitable donations and misused them. I looked at the evidence given by Professor Clive Walker to the Select Committee on Home Affairs—which no doubt both of you have read—on whether the Charity Commission has reduced the ability of terrorists to obtain funding through charitable donation. Apart from the generalities in that evidence, which are very perturbing, he gives three examples of organisations and talks about your green-light regulation mechanism—you tend to give the green light before you see the danger. He talks about one case involving the Ikhlas Foundation, which was registered in 1997 and whose main work involved the Muslim Prisoner Support Group, especially related to prisoners impugned for involvement in terrorism. In 2007, you had to remove a trustee, Mohammed al-Ghabra, because you were given information that he had been involved in terrorist activities. You then told them to behave themselves, but in 2009 you had to suspend another trustee, who was arrested and convicted for conspiring in an arson attack on a publisher. You then got the Beeston Iqra bookshop and learning centre in Beeston, Leeds registered as a charity in 2003. Its members took part in the 7 July bombing in 2005; you did not set up a formal inquiry until 2009. According to this evidence, even that step appears to have been taken on the back of media reports and you have only just, or are yet to seize, the remaining trust money.

The third example is another charity, Sivayogam, which works with Tamils both in London and northern Sri Lanka. Again, it appears that the activity that was undertaken there was problematic to say the least. The Charity Commission imposed the sanction of the removal of one trustee, but otherwise sought to work with the charity. Even the attempted removal was reversed, so it appears that you had no regulatory impact there. Adding to what Mr Jackson has said, there is apparently something really scary happening here. Either your powers are too limited, or you take far too long and do not use the powers you have appropriately to see an abuse of charitable status, particularly in relation to terrorism. I think Professor Walker would not have made those assertions had he not been pretty confident of the ground on which he was standing.

Sam Younger: There are some issues about powers in those cases. Sivayogam in particular, which was one where our removal of the trustee was overturned and the tribunal judgement said that the commission had evidence of mismanagement.

Q110 Chair: But you could have put in an interim manager, couldn’t you?
Sam Younger: No, the tribunal said—

Q111 Chair: Couldn’t you have put in an interim manager?
Sam Younger: No, we couldn’t at that stage.

Q112 Chair: Why not?
Sam Younger: We had tried to remove the trustee because that was where we thought the problem was.

Q113 Chair: But you could have put in an interim manager, full stop. You could have taken your powers to put in interim managers and have stopped the money going to the wrong purpose.
Sam Younger: But we have to have grounds for doing that. As far as I know, the grounds were not there. The grounds were there to remove this individual trustee.

Q114 Chair: But grounds of using it for terrorist activity is not grounds?
Sam Younger: But we were told by the tribunal that this was a disproportionate act and that we should engage further with that trustee and the others.

Q115 Chair: Make this clear to me: so where there are allegations that donations received by a charity could be being used to fund terrorist activities, that does not provide grounds for you to put in an interim manager. Am I hearing that right?
Sam Younger: No. If we had those suspicions and we felt that we had enough evidence to act on them, we could open a statutory inquiry and, if necessary, put in an interim manager.

Q116 Chair: In these particular instances, is it that you did not seek the evidence or that you did not believe it? Is Professor Walker alone? I can’t get it. On the one where they were involved in the 7 July 2005 bombings, why did it take you four years from then to even start trying to get hold of the money that had been given for charitable donations. I just don’t get it. Is it you? It is back to the question: is it you or is it the system?

Q117 Mr Jackson: Can I ask a follow-up that might help? It is only fair to say that in June 2012 when the Charity Commission did a re-inquiry, it found that Interpal had produced a partnership and funding operations manual.

Will you please write to us to explain how you are monitoring the adherence of Interpal, for instance, and perhaps those other charities, to the agreements that they have made? Suffice it to say that one of the things you did, contrary to your previous example, was remove one of the trustees of Interpal: Dr Essam Mustafa, who was general secretary of the Union of Good, a jihadist organisation.

So that we are reassured on the point brought up by the Chair and myself, would you be in a position to write to the Committee to explain how you are properly monitoring, scrutinising and fulfilling your regulatory duties in respect of Interpal and other quoted organisations?

Sam Younger: Yes, indeed, I am very happy to do that. On the point about trustees, there is a significant problem with the removal of trustees.

Q118 Chair: Why not have an interim manager? That is what I don’t get. You have got various regulatory powers. If it were up to me and I was worried about where this money was going, I would bung in an interim manager. Let them challenge you.
Sam Younger: I don’t know why in that particular case, going back.
Q119 Chair: Not one case—four cases.
Sam Younger: What I would say, Madam Chair, is that the phrase you have used about bunging in an interim manager and taking the risk of challenge—if that is what you meant—is precisely one of the things that we are looking to do.

Q120 Chair: Well, terrorist activity, Mr Younger, terrorist activity.
Sam Younger: In whatever area, whether it is terrorist activity or something else. This has been one of the bugbears of being too focused on the risks of sending somebody in and that that will be challenged, as opposed to the wider what you might call reputational or public interest risks of not doing something. As you can see, we are putting in interim managers more.

Not only that, but one of the things that in policy terms has historically been a disincentive against putting in interim managers has been the policy of the Commission that said that, if an interim manager went in, there would have to be funds in the charity to pay. We would not pay for that ourselves. In the past year, we have put in two interim managers that we are paying for. That is a risk, but it is another judgment in terms of proper use of public money to do something that otherwise we could not.

There is another case that I know of where, even having made that change, we would not put in an interim manager because we don’t see sufficient further risk for charitable funds for that to be justifiable in terms of the use of public money.

Amyas Morse: I just wanted to get to the question of culture. I think you are relevant when you are looking at the future. I bring it up I hope for reference to both of you. As I compare the work we have been doing with the Charity Commission, allowing for the limitations in your powers and so on, we see a lot of other regulators. I have had the privilege of interacting with the Charity Commission, allowing for the Commission dances on a pinhead about technical definitions of what might be political activity or a suitable educational set-up—the Plymouth Brethren definitions of what might be political activity or a suitable educational set-up—the Plymouth Brethren are the biggest risk and I worry that, in some of the cases we have talked about and read about elsewhere, the Commission is on that board.

Perhaps I missed this, but will you outline how you may be another case in point—rather than seeing the criticism that has come in through the press, as is a result of that. The tone has changed and, not surprisingly, the sector is not terribly happy. I think there is a mixed story here. I suspect that initially the sector will not be terribly happy with the fact that we are taking a much more rigorous approach, but, in the long run, tackling wrongdoing has got to be the right way to increase the confidence in charities.

Sam Younger: May I add something? I think you are absolutely right to say that lesser tolerance is a really important message and, actually, a lot of people in the very senior management are very much pushing that now. I think there is a special difficulty with the charitable sector: we are dealing with 165,000 voluntary organisations with volunteers running them, and we have to be careful not to tar everybody with that brush of suspicion—that is where the antennae come in. But I do have to say we are having to make a gradual change from something that was there from the mid-2000s onwards, which was a very clear focus on the Commission being there to be an enabler and a supporter. That was there in a number of Reports in those five years. That is something that we are turning around now.

Chair: I have to say that this Committee has been reporting for 26 years and we are losing patience.

Q211 Meg Hillier: I wanted to pick up on the broader activity. We talked about the Plymouth Brethren and some of the terrorist examples, but you have got a big challenge with monitoring political activity and, as we are 18 months from a general election, that is likely to step up. You have also got the challenge to monitor educational charities to see if they are meeting their charitable requirements as well as other issues such as legal action, which I raised earlier.

I still do not have a clear picture of which of those are the biggest risk and I worry that, in some of the cases we have talked about and read about elsewhere, the Commission dances on a pinhead about technical definitions of what might be political activity or a suitable educational set-up—the Plymouth Brethren may be another case in point—rather than seeing the bigger picture.

Perhaps I missed this, but will you outline how you will move forward with the risk plan to ensure that you are focusing on the big risks and not dealing with spurious, time-consuming things? With a general election coming, you could be busy with spurious claims about political activity by charities.
Sam Younger: I think that is right. That is one reason why the risk framework is adaptable over time and can highlight a risk at a given time that may be a lesser risk at another time in the cycle. Curiously, political activities by charities and engagement in election campaigns has been a very small part, even for the educational charities, with just occasional accusations from think-tanks that are seen by some as having a political, rather than educational, purpose. But those are relatively small in number. At the moment, we are looking at revising the guidance on educational think-tanks to try to make that clearer. But I think the core point you are making is a general one and part of this overall culture change that we are engaged in. You talked about dancing on legal pinheads and I think there has been too strong a sense of privileging the legal risks of getting involved in something, rather than that also countervailing public interest risk in not doing something. It is difficult, because we are law-based regulator and we have to be careful to stay within the law, but we can be more proactive in that area.

Q122 Meg Hillier: I think that has come across. You keep referring back to the law and I get that on one level, but it seems that you have huge influence outside the law. If my charity had you come in and ask questions, we would take that very seriously—it would certainly sharpen up any reasonable charity. But it seems like you can go in and use your powers not completely ultra vires, but to rap people over the knuckles, warn them and call them. Do you do any of that?
Sam Younger: Yes. That happens a good deal, if you look at not our investigations and enforcement area, but our operations area, which deals with the vast majority of cases where there is a suspicion that something has gone wrong or may be going wrong. You will see that we engage with the trustees. Those engagements, most of the time, lead to the trustees putting right what is going wrong.

Q123 Meg Hillier: Do you publicise that? That is the other thing about transparency. You are watching this money for the taxpayer on all our behalves, with gift aid and things all coming to it, and you are funded by the taxpayer. If I had a complaint about a charity, how would I know that you have had that little cosy phone call with the chairman of the trustees or the chief executive?
Sam Younger: I don’t think we are in a position to publicise absolutely every such engagement, but we would have an annual publication, most recently tackling abuse and mismanagement, and there were a number of examples of those kinds of cases. We are looking to it as a significant priority at the moment for a very wide range of cases, to be honest, where we are engaging in compliance terms with charities, which of course themselves are reluctant for their stories to come out into the public domain.

Q124 Ian Swales: Have you ever censured an organisation for political campaigning?
Sam Younger: Yes, indeed we have. The Smith Institute was an example. Atlantic Bridge came off the register after an inquiry. So yes, we do. These are quite difficult at the margin, but nevertheless, we need to be alert to them and continue to monitor them. I think you are right to say that, with the general election coming up, particularly depending on where the Lobbying Bill goes, there may be more—

Q125 Meg Hillier: It is a difficult area of law, to be fair to you. Also, is it the best use of your time, coming up to a general election, to take on a couple of think-tanks that might be weighted both ways, being a little bit political? They tend to have a political bent.
Sam Younger: We are required to do it, so we have guidance on charities and campaigning, which I think is regarded as pretty sound. But we will get complaints that people are operating outside that.

Q126 Chair: I think we have been round most of the areas. What I would say to you, Ms Moosa, is that we are really concerned. We would want to return to this before the general election, if I can put it into that context. That is the time frame in which we will be looking for real evidence of improvement.
Nazo Moosa: Yes. We have a process in place for the next 12 months. Some of the evidence will come through, and some of it will take longer. Hopefully what you are seeing is that there is a process, and that there is a real determination to turn this around.
Ian Swales: If your board wants to make recommendations about regulations, go ahead. If that is a problem, go for it. We cannot promise to deliver what you want, but at least we can all look at it.

Q127 Mr Bacon: You mentioned that there is a process for the appointment of a new chief executive. I think you said that there will be a period where eventually someone will be selected, and then there will be a start date, which will probably be even further away. When do you anticipate the new chief executive to start in post?
Nazo Moosa: As I mentioned, we are about a third of the way there. Our best hope is that by spring or summer next year, we will have a chief executive in place.
But of course, most of this work is already in train. Some of it would not make sense to execute without a chief executive. That is why you have not seen us make any significant changes to the structure of the senior management team; it would not make sense to do that now, before a new executive comes in. But at least the groundwork for this will take place. The chief executive will need to be already in place to review the actual changes and make sure that they have bought in and are willing to go ahead and implement those. Around the middle of next year is when we would expect to have someone in place.
Chair: Okay. We will see you again before the election, whenever it is—May or June 2015.
Written evidence from the Charity Commission

RISK FRAMEWORK (QQ54–5)

A copy of the Commission’s current risk framework can be seen here: http://www.charitycommission.gov.uk/our_regulatory_activity/our_approach/risk_framework.aspx


The risk framework is a living document and changes regularly depending on a variety of circumstances, internal and external, to ensure it remains relevant and up to date.

AFGHAN HEROES (QQ87–8 and 99–103)

The Commission opened a statutory inquiry into Afghan Heroes (registered charity no 1132430) on 22 November 2013. The purpose of the inquiry is to examine various regulatory concerns about the management and administration of the charity, including:

— the significant risk to, and potential loss of, the charity’s funds or other property;
— unmanaged conflicts of interest and unauthorised trustee benefits;
— whether, and to what extent, there was mismanagement or misconduct on the part of the trustees, in particular, financial mismanagement and/or serious governance failures; and
— whether, and to what extent, the trustees have discharged their legal duties as charity trustees.

We have used our legal powers to restrict the charity’s and its trading subsidiaries’ bank accounts and the transactions they may conduct, so that the trustees cannot make payments from the accounts or dispose of property without the consent of the Commission.

We informed trustees that the inquiry had been opened on 13 December 2013 and told them then that we intended to make this public in due course. We have now done so, issuing a press release on 17 December 2013. We have kept the complainant updated.

INTERPAL (Q117)

Interpal is a registered charity (under the name Palestinian Relief and Development Fund, charity no 1040094). It has been designated by the US government, but this is not effective in the UK under UK law. As an entity it is neither proscribed under UK criminal law or designated under the asset freezing legislation in the UK (or under UN measures) and nor are its trustees. The Charity Commission has undertaken three statutory inquiries into Interpal in 1996, 2003 and 2006–09.

At the conclusion of our most recent inquiry into Interpal in 2009 we issued the charity with an order to carry out a review of the trustees’ due diligence and monitoring procedures, to dissociate the charity from the Union for Good, and to ensure that no trustee holds any office or role with the Union for Good. We monitored the charity’s compliance with the order closely, meeting with the trustees and their advisers on several occasions and seeking evidence to verify their assurances. We also conducted an onsite monitoring visit, inspecting records to ensure the processes and procedures as outlined in the charity’s Partnership and Funding Operations manual were being applied, suitable records maintained by the trustees to demonstrate the effectiveness of their decision making and that the trustees were properly exercising their trustee duties to safeguard the charity’s assets.

A copy of the supplementary report we published in 2012 detailing our assessment of Interpal’s compliance with the order is attached.

CHARITIES AND TERRORISM (Q109)

The Commission takes concerns about terrorist abuse of charities very seriously and acts robustly to deal with this issue. Where there are concerns about suspected terrorist abuse connected to a charity, the Commission will always liaise with and work closely with the police and the security services—sometimes on their advice we have to let the police and law enforcement agencies do their work first and delay our action, instead coming in later. Sometimes we work alongside other agencies, always mindful of the need to take care and do nothing that would hamper or prejudice a criminal investigation.

A copy of our evidence submitted to the Home Affairs Select Committee was published by the HAC in January 2014 as part of its ongoing inquiry into counter-terrorism and is available online here http://www.parliament.uk/documents/commons-committees/home-affairs/CT%20Written%20Evidence.pdf

In its evidence session the Committee referred to two cases, the Al Ikhlas Foundation and the IQRA bookshop.
THE AL IKHLAS FOUNDATION (no longer a registered charity)

The Commission did open two inquiries into this charity, for different reasons.

In the first inquiry, in 2007–08, we suspended and went on to remove an individual who was designated under asset freezing legislation as a trustee. We used grounds that had never been used before in an innovative way, as we were concerned the existing disqualification provisions did not cover the situation with the trustee. (Proposals to change these powers are currently being consulted on by the Cabinet Office).

The Commission opened the second inquiry into the charity in 2008 within days of the arrest of one of the trustees. We suspended the trustee during that inquiry and he resigned (again the limitations of our current powers meant once he had resigned we had no power to remove and disqualify the individual from acting as a trustee in the future). We used our legal powers at the end of the inquiry to direct the trustees to take action. The charity was monitored and we proactively contacted them before the deadlines expired and proceeded to enforce it. This led, under pressure from us (where again we currently have no legal power to force a winding up of a charity) to removal of the charity from the register.

The report of our inquiry is attached.

IQRA (no longer a registered charity)

It is not true that the Commission was tardy in investigating this charity. We worked from the beginning with the police in the criminal investigation into the 7 July bombings and monitored the charity’s operations throughout; as any responsible civil regulator would and as the public would expect, we had to give primacy to the police investigation which seized the charity’s records. The Commission’s inquiry was opened immediately after the criminal proceedings finished, when we had the all clear from the police to do so.

The report of our inquiry is attached.

APPROACH TO MONITORING

The Commission has since the strategic review in 2011 had a team dedicated to pre-investigation monitoring and assessment; in October this year we set up a new operations monitoring team to bolster our monitoring capability.

We monitor charities where there are concerns relating to serious non-compliance, or where it is believed that there is a significant risk of serious non-compliance within a charity or class of charities. Our monitoring includes:

— close liaison with other government regulators and law enforcement agencies;
— reviewing information that charities supply to the Commission, along with appropriate and targeted scrutiny of accounts;
— formal monitoring to ensure that trustees have complied with regulatory advice and guidance following the conclusion of our formal regulatory engagement with a charity;
— proactive monitoring of the sector in areas that we identify as high risk and proactive engagement with those charities that may operate in high risk areas and may be facing problems; and
— conducting compliance visits to charities identified as potentially at risk so that we can establish if there are any serious regulatory concerns, and if so, provide regulatory advice and supervisory support.

Monitoring a charity may also be appropriate where we are unable to take immediate action, or are restricted in the action we can take to address regulatory concerns, because a law enforcement investigation takes primacy to our own, and where our intervention may prejudice or frustrate the criminal investigation.

The new operations monitoring unit set up in October 2013 is currently monitoring 103 charities. These are cases which are not assessed against our risk framework as presenting the highest risk or involving the most serious concerns, but which nonetheless need monitoring. Cases can be referred from one monitoring unit to the other, or to investigations or operations, if our assessment changes during the course of a case or we identify serious regulatory concerns which warrant formal investigation or corrective regulatory action.

Cases in the operations monitoring unit include:

— charities given an action plan following the closure of operational cases—where we monitor the charity to ensure compliance with the action plan through appropriate routes including correspondence, books and records inspections and meetings with trustees;
— referrals received from registration—where an organisation meets the legal requirements for charitable status and must be registered, but concerns have been raised by registration that the charity may not function as stated at the time of application, perhaps regarding levels of charitable activity or funds being used overseas. In these cases we might conduct a books and records inspection and a meeting with the trustee board. Our engagement so far has led to two charities dissolving as they could not satisfy the CC that they were charitable;
— referrals and disclosures to/from HMRC—involving a two way secondment and joint working and visits on cases of mutual interest as measured against both organisations’ risk frameworks;
— referrals and disclosures to/from UKBA—sharing information of concern to both organisations through a single point of contact and joint working in cases where serious concerns have been identified regarding tier 2, tier 4 and tier 5 licensing applications. The major impact regarding these applications will be on religious and educational charities with links overseas; and
— joint working with FRSB and major supermarkets, Transport for London, Network Rail to agree a standard format for requests to fundraise with increased security checks.

**Reviews of other Charities Following the Cup Trust Case (QQ89–91)**

In addition to our ongoing work considering information passed to us by HMRC through the statutory gateway about charities of concern (which is detailed below), the Commission last year undertook its own review to ascertain whether there were other charities operating in the same manner as the Cup Trust or if there were other charities operating solely for tax avoidance purposes. Accountants reviewed all charities on the register focusing on three characteristics:

— low charitable expenditure as a proportion of total income;
— high cost of generating voluntary income as a percentage of the voluntary income generated; and
— a corporate trustee registered outside the UK.

As a result of this review we set up monitoring on five charities and opened operational cases on 13. 10 cases have since been closed; two are awaiting a response from HMRC and one is being pursued for a response. There is no indication that any of the charities identified are set up in the same way as The Cup Trust.

Many of the issues we have identified are connected to the way matters are accounted for and a lack of clarity in the accounts, rather than significant regulatory concerns about how the charity actually operates. A common theme is the lack of information or clarity in the trustees’ annual reports.

In a number of cases more detail should have been provided about a charity’s achievements and investment, reserves and grant making policies. This would have helped to provide a clear overview of the charity’s activities and how the trustees made decisions in relation to the assets to ensure that the charity’s purposes are furthered effectively.

Other issues include ensuring activities are in furtherance of the charity’s objects (for example in relation to grants), the level and management of reserves and investments, the way the relationship between different organisations is presented in the accounts to ensure clarity, potential trustee benefits and conflicts of interests.

However, none of these issues have been deemed serious or high risk and have all been dealt with through the provision of regulatory advice and guidance where appropriate.

We have also identified some complex structures and relationships between different charities, although so far have not identified any specific regulatory concerns in relation to this.

**Working with HMRC**

We have a strong working relationship with HMRC but since March we have made progress in strengthening this further. A revised Memorandum of Understanding was signed on 7 November 2013 which has made a renewed commitment to our relationship with HMRC and strengthened the provisions under the information sharing gateway.

There has been over recent years a significant increase in information sharing between both departments. We already have in place a well-established system of formal information exchanges to ensure this is performed consistently and in accordance with the law. However, the new memorandum is more specific about what type of information the agencies agree to exchange with each other and when. One criticism in the NAO report was that we did not always routinely notify HMRC of investigation cases if it was not a financial issue. We now let HMRC know of all inquiries even if there is not a financial aspect to the investigation.

More specifically, HMRC has provided information about relevant charities of concern under the statutory gateway, including the names of 12 charities they are investigating for possible criminal prosecution. The Commission has one open inquiry into these charities and has closed one compliance case and provided a witness statement to HMRC. We have also received additional intelligence from HMRC on four of the 12 charities they are investigating. Intelligence cases have been opened into these charities and witness statements provided to HMRC. We are awaiting additional information from HMRC on two of these cases. Two charities are no longer registered.

**Cabinet Office Consultation on Extending Charity Commission’s Powers to Tackle Abuse in Charities (Q64)**

We have long pressed for extensions to our powers to prevent and tackle abuse in charities. We raised this in the discussions which led to the 2006 Charities Act and our response to Lord Hodgson’s review of the
Charities Act. Our discussions last month about the difficult in removing trustees, and the fact many resign when they are served notice, emphasises this.

We welcome and support the Cabinet Office consultation launched in December on amending and extending our statutory powers. If enacted, the changes in this consultation would make us a stronger, more robust and more agile regulator. In particular, we are especially keen to see the law strengthened with regards to trustee disqualification and powers to prevent and remedy deliberate abuse—the Committee can see from the cases of Al Ikhlas and IQRA highlighted in this submission examples of the impact such a change would have. We will continue to press for changes in legislation if we feel the current framework hinders our regulatory approach.

7 January 2013
House of Commons
Committee of Public Accounts

The Charity
Commission