House of Commons
Public Administration Select Committee

The role of the Charity Commission and “public benefit”: Post-legislative scrutiny of the Charities Act 2006

Third Report of Session 2013–14

Volume I: Report, together with formal minutes, oral and written evidence

Additional written evidence is contained in Volume II, available on the Committee website at www.parliament.uk/pasc

Ordered by the House of Commons to be printed 21 May 2013

HC 76 [incorporating HC 574-i-vi, Session 2012-13]
Published on 6 June 2013
by authority of the House of Commons
London: The Stationery Office Limited
£23.00
The Public Administration Select Committee (PASC)

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Summary

The charitable sector is at the heart of UK society, with £9.3 billion received in donations from the public in 2011/2012, and around 25 new applications for charitable status received by the Charity Commission every working day.

The regulation of the charitable sector in England and Wales dates back to the 1601 Statute of Charitable Uses which set out the first definition of charity in English law and the purposes for which a charity could be established. While further legislation and case law emerged over time, at the start of the 21st century the definition of a charity remained largely unchanged from 1601.

The Charities Act 2006, on which we have conducted post-legislative scrutiny following a thorough and welcome review by Lord Hodgson of Astley Abbotts, sought to “provide a legal and regulatory environment that will enable all charities, however they work, to realise their potential as a force for good in society; to encourage a vibrant and diverse sector, independent of Government; and to sustain high levels of public confidence in charities through effective regulation”.

We have concluded that, while the Act has been broadly welcomed by the charitable sector, it is critically flawed on the issue of public benefit. The Act stated that “it is not to be presumed that a purpose of a particular description is for the public benefit”. While it is arguable that such a presumption was in place prior to 2006, the stated removal of the presumption, the failure to define “public benefit” and the requirement for the Charity Commission to produce public benefit guidance, left the Commission, a branch of the executive, in an impossible position. This was evidenced by the Commission’s costly legal battles with the Independent Schools Council and the Plymouth Brethren Christian Church (or Exclusive Brethren). While we have criticised the interpretation of the law by the Charity Commission, we also believe that it is essential for Parliament to revisit this legislation and set the criteria for charitable status rather than delegating such decisions to the Charity Commission and the courts.

We have also considered the impact of face-to-face fundraising, or chugging, and warned that self-regulation has failed so far to generate the level of public confidence which is essential to maintain the reputation of the charitable sector.

We have called for ministers to revise the statutory objectives for the Charity Commission, to allow the Commission to focus its limited resources on regulating the sector; rejected the proposal of Lord Hodgson to increase the financial threshold for compulsory registration of a charity with the Charity Commission; and called for charities to publish their spending on campaigning and political activity.

We believe our recommendations will help to maintain public trust in charities and the Charity Commission, and promote the good work of charitable organisations in
communities across the country.
1 Introduction

1. Charities and their work lie at the heart of what sort of country and the kind of society we aspire to be. In 2011/12 the public supported charities with £9.3 billion of donations.1 Though the state supplanted the role of charities during the last century, charities still play a vital role in the wellbeing and altruism of our society, and all shades of political opinion support the strengthening and enhancement of their role.

2. The Charities Act 2006 was a major piece of charity legislation, which intended to reduce bureaucracy, particularly for smaller charities; to modernise the definition of “charitable purposes”; to modernise and increase the accountability of the Charity Commission; and to maintain public trust in charities.2 It was consolidated into the Charities Act 2011—a statute which did not make substantive changes to the law but brought together the provisions of a number of existing Acts of Parliament covering charity law into a single act to make it easier to follow charities legislation.3

3. The 2006 Act sets out for the first time a statutory definition of “charity”: an “institution which is established for charitable purposes only, and falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities”.4 The Act defines charitable purposes as a purpose that falls within a set list of charitable purposes (such as the “prevention or relief of poverty”, and the “advancement of religion”) and “is for the public benefit”).5 The Act requires all charities to demonstrate that they are for the “public benefit” and requires the Charity Commission to issue guidance on “public benefit”.6 We consider issues arising from the definition of “charity” and the lack of definition of “public benefit” in chapter five.

4. Other provisions in the Act include:

a) Reforming the operation of the Charity Commission and setting out its statutory objectives.7 We consider this aspect of the Act in chapter three;

b) The establishment of the Charity Tribunal to consider appeals against specific decisions of the Charity Commission (considered in chapter six of this Report);8

c) An increase in the registration threshold for charities, from an annual income of £1,000 to £5,000, and the introduction of voluntary registration for charities of all sizes—this provision has been implemented in part and is considered in chapter four;9

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2 “Charity law and regulation”, Cabinet Office, 7 May 2010, cabinetoffice.gov.uk
3 Charities Bill [HL], Standard Note SN/HA/6159, House of Commons Library, December 2011
4 Charities Act 2006, section 1
5 Ibid. section 2-3
6 Ibid. section 3, 7
7 Ibid. section 7
8 Ibid. section 8
9 Ibid. section 9
d) Provisions relating to charitable trustees, including a new power for charities to pay trustees for the provision of services to the charity.\textsuperscript{10} This matter is considered in chapter nine.

e) A new regulation system for charitable collections—this provision is considered in chapter eight.\textsuperscript{11}

5. The Act requires that the Government appoint a person to carry out a general review of the legislation, no more than five years after the Act was passed.\textsuperscript{12} Lord Hodgson of Astley Abbots, Chairman of Nova Capital Management Limited and a Conservative life peer, who led for the Conservatives in the House of Lords during the passing of the Charities Act 2006, was appointed to carry out this review in November 2011.\textsuperscript{13} He published his review in July 2012, making 102 recommendations, including 28 proposals which would require primary legislation.\textsuperscript{14} On behalf of the House of Commons, the Public Administration Select Committee (PASC) thanks him for this valuable and meticulous work.

6. In July 2012 we announced our intention to conduct a post-legislative scrutiny inquiry into the Charities Act 2006, building on Lord Hodgson’s report, and also responding to a number of other developments regarding the regulation of the charitable sector:

a) The decision of the Upper Tier Tribunal in the case of the Independent Schools Council (ISC) in October 2011—this decision followed a long-running legal battle that had commenced when the ISC challenged the public benefit guidance produced for independent schools by the Commission, which promoted the offering of bursaries to pupils who could not afford the fees, as a method of proving that a school with charitable status was operating for the public benefit;\textsuperscript{15}

b) The Charity Commission’s decision to decline an application for charitable status from the Preston Down Trust, part of what is called the Plymouth Brethren Christian Church, or Exclusive Brethren (whose name is subject to some dispute as explained in paragraphs 71 and 72), and the Trust’s subsequent decision to take their case to the Charity Tribunal;\textsuperscript{16}

c) Media reports of significant public concern caused by face-to-face fundraisers, or “chuggers”;\textsuperscript{17} and

\textsuperscript{10} Charities Act 2006, section 36
\textsuperscript{11} Ibid, section 45
\textsuperscript{12} Ibid, section 73
\textsuperscript{13} “Lord Hodgson of Astley Abbots is to lead a full review of the law relating to charities in England and Wales”, Cabinet Office, 8 November 2011, www.gov.uk/government/news
\textsuperscript{14} Cabinet Office, Trusted and Independent: Giving charity back to charities: Review of the Charities Act 2006, July 2012, p 8
\textsuperscript{15} The Independent Schools Council -v- The Charity Commission and others, The Upper Tribunal Tax and Chancery Chamber decision, TCC-JR/03/2010, 14 October 2011
\textsuperscript{16} Ev 152, ev 99
\textsuperscript{17} “The business of charity should be transparent”, Daily Telegraph, 15 July 2012
d) The reduction in budget of the Charity Commission by 33% in real terms between 2010/11 and 2014/15.\(^\text{18}\)

In addition, PASC is mindful that the Government is creating new expectations for the sector by promoting new forms of public service delivery and the growth of social enterprises, against a background of tight restraint on government spending.

7. The inquiry follows on from our Report *The Big Society* (December 2011), and our ongoing scrutiny of the Charity Commission, which has recently included a pre-appointment hearing for the new Chair of the Commission, William Shawcross.\(^\text{19}\) Our predecessor Committee, the PASC in the 2005-2010 Parliament, also took evidence on the impact of the Charities Act 2006 on independent schools and religious organisations.\(^\text{20}\)

8. Over the course of this inquiry we received 192 memoranda. We also commissioned a review of charity legislation by the National Audit Office (NAO), to inform our inquiry. This is published on the NAO website. We held six evidence sessions, during which we heard from Lord Hodgson of Astley Abbots; charity sector umbrella organisations; the fundraising self-regulatory bodies; think tanks; the Independent Schools Council and the Plymouth Brethren Christian Church (or Exclusive Brethren); charity lawyers; the Chair and Chief Executive of the Charity Commission and the Minister for Civil Society. We also took evidence from the newly formed Australian Charities and Not-for-profits Commission, who were visiting the UK, to provide an international comparison on charitable regulation. We would like to thank all who contributed to our inquiry, and particularly our Specialist Adviser, Dr Jonathan Garton, Reader in Law at the University of Warwick.\(^\text{21}\)


\(^{21}\) Dr Jonathan Garton was appointed as a Specialist Adviser for this inquiry on 12 September 2012. The following interests were declared: a formal connection with three universities, each of which is an exempt charity: employed by the University of Warwick as an associate Professor and Reader; holds an unpaid Senior Research Fellowship at the University of Liverpool; and has a book contract with Oxford University Press.
2 Background to the Charities Act 2006

A brief history of charity regulation

*Lord Hodgson: “the fundamental principles of charity and philanthropy are deeply ingrained in this country’s culture”.*

1597: The country’s oldest charity—King’s School, Canterbury—is established.
1601: Queen Elizabeth I gives Royal Assent to the Statute of Charitable Uses, which sets out the first definition of charity in English law and the purposes for which a charity could be established.
1853: The Charitable Trusts Act establishes the Charity Commission.
1891: Lord Macnaghten’s judgment in the Pemsel case (Income Tax Special Purpose Commissioners v. Pemsel) groups different charitable purposes under four heads: the relief of poverty; the advancement of education; the advancement of religion; and other purposes beneficial to the community.
1916: The Police, Factories etc (Miscellaneous Provisions) Act requires a charity to obtain a licence for charitable collections in public places.
1939: The House to House Collections Act introduces regulations for charities fundraising through house-to-house collections.
1960: The Charities Act introduces the register of charities and gives the Charity Commission powers to investigate charities.
1992: The Charities Act introduces compulsory registration for all charities with an income over £1,000 and new regulations for fundraising.
2002: The publication of *Private Action, Public Benefit*, which followed a review of charities and the not-for-profit sector by the Strategy Unit in the Cabinet Office.
2004: The introduction of the Draft Charities Bill, which aimed to provide a legal and regulatory environment to enable all charities to realise their potential as a force for good in society; to encourage a vibrant and diverse sector, independent of Government; and to sustain high levels of public confidence in charities through effective regulation.
2004: The Introduction of the Charities Bill (following scrutiny of the Draft Bill by a Joint Committee).
2006: The Charities Act receives Royal Assent. The Act states that: all charities must be established for charitable purposes only, that a charitable purpose must be “for the public benefit”, and that “it is not to be presumed that a purpose of a particular description is for the public benefit”.
9. The piecemeal regulation of this sector (set out in the timeline) is due in part to the history of charity regulation, which dates back to the Statute of Charitable Uses 1601.\textsuperscript{22} This, as Lord Hodgson noted, “set out the first definition of charity that existed in English law” and set out the purposes for which a charity could be established.\textsuperscript{23} While there were further reforms to the law, introducing, for example, the Charity Commission in 1853, and strengthening its powers in 1960, the 1601 Act, and the definition of charity, remained largely unchanged at the start of the 21\textsuperscript{st} century, when as Lord Hodgson has said, it was “clear that reform was […] much needed”.\textsuperscript{24}

10. The regulation of fundraising has often developed separately, with much of the present legislation dating back to 1916 and 1939.\textsuperscript{25} We heard that the age of the legislation meant that it did not “contemplate the new varied and sophisticated means of fundraising that charities engage in” in the present day.\textsuperscript{26}

11. Proposals to “modernise” charity law were made in 2002 with the publication of Private Action, Public Benefit, by the Strategy Unit in the Cabinet Office, which followed a review of charities and the not-for-profit sector.\textsuperscript{27} This report led into the drafting of the Draft Charities Bill 2004, which aimed:

a) to provide a legal and regulatory environment that will enable all charities, however they work, to realise their potential as a force for good in society;

b) to encourage a vibrant and diverse sector, independent of Government; and

c) to sustain high levels of public confidence in charities through effective regulation.\textsuperscript{28}

12. The Draft Bill was considered by a Joint Committee of both Houses, which listed the areas in which the Draft Bill sought to legislate, including “expanding the list of charitable purposes, removing the presumption of public benefit, defining the role of the Charity Commission, establishing a new Charities Appeal Tribunal to hear appeals against Charity Commission decisions, introducing a new legal form for charities and regulating public charitable collections”.\textsuperscript{29} The Joint Committee warned, however, that there was an “imprecise rationale behind the draft Bill”.\textsuperscript{30}

13. Nevertheless, the Charities Bill was presented in the House of Lords in December 2004, and was immediately re-introduced following the General Election in 2005, receiving Royal Assent in November 2006.\textsuperscript{31}

\textsuperscript{22} Charitable Uses Act 1601
\textsuperscript{23} Cabinet Office, Trusted and Independent, p 8
\textsuperscript{24} Ibid. p 18
\textsuperscript{25} Q 16
\textsuperscript{26} Ev w86 [Note: references to ‘Ev wXX’ are references to written evidence published in the volume of additional written evidence published on the Committee’s website.]
\textsuperscript{27} Cabinet Office, Private Action, Public Benefit, September 2002
\textsuperscript{28} Draft Charities Bill, Cm 6199, May 2004
\textsuperscript{29} Joint Committee on the Draft Charities Bill, The Draft Charities Bill, HC (2003-2004) 660-I, para 12
\textsuperscript{30} Ibid. para 21
\textsuperscript{31} Cabinet Office, Trusted and Independent, p 13
3 The Charity Commission

14. The Charity Commission, first established in 1853, is funded entirely by a settlement from the Treasury, currently set at £25.7 million for 2012/13. It receives no other income. Between 2010 and 2015, the Commission’s budget will have reduced by one third, from £29.3 million in 2010/11 to £21.3 million in 2014/15. The former Chair of the Commission, Dame Suzi Leather, has said that the budget reduction will require the Commission of 2015 to meet the same statutory objectives and functions as in 2005, but with only half the number of staff. At the same time, the demands on the Commission continue to increase. Around 20 to 25 new charities register with the Commission every working day—a total of 5,600 new charities between April 2011 and March 2012. Furthermore, the 2006 Act increased the duties and objectives of the Commission.

15. We considered whether the Commission’s role was still appropriate and how it should be funded. The Commission’s statutory objective were set out in the 2006 Act as:

1. The public confidence objective: to increase public trust and confidence in charities.

2. The public benefit objective: to promote awareness and understanding of the operation of the public benefit requirement. (We consider this objective in chapter four).

3. The compliance objective: to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.

4. The charitable resources objective: to promote the effective use of charitable resources.

5. The accountability objective: to enhance the accountability of charities to donors, beneficiaries and the general public.

16. Lord Hodgson did not propose any changes to the Commission’s statutory objectives but did recommend that it should focus more tightly on regulation of the sector. The Commission’s Chief Executive, Sam Younger agreed with Lord Hodgson that, given its limited resources, the role of the Commission should be more focused on regulation, than, for example, the objective to “promote the effective use of charitable resources”. The Chair of the Commission, William Shawcross, believed that the statutory objectives were...

33 Ibid.
34 Oral evidence taken before the Public Administration Select Committee on 3 July 2012, HC (2012-2013) 315-i Q 81
36 Charities Act 2006, Section 7
37 Cabinet Office, Trusted and Independent, p 58
38 Q 474
still appropriate, but added that, while he did not think the Commission “will ever have the budget necessary” to increase its regulatory role, it had reorganised to regulate “as effectively as possible” in the context of the budget cuts.  

17. The Commission’s focus “on serving the public by doing things only a regulator can do” has meant, for example, that it has scaled back one-to-one advice to charities, and placed greater emphasis on preventing problems before they start, for example by means of an increased use of spot checks on charities’ annual accounts. The Commission has also sought to reduce the demands from charities on its information and advice services, by moving these services online, and also working with the charity sector umbrella bodies “to try to shift some of the things that, historically, the Charity Commission has done to others”.

18. Several of the sector umbrella groups argued, however, that they did not have the resources to take on the advisory work that the Commission can no longer afford to undertake. Sir Stuart Etherington, Chief Executive of National Council for Voluntary Organisations (NCVO), stated that the “umbrella bodies themselves are facing financial difficulties” and would not be able to take on tasks previously carried out by the Commission unless they were “resourced to do it”. Joe Irvin, Chief Executive of the National Association for Voluntary and Community Action (NAVCA), also highlighted the difference of reach between the Commission and the umbrella groups, noting that the Commission’s website received 3.5 million individual users a year, compared to only 0.5 million and 150,000 for the NCVO and NAVCA websites respectively.

19. Witnesses also expressed concerns about other potential effects of the Commission’s reduced budget. Sir Stuart Etherington warned that it would be “very difficult” for the Commission to support smaller charities. Other witnesses expressed frustration about the Charity Commission’s capacity to investigate complaints about charities from members of the public. The Association for Charities warned of the “danger that the Commission, for understandable budgetary reasons, may fail in attempts to regulate the sector better”. Sam Younger accepted that the Commission would not “get it right every time” when deciding which complaints to investigate further, given the scale of contact from the public with the Commission, which he stated was “almost 900 calls, emails and letters every single working day of the year”. Deciding which of these complaints to investigate further was, he said, the “most difficult area” for the Commission. The Commission was also unable to take up some complaints received because of its remit, and we consider proposals for handling these complaints in chapter seven.

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39 Q 476
40 Charity Commission, Annual Report 2011-2012, p 2
41 Q 476 [Sam Younger]
42 Q 51 [Sir Stuart Etherington]
43 Q 51 [Joe Irvin]
44 Q 53
45 Ev w63
46 Q 476
47 Ibid.
The Charity Commission and the Cup Trust

In January 2013 *The Times* reported that a charity, the Cup Trust, was “a front for tax avoidance”, alleging that the charity received a total of £176 million in 2010 and 2011, but that “instead of using the money for its stated objective to ‘improve the lives of young children and adults’, it carried out trades that artificially generated Gift Aid for donors to reduce their tax bills”.48 The Charity Commission registered the Cup Trust as a charity in April 2009, and opened an investigation into its activities in April 2010. The Commission considered whether the Trust “was still, and had always been, a charity existing for charitable purposes under British law, and whether it was working in the public benefit”.49

The Commission found that the Trust had given £55,000 to young people’s charities, and was in fact acting inside the law as it stands on charitable status. The fact the Cup Trust was able to carry out its activities without breaching charity law led the Chair of the Commission, William Shawcross, in evidence to the Public Accounts Committee, to describe the issue of the Cup Trust as “a disaster for the charity sector”.50

The Public Accounts Committee has examined the role of HMRC and the Charity Commission in this case. Our inquiry did not include evidence about the Cup Trust, but we have drawn on the evidence taken by the Public Accounts Committee.

20. The core role of the Charity Commission must be the regulation of the charitable sector. The exposé of the scandal of the Cup Trust demonstrates that there are shortcomings in the regime for regulating tax evasion involving charities. The Charity Commission was obliged to register the Cup Trust when it was established, but it does not have the means of investigating potential tax fraud, which must be the role of HMRC. Furthermore, the Commission has complained about limitations on its powers to deregister suspect charities.

21. Charities should not be used as a tax avoidance vehicle. We welcome the Charity Commission’s statutory investigation into the Cup Trust. We recommend that the Commission follows this inquiry with a review of lessons learnt from this scandal. The Commission should specifically reconsider the legal advice it received on the status of the Cup Trust, and whether it was right not to take its concerns about the Cup Trust further. Having reviewed this case, if the Commission still feels that it was restricted in its legal abilities to prevent such organisations from obtaining charitable status, we would welcome its proposals for a change in the law on the criteria for registering as a charity.

22. The objectives of the Charity Commission, as set out in the 2006 Act, are far too vague and aspirational in character (an all too frequent shortcoming of modern legislative drafting) to determine what the Charity Commission should do, given the limitations on its resources, to fulfil its statutory objectives. The 2006 Act represented an ambition which the Commission could never fulfil, even before the budget cuts were initiated.

48 "Charity at heart of massive tax avoidance scam", *The Times*, 31 January 2013
49 Oral evidence taken before the Public Accounts Committee on 7 March 2013, HC (2012-13) 1027-i, Q 15
50 Ibid. Q 13
23. The Commission’s reduced budget means extra tasks, outside of its statutory objectives, are an unaffordable luxury, particularly as it has to use its precious resources to combat lobbying and legal pressure from some well-resourced organisations. Furthermore, by seeking to be an advice service to charities, the Commission also risks a conflict of interest: it cannot simultaneously maintain public trust in the charitable sector while also acting as a champion of charities and the charitable sector. The latter should be, as the Commission and Lord Hodgson have recommended, a role for the sector’s umbrella bodies and not its regulator.

24. The Cabinet Office must consider how to prioritise what is expected of the Charity Commission, so that it can function with its reduced budget. This must enable it to renew its focus on regulation as its core task. The Commission is not resourced, for example, “to promote the effective use of charitable resources”, or for that matter, to oversee a reappraisal of what is meant by “public benefit”, nor is it ever likely to be.

25. Abuse of charitable status to obtain tax relief is intolerable and should be uncovered by HMRC and the Charity Commission working more closely together. We recommend that the Commission should prioritise the investigation of potential “sham” charities but the obligation to investigate and report tax fraud rests with HMRC, recognising that the Commission’s financial position will limit their own investigation. Ministers must decide whether they think it is necessary to have a proactive regulator of the charitable sector, and if so, the Government must increase the Commission’s budget and ask Parliament to clarify their powers. If funding cannot be found for the Commission to carry out such a role, ministers should be explicit that they accept that the regulatory role of the Commission will, by necessity, be limited.

Charges

26. Lord Hodgson’s report raised the prospect of the charitable sector bearing some of the cost of its regulation through “a fair and proportionate system” of charging charities for filing annual returns and for the registration of new charities.\textsuperscript{51} He emphasised that such charges “should be set at a level to reflect the activities that they cover” and that funds raised “must be accepted by HM Treasury as being an incremental increase in resources available to enable the Commission to carry out its functions more effectively not merely a reason to reduce its budget by the same amount”.\textsuperscript{52} Lord Hodgson also recommended that the Government and the Commission should consider the possibility and logistics of introducing late-filing fines for charities which do not submit their accounts on time.\textsuperscript{53} The Government’s interim response to Lord Hodgson stated that it would need further consideration of the proposals before they could be accepted or rejected.\textsuperscript{54}

27. Both the current and former Chairs of the Commission were cautious about introducing charging. Dame Suzi Leather, Chair of the Commission between 2005 and

\textsuperscript{51} Cabinet Office, \textit{Trusted and Independent}, p 77

\textsuperscript{52} Ibid.

\textsuperscript{53} Ibid.

\textsuperscript{54} Response to the Charities Act Review from the Minister for Civil Society, Cabinet Office, 4 December 2012, www.gov.uk/consultations/charities-act-review
2012, has suggested that there would be a possible conflict of interest if the regulator was funded by the organisations it regulated. Her successor, William Shawcross, also shared this concern, noting that while the Commission could raise its “£25 million per annum running costs by a £5,000 annual levy on the top 5,000 charities in terms of income”, this may mean that those charities “think that they owned the Commission and owned the regulator. That would not be a healthy thing”. He also warned that the funding mechanism of the Commission meant that it would not obtain any “financial advantage” from any charges, as additional income would go straight to the Treasury.

In addition, Sam Younger, the Chief Executive of the Commission, argued that a levy would not be sufficient to replace Government funding, unless it was set at a “pretty significant” level.

The evidence received from the charitable sector was also broadly against any charges for the registration of new charities or annual returns. Sir Stuart Etherington argued that it was the Government’s role to fund the work of regulating the charity sector. A working party of the Charity Law Association dismissed any comparison with Companies House, which does charge for registration, arguing that “the idea of private citizens paying fees to the state in setting up an exclusively public benefit organisation is anathema to many”. NAVCA argued that such charges would “disproportionately affect small charities”.

The Minister for Civil Society, Nick Hurd, stated that it was an “extremely difficult time to introduce the concept of additional charging to the charitable sector” and that his “personal view” was that “it would be quite wrong for the Government to move away from the current situation in which, effectively, the taxpayer funds the regulator, to something that is significantly different from that”.

There was also a more mixed reaction to the idea of fines for charities that submit late returns to the Charity Commission (86% of charities submitted their accounts on time in 2011-2012). The Charity Finance Group reported findings from a survey of its 1,800 members that a “significant number” would not object to fines being introduced to promote compliance, as long as they were not seen as a revenue-generating measure for the Commission, as this could lead to the same conflict of interest as charging for new registrations and annual returns. We heard that the newly formed Australian Charities and Not-for-profits Commission planned to charge for late returns, having studied the experience of other regulators in Australia.

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55 Oral evidence taken by the Public Administration Select Committee on 25 October 2011, HC 1542, Q 12
56 Q 488
57 Q 482
58 Q 484
59 Q 54
60 Ev w42
61 Ev 126
62 Q 570
63 “Charity trustees ‘too relaxed about legal duties’ to file online accounts”, Charity Commission, 26 September 2012, www.charity-commission.gov.uk
64 Ev w55
65 Q 304
31. Sir Stuart Etherington suggested that a warning system and the ultimate penalty of removal from the register of charities may be a more effective way of promoting prompt filing of accounts than fining charities.\(^6\) Cath Lee, the then Chief Executive of the Small Charities Coalition, concurred, and argued that simply fining charities for submitting late accounts ignored the reasons why charities had been unable to send in their accounts on time. She argued that, if a small charity had been unable to fund an accountant to process their return, a financial penalty "could exacerbate the problems".\(^7\) We note, however, that the Commission has stated that many of the charities which submit late accounts have managed to submit the same accounts on time to Companies House, which does charge for late returns.\(^8\)

32. We do not support Lord Hodgson’s recommendation for the introduction of charges for the registration of new charities or the submission of annual returns. To do so would act as a block on the creation of new charities and the dynamism and charitable spirit of the volunteers working hard in their communities. It would be, quite simply, a tax on charities and charitable work. Furthermore, the Commission would also incur substantial administrative cost in a time of austerity, since it does not have the people and systems for invoicing and receiving payments from all 163,000 registered charities once per year. There would be something absurd about a system which would result in the Treasury giving tax relief to charities with one hand, and then clawing back from charities the money to fund the regulator, with the other hand. It is undesirable in principle that a regulatory body should be funded by those that it supervises.

33. There is a case for charging charities for late returns to the Charity Commission. The cost of such a system would be much less than for a full-scale charging system and the income received would not constitute a conflict of interest. The failure to submit annual returns on time is a risk to public trust in the charitable sector and charging will promote increased transparency: members of the public wishing to make a charitable donation should have up-to-date information, proportionate to the size of that organisation, on the charity’s income and expenditure, in order to make an informed choice about their donation.

34. We endorse Lord Hodgson’s recommendation that the Cabinet Office should work with the Charity Commission to develop a proportionate and flexible system of fines for late returns to the Commission. This is subject to the acceptance of our recommendation on joint registration in paragraph 51.

\(^{6}\) Q 61 [Sir Stuart Etherington]
\(^{7}\) Q 62 [Cath Lee]
\(^{8}\) “Charity trustees ‘too relaxed about legal duties’ to file online accounts”, Charity Commission, 26 September 2012, www.charity-commission.gov.uk
4 Registration

35. It is a common misconception that all charities are registered with the Charity Commission. In fact, only 163,000 of the estimated 350,000 charities in England and Wales are registered with the Commission. Of the 191,000 unregistered charities, 80,000 charities fall below the threshold for registration, currently set at an annual income of £5,000; 100,000 are excepted charities: charities that have previously been excepted by regulation or order, with an income of £100,000 or less—such as local parish councils affiliated with the Church of England and other mainstream Christian organisations, scout and guide groups, and armed forces charities. Although excepted charities do not need to be registered with the Commission, they may apply to HM Revenue & Customs for recognition as a charity for tax purposes.69 The total number of unregistered charities also includes some 10,000 exempt charities, which are overseen by a principal regulator, rather than the Charity Commission. A principal regulator is usually the sponsoring public body of a charity, for example the Department for Environment, Food and Rural Affairs is the principal regulator for the Royal Botanical Gardens at Kew, and the Higher Education Funding Council for England is the principal regulator for most universities in England.70

36. The rules surrounding the registration and regulation of charities are, in the words of the Minister for Civil Society, “a bit messy, probably not ideal and a product of evolution over many years”.71 The current threshold for registration with the Charity Commission was set by the Charities Act 2006 at an annual income of £5,000 (prior to the Act, the threshold was £1,000).72 Lord Hodgson recommended that the threshold for compulsory registration should be raised to £25,000, with registration also compulsory for all charities that claim tax relief. He also recommended that charities beneath the compulsory registration threshold should be able to register voluntarily, a provision which was introduced in the 2006 Act, but has not been implemented.73 Lord Hodgson described himself as “quite robust” about his recommendation and emphasised that one of the principles he based his review on was that “charitable status must be a privilege, not a right”.74

37. The overwhelming majority of the evidence we received expressed concern that the public trust in individual charities was often contingent on the organisation being registered with the Charity Commission, that increasing the registration threshold would leave a large number of charities unregistered with the Commission, and could potentially reduce trust in the charitable sector as a whole. Joe Irvin, Chief Executive of NAVCA, warned that “many members of the public, foundations and even public authorities will only support registered charities because they see that as a mark of quality and of intent”, and that an increase in the threshold would therefore be tantamount to a declaration that

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69 NAO, Regulating charities: a landscape review, July 2012
70 Ibid.
71 Q 564
72 Charities Act 2006, section 9
73 Cabinet Office, Trusted and Independent, pp 55-56
74 Qq 2-3
charities that did not meet the £25,000 threshold were “second-class citizens”. He added that the threshold was already increased in 2006 Act from £1,000 to £5,000, and that a further increase to £25,000 would be “quite a big leap”. Cath Lee argued that the proposal would place “about 120,000 charities” in “a hugely disadvantaged position and potentially, if they are not able to raise money, result in a lot of very good work going undone and therefore our society being damaged”. The Hospital Broadcasting Association suggested that the Charity Commission took “little interest in registered charities with an income of less than £25,000”, even at the present registration threshold, and recommended that the threshold be abolished completely, with all charities required to register, regardless of income, as is the case in Scotland.

38. The Commission has stated that if the threshold were raised from £5,000 to £25,000, 45,571 charities currently on the register would be free to leave. The Commission added that public focus groups argued that the current threshold was too high and warned that raising the threshold would create a “hidden sector” of charities which would not be required to provide key information to the Commission or the public. William Shawcross told us that:

It is important for the whole charitable sector that people have confidence that the overwhelming majority of charities are registered. It would be a problem if they no longer were.

39. The Commission also reported that the “overwhelming” view of participants in public opinion research and focus groups it had carried out was that there should be no threshold at all for registration and that all charities should be on the register. Mr Shawcross added that the Commission had found that “not many” charities complained about the burden of registration, as in fact most wanted to be registered as “it gives them a certain seal of good housekeeping”.

40. Lord Hodgson suggested that “very few” small charities with incomes beneath £25,000 would deregister if the threshold was raised from £5,000 to £25,000. He argued that, instead, that the “overwhelming result will be charities below £5,000 revenue rushing to register”, as they will have the opportunity to do so voluntarily for the first time. The introduction of voluntary registration would, he believed, facilitate the growth of new charities as, for the first time, a charity of any size would have the right to registration and the benefits of a charity number. A rush of voluntary registrations would, however,
introduce a new burden on the Charity Commission, which would still have to process compulsory registration for organisations that fell beneath the threshold but wished to claim tax relief.\textsuperscript{86}

41. Witnesses from the charitable sector were sceptical that the Charity Commission would be able to introduce voluntary registration.\textsuperscript{87} Such powers had been included in the 2006 Act but not introduced because of the extra funding the Commission would require. When questioned about whether the Commission would, in practice, have the resources to introduce voluntary registration, Lord Hodgson told us that his terms of reference had not included examining “the financial viability or the operational efficiency of the Charity Commission”.\textsuperscript{88}

42. Cath Lee of the Small Charities Coalition warned that even if the Commission was provided with extra resources to enable voluntary registration, the proposed increase in the registration threshold to £25,000 would “still not be [a] good” recommendation, as it promotes a message that small charities are inferior to larger charities, and that growth is necessary for small, local charities with “hundreds of volunteers [which] do a high volume of work and [...] achieve great impact”, which will never reach a £25,000 threshold.\textsuperscript{89}

43. Joe Irvin further questioned why the £25,000 threshold had been proposed, if, as Lord Hodgson argued “very few” charities would deregister. He cautioned that the case “has not been clearly articulated” and questioned whether it was “aimed at making it harder for new charities to register or deterring new charities from registering, perhaps just for the administrative convenience of the Charity Commission”. This would be, he suggested, “a mistake”, as small charities “are often the lifeblood” of the charitable sector.\textsuperscript{90}

44. Lord Hodgson was clear that his proposal to raise the threshold was to be considered solely as part of a package with the introduction of voluntary registration, and the requirement that charities which have incomes below £25,000 should have the label “small” next to their charity number.\textsuperscript{91} He suggested that opposition to the threshold increase had occurred because critics, including the Charity Commission, had not understood the nature of the package. He also questioned the Commission’s commitment to deregulation, adding that “like most regulators, they [the Commission] talk about deregulation, but when it actually comes to giving away power and influence, they do not quite like it so much”.\textsuperscript{92}

45. We heard of other bureaucratic burdens relating to charity regulation. Lord Hodgson recommended that the 35,000 charities which are also companies should not have to make two separate annual returns—to the Charity Commission and to Companies House,
arguing that “it should not be beyond the wit of man to create a form that serves both organisations”.

46. The NCVO reported that there were “operational problems”, for charities working across the UK, which have to file separate accounts in England and Wales, Scotland, and shortly, also in Northern Ireland, in addition to dealing with different definitions for public benefit in England and Scotland. The possibility of “passporting” for charities working across the national borders had been considered by the various regulators, we heard, but a solution had not been achieved.

47. Lord Hodgson said that he did not think that a passporting approach would be “achievable in the short term”, as the matter went “to the heart of devolution and the relative independence of Scotland, England and Wales”. He added:

Because the size of [Scotland’s] charity sector is much smaller and ours is very much larger, I do not think the regulatory approach can be anywhere near the same. We are some way away from getting agreement. I mentioned desirability, but that is hope rather than expectation.

48. Similar concerns were raised about the prospect of having a single definition across the UK for charitable status. Charity lawyer, Philip Kirkpatrick of Bates Wells and Braithwaite, warned that this would be “an attack on the devolutionary principle”. Mr Kirkpatrick also pointed out that, in Scotland, organisations “connected with the state” are not entitled to charitable status—a restriction, which he said would have a “huge effect on a number of charities” based in England and Wales.

49. In his review of the Charities Act 2006, Lord Hodgson proposed a rise in the threshold for compulsory registration with the Charity Commission to £25,000, to reduce red tape for smaller charities. We do not accept the premise that charity registration itself is a significant regulatory burden on charities, and believe that any benefits of raising the threshold would be outweighed by the potential impact on public trust in charities.

50. In addition to his proposal to increase the compulsory registration threshold for charities, Lord Hodgson recommended a package of changes to the way charities are registered including the introduction of a voluntary registration with the regulator, for charities of any size. Such a move could foster the development of new charities, which would be boosted by the reputational benefits of registration, but the Charity Commission must carry out a feasibility study of the costs and benefits of such a voluntary registration scheme as the basis for any decision to proceed. Any extra resources required will have to be identified and provided for.

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93 Q 11
94 Q 81
95 Q 85
96 Q 32
97 Ibid.
98 Q 182
99 Ibid.
51. The bureaucratic burden on charities could be more effectively reduced by addressing other issues facing charities rather than increasing the registration threshold, so we reiterate Lord Hodgson's recommendation that charities which are also companies should not be required to file annual returns with both the Charity Commission and Companies House. There should be agreement between the Charity Commission and Companies House about what information is required from registered charitable companies in one place. Ministers should make this a priority, to facilitate cost savings for the Commission and for charities.

52. We recognise the difficulties faced by charities operating across the separate countries, and charity jurisdictions, of the United Kingdom. While recognising that charity regulation is a devolved matter, we believe there would be benefits for charities in all parts of the country if a passporting system for charity regulation could be developed. The present system wastes the resources of both charities and taxpayers. If this proposals results in the convergence of conditions for the registration of charities across the UK, this would be welcomed by the sector. We call on the Cabinet Office and the Charity Commission, and the equivalent bodies in Scotland and Northern Ireland, to renew efforts to achieve this. While respecting the UK's different jurisdictions, we expect ministers accountable to PASC to be proactive in this.
5 Public Benefit

53. The 1601 Statute of Charitable Uses included a list of purposes that were considered to be charitable.100 In 1891 these were grouped together into four heads of charitable purposes: the relief of poverty; the advancement of religion; the advancement of education; and other purposes beneficial to the public.101 It is argued that prior to the Charities Act 2006, there was a presumption in case law that the first three heads were for the public benefit.102

54. It is arguable that the Charities Act 2006 introduced a fundamental change by stating that “it is not to be presumed that a purpose of a particular description is for the public benefit”.103 The Act also places a statutory objective on the Charity Commission to promote awareness and understanding of the operation of the public benefit requirement, through the publication of guidance. The full consequences of this may not have been fully appreciated: it has always been the case that all charities must be established for charitable purposes only, and that a charitable purpose must be “for the public benefit”. The Act did not define “public benefit”, and this has proved to be of crucial significance.104

55. Guidance on public benefit was published by the Charity Commission in December 2008, and prompted a lengthy legal battle between the Commission and the Independent Schools Council (ISC), which was concerned that the guidance may have meant that some of its members lost their charitable status. The case focused on the methods by which an independent school with charitable status could demonstrate that its charitable purposes were for the public benefit. The ISC stated that the intention of the Charity Commission, in its guidance, was “that the threshold to qualify schools for charitable status would be raised every year to ensure that they provide the maximum possible public benefit”. The ISC added:

It cannot be right to hold a sword of Damocles over an organisation and threaten to strip its assets (which is effectively what removing charitable status would do) based on a periodic, fluctuating assessment by an external agency, against hazy benchmarks, of its activities.105

56. The legal battle concluded with a judgment by the Upper Tier Tribunal on 14 October 2011. The Tribunal—the Hon Mr Justice Warren, and Judges McKenna and Ovey—ruled that:

100 Cabinet Office, Trusted and Independent, p 8
101 Ibid. pp 8-9
102 Charity Commission, Analysis of the law underpinning charities and public benefit, December 2008
103 Charities Act 2006, section 3
104 The Independent Schools Council -v- The Charity Commission and others, The Upper Tribunal Tax and Chancery Chamber decision, TCC-JR/03/2010, 14 October 2011
105 Ev 91
whether such a school is a charity within the meaning of the 2006 Act does not now turn on the way in which it operates any more than it did before. Its status as a charity depends on what it was established to do not on what it does.\footnote{106}

The ruling stated that in all cases of fee-charging independent schools with charitable status, there must be more than a \textit{de minimis} or token benefit for the poor, but that it was for the trustees of a charitable independent school to decide what was appropriate in their particular circumstances, not the Charity Commission.\footnote{107} The Tribunal ruled that the Commission must withdraw its guidance on public benefit.

57. The Tribunal’s decision was questioned by Peter Luxton, Professor of Law at Cardiff University, who argued that the ruling was based on an “erroneous view” that “public benefit is not inherent in the categories of purposes listed in the statute”.\footnote{108} Professor Luxton added:

\begin{quote}
the Tribunal decision requires some mysterious additional “public benefit” to be shown under every category of charity [...] In this respect the Tribunal’s judgment is incompatible with the established case law, which shows that a purpose falling within one of the recognised categories is necessarily for the public benefit.\footnote{109}
\end{quote}

58. The Commission’s stance on the issue of public benefit was also questioned following its decision in June 2012 to reject the application for charitable status from the Preston Down Trust, part of the Plymouth Brethren Christian Church (or Exclusive Brethren). The Commission’s decision letter stated:

\begin{quote}
As a matter of law, we are not able to satisfy ourselves and conclusively determine that Preston Down Trust is established for exclusively charitable purposes for public benefit and suitable for registration as a charity.\footnote{110}
\end{quote}

The Brethren announced in July 2012 that they would take the Commission to the Charity Tribunal. In February 2013, after members of the Brethren raised their concerns with this Committee, which were also taken up elsewhere in Parliament, a stay in the Tribunal proceedings was announced to allow time for the Commission to investigate whether a cost-effective alternative to tribunal proceedings could be agreed.\footnote{111} At the time of publication, this remains the position.

59. The legal disputes relating to the Charity Commission’s interpretation of “public benefit” and the Charities Act 2006 are complex and touch upon controversial and political questions concerning charitable status. This has also been a considerable financial burden on the Charity Commission and on the charities concerned, which is itself an injustice.

\footnotesize{\begin{itemize}
\item \footnote{106} The Independent Schools Council \textit{v-} The Charity Commission and others, The Upper Tribunal Tax and Chancery Chamber decision, TCC:JR/03/2010, 14 October 2011
\item \footnote{107} \textit{Ibid.}
\item \footnote{108} Ev w89
\item \footnote{109} \textit{Ibid.}
\item \footnote{110} Letter from Kenneth Dibble, Charity Commission, to Julian Smith, 7 June 2012, www.parliament.uk/pasc
\item \footnote{111} “Updated statement on Preston Down Trust”, Charity Commission, www.charity-commission.gov.uk, 6 February 2013
\end{itemize}}
Parliament, public benefit and the 2006 Act

60. The 2006 Act, while placing a requirement on the Charity Commission to produce guidance on public benefit, did not define, or provide direction on what “public benefit” meant. Charity lawyers Francesca Quint and Philip Kirkpatrick noted that the Commission was required to produce guidance that reflected centuries—and thousands of pages—of sometimes contradictory case law.\(^{112}\)

61. The Commission has stated that there was a “lack of certainty as to the law relating to the public benefit requirement for the advancement of religion” since the passing of the Act and the statement “it is not to be presumed that a purpose of a particular description is for the public benefit”.\(^{113}\)

62. Witnesses, argued however, that the Commission’s interpretation of the 2006 Act went against what Parliament had intended when the Act was passed. The Plymouth Brethren (or Exclusive Brethren) stated that at the time that Act was passed “the message from the then Government was that charities created to advance established religions had nothing to fear” and described the Commission’s decision in the case of the Preston Down Trust as a “shocking turn of events for these charities never prefaced when the Act was passed”.\(^{114}\)

63. The consideration of intent behind a statute is a complex legal area. There has been a long-standing self-imposed ordinance that the courts “excluded from their consideration when interpreting statutes parliamentary material, including debates, relevant to this statute” in recognition of the “exclusive cognizance” of Parliament over its own proceedings.\(^{115}\) This rule has been subject to some change in recent years, with very limited consideration of ministerial statements accepted in certain cases, most notably by the House of Lords, sitting in its judicial capacity, in the case of *Pepper v Hart* in 1992. Erskine May describes the impact of the case on the exclusive cognizance rule as below:

> As a result of the decision in *Pepper v Hart*, the courts now refer to parliamentary material where legislation is considered to be ambiguous or obscure, or leads to an absurdity; where the parliamentary material consists of one or more statements by a Minister or other promoter of a bill, together with such other parliamentary material as is necessary to understand such statements and their effect; and where the statements relied upon are unclear.\(^{116}\)

64. We accept the case of the Charity Commission that there is a lack of certainty about religious charities and public benefit in the 2006 Charities Act. This ambiguity suggests that it is reasonable to examine the Official Report for a consideration of the ministerial intent behind the statute.

65. An amendment was tabled at Third Reading of the Charities Bill by the then Member for Maidstone and the Weald, the Rt Hon Ann Widdecombe, to retain the presumption of

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\(^{112}\) Qq 192-193  
\(^{113}\) Ev 152, Charities Act 2006, Section 3  
\(^{114}\) Ev 99  
\(^{116}\) Ibid. p 232
public benefit for religious charities, following concern that the Act may challenge the charitable status of religious charities. The now Leader of the Opposition, the Rt Hon Ed Miliband, who took through the Act as a Cabinet Office Minister, stated in response that “the burdens will not be onerous for religious charities” and that the Act was not “intended to lead to a narrowing down of the range of religious activities that are considered charitable”. He added that:

Religion has an important role to play in society through faith and worship, motivating charitable giving and contributing in other ways to stronger communities. Both those dimensions will thus usually be apparent from the doctrines, beliefs and practices of a religion. The Charity Commission is clear that most established religions should not have any difficulty in demonstrating their value to society from their beliefs.

66. Lord Hodgson has argued that the “will of Parliament was to ensure that the words ‘public benefit’ appeared on the face of the Act and that the Charity Commission should interpret this”. Charity lawyer, Francesca Quint, stated that it was “right” for public benefit to be mentioned in the 2006 Act, as it helped to explain the case law developed over centuries, and “brought to the fore the fact that the public benefit principle is an essential part of charitable status and that no purpose is charitable unless it benefits the public in some way”. She cautioned, however, that while it was helpful that the Act confirmed that “public benefit meant what it always meant in charity law”, this “was not particularly helpful in defining what it did mean, because one then had to work out what charity law said it was”. She added that this might mean that the courts relied on “some very old cases that have stood for so long that they can’t be changed even if we have moved on in society”.

67. Lord Hodgson told us that the Commission “was given a hospital pass” by Parliament on the issue of public benefit. Sir Stuart Etherington, the Chief Executive of the NCVO, said, however, that while the Commission faced difficulties defining public benefit; part of the problem was attributable to the fact that it “did not interpret public benefit correctly”. This view was widely shared by other witnesses. Professor Peter Luxton argued that the Commission produced “voluminous amounts of [public benefit] guidance of questionable accuracy”, which it has then used in its decision-making processes “without referring to the case law on which such guidance is (or at least purports to be based)”.

118 Ibid.
119 Ibid. col 1609
120 Q 26
121 Qq 142, 143
122 Q 143
123 Q 148
124 Q 25
125 Q 77
126 Ev w89
68. Charity lawyers Philip Kirkpatrick and Francesca Quint stated that the Commission’s original guidance on public benefit “did not recognise sufficiently the discretion given to trustees to determine how to pursue their charitable purposes”.\textsuperscript{127} Ms Quint suggested that “the Commission did not respect the trustees enough. The Commission regarded itself as knowing better than the trustees sometimes”.\textsuperscript{128}

69. The Plymouth Brethren (or Exclusive Brethren) argued that the Commission had interpreted the requirement to provide public benefit as a requirement to produce “all-encompassing guidance”. Such guidance, the Brethren argued, could not be based in full on case law. As a result the production of all-encompassing guidance involved “an extrapolation from existing cases to fill in the gaps in the law: such extrapolation may or may not be correct in law, but can only be tested through recourse to the Tribunal”.\textsuperscript{129}

70. Matthew Burgess of the Independent Schools Council (ISC) stressed that the ISC’s Charity Tribunal case was a challenge to the way the Act was interpreted by the Charity Commission, rather than a challenge to the 2006 Act, or its inclusion of public benefit.\textsuperscript{130} This interpretation, he believed, was not “politically-led”, but simply wrong.\textsuperscript{131}

The charitable status of the Plymouth Brethren (or Exclusive Brethren)

Plymouth or “Exclusive” Brethren

71. We have received conflicting evidence about the nature of the Plymouth Brethren (or Exclusive Brethren) and we have endeavoured to present both sides of the case which has been presented to us. Following the decision of the Charity Commission in the case of the Preston Down Trust we received evidence questioning whether the Plymouth Brethren was another name for an organisation also known as the Exclusive Brethren. When questioned on this point, Garth Christie of the Brethren stated that the word “exclusive” when used in the context of the Brethren meant that they were “exclusive from evil”, but that, nonetheless, they were “known as the Plymouth Brethren Christian Church”.\textsuperscript{132} Several members of the public contacted us to state that the Plymouth Brethren Christian Church was a new name for the Exclusive Brethren and to suggest that the Brethren changed their name to avoid the suggestion that the “exclusive” in their name suggested limited public benefit. Marcus Anderson, a former member of the Church, wrote in evidence to the Committee that:

To avoid being linked with this and other publicity, it appears they have changed their name, as if to disassociate themselves from the name Exclusive Brethren.
However, please be assured, this group is one and the same. Their own website was www.theexclusivebrethren.com, but has now undergone a brand name change.133

We also received evidence from John Weightman, which stated that, until November 2012, the organisation was “known as Exclusive Brethren [...] Despite the claim that Plymouth Brethren Christian Church is the historic name it is an entirely new invention. Two months ago that name did not exist”.134

72. We heard that the change of name by the Plymouth Brethren had caused some to confuse the organisation with the separate, Open Brethren, which has approximately 1,000 congregations in the UK that do not follow the doctrine of separation (the Plymouth (or Exclusive) Brethren split from the Open Brethren in 1848).135 The Open Brethren indeed wrote to the Charity Commission to express their concern at the confusion between the two organisations.136 We will, for ease of reference, use the term “Plymouth Brethren (or Exclusive Brethren)” to refer to the organisation to which the Preston Down Trust belongs.

**The Preston Down Trust and the Charity Commission**

73. The decision of the Charity Commission to refuse the registration of the Preston Down Trust was, the Plymouth Brethren (or Exclusive Brethren) told us, a “bolt out of the blue”, following seven years of “dialogue with the Charity Commission”.137 In evidence, the Commission set out how the 2006 Act and case law has defined the requirements to be registered as a religious charity:

In charity law, a religion is a system of belief that has certain characteristics that have been identified in case law and clarified in the Charities Act 2006 which says that the word religion includes “a religion which involves belief in more than one god, and a religion which does not involve belief in a god”.

When considering whether or not a system of belief constitutes a religion for the purposes of charity law, the courts have identified various characteristics of religion that describe a religious belief. These are:

- belief in a god (or gods) or goddess (or goddesses), or supreme being, or divine or transcendental being or entity or spiritual principle, which is the object or focus of the religion
- a relationship between the believer and the supreme being or entity by showing worship of, reverence for or veneration of the supreme being or entity; and
- a degree of cogency, cohesion, seriousness and importance; and
- an identifiable positive, beneficial, moral or ethical framework

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133 Ev w83
134 Ev w92
135 “Open Brethren write to the Charity Commission to stress differences with Exclusive branch”, Third Sector, 14 January 2013
136 Ibid.
137 Qq 226, 228
Public benefit is a requirement of charities for the advancement of religion as it is for all other charitable purposes. Any presumption of public benefit which was afforded to religious purposes was removed by the Charities Act 2006. The public benefit requirement varies between different charitable purposes and is set out in case law.\textsuperscript{138}

74. The Commission stated that its decision was based on the legal consideration of "whether the organisation is advancing the Christian religion for the public benefit, according to charity law".\textsuperscript{139} The Commission further cited the judgment of the Upper Tier Tribunal in the Independent Schools Council case, which stated:

Returning to the example of religion, not only is there to be no presumption that religion generally is for the public benefit […] but that there is no presumption at any more specific level and thus no presumption that Christianity or Islam are for the public benefit and no presumption that the Church of England is for the public benefit.\textsuperscript{140}

The evidence added that the Commission was "obliged to have due regard to decisions of the Tribunal".\textsuperscript{141}

75. The Commission emphasised that a charity advancing religion has to show that the "aim of the organisation is to advance the religion in a way that is for the public benefit", rather than simply acting in the name of religion. The Commission added that:

The wider public must benefit from a religious organisation seeking to be a charity. It cannot be established solely for the benefit of the followers or adherents of the religion, the aim must be for the benefit of the public. The public may benefit by participating in the services of the religion, or, where the religious beliefs and practices, reflected in the doctrines and codes of the particular religion, encourage its followers or adherents to conduct themselves in a positive and socially responsible way in the wider community.\textsuperscript{142}

76. The Commission described its decision in the Brethren case as “finely balanced” because of the “particular doctrines and practices promoted by the Preston Down Trust”:

Preston Down Trust promotes particular beliefs and practices, in particular the doctrine of separation which is central to their beliefs and way of life and this has the consequence of limiting their engagement with non-Brethren and the wider public. The evidence we were given showed that the doctrine of separation as preached by the Trust requires followers to limit their engagement with the wider public, and there was insufficient evidence of meaningful access to participate in public worship.\textsuperscript{143}
The Commission concluded that “the evidence of beneficial impact on the wider public was not sufficient to demonstrate public benefit”.  

77. The Plymouth Brethren (or Exclusive Brethren) dismissed the argument that the organisation did not act for the public benefit, and sought to address concerns over what the Commission described as the “doctrine of separation”. The Brethren’s evidence stated:  

Non-Brethren may attend our services. Generally, our Holy Communion service alone is for Brethren, but we would not expect to turn away a non-Brethren [...] In short, we believe that our gospel halls advance the Christian religion through advancing the beliefs of the Plymouth Brethren Christian Church. We are not a closed order, but live in society, take part in open preaching and our gospel halls are open to non-Brethren.  

78. We received a substantial weight of evidence in support of the Brethren, including statements from dozens of non-Brethren members who wished to state for the record that allegations that Brethren members do not integrate with the wider community and non-Brethren members were false.  

79. We also heard that the Plymouth Brethren (or Exclusive Brethren) had not experienced similar issues with charity registration in other jurisdictions. Bruce Hazell, of the Brethren, stated that their organisations in Scotland had not experienced any issues with their charitable status. The evidence from the charities regulator in Australia was that the equivalent Brethren organisation had been granted charitable status, as it was “presumed that bona fide religious organisations are for the public benefit”. This presumption, however, is what the 2006 Act in England and Wales set out to remove.  

80. The decision in the case of the Preston Down Trust is the first time that the Charity Commission has refused charitable status to a religious group on the grounds of public benefit, as set out in the 2006 Act. In October 2012, however, the Commission refused an application for charitable status from the Pagan Federation, stating that the organisation was “not established exclusively for charitable purposes for the public benefit, because it does not meet all the essential characteristics of a religion for the purposes of charity law, nor is it for the public benefit”.  

81. The Plymouth Brethren (or Exclusive Brethren) have warned that the Charity Tribunal decision may affect other faith charities that hold services in which “non-believers may attend but not participate in all aspects”. The Christian Institute agreed, arguing that “the charitable status of established Christian churches is threatened because of the Charity Commission’s approach to public benefit”. Jon Benjamin, the Chief Executive of the
Board of Deputies of British Jews, has also warned of the similarities between the Brethren as “deeply devout, very traditional and detached in many ways from what they would regard as pernicious influences in modern society” and the practices of some organisations practising Judaism. Mr Benjamin warned that “the concern must be that parts of the Jewish community may now be vulnerable to censure or even de-registration by the Commission”. 152

82. William Shawcross told us that there was “no way in which the Commission would wish to discriminate against Christians or indeed any other religion”, and noted that the Commission had registered “1,000 new Christian or Christian-related charities in the last year, and 400 new charities of other religious faiths”. 153 He argued that the concern about the Brethren’s case was in relation to “their doctrine of separation and exclusiveness”, and “how much public—as opposed to private—benefit they could give”. 154

83. Sam Younger, the Commission’s Chief Executive, also sought to counter the suggestion that the Commission were “picking on” the Brethren by insisting that the Commission was required, when it received an application for registration as a charity, to consider that application on its merits. 155

84. In evidence to us, Garth Christie of the Plymouth Brethren (or Exclusive Brethren) purported to read from the letter from Kenneth Dibble at the Charity Commission which declined the application for charitable status from the Preston Down Trust. Mr Christie read out an extract of the judgment of the Upper Tier Tribunal as if it was Mr Dibble’s own view, thus attributing legal opinion to the Charity Commission. Mr Christie’s extract from Mr Dibble’s letter also included text which the Commission stated bore “no relation to anything in that letter”, and was, in fact, taken out of context from comments Mr Dibble had made to this Committee in the previous Parliament to discuss the application for charitable status from the religion of scientology. The Commission argued that “such a misrepresentation is a serious matter” and described this part of the Brethren’s evidence as “seriously misleading”. 156 Mr Christie of the Plymouth Brethren (or Exclusive Brethren) apologised unreservedly to us for this “inadvertent” mistake. 157 We are grateful for his apology and clarification. Mr Christie’s letter is at appendix B.

85. Parliament should be under no illusion about the scale of the task it presented to the Charity Commission when it passed the Charities Act 2006, which required the Commission to produce public benefit guidance without specifically defining “public benefit”. This has had the effect of inviting the Commission to become involved in matters such as the charitable status of independent schools which has long been a matter of party political controversy.

153 Q 530
154 Q 523
155 Q 542
156 Ev 141
157 Ev 141
86. *In our view, it is for Parliament to resolve the issues of the criteria for charitable status and public benefit, not the Charity Commission, which is a branch of the executive. In this respect the Charities Act 2006 has been an administrative and financial disaster for the Charity Commission and for the charities involved, absorbing vast amounts of energy and commitment, as well as money.*

87. We are far from happy with the manner in which the Charity Commission has conducted policy concerning public benefit. We have, however, received clear advice from the Attorney General that it is not Parliament’s role to make decisions on the charitable status of particular organisations (see appendix A). We will not therefore prejudge the Tribunal decision in the case of the Preston Down Trust, part of the Plymouth Brethren (or Exclusive Brethren). For the purposes of this Report, we are therefore treating the Preston Down case as *sub judice* and will not make a substantive comment on the Commission’s decision, until any judicial proceedings on the case have been concluded.

### A statutory definition of public benefit?

88. We considered whether a statutory definition of public benefit would be helpful in clarifying the law on this point. In his review, Lord Hodgson dismissed this suggestion and argued that a fixed definition would quickly become out-of-date in a changing world.\(^{158}\) William Shawcross, Chair of the Charity Commission, agreed and stated that, in choosing not to define public benefit in the Act, “Parliament was correct: it has to evolve under case law”.\(^{159}\) This view was also accepted by the Minister, who stated that “on balance we should continue to rely on case law rather than seeking to make a statutory definition of ‘charity’”.\(^ {160}\)

89. Alternative proposals for clarifying the law without a statutory definition were proposed. Francesca Quint, who agreed that a statutory definition could be “fossilised” by a changing context, suggested that, as in Scotland, there should be “some guidance in legislation to indicate what has to be taken into account in assessing public benefit”.\(^ {161}\) Ms Quint also recommended that it should be made clear that “the Commission, the courts and the tribunals are not bound by precedent in the sense that they can take account of social and economic circumstances”.\(^ {162}\)

90. The Plymouth Brethren’s (or Exclusive Brethren’s) evidence recommended that Section 4(2) Charities Act 2011 (s3(2) of the 2006 Act) and s17(1) Charities Act 2011 (s4(1) of the 2006 Act) should be repealed.\(^ {163}\) The Brethren has also recommended a review by the Law Commission of the meaning of charity and the obligation on the Charity Commission to produce public benefit guidance.\(^ {164}\) Peter Luxton, Professor of Law at Cardiff University

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\(^{158}\) Cabinet Office, *Trusted and Independent*, p 29

\(^{159}\) Q 508

\(^{160}\) Q 557

\(^{161}\) Qq 145, 148

\(^{162}\) Q 148

\(^{163}\) Ev 143

\(^{164}\) Ibid.
has also called for the Commission’s public benefit objective to be abolished, alongside the repeal of the duty on the Commission to produce public benefit guidance.¹⁶⁵

91. The Charity Commission’s evidence argued that there was a “lack of certainty as to the law relating to the public benefit requirement for the advancement of religion” since the passing of the Charities Act 2006. This lack of certainty, and the Commission’s interpretation of the Act, have led to the questioning of the charitable status of independent schools and the Plymouth Brethren Christian Church (or Exclusive Brethren) and concerns over the wider impact on faith charities.

92. In its approach to the question of public benefit, the Charity Commission chose not to rely on previous jurisprudence, as it could be argued Parliament intended, in the light of the vacuum of definition left by the Act. Ultimately the Charities Act 2006 is critically flawed on the question of public benefit and should be revisited by Parliament.

93. We recommend that the removal of the presumption of public benefit in the 2006 Charities Act be repealed, along with the Charity Commission’s statutory public benefit objective. This would ensure that no transient Government could introduce what amounts to substantive changes in charity law without Parliament’s explicit consent. If the Government wishes there to be new conditions for what constitutes a charity and qualifies for tax relief, it should bring forward legislation, not leave it to the discretion of the Charity Commission and the courts.
6 The Charity Tribunal

94. The Charities Act 2006 established the Charity Tribunal to be a quick, low-cost, non-adversarial method of settling disputes and holding the Charity Commission to account. The Tribunal was established to hear appeals against the decisions of the Charity Commission; previously charities had to take such cases to the High Court. The functions of the Charity Tribunal were transferred to the First-tier Tribunal (Charity) on 1 September 2009 following reforms of the tribunal system by the Tribunals Courts and Enforcement Act 2007.

95. Lord Hodgson suggested that the presence of eight QCs on the Independent Schools Council’s case meant that the Tribunal had not succeeded in the objective to reduce both the costs, compared to the High Court process, and the adversarial nature. William Shawcross, the Chair of the Charity Commission agreed, and stated that “the Tribunal is turning out to be more expensive than I think Parliament envisaged in the 2006 Act”. The Charity Law Association (CLA) has reported that a lower number of people have used the Tribunal than expected, and that many of those who have used it had found it “slow and expensive”.

96. Lord Hodgson has recommended that:

- Schedule 6 to the Charities Act 2011 should be removed and the jurisdiction of the Tribunal reformulated on the face of the legislation as:
  a. A right of appeal against any legal decision of the Commission
  b. A right of review of any other decision of the Commission.

He argued that this “would mitigate the risks to the Commission’s independence and efficiency while creating a simple and comprehensible system for broad access to the Tribunal”.

97. The Plymouth Brethren (or Exclusive Brethren) argued that their case highlighted a wider issue with the operation of the Charity Tribunal, namely that, in their view, the Charity Commission viewed it as their duty to refer to the Charity Tribunal “any question of public benefit which, following the Act, it (perhaps alone) perceives to be in doubt, for hard won clarification at charities’ expense”.

98. The Minister told us that he regretted the costs incurred by the Brethren as a result of the tribunal process. The Chair of the Commission, William Shawcross, emphasised that
the Commission sought to resolve cases without recourse to the Tribunal “in the overwhelming majority of cases”. 173 The Commission’s written evidence added that its “interest in Tribunal cases is not in achieving a particular outcome, but achieving clarity to guide our work”. 174

99. The Chief Executive of the Charity Commission, Sam Younger, stressed that if the will of Parliament, as reflected in the 2006 Act, was for the definition of public benefit to be developed by case law, then “you need the case law to do it”. His view was that the Commission “should not be afraid of going to the Tribunal, because the Tribunal is there as part of the architecture specifically designed in order to clarify difficult areas of law”. 175 Mr Shawcross recommended that ways of making the process cheaper for charities should be considered, but noted that a charity facing the Tribunal process “will feel that it has to be represented in the best possible way” and that is a factor in the high costs of a Tribunal case. 176

100. The Charity Commission’s reliance on the Charity Tribunal to resolve contentious areas of the law means, in practice, that some of the cost of regulating the sector falls on the particular charities concerned, taking away vital funds that could be used to fulfil their charitable objectives. This amounts to an abdication of responsibility by the Charity Commission, and an expensive, time-consuming and unjust way to test the law.

101. The present policy for determining questions of public benefit has proved disastrous in terms of the time and commitment of the Charity Commission and the charities involved. It must also be noted that the tribunal system, has failed in its objectives to reduce the cost of disputes. The Commission should devise informal dispute resolution procedures and should not use the tribunal system as a means of determining the law, except as a last resort.

173 Q 528
174 Ev 152
175 Q 516
176 Q 515
A charity ombudsman?

102. We heard of concerns that the remit of the Charity Commission does not include acting as an independent adjudicator, or considering complaints that do not constitute a breach of the law, from current or former trustees, employees, or volunteers of charities. As Lord Hodgson noted, the Commission will “only take action on complaints if they amount to serious mismanagement or misconduct”. A lack of awareness of this limited remit, and an absence of alternatives, has resulted in the Commission, according to its former Chair Dame Suzi Leather, often receiving letters “complaining about standards of service in charities” which it did not fall within its remit to consider. We heard a proposal for a Charity and Volunteering Standards Board—a single body to provide advice and adjudication in the event of unresolved disputes from third parties and volunteers. Dame Suzi also suggested that there was a strong case for a charity ombudsman to consider such complaints.

103. Lord Hodgson noted that there was no single body to deal with less serious complaints and considered the potential introduction of a charity ombudsman (or the extension of the remit of an existing ombudsman to cover charities) to address such complaints. He noted however, that the Commission’s remit was not as limited as had been suggested by witnesses; that it already handles serious complaints, and that some areas of charity services, such as healthcare, are already covered by an ombudsman. Lord Hodgson also argued that most ombudsmen are established to follow up complaints which are against public bodies and that involve a customer or consumer relationship between the individual and public body concerned, and that internal disputes within charities or between charity partners rarely involve this type of relationship. There are also limits of how effectively an ombudsman can resolve complaints, as many such bodies only have the powers to make recommendations rather than issue binding directions.

104. Lord Hodgson concluded that a new ombudsman would be not “necessary or appropriate”, and that the cost to taxpayers would be “difficult to justify”. He argued that the charitable sector “must take some responsibility for addressing its own mistakes and that individual charities must in turn take their share”. This should mean, he recommended, that all charities should have internal complaints procedures which would also include an “element of independent review whether that be referral to another charity, an umbrella body or any other independent body deemed appropriate”. If the sector still wished for a single body for dealing with complaints and arbitrating disputes, then it “would seem sensible” for the sector itself, possibly through one of the umbrella bodies, to set up such a scheme on its own.

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177 Cabinet Office, Trusted and Independent, p 78-79
178 Ev w73
179 Oral evidence taken before the Public Administration Select Committee on 3 July 2012, HC (2012-2013) 315-I, Q 121
180 Cabinet Office, Trusted and Independent, p 79
181 Ibid.
182 Ibid.
105. Lord Hodgson also rejected the suggestion that the Charity Commission should handle complaints about charities that fall below the threshold of risks to legal compliance, stating that this “cannot, ultimately, be the right answer”, as it would be very expensive and “blur the Commission’s role as a regulator”. He added that:

on grounds of principle, it cannot be right that the sector should rely on the Commission (and the tax payer) to provide a system for resolving complaints when many organisations in the sector have failed to take responsibility for doing so in their own organisations.  

106. Many were unconvinced by this argument. Charity campaigner Louisa Hutchinson warned that “in dismissing the appointment of a charity ombudsman on grounds of cost without an effective alternative, most members and volunteers are left powerless in the face of misconduct by governors”. The Self-Help Group, an organisation that provides support and legal advice to people who are being investigated and prosecuted by the Royal Society for the Prevention of Cruelty to Animals, warned of the potential risk to the reputation of the sector if a complaints system and ombudsman was not introduced:

Every other profession or range of services have proper controls in place and there is a clear and open complaints system which usually culminates in an ombudsman. There is no reason why charities should be exempt from proper and open regulation, whether in terms of fundraising, financially or for the simple complaints of bad service that can lead to serious public damage if not addressed and dealt with at an early stage.

107. Sir Stuart Etherington of the NCVO, however, agreed with Lord Hodgson, suggesting that “everybody starts off thinking an ombudsman is a great idea and then they look at it closely and decide that, actually, it is not too good an idea [...] It would be operating between the industry and the regulator, and I do not think there is enough space there to justify the expense. I started as an enthusiast, and I have become much more sceptical”.  

108. We heard worrying testimony from people with complaints about the way charities have treated them, as employees, trustees or volunteers. The sector must recognise the risk to the reputation of charities as a whole from such complaints, and must take responsibility for resolving these matters, through internal complaints mechanisms and independent appeal processes. We agree with Lord Hodgson that, while superficially attractive, the costs of a charity ombudsman should not fall upon the Government or the regulator, and should be borne by the sector itself.
Fundraising

109. In 2011/12 UK charities received some £9.3 billion in donations from members of the public, with 28.4 million adults estimated to have made a donation to charity in a typical month.\(^{187}\) The most common form of donation is cash (half of all total donations), with direct debits making up 31% of donations (the second most common method of donating).\(^{188}\) As set out below, public charitable collections, such as the use of collection tins or the soliciting of direct debit commitments are regulated by the Fundraising Standards Board, the Institute of Fundraising and the Public Regulatory Fundraising Association, through a self-regulatory system. House-to-house collections by charities are regulated by local authorities licensing schemes, although some larger charities can avoid applying for a new licence for each collection by obtaining a National Exemption Order from the Cabinet Office.

110. The right of a charity to raise funds for their work must be balanced against the right of the individual not to be harassed for donations and consideration of the potential damage to the charity sector as a whole caused by intrusive or inappropriate fundraising methods. Our evidence was clear that the regulation of fundraising, and in particular, face-to-face fundraising or “chugging”, remains a concern for many members of the public. “Chugging” is commonly used to describe the attempt of fundraisers working for, or on behalf of charities to persuade members of the public on the street to sign up to direct debit donations. Two in three people have reported feeling uncomfortable as a result of the fundraising methods used by some charities—an increase from the equivalent figure in 2010.\(^{189}\) Businesses also warned about the impact on trade, an issue acknowledged by Lord Hodgson, who told us that “chugging affects local shops [...] it is a problem in the high street”.\(^{190}\) Lord Hodgson stressed that charities needed to recognise that “every part of the [charitable] sector is damaged” by the public’s concern about chugging. The Chair of the Charity Commission, William Shawcross, described chugging as “a blight on the charitable sector and it has to be dealt with”.\(^{191}\)

111. The Charities Act 2006 set out powers for the Charity Commission to regulate public charitable collections, including face-to-face fundraising. The scheme proposed that anyone wishing to carry out public charitable collections would have to obtain a public charitable certificate from the Commission, which would be valid for five years but could be withdrawn or suspended.\(^{192}\) These powers, however, have not been enacted, and instead fundraising has been self-regulated by a combination of three organisations: the Fundraising Standards Board (FRSB), a membership organisation for charities; the Public Fundraising Regulatory Association (PFRA), which works with local authorities, town

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\(^{188}\) Ibid.  
\(^{189}\) Ipsos MORI, Public trust and confidence in charities 2012, p 34  
\(^{190}\) Ev w23, q 19  
\(^{191}\) Q 504  
\(^{192}\) Charities Act 2006, section 45
centre management, and business improvement districts; and the Institute of Fundraising, (IoF) which determined and set the Codes of Practice for fundraising.

112. The evidence of the success of self-regulation was mixed. Lord Hodgson identified a confused regulatory landscape, and very low public awareness of the system: nine out of ten people are unaware of the FRSB.\textsuperscript{193} A survey of local councils carried out by the Local Government Association found that 81\% of the authorities that responded had received complaints about the conduct of street fundraisers.\textsuperscript{194} An investigation by the \textit{Sunday Telegraph} found that some fundraisers deliberately misled shoppers and broke the code of practice which regulates their activity.\textsuperscript{195} A further concern is the number of fundraising charities that have chosen not to join the FRSB: members of the public have no redress if fundraisers working for such charities breach the acceptable behaviour laid down in the code of conduct for fundraisers.\textsuperscript{196} Lord Hodgson stated that “with fewer than 1,500 members (of the estimated 45,000 fundraising charities), and falling well short of original expectations, the FRSB’s penetration of the market remains its greatest weakness”.\textsuperscript{197}

113. While the FRSB accepted that chugging was a “problem”, and the IoF concurred that “some forms of fundraising do cause some public distress”, the self-regulatory bodies sought to address the concerns raised about the progress of the system.\textsuperscript{198} Mr Lewis emphasised the £130 million raised by the 1.3 million people who signed up to a direct debit through face-to-face fundraising in 2011, an income which he described as “very very important”.\textsuperscript{199} The PFRA also suggested that some complaints made about face-to-face fundraising are not about fundraisers breaching the code of conduct governing their behaviour, but that instead “some people just do not like to be asked to support charity”.\textsuperscript{200} Lord Hodgson agreed that some frustration at chuggers was caused by an element of guilt, and “behaviour transference”.\textsuperscript{201}

114. The fundraising self-regulatory bodies also stressed that the proportion of complaints received by the FRSB about face-to-face fundraising was very low, at 3.5\% of all complaints, and was lower than complaints relating to direct mail.\textsuperscript{202} Lord Hodgson also described the numbers as “a tiny proportion” compared to the “billions of donor interactions each year”.\textsuperscript{203} Alistair McLean of the FRSB sought to defend the low public awareness of the organisation, highlighting that it had developed over five years, and noted that only 55\% of the public were aware of the Charity Commission.\textsuperscript{204} The FRSB also conducted an investigation into the company featured in the \textit{Sunday Telegraph}, Tag Campaigns, and

\begin{footnotes}
\footnote{193 Cabinet Office, \textit{Trusted and Independent}, p 147}
\footnote{194 Ev w15}
\footnote{195 “The business of charity should be transparent”, \textit{Daily Telegraph}, 15 July 2012}
\footnote{196 Cabinet Office, \textit{Trusted and Independent}, p 91}
\footnote{197 Ibid. p 89}
\footnote{198 Q 120, Q 124}
\footnote{199 Q 124, 125}
\footnote{200 Ev 97}
\footnote{201 Q 21}
\footnote{202 Q 121 [Sally de la Bedoyere], Q 121 [Alistair McLean]}
\footnote{203 Cabinet Office, \textit{Trusted and Independent}, p 87}
\footnote{204 Q 122}
\end{footnotes}
reported that the company had acted outside of both the code of conduct for face-to-face fundraisers and charity law.\textsuperscript{205} The PFRA added that there had been reductions in complaints about chugging in areas where it had worked with local authorities to establish “site management agreements”, citing Plymouth City Council, which saw a reduction in complaints about chugging from 50 per month to just two per month.\textsuperscript{206}

115. In considering the performance of the self-regulatory system, we also considered the cost of statutory regulation. The Charity Commission has estimated that the cost of regulating fundraising would be approximately £4 million per year, on top of an additional cost of setting up the regulatory system.\textsuperscript{207} The cost of the statutory regulation system, proposed in the 2006 Act was, we heard from the FRSB, not seen as “workable”.\textsuperscript{208} Lord Hodgson concluded that “self-regulation is the least worst option” and that statutory regulation would not be cost-effective. The Minister told us that his “instinct” was to allow the self-regulatory system more time before introducing “the big stick” of statutory regulation.\textsuperscript{209}

116. Lord Hodgson did, however suggest that the Charity Commission should do more to encourage membership of the FRSB, stating that “insofar as they are the guardians of the sector, they should be taking an interest in it”.\textsuperscript{210} He also called on the FRSB to work with the sector umbrella organisations and Cabinet Office to agree, within six months, “a division of responsibilities which provides clarity and simplicity to the public, and removes duplication”.\textsuperscript{211} This was achieved, Alistair McLean of the FRSB told us, after only a month and a half of the six month timescale, when the self-regulatory bodies entered into a formal agreement to address concerns about the clarity of their roles.\textsuperscript{212}

117. We appreciate the very significant levels of public concern about face-to-face fundraising, or “chugging”. Many members of the public report that they feel pressured by chuggers and businesses warn of the nuisance caused to their customers and obstruction on the streets. It is clear that self-regulation has failed so far to generate the level of public confidence which is essential to the success of the system and the reputation of the charitable sector.

118. The case for statutory regulation of fundraising is compelling, but this must be balanced against the significant cost, whether to the public purse, or to charities themselves. We also note the progress made by the self-regulatory bodies—the Fundraising Standards Board (FRSB), the Public Fundraising Regulatory Association and the Institute of Fundraising—in clarifying where responsibilities lie, and the response they have shown to the companies which have been shown to harass and pressure potential donors. With this in mind, we recommend to the Cabinet Office that the self-

\begin{footnotes}
\item[206] Q 126
\item[207] Q 501
\item[208] Ev 116
\item[209] Q 599
\item[210] Q 22
\item[211] Cabinet Office, Trusted and Independent, p 102
\item[212] Ev 116, q 132
\end{footnotes}
...regulation system remains in place but is placed on notice, as recommended by Lord Hodgson, with progress reviewed in five years’ time. The self-regulatory bodies must act with urgency to increase membership of the FRSB, improve compliance with its code, and strengthen public awareness of the complaints system. The Charity Commission should do more to promote the self-regulatory system as part of its statutory duty to increase public trust and confidence in charities. There should be no complacency from the charity sector about the need to rebuild public confidence in charity fundraising. Should statutory regulation become necessary, the cost should be borne by the charities themselves, and should focus on the solicitation of direct debit collections. Some means of excluding traditional “street collections”, such as those by the Royal British Legion, the Royal National Lifeboat Institution, and local hospices, should be found.

House-to-house collections

119. Lord Hodgson’s report also examined other examples of the confused regulatory landscape for charity fundraising. House-to-house collections by charities are regulated in part by legislation dating back to 1939, and require charities to apply to local authorities (or in London, the Metropolitan Police) for a permit. The National Exemption Order scheme allows larger charities, with a track record of obtaining licences in at least 70 local authority areas in the preceding two years, to collect without a licence, although they are required to notify the local council in the area of the dates on which they will be collecting. At present, some 44 charities have a National Exemption Order (NEO). Lord Hodgson noted the concern that NEOs had created “an unlevel playing field, disadvantaging smaller, more local charities in particular”, and recommended the abolition of the orders, if provision could be made for “a few nationally recognised flag days”, such as the Poppy Appeal, and urgent disaster appeals.213

120. Lord Hodgson’s proposal was criticised by a number of the charities that submitted evidence to us. The British Heart Foundation, for example, warned that such a move would increase administrative costs on both charities and local authorities.214 The Charity Retail Association argued that it would “significantly increase costs for charities which hold [National Exemption Orders] while doing nothing to alleviate the administrative burden for charities without them.”215 The Association recommended that “the logical response aimed at supporting charities without NEOs would be to make it easier for all charities to conduct house-to-house collections, rather than harder for some”, and noted that there were no such proposals in Lord Hodgson’s report.216

121. The British Heart Foundation also cautioned that abolishing NEOs would not tackle what it argued was the “real issue” affecting house-to-house collections: “the proliferation of commercial collections and the rise of bogus collectors”217 Lord Hodgson did recognise that while charities making house-to-house collections for clothes or textiles are bound by fundraising regulations, commercial organisations making the same collections “are not

213 Cabinet Office, Trusted and Independent, p 98-99
214 Ev w29
215 Ev w38
216 Ibid.
217 Ev w29
regulated in the least”.

218 He called on the Government to “explore the appetite and options for licensing all types of house to house textile collections to equalise the position between commercial and charitable collections”.

219 The Government’s interim response to Lord Hodgson cautioned that criticisms of the proposal to abolish NEOs might have misinterpreted the deregulatory intention of his recommendation. With that in mind, the Minister stated that:

We do not want to implement a new scheme for NEO holders that would be more burdensome either for them or for local authorities, but at the same time we do want a mechanism that will ensure that local authorities are aware of NEO collections that are taking place in their areas.

220 We share the view of many of the charities that submitted evidence to us that Lord Hodgson’s proposal to abolish National Exemption Orders is not the way to improve the legislation relating to house-to-house charitable collections. While it was made with the intention of deregulation and supporting smaller charities, it is unlikely to have this effect in practice, and would increase the administrative costs of larger charities. Such a move would reduce the charitable funds available to such organisations and would therefore be unwise.

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218 Q16
219 Cabinet Office, Trusted and Independent, p104
Payment of trustees

124. The majority of the country’s 940,000 charity trustees, who have overall responsibility for making sure that their charity is properly run and achieving its charitable aims, carry out this vital role on a voluntary basis. They can be reimbursed for expenses incurred and for the provision of professional services to the charity, but cannot be paid for the services of acting as the trustee unless specific permission is received from the Charity Commission, or there is a specific power in a charity’s governing document, which also requires approval of the Commission.

125. Lord Hodgson recommended that large charities (those with an income of over £1 million) should have the power to pay their trustees, without seeking specific permission, if such payments were clearly disclosed in the charity's annual return. Lord Hodgson noted that "very few organisations mentioned the inability to pay trustees as a barrier to recruitment", and that there was “no real indication from sectors that do have the general power to pay trustees that they have found this helpful in recruiting and retaining quality trustees”. His recommendation was, however, intended to be “deregulatory”; the difference, he perceived between a smaller charity, and a charity with a revenue of over £1 million, which would have the automatic right to pay trustees, was that the larger organisation could be characterised as a “big-ish business”. This proposal has, however, proved contentious.

126. Sir Stuart Etherington, Chief Executive of the NCVO, has warned that "the voluntary principle clearly goes right to the heart of charity" and that it would damage public trust if "it was felt that charities, large charities in this case, could pay their trustees whatever they wanted to from charitable funds at the will of those trustees". He argued that there was "no evidence" that trustee payment would enable voluntary organisations to attract new trustee recruits with particular skills or that it would increase diversity on a board, but that if this were the case, the current legislation already provided for this, through the option to seek permission from the Commission for trustee payment. Kevin Curley, the former Chief Executive of NAVCA, put it more bluntly: “in my experience a charity that is doing effective work and which is run well has no difficulty attracting able and committed trustees”.

127. Sir Stephen Bubb, Chief Executive of Association for Chief Executives of Voluntary Organisations (ACEVO), provided one of the few voices in favour of trustee payment, arguing that gaining permission from the Commission for trustee payment was “a tortuous
process”.\(^{229}\) Sam Younger, the Commission’s Chief Executive, argued, however that the process of approval was “relatively simple and straightforward”, with charities simply having to provide “a clear rationale for saying why they wish to have this right”.\(^{230}\) The Commission’s data revealed that, since 1 April 2012, only seven requests have been received from charities seeking permission to pay their trustees, of which five of which had been granted by December 2012 and two are still pending.\(^{231}\)

128. The Government’s interim response to Lord Hodgson’s report has rejected the “easing of the general presumption against trustee remuneration”, noting the opposition to such a move in the charitable sector, and the concern that such a move would undermine the voluntary principle.\(^{232}\)

129. We endorse the Government’s rejection of the recommendation that large charities should have the automatic right to pay trustees. We were not convinced by the call by the Association for Chief Executives of Voluntary Organisations that such a measure would be either necessary or desirable. Indeed, we share the view of the overwhelming majority of our evidence, expressed with passion in some cases, that it would undermine the voluntary principle central to the whole ethos of the charitable sector. It is clear that in a few, exceptional, cases, trustee payment is appropriate, for example when being a trustee is incompatible with full-time employment. Our evidence suggested, however, that such cases are adequately and appropriately provided for within the current rules and we are not persuaded of the arguments for change.

\(^{229}\) Q 95
\(^{230}\) Qq 492, 494
\(^{231}\) Q 492
10 Political campaigning and independence

130. The right of charities to campaign on political matters is an issue about which many have views, but which is also highly subjective. Few want to see funds collected for famine relief spent on political lobbying, but few would deny that a political campaign to abolish child trafficking is charitable, for example. Lord Hodgson’s review of the Charities Act 2006 did not recommend any changes to the rules about political campaigning by charities. The current Charity Commission guidance on this point states that “an organisation will not be charitable if its purposes are political”. The guidance does, however, state that “campaigning and political activity can be legitimate and valuable activities for charities”, if it supports the delivery of its charitable purposes. A charity may focus all of its resources on political activity “for a period”, but it should not be “the reason for the charity’s existence”.

131. The Charity Commission reported that it believed the current rules on political campaigning were “working well”, and noted that cases of “inappropriate political activity are relatively rare”. This view was shared by several others, including Sir Stuart Etherington, Chief Executive of the NCVO, who argued against any relaxation of the campaigning laws, on the basis that this would place charities “much more in a political position”, leading the sector as a whole into “slightly more dangerous waters”. Sir Stuart added that charities that provide public services should not be restricted from campaigning, as he believed that “if you see a glaring need that you think public policy could address, you are almost duty bound to raise issues consistent with your charitable objectives around that”. Joe Irvin, Chief Executive of NAVCA agreed, and argued that the state should not “buy silence” from charities that receive income from the state to provide public services. The Sheila McKechnie Foundation noted the low numbers of complaints about political activities by charities (approximately 36 in 2010-2011) and argued that there was “no evidence of an endemic problem of charities being political”.

132. We received further conflicting evidence on whether the rules on charitable campaigning were set at an appropriate level. The charity War on Want has pressed for the restrictions to be abolished, allowing trustees to direct all the charity’s resources to this end if they are convinced that it is the “best way of achieving the charity’s charitable objectives in the long term”. War on Want argues that the restrictions are “the last hangover from an obsolete belief that charities should engage only in relief or palliative care”.

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234 Ev 121

235 Q 108

236 Q 109

237 Ibid.

238 Ev w5

239 Ev w20

240 Ibid.
Stephen Bubb, the Chief Executive of ACEVO, agreed with this view, and stated that that the campaigning work of charities both contributed to a vibrant democracy, and could improve public services, and as such should be celebrated.241

133. In contrast, we also took oral evidence from author and journalist Christopher Snowdon who has argued, in a report published by the Institute for Economic Affairs (IEA), that the current guidelines had “led to a free-for-all, with some charities seemingly able to engage in political lobbying on a permanent basis”, and that they did not reflect case law, which ruled that “charities cannot spend most of their time campaigning”.242 He criticised the guidance for stating that “a charity may choose to focus most, or all, of its resources on political activity for a period”, without defining the maximum length of time for this “period”, adding “can it be 10 or 20 years? Can Shelter continue campaigning indefinitely? It seems that they can”.243

134. In response, the Commission stated that the guidance does not state a maximum time period for campaigning because “it is for not for the Commission to gainsay the judgement of individual trustees about how the general principles in our guidance will apply to their organisations”.244 The Commission added that as long as political activity does not become the continuing and sole purpose of a charity, “it is for trustees to decide how best to run their charities and advance their charitable purposes”. The Commission “cannot prescribe a limit in either absolute or relative terms for the amount of time charities can devote to political activity”.245

135. The main concern of Mr Snowdon’s report was the somewhat separate issue of public funding for charities which are engaged in political campaigning. He argued that “Government funding of politically active charities [...] is objectionable [...] it subverts democracy and debases the concept of charity” and recommended that the Commission “should revert to previous guidelines which forbade charities from making political campaigning their dominant activity”.246 He also argued that there was public frustration with big charities which led campaigns calling for the Government to “raise taxes or restrict our liberties”.247

136. There is not much evidence of public support for this: Ipsos Mori research in June 2012 stated that, of the respondents who said that their trust in charities had declined in the last two years, 7% ascribed this decline to “political bias/pressure” by charities.248 Conversely, the NCVO argued that “there is widespread public support for charities’ campaigns”, citing research by the not-for-profit consultancy, entitled “nfpsynergy”, that showed that:

241 Q 106
242 Institute for Economic Affairs, Sock Puppets: How the Government lobbies itself and why, June 2012, Q 428
243 Q 428
244 Ev 151
245 Ibid.
247 Q 440
248 Ipsos MORI, Public trust and confidence in charities 2012, page 30
56% of the public identify ‘lobbying government and other organisations’ as a worthwhile activity for charities; [and] 67% of respondents agree that ‘[...] charities should be able to campaign to change laws and government policies relevant to their work.’

137. Mr Snowdon’s recommendations were criticised by other witnesses. The Sheila McKechnie Foundation told us that the report made “strong, strident claims but presents little evidence”. The anti-smoking charity, ASH, highlighted in Mr Snowdon’s report, rejected claims that it has used government funding to campaign, and questioned the motives behind Mr Snowdon’s use of the organisation as a case study, describing him as a “prominent opponent of tobacco control”. ASH also alleged that while the IEA does not disclose its income, the “IEA was funded by British American Tobacco from 1963 until 1999 (the last year for which evidence is available)” and described the report as an “attempt by the tobacco industry and its allies to undermine tobacco control organisations such as ASH [...] intended to protect its market”.

138. In his oral evidence on the substantive issue of charities’ political campaigns, Mr Snowdon told us that he had “not really made up [his] mind” on whether the rules on political campaigning should be relaxed or tightened, stating that:

On the one hand, I do feel that they should be relaxed and we should start from scratch, as it were, and have a system in which campaigning has clear limits but, in general, more liberal boundaries; but if we do not do that, then we should stick with the existing system that has been in place for many decades, and which the Charity Commission, over the last 10 to 15 years, has misrepresented. We should go back to case law, like the anti-vivisection case, in which case it should be tightened up and campaigning should not be the dominant activity.

139. The Minister for Civil Society, Nick Hurd, told us that he viewed the current regulations as “about right” and stressed that he would “be very reluctant [...] to go down a path that sends any message to charities that somehow their campaigning role, their advocacy role and their independence from the state are being challenged or undermined in any way”. He cited the campaign for the smoking ban as an example of charities engaging in political campaigning which should be “welcomed and encouraged”.

140. We considered whether public trust in charities could be improved by requiring charities to declare on their annual returns how much of their spending has gone on political and communications work. Charity lawyer Philip Kirkpatrick suggested that this...
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would work in a similar way to the way that fundraising administrative costs are published by charities.255

141. Mr Snowdon disagreed, arguing such a move would not have much of an effect, as the public would be unlikely to look at a charity’s accounts before donating. He also suggested that for some charities, the delineation between campaigning and other activities would be “fairly arbitrary”.256

142. We heard conflicting evidence on whether the restrictions on political campaigning by charities should be tightened or relaxed. Neither side made a compelling case. We note that the Charity Commission’s figures show that there are few cases of inappropriate political activity by charities. Consequently, we do not recommend any changes to the rules on political campaigning by charities.

143. We recommend that the Liaison Committee considers the issue of transparency by select committee witnesses who appear to be independent commentators but may be lobbying for vested interests.

144. We do support greater transparency by charities. Charities should be more transparent about their political and campaigning activities. Clear information about how much a charity spends on political and campaigning activity would enable members of the public to make an informed choice about whether to donate based on an understanding of how an organisation would use their donation. We recommend that the Charity Commission requires charities to declare in their annual returns how much of their spending has gone on political and communications work. We also recommend that the Charity Commission requires charities above the current registration threshold to declare on their annual returns how much of their income in the previous year was received from public or government sources in either i) grant income or ii) other forms of remuneration, and how much was received in the form of private donations.

145. On the separate issue of whether public funds should be used to fund charities involved with political campaigns, this is a matter for Parliament and its oversight of public spending. We recommend that ministers should make a written statement to Parliament whenever a decision is made to provide government support by direct grant to a charity which is involved in political campaigning.

The charitable status of think tanks

146. The Charity Commission’s evidence stated that cases of “inappropriate political activity [by charities] are relatively rare”, and account for “around 2%” of the cases examined by its Investigation and Enforcement function.257 This equated to 12 investigations in 2009-2012 “where political activity was a significant theme”.258

255 Q 207
256 Q 437
257 Ev 121
258 Ev 151
147. While such cases are rare, a significant proportion have related to political think tanks registered as educational charities. Dame Suzi Leather, the then Chair of the Charity Commission, told us in 2011 that the registration of think tanks as charities was “a difficult area for the Commission”, which had faced “quite tricky questions” about both left, and right-wing think tanks.259

148. We took evidence from one such think tank, the Smith Institute, which operated as a charity between 1997 and 2011, when it voluntarily left the register of charities and reconstituted itself as a not-for-profit institution. Press concerns about the activities of the Institute in late 2006 prompted the establishment of, first, a compliance case by the Commission on 28 November 2006, and then a statutory inquiry on 1 February 2007. This inquiry aimed “to consider whether the Institute was both established and operating as a charity in accordance with its charitable purpose [and] whether the Institute was carrying out political activities inappropriate for a charity”.260 It concluded that:

In summary, the Inquiry reconfirmed that the Institute is a charity and is capable of operating for the public benefit.

Further, the Inquiry found that the Institute is producing work which falls within its charitable purpose, is of educational value and is freely available to the public.

However, the Inquiry found that the trustees had allowed the Institute to become exposed to concerns that it supported Government policy and was involved in party political activity inappropriate for a charity. The trustees did not adequately manage the risks to the independence and reputation of the Institute.261

149. Paul Hackett, Director of the Smith Institute, stated that while the Charity Commission was happy to keep the Institute as a charity, as its compliance requests had been met, the Institute chose to reconstitute itself as a not-for-profit think tank, rather than a charity. This enabled the organisation to be “more fleet of foot and more flexible” as it did not need to meet the Commission’s “cumbersome” and time-consuming compliance requirements.262 He argued that for an organisation that only had five staff, complying with the Commission’s requirements “would have meant no other work was done”.263

150. A further example was the Charity Commission’s 2011 investigation into Atlantic Bridge, a think tank which was found to have “crossed the line between what is and is not permissible in charity law” with regards to political activity.264 On receipt of the Commission’s report into its activities, the trustees of Atlantic Bridge wound up the organisation.265

259 Oral evidence taken by the Public Administration Select Committee on 25 October 2011, HC (2010-2012) 1542-i, Q 24
260 Charity Commission, Charities back on track 2008-09, p 18
261 Ibid.
262 Q 380
263 Q 390
264 Ev 151
265 Oral evidence taken before the Public Administration Select Committee on 3 July 2012, HC (2012-2013) 315-I, Q 27
151. The evidence from Mr Hackett and Mr Snowdon prompted a wider debate about why some think tanks sought and maintained charitable status. Mr Hackett reported that the Smith Institute had not lost “the halo effect” when they moved from a charity to a not-for-profit organisation.266 Christopher Snowdon, a Research Fellow at the Institute for Economic Affairs (IEA) stated that the IEA did not “use the charitable halo”.267 He did however, confirm that the IEA received the tax benefits that derive from charitable status, and argued that “people are giving us money out of their own pocket without getting anything in return, and to me that is what a charity is about”.268

152. We heard evidence that the Charity Commission was unsure and inconsistent in how it regulated think tanks with charitable status. In the case of the Smith Institute, Mr Hackett suggested that the Charity Commission had “panicked” on receipt of complaints about the Institute, and that their reaction had been “disproportionate”. He thought that the Smith Institute had been “singled out”, with other organisations carrying out a similar amount of political work receiving a “very cursory […] very short” investigation by the Commission.269

153. Mr Hackett suggested that there was a parallel between the case of the Smith Institute and the Plymouth Brethren (or Exclusive Brethren), arguing that “where [the Charity Commission] swoop in on organisations willy-nilly almost, without any sort of clear rationale, you are going to get these inconsistencies”.270 In his view, the Commission’s approach was to single out an individual organisation, and then try to “extrapolate a wider set of rules and regulations” from that one case.271

154. When we put these points to the Commission it stated that a review of the position of charitable think tanks was underway, and would result in the publication of new guidance for staff who are involved in either processing the registration of new charitable think tanks or handling regulatory issues with existing think tanks, and for trustees of think tanks. The Commission also announced a change to the registration procedures of think tanks to ensure that both the Commission and the charity’s trustees are aware of the commitments made by the think tank to ensure that it exists for exclusively charitable purposes for the public benefit.272

155. The NCVO described the new advice as an “improvement”, which meant that there was “no need to change the rules on political activity by charities derived from case law, which are widely considered to be proportionate and well-balanced”.273 The NCVO added that “many think tanks do invaluable work under the broad term of advancing education”.274 Mr Snowdon concurred, stating that “as long as education is considered to

266 Q 380
267 Q 399
268 Ibid.
269 Q 391
270 Q 466
271 Ibid.
272 Ev 151
273 Ev 152
274 Ibid.
be a public benefit, then the think tanks that are providing education should be charities’.  

156. While think tanks may not fit the typical image of a charity, we accept that, as organisations for the furthering of education, they have a place inside our charity sector, provided they are established for a charitable purpose and for the public benefit. Think tanks such as the Smith Institute and Atlantic Bridge failed to maintain the correct balance between political activity and neutrality as required from think tanks with charitable status, though we are concerned by an apparent lack of consistency in the application of rules to this sector. The high profile of these cases, and the potential impact on trust in the charitable sector as a whole, means that it is crucial for the Charity Commission to regulate such bodies in a fair, consistent and proportionate manner. The Charity Commission’s review of the handling of applications for charitable status from think tanks must demonstrate objectivity and impartiality, which is necessary to maintain public trust in the charity sector as a whole.
11 Conclusion

157. We have set out to consider the impact of the Charities Act 2006 on the charitable sector and whether the legislation has resulted in a regulator and charity sector capable of addressing financial challenges not envisaged in 2006. Prior to the 2006 Act, the definition of charity remained largely unchanged from that of the 17th century, and we heard that it was “clear that reform was [...] much needed”.276 The Charity Finance Group described the “unprecedented context” of the economic climate which had not been foreseen at the time the Act was passed.277 The Charity Commission has seen a significant reduction in its funding which, the Charity Law Association told us, has “compromised” its ability “to discharge effectively all of the functions Parliament intended in 2006”.278 Charities themselves have been hit by reductions in both voluntary donations and government grants, often while experiencing an increase in demand for their services.279

158. While we have not addressed this issue in great detail in our inquiry (our December 2011 Report The Big Society covered this issue in considerable depth), there has also been an increase in the number of voluntary sector bodies, such as not-for-profit groups, public sector mutuals or social enterprises, which are often engaged in the same kinds of socially beneficial activities as charities and mistaken for charities in the view of the public, but are not covered by the 2006 Act, and effectively excluded from systemic regulation.280

159. Since 2010, the Coalition Government’s Big Society policy programme has promoted the delivery of public services by charities. This new role has opened up a new income stream for charities but has also led to concerns about a blurring of boundaries between the voluntary, public and private sectors which could threaten the independence of the voluntary sector.281

160. An increase in complaints about “chugging”, or face-to-face fundraising, has prompted complaints that the law is not sufficiently robust to protect the public from harassment by street fundraisers.282 The impact of devolution in both Scotland and Northern Ireland has added to the complexity of the legal landscape of charity regulation, particularly with regard to the issue of public benefit.283

161. We received mostly positive evidence about the Act. The charity Help the Hospices said that the Charities Act “has proved to be a key piece of legislation, producing a modern legal framework, which, in our view, remains fit for purpose”.284 The National Council for Voluntary Organisations (NCVO) stated that it “has proved to be a good piece of

276 Cabinet Office, Trusted and Independent, p 18
277 Ev w55
278 Ev w42
279 Ev w55
280 Ev w42, ev w68, ev 121
281 Ev w68
282 Ev w23
283 Cabinet Office, Trusted and Independent, p 26
284 Ev w31
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legislation: whilst the law would benefit from some rationalisation and minor modifications, the legal framework is robust and remains fit for purpose.” Lord Hodgson noted that the Act “could have gone further in deregulating and freeing up charities” and was “in some ways, an opportunity missed”.

162. The landscape of charity law is complex and inconsistent, developed in a piecemeal fashion through centuries of case law and legislation, but which nevertheless represents a delicate and uneasy consensus amongst charities and those with an interest in the sector. The 2006 Act was a much-needed piece of legislation, but while generally welcomed by the sector, it indicated a continuation of the complexity of charity law, rather than radical change or simplification. The Charity Commission interpretation of “public benefit” has been disruptive; though the 2006 Act left ambiguity and the Commission with an obligation to provide definition in guidance but little indication about how it should interpret an unreasonable degree of latitude.

163. Parliament must legislate to clarify the flawed legislation on the question of charities and public benefit.

164. Lord Hodgson has suggested that, in some ways, the 2006 Act represented a “missed opportunity” to deregulate more. We would go further and suggest that the Act, while reflecting the political climate of the time, does not equip the regulator or the Cabinet Office with the tools to address the changes in the sector that have occurred in the relatively short space of time since the Act was passed: the reductions in public spending, and consequently in charitable income; the growth of non-charitable organisations, such as social enterprises; and a new focus on the delivery of public services by charities.

165. We trust that the Government will accept our recommendations, which have been made with the objective of increasing public trust in charities, while reflecting this changed economic and political climate.
Conclusions and recommendations

The Charity Commission

1. The core role of the Charity Commission must be the regulation of the charitable sector. The exposé of the scandal of the Cup Trust demonstrates that there are shortcomings in the regime for regulating tax evasion involving charities. The Charity Commission was obliged to register the Cup Trust when it was established, but it does not have the means of investigating potential tax fraud, which must be the role of HMRC. Furthermore, the Commission has complained about limitations on its powers to deregister suspect charities. (Paragraph 20)

2. Charities should not be used as a tax avoidance vehicle. We welcome the Charity Commission’s statutory investigation into the Cup Trust. We recommend that the Commission follows this inquiry with a review of lessons learnt from this scandal. The Commission should specifically reconsider the legal advice it received on the status of the Cup Trust, and whether it was right not to take its concerns about the Cup Trust further. Having reviewed this case, if the Commission still feels that it was restricted in its legal abilities to prevent such organisations from obtaining charitable status, we would welcome its proposals for a change in the law on the criteria for registering as a charity. (Paragraph 21)

3. The objectives of the Charity Commission, as set out in the 2006 Act, are far too vague and aspirational in character (an all too frequent shortcoming of modern legislative drafting) to determine what the Charity Commission should do, given the limitations on its resources, to fulfil its statutory objectives. The 2006 Act represented an ambition which the Commission could never fulfil, even before the budget cuts were initiated. (Paragraph 22)

4. The Commission’s reduced budget means extra tasks, outside of its statutory objectives, are an unaffordable luxury, particularly as it has to use its precious resources to combat lobbying and legal pressure from some well-resourced organisations. Furthermore, by seeking to be an advice service to charities, the Commission also risks a conflict of interest: it cannot simultaneously maintain public trust in the charitable sector while also acting as a champion of charities and the charitable sector. The latter should be, as the Commission and Lord Hodgson have recommended, a role for the sector’s umbrella bodies and not its regulator. (Paragraph 23)

5. The Cabinet Office must consider how to prioritise what is expected of the Charity Commission, so that it can function with its reduced budget. This must enable it to renew its focus on regulation as its core task. The Commission is not resourced, for example, “to promote the effective use of charitable resources”, or for that matter, to oversee a reappraisal of what is meant by “public benefit”, nor is it ever likely to be. (Paragraph 24)

6. Abuse of charitable status to obtain tax relief is intolerable and should be uncovered by HMRC and the Charity Commission working more closely together. We
recommend that the Commission should prioritise the investigation of potential “sham” charities but the obligation to investigate and report tax fraud rests with HMRC, recognising that the Commission’s financial position will limit their own investigation. Ministers must decide whether they think it is necessary to have a proactive regulator of the charitable sector, and if so, the Government must increase the Commission’s budget and ask Parliament to clarify their powers. If funding cannot be found for the Commission to carry out such a role, ministers should be explicit that they accept that the regulatory role of the Commission will, by necessity, be limited. (Paragraph 25)

**Charges**

7. We do not support Lord Hodgson’s recommendation for the introduction of charges for the registration of new charities or the submission of annual returns. To do so would act as a block on the creation of new charities and the dynamism and charitable spirit of the volunteers working hard in their communities. It would be, quite simply, a tax on charities and charitable work. Furthermore, the Commission would also incur substantial administrative cost in a time of austerity, since it does not have the people and systems for invoicing and receiving payments from all 163,000 registered charities once per year. There would be something absurd about a system which would result in the Treasury giving tax relief to charities with one hand, and then clawing back from charities the money to fund the regulator, with the other hand. It is undesirable in principle that a regulatory body should be funded by those that it supervises. (Paragraph 32)

8. There is a case for charging charities for late returns to the Charity Commission. The cost of such a system would be much less than for a full-scale charging system and the income received would not constitute a conflict of interest. The failure to submit annual returns on time is a risk to public trust in the charitable sector and charging will promote increased transparency: members of the public wishing to make a charitable donation should have up-to-date information, proportionate to the size of that organisation, on the charity’s income and expenditure, in order to make an informed choice about their donation. (Paragraph 33)

9. We endorse Lord Hodgson’s recommendation that the Cabinet Office should work with the Charity Commission to develop a proportionate and flexible system of fines for late returns to the Commission. This is subject to the acceptance of our recommendation on joint registration in paragraph 51. (Paragraph 34)

**Registration**

10. In his review of the Charities Act 2006, Lord Hodgson proposed a rise in the threshold for compulsory registration with the Charity Commission to £25,000, to reduce red tape for smaller charities. We do not accept the premise that charity registration itself is a significant regulatory burden on charities, and believe that any benefits of raising the threshold would be outweighed by the potential impact on public trust in charities. (Paragraph 49)
11. In addition to his proposal to increase the compulsory registration threshold for charities, Lord Hodgson recommended a package of changes to the way charities are registered including the introduction of a voluntary registration with the regulator, for charities of any size. Such a move could foster the development of new charities, which would be boosted by the reputational benefits of registration, but the Charity Commission must carry out a feasibility study of the costs and benefits of such a voluntary registration scheme as the basis for any decision to proceed. Any extra resources required will have to be identified and provided for. (Paragraph 50)

12. The bureaucratic burden on charities could be more effectively reduced by addressing other issues facing charities rather than increasing the registration threshold, so we reiterate Lord Hodgson’s recommendation that charities which are also companies should not be required to file annual returns with both the Charity Commission and Companies House. There should be agreement between the Charity Commission and Companies House about what information is required from registered charitable companies in one place. Ministers should make this a priority, to facilitate cost savings for the Commission and for charities. (Paragraph 51)

13. We recognise the difficulties faced by charities operating across the separate countries, and charity jurisdictions, of the United Kingdom. While recognising that charity regulation is a devolved matter, we believe there would be benefits for charities in all parts of the country if a passporting system for charity regulation could be developed. The present system wastes the resources of both charities and taxpayers. If this proposals results in the convergence of conditions for the registration of charities across the UK, this would be welcomed by the sector. We call on the Cabinet Office and the Charity Commission, and the equivalent bodies in Scotland and Northern Ireland, to renew efforts to achieve this. While respecting the UK’s different jurisdictions, we expect ministers accountable to PASC to be proactive in this. (Paragraph 52)

Public Benefit

14. The legal disputes relating to the Charity Commission’s interpretation of “public benefit” and the Charities Act 2006 are complex and touch upon controversial and political questions concerning charitable status. This has also been a considerable financial burden on the Charity Commission and on the charities concerned, which is itself an injustice. (Paragraph 59)

Parliament, public benefit and the 2006 Act

15. We accept the case of the Charity Commission that there is a lack of certainty about religious charities and public benefit in the 2006 Charities Act. This ambiguity suggests that it is reasonable to examine the Official Report for a consideration of the ministerial intent behind the statute. (Paragraph 64)
The charitable status of the Plymouth Brethren (or Exclusive Brethren)

16. Parliament should be under no illusion about the scale of the task it presented to the Charity Commission when it passed the Charities Act 2006, which required the Commission to produce public benefit guidance without specifically defining “public benefit”. This has had the effect of inviting the Commission to become involved in matters such as the charitable status of independent schools which has long been a matter of party political controversy. (Paragraph 85)

17. In our view, it is for Parliament to resolve the issues of the criteria for charitable status and public benefit, not the Charity Commission, which is a branch of the executive. In this respect the Charities Act 2006 has been an administrative and financial disaster for the Charity Commission and for the charities involved, absorbing vast amounts of energy and commitment, as well as money. (Paragraph 86)

18. We are far from happy with the manner in which the Charity Commission has conducted policy concerning public benefit. We have, however, received clear advice from the Attorney General that it is not Parliament’s role to make decisions on the charitable status of particular organisations (see appendix A). We will not therefore prejudge the Tribunal decision in the case of the Preston Down Trust, part of the Plymouth Brethren (or Exclusive Brethren). For the purposes of this Report, we are therefore treating the Preston Down case as sub judice and will not make a substantive comment on the Commission’s decision, until any judicial proceedings on the case have been concluded. (Paragraph 87)

A statutory definition of public benefit?

19. The Charity Commission’s evidence argued that there was a “lack of certainty as to the law relating to the public benefit requirement for the advancement of religion” since the passing of the Charities Act 2006. This lack of certainty, and the Commission’s interpretation of the Act, have led to the questioning of the charitable status of independent schools and the Plymouth Brethren Christian Church (or Exclusive Brethren) and concerns over the wider impact on faith charities. (Paragraph 91)

20. In its approach to the question of public benefit, the Charity Commission chose not to rely on previous jurisprudence, as it could be argued Parliament intended, in the light of the vacuum of definition left by the Act. Ultimately the Charities Act 2006 is critically flawed on the question of public benefit and should be revisited by Parliament. (Paragraph 92)

21. We recommend that the removal of the presumption of public benefit in the 2006 Charities Act be repealed, along with the Charity Commission’s statutory public benefit objective. This would ensure that no transient Government could introduce what amounts to substantive changes in charity law without Parliament’s explicit consent. If the Government wishes there to be new conditions for what constitutes a charity and qualifies for tax relief, it should bring forward legislation, not leave it to the discretion of the Charity Commission and the courts. (Paragraph 93)
The Charity Tribunal

22. The Charity Commission’s reliance on the Charity Tribunal to resolve contentious areas of the law means, in practice, that some of the cost of regulating the sector falls on the particular charities concerned, taking away vital funds that could be used to fulfil their charitable objectives. This amounts to an abdication of responsibility by the Charity Commission, and an expensive, time-consuming and unjust way to test the law. (Paragraph 100)

23. The present policy for determining questions of public benefit has proved disastrous in terms of the time and commitment of the Charity Commission and the charities involved. It must also be noted that the tribunal system, has failed in its objectives to reduce the cost of disputes. The Commission should devise informal dispute resolution procedures and should not use the tribunal system as a means of determining the law, except as a last resort. (Paragraph 101)

A charity ombudsman?

24. We heard worrying testimony from people with complaints about the way charities have treated them, as employees, trustees or volunteers. The sector must recognise the risk to the reputation of charities as a whole from such complaints, and must take responsibility for resolving these matters, through internal complaints mechanisms and independent appeal processes. We agree with Lord Hodgson that, while superficially attractive, the costs of a charity ombudsman should not fall upon the Government or the regulator, and should be borne by the sector itself. (Paragraph 108)

Fundraising

25. We appreciate the very significant levels of public concern about face-to-face fundraising, or “chugging”. Many members of the public report that they feel pressured by chuggers and businesses warn of the nuisance caused to their customers and obstruction on the streets. It is clear that self-regulation has failed so far to generate the level of public confidence which is essential to the success of the system and the reputation of the charitable sector. (Paragraph 117)

26. The case for statutory regulation of fundraising is compelling, but this must be balanced against the significant cost, whether to the public purse, or to charities themselves. We also note the progress made by the self-regulatory bodies—the Fundraising Standards Board (FRSB), the Public Fundraising Regulatory Association and the Institute of Fundraising—in clarifying where responsibilities lie, and the response they have shown to the companies which have been shown to harass and pressure potential donors. With this in mind, we recommend to the Cabinet Office that the self-regulation system remains in place but is placed on notice, as recommended by Lord Hodgson, with progress reviewed in five years’ time. The self-regulatory bodies must act with urgency to increase membership of the FRSB, improve compliance with its code, and strengthen public awareness of the complaints system. The Charity Commission should do more to promote the self-regulatory system as part of its statutory duty to increase public trust and confidence
in charities. There should be no complacency from the charity sector about the need to rebuild public confidence in charity fundraising. Should statutory regulation become necessary, the cost should be borne by the charities themselves, and should focus on the solicitation of direct debit collections. Some means of excluding traditional “street collections”, such as those by the Royal British Legion, the Royal National Lifeboat Institution, and local hospices, should be found. (Paragraph 118)

**House-to-house collections**

27. We share the view of many of the charities that submitted evidence to us that Lord Hodgson’s proposal to abolish National Exemption Orders is not the way to improve the legislation relating to house-to-house charitable collections. While it was made with the intention of deregulation and supporting smaller charities, it is unlikely to have this effect in practice, and would increase the administrative costs of larger charities. Such a move would reduce the charitable funds available to such organisations and would therefore be unwise. (Paragraph 123)

**Payment of trustees**

28. We endorse the Government’s rejection of the recommendation that large charities should have the automatic right to pay trustees. We were not convinced by the call by the Association for Chief Executives of Voluntary Organisations that such a measure would be either necessary or desirable. Indeed, we share the view of the overwhelming majority of our evidence, expressed with passion in some cases, that it would undermine the voluntary principle central to the whole ethos of the charitable sector. It is clear that in a few, exceptional, cases, trustee payment is appropriate, for example when being a trustee is incompatible with full-time employment. Our evidence suggested, however, that such cases are adequately and appropriately provided for within the current rules and we are not persuaded of the arguments for change. (Paragraph 129)

**Political campaigning and independence**

29. We heard conflicting evidence on whether the restrictions on political campaigning by charities should be tightened or relaxed. Neither side made a compelling case. We note that the Charity Commission’s figures show that there are few cases of inappropriate political activity by charities. Consequently, we do not recommend any changes to the rules on political campaigning by charities. (Paragraph 142)

30. We recommend that the Liaison Committee considers the issue of transparency by select committee witnesses who appear to be independent commentators but may be lobbying for vested interests. (Paragraph 143)

31. We do support greater transparency by charities. Charities should be more transparent about their political and campaigning activities. Clear information about how much a charity spends on political and campaigning activity would enable members of the public to make an informed choice about whether to donate based on an understanding of how an organisation would use their donation. We recommend that the Charity Commission requires charities to declare in their
annual returns how much of their spending has gone on political and communications work. We also recommend that the Charity Commission requires charities above the current registration threshold to declare on their annual returns how much of their income in the previous year was received from public or government sources in either i) grant income or ii) other forms of remuneration, and how much was received in the form of private donations. (Paragraph 144)

32. On the separate issue of whether public funds should be used to fund charities involved with political campaigns, this is a matter for Parliament and its oversight of public spending. We recommend that ministers should make a written statement to Parliament whenever a decision is made to provide government support by direct grant to a charity which is involved in political campaigning. (Paragraph 145)

The charitable status of think tanks

33. While think tanks may not fit the typical image of a charity, we accept that, as organisations for the furthering of education, they have a place inside our charity sector, provided they are established for a charitable purpose and for the public benefit. Think tanks such as the Smith Institute and Atlantic Bridge failed to maintain the correct balance between political activity and neutrality as required from think tanks with charitable status, though we are concerned by an apparent lack of consistency in the application of rules to this sector. The high profile of these cases, and the potential impact on trust in the charitable sector as a whole, means that it is crucial for the Charity Commission to regulate such bodies in a fair, consistent and proportionate manner. The Charity Commission’s review of the handling of applications for charitable status from think tanks must demonstrate objectivity and impartiality, which is necessary to maintain public trust in the charity sector as a whole. (Paragraph 156)

Conclusion

34. The landscape of charity law is complex and inconsistent, developed in a piecemeal fashion through centuries of case law and legislation, but which nevertheless represents a delicate and uneasy consensus amongst charities and those with an interest in the sector. The 2006 Act was a much-needed piece of legislation, but while generally welcomed by the sector, it indicated a continuation of the complexity of charity law, rather than radical change or simplification. The Charity Commission interpretation of “public benefit” has been disruptive; though the 2006 Act left ambiguity and the Commission with an obligation to provide definition in guidance but little indication about how it should interpret an unreasonable degree of latitude. (Paragraph 162)

35. Parliament must legislate to clarify the flawed legislation on the question of charities and public benefit. (Paragraph 163)

36. Lord Hodgson has suggested that, in some ways, the 2006 Act represented a “missed opportunity” to deregulate more. We would go further and suggest that the Act, while reflecting the political climate of the time, does not equip the regulator or the Cabinet Office with the tools to address the changes in the sector that have occurred
in the relatively short space of time since the Act was passed: the reductions in public spending, and consequently in charitable income; the growth of non-charitable organisations, such as social enterprises; and a new focus on the delivery of public services by charities. (Paragraph 164)

37. We trust that the Government will accept our recommendations, which have been made with the objective of increasing public trust in charities, while reflecting this changed economic and political climate. (Paragraph 165)
Annex

Legal summaries from our specialist adviser, Dr Jonathan Garton, are below:

**Educational charities and public benefit**

Like all charities other than those that prevent or relieve poverty, educational charities must ensure that a sufficient section of the public is eligible to benefit from their charitable purposes. This means, among other things, that the potential beneficiaries cannot be numerically negligible, or limited to a private class, such as family members or the employees of a company. There is also case law holding that the benefits of a charity cannot be restricted to the rich. In *R (Independent Schools Council) v Charity Commission of England v Wales* [2011] UKUT 421 (TCC) the Upper Tribunal held that in order for an independent school to be charitable it must not exclude the poor from its benefits. This does not mean that such a school cannot charge tuition fees, but if these are so high as to effectively exclude the poor then the school must take more than minimal steps to counter this, for example through the provision of means-tested bursaries. The Tribunal held that the Charity Commission must not be prescriptive about how an individual school ensures that it does not exclude the poor, as this is a matter for the trustees’ discretion.

**Religious charities and public benefit**

Like any other charity, a religious charity must benefit a sufficient section of the community. According to the House of Lords in *Gilmour v Coats* [1949] AC 426 a cloistered religious order is not charitable as any benefit is restricted to its members, who are a private class and not a sufficient section of the public. It is no argument that the pious acts carried on by a closed order provide a spiritual benefit to public, as charitable status requires that an organisation’s benefits are of a kind capable of being evidenced in court.

A private religious group that is not wholly shut off from the world at large may be charitable, despite the fact that it provides benefit for its members, if there is sufficient public benefit in its endeavours. This will depend on the facts of each individual case, but in some cases the courts have held that it is sufficient for the members of a group to mix with the wider world (*Neville Estates v Madden* [1962] Ch 832) or for the group take in and care for members of the public (*Re Banfield* [1968] 1 WLR 846).
Charities and political campaigning

Under the current law a charity may not have a political purpose. This means not only that a purpose which seeks to advance political ideas or promote a particular political party cannot be charitable, and also that an otherwise charitable purpose, such as the relief of poverty or the advancement of education, cannot have a political goal or be implemented by primarily political means. However, a charity may carry on limited political activity so long as this is ancillary to, and in furtherance of, its charitable purposes. In *Bowman v Secular Society* [1917] AC 406 the House of Lords gave three reasons for this rule. Firstly, the court is unable to judge the public benefit of a change in the law. Secondly, if it were to do so, this would usurp the role of Parliament. Lastly, it would be undesirable for the Attorney-General, whose role includes enforcing charitable trusts, to be required to take steps to enforce a political trust with objects that the government considers to be detrimental to the state. These reasons were confirmed by the House of Lords in *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31. By comparison, the High Court of Australia has held that in that jurisdiction, which takes its definition of charity from the English common law, there is no prohibition on political purposes. In *Aid / Watch Inc v Federal Commissioner of Taxation* [2010] HCA 42, the court held that the ‘encouragement of public debate’ on matters otherwise falling under a charitable purpose is itself charitable, on the basis that this is of benefit to Australian society.
Appendix A

Letter from Attorney General to Chair of PASC, dated 6th January 2013

I write in response to your letter of 21st December.

You seek my advice in relation to a question arising from the Charity Commission’s decision not to grant charitable status to the Preston Down Trust (PDT), a Brethren meeting hall. The PDT is currently challenging that decision before the First-tier Tribunal (Charity).

In particular, you write to me because the Public Administration Select Committee (PASC) has been invited to give an opinion as to whether or not the Charity Commission’s decision is correct. You seek my view as to whether it would be proper for the PASC to address the merits of the case and the Charity Commission’s decision, when there is a pending case before the Tribunal on that very issue.

To the extent that cases pending decision before the First-tier Tribunal may not be strictly sub judice (because the Tribunal is not, in terms, a court), I think it is nevertheless important to recall the rationale behind the sub judice rule.

The Joint Committee on Parliamentary Privilege in its report in 1999 (the report that recommended the passing of the sub judice rule in its current terms) concluded that:

“191. The present rule rightly tries to strike a balance between two sets of principles. On the one hand, the rights of parties in legal proceedings should not be prejudiced by discussion of their case in Parliament, and Parliament should not prevent the courts from exercising their functions. On the other hand, Parliament has a constitutional right to discuss any matters it pleases.

192. It is important that a debate, a Committee hearing, or any other parliamentary proceeding should not prejudice a fair trial, especially a criminal trial. But it is not only a question of prejudicing a fair trial. Parliament is in a particularly authoritative position and its proceedings attract much publicity. The proper relationship between Parliament and the courts requires that the courts should be left to get on with their work. No matter how great the pressure at times from interest groups or constituents, Parliament should not permit itself to appear as an alternative forum for canvassing the rights and wrongs of issues being considered by the judicial arm of the state on evidence yet to be presented and tested.”

I note, in particular, the Joint Committee’s conclusion that the “proper relationship between Parliament and the courts requires that the courts should be left to get on with their work”.

That principle must apply equally—in my view—to proceedings that are pending before the First-tier Tribunal as it does to proceedings that are pending before a court. In the circumstances, I do not consider that it would be proper for the PASC to address and report on the merits of the Charity Commission’s decision in relation to PDT while there are ongoing tribunal proceedings where that same issue falls to be determined.
If it would be helpful to discuss this matter further, then please do let me know.

A copy of this letter goes to Michael Carpenter, Speaker’s Counsel.

**Letter from Attorney General to Chair of PASC, dated 19th March 2013**

Thank you for your email. The stay in the proceedings does not alter my advice at this stage. It is not yet clear whether discussions between the Charity Commission and the Preston Down Trust will lead to a settlement between the parties and the possibility therefore remains that the case will be heard by the Charity Tribunal. Against that backdrop, the difficulties with Parliament discussing the case before it has been resolved still remain.
Appendix B

Written evidence submitted by Garth Christie

I had the recent privilege of representing the Plymouth Brethren Christian Church before the Public Administration Select Committee in relation to the topic of ’Regulation of the Charitable Sector and the Charities Act 2006’.

During the course of this committee hearing I made an error in my statement to you. I unreservedly apologise for this.

I quoted Kenneth Dibble of the Charity Commission and repeated wording that he had used in his letter of refusal to register the Preston Down Trust as a charity and also repeated what he had said earlier in his appearance before the PASC. Whilst the quotations were correct, I repeated them in such a way that gave the impression that they were stated at the same time. This is clearly not the case.

The mistake was entirely inadvertent and a result of notes which I should have better prepared! Nevertheless I apologise fully for this error and for any confusion it may have caused.

My quotation has been corrected in the transcript of oral evidence notes.
Formal Minutes

Tuesday 21 May 2013

Members present:

Mr Bernard Jenkin, in the Chair

Paul Flynn  Greg Mulholland
Robert Halfon  Mr Steve Reed
Kelvin Hopkins  Lindsay Roy

Draft Report (The role of the Charity Commission and "public benefit": Post-legislative scrutiny of the Charities Act 2006), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 165 read and agreed to.

Annex and Summary agreed to.

Two papers were appended to the Report as Appendices.

Resolved, That the Report be the Third 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 ordered to be reported to the House for printing on 16 and 23 October, 6, 13 and 20 November, 4 and 18 December 2012, 22 January, 12 February and 13 May, was ordered to be reported to the House for printing with the Report.

[Adjourned till Tuesday 4 June at 9.15am]
Witnesses

Tuesday 16 October 2012

Lord Hodgson of Astley Abbots CBE  Ev 1

Tuesday 23 October 2012

Sir Stuart Etherington, Chief Executive, National Council for Voluntary Organisations, Sir Stephen Bubb, Chief Executive, Association of Chief Executive Voluntary Organisations, Cath Lee, Chief Executive, Small Charities Coalition and Joe Irvin, Chief Executive, National Association Voluntary and Community Action  Ev 11

Peter Lewis, Chief Executive, Institute of Fundraising, Alistair McLean, Chief Executive, Fundraising Standards Board and Sally de la Bedoyere, Chief Executive, Public Fundraising Regulatory Association  Ev 23

Tuesday 30 October 2012

Matthew Burgess, General Secretary, Independent Schools Council, Francesca Quint, barrister, Radcliffe Chambers and Philip Kirkpatrick, Partner, Bates Wells & Braithwaite  Ev 28

Garth Christie, Bruce Hazell, Elders, Plymouth Brethren Christian Church and Nicola Evans, Senior Associate, Bircham Dyson Bell  Ev 38

Tuesday 6 November 2012

Susan Pascoe AM, Commissioner Designate, Australian charities and Not-for-profits Commission Taskforce and Murray Baird, Assistant Commissioner, Australian Charities and Not-for-profits Commission Taskforce  Ev 47

Tuesday 27 November 2012

Christopher Snowdon, Research Fellow, Institute for Economic Affairs and Paul Hackett, Director, Smith Institute  Ev 57

Tuesday 4 December 2012

William Shawcross CVO, Chair, Charity Commission and Sam Younger CBE, Chief Executive, Charity Commission  Ev 71

Nick Hurd MP, Minister for Civil Society, Cabinet Office  Ev 83
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First Report
Communicating statistics: not just true but also fair
HC 190

Second Report
Public engagement in policy-making
HC 75

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Leadership of change: new arrangements for the roles of the Head of the Civil Service and the Cabinet Secretary: Further Report: Government Response to the Committee’s Twenty Third Report of Session 2010-12
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Strategic thinking in Government: without National Strategy, can viable Government strategy emerge? Government Response to the Committee’s Twenty Fourth Report of Session 2010-12
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The Role of the Cabinet Secretary and the Resignation of the Chief Whip: Government Response to the Committee’s Eighth Report of Session 2012-13
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Oral evidence

Taken before the Public Administration Committee
on Tuesday 16 October 2012

Members present:
Mr Bernard Jenkin (Chair)
Charlie Elphicke
David Heyes
Greg Mulholland
Lindsay Roy

Examination of Witness

Witness: Lord Hodgson of Astley Abbotts gave evidence.

Q1 Chair: Welcome, Lord Hodgson, to this first evidence session on the three-yearly review of the Charities Act. Just for the record, could you identify yourself, please?

Q2 Chair: First, may I place on record this Committee’s thanks for the extraordinarily diligent way you have conducted this review, though we have plenty of questions about it? If I may, I will start straight away. Do you think the Charities Act has achieved its objectives?

Powell, Lord: Lord Hodgson of Astley Abbotts: I think, broadly, yes it has. Without wishing to duck your question, it might be right for me to declare some interests before. Would that be appropriate?

Chair: Certainly. You may want to make an opening statement as well.

Chair: Lord Hodgson of Astley Abbotts: Would that be possible?

Powell, Lord: Chair: It’s perfectly alright.

Powell, Lord: Chair: Lord Hodgson of Astley Abbotts: I think it might be helpful for the Committee. First of all, the Committee needs to be aware that I am President of the National Council of Voluntary Organisations (NCVO). I will be handing over later this week to Tanni Grey-Thompson; my five-year term has expired. I remain the Chairman of the Armed Forces Charities Advisory Committee, rather inelegantly called AFCAC. The Committee also ought to be aware that I was the Conservative Party’s front-bench shadow spokesman, taking the 2006 Act through the House of Lords. The bill was a “Lords starter” and that was when I first became involved with charities legislation. I think that should be on the record, so that people at least know which side of the political divide I stand.

Fast forward then to 2010, when I was asked by the Cabinet Office to undertake a review of the issues that affected the charity and voluntary sector. We produced a report called “Unshackling Good Neighbours”, which sought to answer the question about what stopped people giving time—volunteering—what stopped them giving money and what stopped charities and voluntary groups growing. The information that we gathered from that did inform the background to the work we undertook in the review of the Charities Act.

As far as that is concerned, I was very anxious when we did that work that we did not find ourselves confined to within the M25. The usual suspects within the M25 are able to access, Chairman, your Committee and the media very successfully, but I wanted to find out what was going on with the thousands of charities out in the provinces. We had what I call a “round-Britain quiz”, in which we had a series of meetings outside London to try to find out what was going on and encourage, as far as possible, as wide a range of charities to deal with, answer and give evidence to our review.

As the reviewer, I stand by the review but I must place on record my thanks to the Cabinet Office team who helped me, led by Ben Harrison—and also my home team, Stephen Lloyd, the senior partner at Bates Wells & Braithwaite, the big charity solicitors, and Antonia Cox. We produced the report; it was 150 pages and 110 recommendations. I think it is now out to consultation. There are issues, of course, that I am sure you will wish to raise with me.

Just one final issue I will lay before you: when you undertake a review of charities, you find, as you might expect, very quickly, it is not just about money and law. It is about emotion. People support charities because they believe in them and, therefore, there is quite a bit of passion in the way they look at regulation and the organisation of charities. Therefore, in order to avoid having a situation in which we dived into the detail too quickly, I tried to lay out some principles which are in the report—the stars by which I steered the good ship Charity Review. There are seven of them and I will not go through them, because it would take too long, but there are three that I would just like to draw to the Committee’s attention.

The first is the emphasis on judgment not process. We should be doing what we can to encourage people involved in charities, whether as trustees, workers or supporters, to use their judgment and not rely on ticking the box.

Secondly, charitable status must be a privilege, not a right. If you wish to freely associate and carry out good works on your own, of course that is an absolutely essential part of our society; but if you wish to get a charity number, which gives you access to certain benefits—the ability to get government contracts, local or national, get grants from
grant-giving foundations, greater facilities with Gift Aid and also the wraparound of the charity “brand”—
that means that society is giving you something. Society is therefore entitled to ask whether you are using those particular benefits appropriately and properly. There is quite a bit of evidence of moribund or semi-moribund charities, whose assets could possibly be usefully recycled.

Thirdly and lastly, the voluntary principle is at the heart of the charitable endeavour. I believe there is a big question coming up, which we will need to address somewhere in Parliament over the next few years. The Committee may not be aware that there are charities that have no volunteers in at all. There are charities that never raise a penny from the public; it all comes from the government, at local or national level. There are obviously charities that charge fees. We know well about that. There are charities that raise a great deal of money by selling other products, such as insurance and so forth, under their brand. There are charities that are quite unusual. The Committee may or may not be aware that the largest charity by revenue is the British Council. Now, in the saloon bar of the Dog and Duck, I don’t think they would think that the British Council was a charity. I am not saying it shouldn’t be; I am making no value judgment. I am just suggesting, Chairman, that at some point in the future, we ought to be trying to increase the social value of the Dog and Duck of charities, about volunteers rattling the tin collecting coins, and what is now actually happening, is quite diverse. Thank you very much.

Q3 Chair: Thank you. Thank you for your 110 recommendations, which, I have to say, is quite a lot of recommendations. Some of your recommendations are, dare I say, a little bit “motherhood and apple pie”. Which do you feel most passionately about? If you were to pick five, what do you think are the most important recommendations you have made?

Lord Hodgson of Astley Abbotts: I would like the Government to amend the Trustee Act to differentiate between the duties imposed on a trustee of an ordinary trust and a charitable trust. At the moment, there is no differentiation between the two. If you are running an ordinary trust, say a pension fund, preservation of capital is absolutely essential, because that is what is going to pay the pensions, but, if you are a charity, you may wish to use some of your permanent endowment to further your charitable objectives. I am quite robust about the need to raise the thresholds, though that recommendation has not been approved, either by the Charity Commission or by NCVO. I believe we should be facilitating the social investment. It is very complicated, very difficult and we ought to be trying to increase the social investments and the ability of people to make them. Those would be my top three, Chairman.

Q4 Chair: Are those the ones that you think that the Government should prioritise?

Lord Hodgson of Astley Abbotts: Yes.

Q5 Chair: Which do you fear will not be implemented?

Lord Hodgson of Astley Abbotts: It looks as though I have had the black spot from the Charity Commission on raising the thresholds. The reason I believe the thresholds should be raised is that they are a package. It is important to understand that they are a package. The compulsory threshold should be raised to £25,000 from £5,000. I should say that, in 2002, the Cabinet Office report, “Private Action, Public Benefit”, recommended £10,000, so we are still half of what was recommended by the Cabinet Office review for the Labour Government 10 years ago. It should be £25,000. You should have to register if you apply for Gift Aid. If you are a Charity applying for Gift Aid, you should appear on the Charity Commission website.

In parallel to that, we should open up so that any charity of any size may register online. At present, you cannot register if you are below £5,000. That seems to me to be wrong. You say you do not have to register until you reach £25,000, unless you are using Gift Aid, but anybody may register at any level online. In parallel to that, those charities that are below £25,000 should have in front of their charity number the word ‘small’. It is not a value judgment—I am not trying to say they are bad—but the public should have it drawn to their attention that they are small and, therefore, as such, they are more vulnerable and the public should be aware of that in choosing whether to give money to them. It is a package, not just raising the threshold. In a way, I do not think what the Charity Commission has said has fully reflected that. I do not think they understand the nature of the package. Like most regulators, they talk about deregulation, but when it actually comes to giving away power and influence, they do not quite like it so much.

Q6 Chair: You talked briefly about the role of charities and wider society. If you had more time to look in depth at this subject, what would you be thinking about the very large number of organisations out there that are not charities, or not registered charities, but are public benefit organisations of one sort or another?

Lord Hodgson of Astley Abbotts: There are two major areas. One is the excepted charities, which have historically been primarily faith-oriented, but may also be Scouts, Guides and those sorts of organisations. My recommendation is that they should gradually be brought within the net. That is to say they only have to register now if they have over £100,000 annual income, but that should be gradually brought down a series of steps to £25,000. Therefore, they would then fall within the arrangements that exist for all charities.

As far as exempt charities are concerned, where there is another regulator, the title principal regulator can be misleading. The Higher Education Funding Council, which looks after the charitable status of English universities—not Welsh ones, but English ones—is a funding body and does perfectly well but to call it the principal regulator seems to me to be misleading. One wants to try to introduce the idea of co-regulation, which is the title I have suggested, but again I don’t
think the Charity Commission likes that much. We need to make it clear that this is a charitable role and that, where you have a Government Department or quasi-Government Department carrying out the regulation, that needs to be made clear.

Q7 Greg Mulholland: Lord Hodgson, taking you directly to points about the £25,000 increase of the threshold, you are aware that that has met with some quite strong criticism from certain quarters. Debra Allcock Tyler, the Chief Executive of the Directory of Social Change, said it would be “disastrous for small charities and not in the public interest”.

Lord Hodgson of Astley Abbotts: That is because she doesn’t understand what I am saying.

Greg Mulholland: Let me finish my question, please. Also Pauline Broomhead, Chief Executive of the Foundation for Social Improvement, said, “Small charities need the same levels of scrutiny to be on them in order to maintain public trust.” Considering the concern there, obviously you believe this is something that is there to assist small charities, but that is clearly not being understood. Why do you think it is not being understood and how would you justify the recommendation?

Lord Hodgson of Astley Abbotts: I don’t think it is being understood, because I don’t think people understand the package. As I tried to explain, it is a series of issues that need to be bound together. I believe the right of any charity to be able to register and get a charity number, although it has to be done online for reasons of economy, actually facilitates the growth of small charities, because the very smallest charities cannot now register. I do not think that people have taken in, as I say, the wraparound that I intend to have happen.

Implicit in your question is the question of supervision. There are 160,000 registered charities and, if you assume it is a 250-day working year, allowing for Saturdays, Sundays and some Bank Holidays, that means that to have supervision 750 sets of accounts to be examined every working day. If we follow the Chairman’s wish to bring in the excepted charities, we will have double that number. There is no body that is going to be able to give a degree of supervision for 750 sets of accounts a day, let alone 1,500 sets of accounts a day. What is happening at the moment is there is a belief among the public that the charity number somehow represents a stamp. The Charity Commission cannot possibly, would never be able, to supervise, in the sense that your question implied, that number of charities. We have to accept that the Charity Commission looks at things that are brought to their attention, and indeed one of my proposals for what I call the “traffic light system” was to try to draw attention to some of the areas that might justify the Charity Commission having a look.

Q8 Greg Mulholland: You gave a figure there. Do you know what percentage of charities currently registered fall below the £25,000 threshold? Do you have any idea or sense of how many may seek to de-register?

Lord Hodgson of Astley Abbotts: I think very few will. The overwhelming result will be charities below £5,000 revenue rushing to register. My package, in which if you are unregistered you would have to say you are unregistered, actually provides the right answer. It will actually shine more light on the lower end of the charity sector than is able to be done under the current regulatory structure.

Q9 Greg Mulholland: An obvious question then is the figure I do have is 43% currently registered have an income of less than £10,000. Presumably well over half fall below this figure.

Lord Hodgson of Astley Abbotts: Huge.

Greg Mulholland: Considering the financial pressure that we are all well aware the Charity Commission is under, do you believe this is going to increase or decrease their workload, and will they be able to manage if there are, as you suggested, increased numbers of registrations under £5,000?

Lord Hodgson of Astley Abbotts: The financial pressures they face are well identified and well known, but they already have substantial pressures coming up, because we have the CIO, the Charitable Incorporated Organisation, which was due—it has been a long time coming this—after the 2006 Act. It was due in February. It was due in May and I am now told it is due in November. That will give rise to a series of pressures on the Charity Commission. All of this will have to be phased in over a period of years. This is not something you are going to do tomorrow; you are going to do it by a series of steps, probably over four or five years. It has to be done online. More and more will have to be done online, with people accessing information via the Charity Commission website.

Q10 Greg Mulholland: One related issue here, which I am sure you would recognise, is that the provision in the 2006 Act for voluntary registration has not been implemented. Why do you think that is and does that not ring alarm bells, considering your recommendation to allow charities of all sizes to go on the register?

Lord Hodgson of Astley Abbotts: I think that was wrong. I think it should have been implemented. That is exactly what I am trying to get at. I am trying to say any charity should be able to register, so long as it does so online. That should provide the Charity Commission and the public with more information, because more charities are registered and, where they are not registered, they will have to say so on their letterhead. It will actually encourage further transparency at the lower end of the charity sector which, as you pointed out with your statistics, is a very big one.

Q11 Greg Mulholland: Finally, going back to the issue of resources—and I do not have the numbers of charities under £5,000 at the moment—do you think there could be a serious problem if that was brought in, in terms of resourcing? Do you think the Charity Commission would need extra resources to deal with that?
Lord Hodgson of Astley Abbotts: My review did not actually examine the financial viability or the operational efficiency of the Charity Commission. That was not part of my terms of reference. Clearly, the issue of its budget being cut from £30 million to £20 million has caused some stresses and strains. How much that can be offset by operational efficiency and greater use of, say, online facilities I suspect is a question for the new Chairman of the Charity Commission, rather than me. If you think what Companies House can do and you think very laterally, could the Charity Commission use some of Companies House’s facilities, where they process hundreds of thousands of pieces of documentation every year? Is there some way that they could collaborate to their greater mutual benefit? One of the things that I have strongly recommended and made absolutely no progress on is the fact that, if you are a charitable company, you have to make two separate returns—one to the Charity Commission and one to Companies House. There are 35,000 charitable companies. It should not be beyond the wit of man to create a form that serves both organisations.

Greg Mulholland: That is something we may take up with the Charity Commission.

Lord Hodgson of Astley Abbotts: And Companies House.

Q12 Chair: Thank you for that very helpful suggestion. Basically, you think the opposition to this package of measures really arises from fear of change and lack of imagination.

Lord Hodgson of Astley Abbotts: Those would be your words. I couldn’t possibly say anything about the sector that I have written I think is brilliant.

Chair: We will move on to payment of trustees.

Q13 David Heyes: This has also been controversial. Your recommendation was to give an automatic right to pay trustees to the largest charities. If it is right for the largest charities, why not for all?

Lord Hodgson of Astley Abbotts: This is a piece of philosophy in which you will have heard Sir Stephen Bubb from ACEVO say we should pay trustees and you will have heard Sir Stuart Etherington from NCEO say we should not. My view was this: that a £1 million revenue charity is a big-ish business and the trustees should have the good sense and good judgment—this is part of judgment, not process—to say, “I need to pay my trustees to get the right people.” At the lower level, if you are talking about a £10,000 or £12,000 charity, in my proposal below the £25,000, then clearly there is a danger of you and I, as trustees of such a charity, saying, “It would be very nice to be paid a fee; why don’t we pay ourselves £500 for our work?” This may represent quite a significant proportion of the income of our charity. The temptations might be there. I am saying the smaller charities should still have to make that application, for reasons of conflict and of maintenance of public confidence, but in the big charities I can pay you for your services as a chartered accountant at going rates. I can pay you for your services as a chartered surveyor at going rates, but I cannot pay you for your services as a general manager. That seems to me to be counterintuitive, because what these big charities need is general management, as well as specific professional advice.

Q14 David Heyes: The ability to pay exists already, with the permission of the Charity Commission, so what is wrong with that system? Why does it need to change?

Lord Hodgson of Astley Abbotts: I am trying to be deregulatory. I am trying to increase the emphasis on judgment that trustees use. If a trustee of a £1 million charity does not have the judgment as to whether he or she needs to pay their trustees, then that is disappointing. They are big businesses and they need the best people.

Q15 David Heyes: Is there not a risk in this that introducing that system of payment is going to pull the most capable and committed trustees towards larger charities?

Lord Hodgson of Astley Abbotts: Let me just say one more thing about payment of trustees. In the Ipsos MORI research that we did, it was interesting how the readiness to allow the payment of trustees was in inverse proportion to your age. The younger the person questioned, the more willing they were to see trustees paid. The older the person, the less willing they were. There is a generational shift taking place, at least in public opinion. I am trying to look forward as to how things are developing but, all the time, I am trying to say where one can, one should rely on the good sense and judgment of trustees, and instead of trying to think of the cases where things could go wrong, accept that there will be mistakes. Of course there will be mistakes—we are a big sector—but we are trying to find ways to free people up, to use their judgment and not to have to go to the Charity Commission to say, “May we pay our trustees?” Make that judgment and stick by it.

Q16 Lindsay Roy: Lord Hodgson, you will be familiar with the term ‘chugging’. It remains a problem for the charitable sector, and sometimes fundraisers have overtly misled the public and broken the code of conduct. Two thirds of the public say that some fundraising methods used by charities makes them feel uncomfortable. Your answer is self-regulation, so what have you done to promote more robust self-regulation?

Lord Hodgson of Astley Abbotts: Can I just briefly lay out the challenge? It may be helpful if you think about it in terms of a vertical and horizontal axis. The vertical axis is the sorts of charities that go fundraising and the horizontal axis is the way they raise funds. The top category is national charities raising money. They raise money in three ways. They raise money permanently, all the time, by continuous fundraising. They raise money episodically but regularly episodically by which I mean Poppy Day, as the classic example. They raise money episodically but periodically, depending on events such as the Darfur famine, Pakistani flood relief and so on. You have those national charities wishing to meet those three particular points. Then second you will have your respected local charity. Your constituency may well
have a hospice in it, which raises money, but only wants to raise money locally. Finally, you have Mrs Jones, 27 Acacia Avenue, and she is raising money to repair the parish hall roof or to put some money in the youth club. Everybody knows Mrs Jones; everybody knows she is a good person; everybody knows it is a worthwhile cause. That is what you have to cover—that spectrum.

Along the horizontal access, you have face-to-face-run fundraising in the street, face-to-face fundraising door-to-door, internet, email and telephone. When you have that schematic, you have the local authorities that want to have power over the way fundraising operates in their area. Then you have a piece of legislation from 1916 that covers one part and a piece of legislation from 1939 that covers another. Finally, when you put all this pressure on the charity sector, you have commercial collectors that find there are no regulations at all. If you wish to go and collect clothing door-to-door, for your own benefit, you are not regulated in the least. To design a silver bullet that is going to hit all those targets is quite tricky. I believe that, in order to achieve that necessary flexibility, self-regulation has to be the best answer.

What is the drawback so far? The drawback so far is that the sector will not agree on where the problems are. The chuggers blame direct mail. Direct mail blames door-to-door collectors and so on. Chuggers is an issue that obviously concerns people, but there are more complaints about direct mail than about chugging. I have said to the three major bodies, the Institute of Fundraising, the Fundraising Standards Board and the PFRA, which does the licensing of sites with local authorities, that they need to get together and agree a united front, so that you and I have a telephone number or an address to which we can send our complaints. At the same time we know not only that they are reacting to our complaints, but there is some mystery shopping going on at points of stress. Upper Street in Islington is a place where the footfall is very great and chuggers congregate—so somebody must go up there and test, allowing themselves to be used by the chuggers to see if they are behaving appropriately and are not hassling the public, because, Chairman, what we have to do is balance the right of the charity to ask with the right of the public not to be hassled.

Q17 Lindsay Roy: Would it be fair to say that the promotion of greater and more robust self-regulation is in its early stages? Have you any indications of success?

Lord Hodgson of Astley Abbots: The Fundraising Standards Board was a product of an initiative after the 2006 Act. It has made good progress in some ways, but there have been too many freeriders, who have said, “We don’t need to bother to get involved and will just coast along at the back.” There has perhaps not been enough attention by the Charity Commission to try to encourage the emergence of the Fundraising Standards Board to use its “give with confidence” and those sorts of things. There is a greater need for the sector to understand that this is a problem that they cannot just pass around like a hot potato. Every part of the fundraising sector is damaged by the public’s feeling, evidenced by your question, that this thing is not being tackled properly.

Q18 Lindsay Roy: What indications do you have of progress?

Lord Hodgson of Astley Abbots: I am being sent responses by various people and there certainly have been meetings when the three bodies that I referred to have got together. I have said to them, “You have to forget your silos, guys. You have to come out of your silo and have something, so that every Member of Parliament and every member of public can know that there is a body that is overseeing the way this whole thing works.”

Q19 Lindsay Roy: A key question from me is: we have had meetings; we have done this; we have done that; so what? What has happened that has brought about improvement?

Lord Hodgson of Astley Abbots: I gave them a six-month window in the report. I said they should have six months to come up with a proposal, and I encouraged the Minister for the Cabinet Office to act as a midwife, along with the Charity Commission, to try to ensure something happened. The trouble with statutory regulation is that it will never keep up with the way that things are shifting all the time. That is the trouble. You risk creating a very elaborate hammer that misses the nut.

Lindsay Roy: We won’t ask who the nuts are.

Lord Hodgson of Astley Abbots: I think the fundraising sector is getting it: you around this table and the rest of us are not going to put up with the present situation. If I may say so, just so you understand, chugging affects local shops. If I am a baker and someone comes and chugs outside my shop, people cross the street to avoid the chugger and go to my competitor. It is a problem in the high street.

Lindsay Roy: With an impact on business and communities.

Lord Hodgson of Astley Abbots: Local authorities can work on this. They can work with the PFRA to make this better, and there are some local authorities that have actually had problems and have sorted them by using the PFRA. But it is an issue and when you touch this issue, stand well back, because charities are extremely sensitive to attempts that affect their ability to raise income. I said something about the National Exemption Orders and was accused of actually trying to abolish Poppy Day. That is hardly what I was trying to do, but was quite an extreme reaction to a thought that we might look at how National Exemption Orders could fit into the structure.

Q20 Lindsay Roy: It is work in progress.

Lord Hodgson of Astley Abbots: I think it will be work in progress for some time but, Chairman, your Committee can help to keep pressure on this.

Chair: It seems to me that the health and safety warning on the elaborate hammer would be that this could be extremely hazardous for the user.

Q21 Charlie Elphicke: Lord Hodgson, I recently met with Dame Judith Mayhew of the New West End...
Company, and their concern is that we are not talking about people rattling a tin for Poppy Day; we are talking about aggressive systematic harassment of tourists and visitors, which drives these people away from shopping centres. It is not simply in the West End. They were caustic about the complete failure of the Charity Commission to use any of the powers under the 2006 Act, which they could have taken forward before now. They want to see action. Two thirds of the public wants to see action. Do you really think that self-regulation is going to be good enough or is it time to bring in statutory powers to take real action and put a stop to it?

Lord Hodgson of Astley Abbotts: It is a very good question. But if you talk to the charities, they will say, “We are desperate not to have our good names besmirched by chugging.” When I am a national charity and my chugger upsets you, Mr Elphicke, you not only think, “I will not support them anymore,” but in the pub that evening, the dinner party or wherever you socialise, you might tell your friends “I had a horrid experience.” So charities will say, “It is in our interests to have very good relationships with the public because we are damaging our brands if we behave badly.” There must be some truth in that. I think that self-regulation is the least worst option. The sector could, if they chose to react to the pressure that Members of this Committee and the public feel, create a really worthwhile structure that would provide a proper way of dealing with these issues, but we do have to recognise, all of us, that when we walk by a chugger working for a very worthwhile cause thinking, “I am not going to give him a quid or sign a direct debit,” we can feel an element of guilt. We sometimes wish to transfer our guilt by saying, “He didn’t behave very well.” I freely admit that sometimes I feel, “Gosh, that’s a good cause. I ought to be doing something for them,” but I do not want to, so I want to find a reason in my own mind for why should not. There is some behaviour transfereence sometimes. I do not think, at this stage, the statutory situation would be appropriately cost effective, and the FRSB is making progress. What I hope will happen as a result of this is that there will be some pooling of sovereignty between the key bodies.

Q22 Charlie Elphicke: My concern on this and so many other issues is that the Charity Commission does not get it. In her valedictory evidence, I asked Dame Suzi Leather whether she was satisfied with the whole business of chugging. She said it all seemed to work just fine. Yet again, we have a situation where the Charity Commission is just completely divorced from any kind of proper regulatory function. Do you think that there is a need for the Charity Commission to be more focused on this and to get it more?

Lord Hodgson of Astley Abbotts: Of course, the powers for statutory regulation, which would presumably come under the Charity Commission, have never been brought into force. They weren’t brought into force in the 1993 Act or the 2006 Act. Insofar as they are the guardians of the sector, they should be taking an interest in it. I have already said that I think the Charity Commission has a role as midwife, if that is the right word, along with the Cabinet Office to try to make sure some pressure is put behind the creation of this new body. It is in their interests to do that.

Q23 Chair: When you say “at this stage”, what you are really saying is that the Government should set a deadline. If the charitable sector cannot get its act together on a voluntary basis in a certain period of time, it would be reasonable for us to recommend as a Committee that the Government ought to bring these provisions into force to enable the Charity Commission to take action.

Lord Hodgson of Astley Abbotts: It is the question of taking the statutory powers and enforcing them.

Q24 Chair: Leaving this open-ended does not seem to be very satisfactory.

Lord Hodgson of Astley Abbotts: No. That is why I put six months in my report—to try to have an end date.

Q25 Charlie Elphicke: Lord Hodgson, on the issue of public benefit, you just gave the picture of the Charity Commission as being a sort of midwife for the sector. The best healthcare learning is not provided or espoused by a Hampstead dinner party approach to life and nor is the best regulation of the Charity Commission. There have been substantial concerns, as I am sure you are aware, about what is perceived as a tax on our schools, a tax on religion and indeed attempts to suppress religion in this country, with this sort of Hampstead approach, which the Charity Commission has previously taken up to now. Turning to the issue of public benefit and the independent schools case, which is the leading legal case on the matter, would you say that the Charity Commission has handled things well and covered itself in glory or should it rethink what it does and how it does it?

Lord Hodgson of Astley Abbotts: I think the Charity Commission has had a very difficult job. It was given a hospital pass; it was bound to upset people, because the question is: are we going to have a fixed statutory definition of “public benefit”, with all that implies. The nature of the charity sector, for reasons we have touched on, is evolving very quickly all the time. The danger of saying “Okay, we won’t have this rather unsatisfactory moving target; we are going to have a statutory definition,” is that we will actually then fix the public benefit test forever. When we come to talk about the tribunal, the tribunal was originally designed to be a quick non-adversarial user-friendly non-lawyerly-type organisation. As I said to Lord Bassam of Brighton, with whom I debated the 2006 Act, when I saw there were eight QCs doing the independent schools case, we had done well on that one. But there are things happening there. Judges quite rightly value their independence, and I hope the tribunal can be encouraged to look forward in its judgments about these sorts of things, in the future. There has tended in my non-lawyer’s view to be a tendency to look back at history. The tribunal could help the development of the sorts of things that you are talking about, and indeed the whole public benefit area, if it could begin to look sideways and forwards.
in terms of its interpretation to reflect more reasons and conditions. It could make itself more accessible. The public schools case judgment is some 110 pages long, and you lose the will to live after about page 50. The Supreme Court now has a front page for each case that summarises, in layman’s language, the essence of the judgment. The Tribunal could put those sorts of things at the front of their judgments. They could do things like that to help the development of the sorts of issues relating to public benefit that you are raising. For me, there can be no statutory definition, because you then fix the world, when the world is moving.

Q26 Charlie Elphicke: Looking at the Charities Act 2006, it mentioned public benefit. Looking at the so-called public schools case, the tribunal says, “So far as we are aware, the courts have never made any assumption about whether a purpose is directed to the public or a sufficient section of the public.” It then goes on, “[It is] directed to what it is that the institution was set up to do, not to how it would achieve its objects or whether its subsequent activities are in accordance with what it was set up to do.” From a lot of the evidence we have had from a lot of interested parties, there is this idea that, in fact, public benefit was always in the charities law, well before the 2006 Act. What happened was putting it into the Act caused the Charity Commission to then issue guidance, which effectively was seeking to change the law. Do you not think there is a risk then, when quangos come along and issue guidance that is at variance with the previous case law, that they are going to cause massive turbulence and instability in a system that was previously well understood? Would it not be better to just get rid of the words “public benefit” out of any revised Act and go back to the case law system?

Lord Hodgson of Astley Abbots: Of course that was a matter for Parliament, and Parliament felt strongly that the words “public benefit” should appear. You will be aware that the public benefit test in Scotland is still more restrictive, in the sense that OSCR, the Scottish Charity Regulator, is required to have regard in deciding public benefit to those institutions that charge fees for their services. There may be yet a third definition of “public benefit” for Northern Ireland. I hope they can be persuaded to follow either the English and Welsh or Scottish one. This is a debate that is actually philosophical, to some extent. Certainly the will of Parliament was to ensure that the words “public benefit” appeared on the face of the Act and that the Charity Commission should interpret this. The purpose was to try to find a way not merely always to be looking forward, but to move in keeping with the times. I accept that it has proved highly controversial.

Q27 Charlie Elphicke: It is controversial, because millions of people in this country, as you know, believe in religion of whichever faith and denomination. Millions and millions of people have deeply held religious views and they feel that the way this guidance has been used has been as a weapon to attack their deeply held beliefs, by a secularist state and secularist Charity Commission. It takes me back to the Hampstead dinner party analogy, which I put earlier. People feel it is a metropolitan-type view. There is particular concern from the Christian Institute, which says, “If the Charity Commission can now find against the Plymouth Brethren and their Preston Down Trust, it would appear to have grave implications for other Christian Churches and groups, the majority of which apply some restrictions on access to sacraments and benefits, on the basis of teachings of scripture. This includes the Church of England, Roman Catholic Churches and many free Churches.” I, as a CoE-denominated individual, cannot have communion in the Catholic Church. Therefore, it might be said that there is no public benefit; it should not be allowed. It is a serious issue. Do you think that the Charity Commission needs to seriously rethink its whole approach to religious groups and actually have a bit more understanding and religious tolerance in Britain, once again?

Lord Hodgson of Astley Abbots: The Charity Commission has got its new guidance out for consultation at the moment. Clearly they were set back by the outcome of the independent schools case and the implications that you referred to in your question. In the end, we want tolerance; we want to find a way for people to be encouraged to do their best for their society, and we want to try to find a means for doing this, but we have to balance the fact that sometimes it becomes so narrow that the charitable status linked to the tax and other benefits associated with it are actually no longer offering a sufficiently wide section of the public proper recompense for society’s financial and other supports.

Q28 Charlie Elphicke: Lord Hodgson, you say that they were set back by the public schools case. I would put it to you that they have learned nothing and forgotten nothing, because now they are lashing out and seeking to persecute and suppress the Plymouth Brethren, not a denomination that you or I may follow, but many tens of thousands of people in this country do. Is it not important that they learn from this experience and amend their behaviour?

Lord Hodgson of Astley Abbots: The Plymouth Brethren have written to me. I have not yet met them. They are here in the room today and they have already given me a large package, before I came before you this morning. I will be meeting them. I have said what I have said about the public benefit test that I do not think a statutory definition is going to help. I think it freezes the situation. The thrust of your question is probably now for the Charity Commission rather than for me.

Q29 Chair: Before we pass on, is it really one for Parliament? Should Parliament take responsibility, because these are highly controversial value judgments? In the independent schools judgment, it was for the trustees of a charitable independent school to decide what was appropriate in their particular circumstances, not the Charity Commission. It is almost passing it back to the trustees, not even to the Charity Commission. It leaves everybody in a limbo. Can I just press you on one thing? Why is it in
Scotland that independent schools do not seem to have had this problem.

**Lord Hodgson of Astley Abbotts:** I have no idea. You will have to ask OSCR. I went to see OSCR, but I did not raise that question with them.

**Q30 Chair:** OSCR seems to have handled it in a completely different way, perhaps more constructively.

**Lord Hodgson of Astley Abbotts:** The answer is I do not know. Of course the situation there is they have a much smaller number of charities, I think 15,000, and they have their arms around the lot. They are able to give them a great deal more detailed attention, because of the number, than is possible with 350,000 charities here. But I don’t know. It is a good question, but frankly, I am afraid, Chairman, I have not asked it.

**Q31 Charlie Elphicke:** Finally, Lord Hodgson, you say you do not see it is a good idea to have a statutory statement clarifying what exactly public benefit would mean. There should not be a full-blown statutory definition, but would you think in that case it is preferable to just excise “public benefit” from the Act and go back to the present system or have some form of statement clarifying different elements of public benefit?

**Lord Hodgson of Astley Abbotts:** One of the principles I put as leading my review is about the independence of the sector. But the sector can sometimes be a bit precious about being above politics. The reality is that charitable activity gives rise to some very sharp issues of public policy, which have to be decided in this building. Therefore, independence does not mean freedom for a charity to do whatever it likes. There are concerns among your colleagues about some charities that are morphing into almost the work of members of Parliament, in some of the activities they are doing in campaigning, which we may come to in a minute. There are some issues here that only Parliament can decide upon because, as the Chairman has rightly pointed out, these are issues that need to be decided outside the immediate environment of the charity world, because they affect society as a whole.

**Q32 Chair:** Moving on to the question raised by NCVO that there are different definitions of public benefit in different parts of the country, leading to confusion for charities that operate in all parts of the United Kingdom, you say it is desirable in the longer term that there should be a UK approach to this. How should that be achieved?

**Lord Hodgson of Astley Abbotts:** It goes to the heart of devolution and the relative independence of Scotland, England and Wales. I do not think it is achievable in the short run. Because the size of their charity sector is much smaller and ours is very much larger, I do not think the regulatory approach can be anywhere near the same. We are some way away from getting agreement. I mentioned desirability, but that is hope rather than expectation.

**Q33 Chair:** Did you find any evidence of what one might call regulatory arbitrage of charities domiciling themselves in one part of the United Kingdom rather than another in order to benefit? Is that a danger?

**Lord Hodgson of Astley Abbotts:** No. Some national charities say it is a bit of a difficulty, but I did not come across anybody who said, “This really is a pain.”

**Q34 Chair:** The HMRC rules are uniform for the whole of the United Kingdom.

**Lord Hodgson of Astley Abbotts:** They are, but of course tax is not a devolved matter, whereas charity law is.

**Q35 David Heyes:** I have occasionally, in my constituency work, come across charities that I have had concerns about. Constituents have been to see me to voice their concerns. I am thinking of a particular case. It was a case where the charity seemed to be being run more for the benefit of the trustees and the main staff than for the supposed beneficiaries. It was probably short of criminality, but it was certainly abusing charitable status, in my view. I tried to refer that to the Charity Commission to get them to look at it, and they did, fairly superficially. I thought it was a superficial look at it, and then they declined to take it on, saying, “This is for the trustees to sort out.” I felt it was really more to do with their lack of resources, and then making excuses for not following through on it. At the time, I would have really loved to have been able to take a complaint like that to an ombudsman. That is what I would do if it was a local authority that was failing to deliver or a Government Department. You were apparently enthusiastic about the idea of a charities ombudsman, but not in your report.

**Lord Hodgson of Astley Abbotts:** The complaints about charities really fall into three parts. There are the ones that are clearly statutory, which the Charity Commission has a duty to follow up. There are those about the services they provide, and there are actually quite a lot of ombudsmen that cover those—the Health Service Ombudsman, the Care Quality Commission and so on. Quite a lot of the services are covered. You then get down to the internal operations of the charity, where there are some extremely difficult value judgments to be made, very often caused by personality disputes within the charity, to be honest. That is a minefield, into which you wander at great expense and time commitment and without any obvious likely successful outcome.

The more I thought about it and discussed it, the more I thought this was not going to be a good use of the Charity Commission’s and therefore the taxpayers’ money. Therefore, my recommendation is that every charity should have a complaints procedure and that complaints procedure must have a degree of external verification. What upsets people at present is that complaints are heard by the charity and they say, “Sorry, Mr Heyes. We are not going to accept your complaint; it is not founded.” You think that is all very well, but they are judge and jury. I have suggested that people like NCVO or ACEVO could actually help by providing a means for somebody to provide independent verification of what the charity’s internal complaints procedure provides. I think that the ombudsman, attractive at first sight, unfortunately will
not achieve what I think you want to achieve and I would like to achieve, which is producing an outcome that everyone accepts.

Q36 David Heyes: I don’t want to labour this too much, but in the most recent case that is fairly fresh in my mind, I was very aware of the dangers that you allude to—personality conflicts and that kind of thing. I looked into that carefully and discounted that as being what was going on. There were real causes for concern. Was that your sole reason for discounting the idea of an ombudsman, the fact that it is a muddy area?

Lord Hodgson of Astley Abbotts: It is that you move by slow degrees from something that is just bad practice to something that is illegal. You are on a swingometer, but where you are on the swingometer is very difficult to judge. I referred before to the question of moribund and semi-moribund charities. When a charity finally becomes moribund is very difficult to judge. A lot of them just keep going, but they are not doing very much. They have, say, £0.5 million worth of assets; the trustees meet four times a year at the golf club; they do not have any new trustees and have not had for 20 years. It is just ticking over. Frankly, they should be finding a charity to merge with or winding up, and deploying their assets cy-près in some other parallel similar activity. The same is true of what you are saying here. Where is the tipping point? An ombudsman would be expensive, and will the people accept the outcome? When you have gone through all this and produced the judgment, will they say, “never mind”? How do you enforce it?

Q37 Chair: You mentioned merging charities. Is it much too difficult to merge charities? Is it something that should be made easier?

Lord Hodgson of Astley Abbotts: Merging is difficult and there are all sorts of technical actions that could be done to improve it. One of the classic things is that, when you merge a charity with another charity and it is all done above board and properly, the banks will not allow you to transfer standing orders and direct debits. You have to re-sign them. You know that if you send direct debits and standing orders around for re-signing, you lose 75% of them. We have quite a number of charities that exist in name only to collect direct debits and standing orders forever, because they are inertia revenue. Even more it applies to the issue of legacies. There is a real argument—and the Financial Services Bill may provide some answer to this or at least a chance to aerate and ventilate the problem—that banks should say, “Look, when a bona fide merger has taken place, we will accept that the standing orders and direct debits should go to the new merged charity.”

Chair: Maybe they should be obliged to do so.

Lord Hodgson of Astley Abbotts: Maybe they should be.

Q38 David Heyes: In the case that I have been referring to, if the Charity Commission had declined to investigate my complaint, I think your recommendation might have been that, in the absence of an ombudsman, I could take that to the Charity Tribunal to challenge the Charity Commission’s decision.

Lord Hodgson of Astley Abbotts: The Charity Tribunal has more tasks that it could usefully be given. Presently, the schedule to the Act, which limits the way you can go to the Tribunal, is very restrictive as to how it can be done and to time. I have suggested that that schedule should go and the Tribunal should be able to hear appeals against any decision of the Charity Commission or review any action they take. There would be an opportunity then for the Charity Tribunal to have a greater say and I have suggested, incidentally, that charities should have four months to make their decision, not three.

Q39 Chair: Finally moving on to political campaigning, another very controversial area, what sort of representations did you get on this subject? Did you start out with any preconceived ideas about this subject and did they change as you were undertaking this review?

Lord Hodgson of Astley Abbotts: My only conclusion takes me back to what a charity is. The sector runs the risk, if it becomes too involved in political campaigning, that some of the cross-party—all parties but no party—benefit that it gets will disappear if it is seen to be too strident or seems to become an arm of political activity. This, along with the other issues that I raised in my opening remarks, is something that Committees of this House or the House of Lords could usefully examine. There are those who believe that the present guidance is fine. It obviously places quite severe restrictions on the way you can operate. As a charity, carrying out political campaigning must be incidental to your purposes and all that sort of stuff. The State of Queensland in Australia is looking at legislation, which I think proposed that, where you get more than 50% of your revenue from government sources, you are not allowed to undertake political campaigning. I do not know where the thing is in the process of the legislative sausage machine in Queensland, but that is something they are looking at.

Chair: We will have a look at that.

Lord Hodgson of Astley Abbotts: It is to try to deal with this point about organisations campaigning against the Government of the day, when they are using the money that the Government is providing.

Q40 Chair: Or campaigning for the party in office. What does the public think about this?

Lord Hodgson of Astley Abbotts: I think the public is way off the pace on these sorts of issues.

Q41 Chair: Do you think the public expects charities to be political? I think the public can be affronted when they see a charity they respect taking a very strident political line on something. One of our colleagues, absent today I am afraid, would be complaining about Christian Aid and their very pro-Palestinian stance, for example. Somebody else might complain about Oxfam’s campaigns against free trade.

Lord Hodgson of Astley Abbotts: I said earlier that this is about emotion and there is a lot of emotion in...
these things. People feel very strongly about these charities.

**Q42 Chair:** Yet you have some charities, War on Want, saying, “We urge the PASC to send an unequivocal message in support of the right of charities to engage in political activity, and to remove the last remaining restriction preventing charities from achieving their charitable objectives to the best of their abilities.”

**Lord Hodgson of Astley Abbotts:** If you mention the Queensland proposals to charities here, again, stand well back. They feel very, very strongly about that.

**Q43 Chair:** It would mean that public money becomes a muzzle. Isn’t the corollary of allowing charities to engage in political activities actually to suggest that political parties themselves, each of which would argue they are trying to benefit the public, should themselves be charities, have charitable status or the same advantages of charities, as they do for example in the United States of America?

**Lord Hodgson of Astley Abbotts:** If you mention the Queensland proposals to charities here, again, stand well back. They feel very, very strongly about that.

**Q44 Chair:** That may well be my view. The corollary of allowing charities unfettered right to do political campaigning would suggest that any organisation that does political campaigning should be a charity.

**Lord Hodgson of Astley Abbotts:** It is not unfettered of course, because it has to be related to their charitable purposes and it may not be their primary purpose. I do not have the guidance in front of me, but there is quite strict guidance on what is allowable and what is permissible. A political party that has only one purpose, which is political activity, would not be able to.

**Q45 Chair:** On the other hand, if people do not want to give money to a charity that takes a political stance, that is up to them, is it not?

**Lord Hodgson of Astley Abbotts:** Going back to my earlier remarks about the traffic-light system on the front of every charity return, one of the questions that ought to be there is: does your charity give money overseas and, if so, to which countries? Some people are concerned about where some of the money is going. You try to inform people.

**Q46 Chair:** Your advice to the Committee seems to be: there be dragons; stay away.

**Lord Hodgson of Astley Abbotts:** Yes.

**Q47 Chair:** Having done dragons and elaborate hammers, I think we are at the end of our cross-examination, unless any colleagues have any further questions. Can I thank you very much indeed? Is there anything you want to add, any passing thoughts?

**Lord Hodgson of Astley Abbotts:** All I would say is, when you go around the country and see what people are doing, what wonderful work they are doing with very little resources, my report was trying to encourage them, invigorate them and make them feel they were appreciated. I do hope, Chairman, that your report, when you publish it, can do the same.

**Chair:** Thank you very much for the extraordinary knowledge that you have demonstrated today, confirming that your report is a great work. You have gone into great detail with great diligence, and we are very grateful to you. Thank you very much indeed.
Tuesday 23 October 2012

Members present:
Mr Bernard Jenkin (Chair)
Alun Cairns
Charlie Elphicke
Greg Mulholland

Examination of Witnesses

Witnesses: Sir Stuart Etherington, Chief Executive, National Council for Voluntary Organisations, Sir Stephen Bubb, Chief Executive, Association of Chief Executives of Voluntary Organisations, Cath Lee, Chief Executive, Small Charities Coalition, and Joe Irvin, Chief Executive, National Association for Voluntary and Community Action, gave evidence.

Q48 Chair: Welcome to this session on the triennial review of the Charities Act, and I would be very grateful if you could identify each of yourselves for the record.

Cath Lee: I am Cath Lee and I am Chief Executive of the Small Charities Coalition.

Sir Stuart Etherington: Stuart Etherington, Chief Executive of the National Council for Voluntary Organisations.

Sir Stephen Bubb: Stephen Bubb, head of ACEVO.

Joe Irvin: I am Joe Irvin, Chief Executive of NAVCA, the National Association for Voluntary and Community Action.

Q49 Chair: Thank you all very much for being with us today. Can I first ask about the Charity Commission’s budget, which is under a great deal of pressure? What effects are the reductions in the Charity Commission’s budget going to have on the work of the Charity Commission?

Cath Lee: We are seeing that they are moving away from the perhaps more supportive work that they have been able to do: the preventative work, the advice giving, and explaining and interpreting the guidance. But there is a very collaborative approach to managing that process, and they are in discussion with a number of sector bodies, us included, about how that process can be managed and how we can ensure that they both retain the responsibility for the regulatory side of that and ensure that organisations are still receiving the advice and support they need.

Q50 Chair: Can I make a suggestion? Because there are four of you, if you all agree with what the first person has said, you do not need to say anything. If you have something to add, that would be marvellous.

Sir Stuart?  
Sir Stuart Etherington: I have nothing to add.

Sir Stephen Bubb: No.

Q51 Chair: Dame Suzi identified the one-to-one support for charities as the casualty of the cuts and suggested that the umbrella bodies have to take over this role. Do you think that is a practical proposal from their point of view?

Sir Stuart Etherington: No, Chairman, not unless the umbrella bodies themselves are facing financial difficulties. I know that we and our colleagues from NAVCA put a proposal to Government about how advice services could be provided. We would be willing to do that, but that needs resourcing. We are not going to be able to do it with no resources.

Joe Irvin: We have been in discussion with the Charity Commission about this, as my colleagues have said. It looks as though both the force of the financial restraints on the Commission and also the recommendation of Lord Hodgson is that there should be concentration on regulation, not advice giving. I just wanted to point out that, on the Charity Commission website, they receive 3.5 million unique users a year, so it is a very well used service. If you compare that with the NCVO, its website receives about 0.5 million and ours about 150,000. It would be quite difficult for us to take on board that sort of demand. We are willing to try to help to do it; we want to support our members. In our case, we represent about 400 Councils for Voluntary Service and such, which support 160,000 local groups and charities. They are often in that position, but there are resources that need to be there to make it an effective operation.

Q52 Chair: What do we expect to happen? What do we expect the Charity Commission to be able to do? What is it reasonable to expect the Charity Commission to be able to do with their limited resources?

Sir Stuart Etherington: Just picking up Cath’s point, it is going to focus much more on regulatory activity—what it must do.

Q53 Chair: How is it going to support small charities?

Sir Stuart Etherington: It is going to be very difficult for it to do that. The solution that the umbrellas might come up with is more peer-to-peer learning, where organisations learn from one another, not just being told, and tailored materials that might deal with particular issues, but in general their advice function is going to reduce and the regulatory function is going to be where they focus.

Sir Stephen Bubb: I do not know whether you are going to come on to the issue of charges, but I suspect this is an area where the Charity Commission does now need to look. If their resources from Government are being constrained, it is entirely legitimate for them to look at sources of funding from elsewhere, for example registration charges. There are different views on that. When we consulted our members, they
said they thought it was reasonable for there to be a small charge to register a charity, probably in line with the charges you pay if you are registering at Companies House, which is £14 if you do it online and £40 by post.

Q54 Chair: Do you think it is legitimate that the Government should hijack taxpayer-subsidised resources that have been given by the public for charitable services effectively to fund a Government function?

Sir Stephen Bubb: Ideally, you would not want to be in this position, but the fact is that resources are constrained for the Charity Commission and their main source is Government. I think it is legitimate, as many of us have had to do.

Joe Irvin: Just let me try to paint a picture of the whole sector. There are 160,000 registered charities. The top 500 biggest charities account for nearly 50% of all the income of all charities, so there is a very long tail of small charities, as there is with small and medium-sized businesses. Nearly half of charities—I think it is 43%—have income below £10,000 a year and many of them much less than that. The sorts of charges that are being talked about, not just for registration but also for other services—being encouraged to join umbrella groups and maybe being fined—could together be quite onerous on a small charity on an income of less than £10,000, maybe only £1,000, a year.

Sir Stuart Etherington: I do not agree with Stephen’s view on this. The Charity Commission is there to safeguard the public interest. It is not there to promote charity; it is there to act as a regulatory function. In my view, that should be funded by Government because that is the function that it is performing. I also think the suggestion that fee income would generate additional income for the Commission is naïve, because I have known the Treasury long enough to realise that, if they felt they were able to generate money from elsewhere, any additional income would result in the reduction of the Charity Commission’s budget further. I am not sure that this money would ultimately end in improving the Charity Commission’s services; it would effectively be a pass-through tax.

Q55 Chair: Has the cart not gone before the horse? They are removing the money before the charging income is available. Do you think the Treasury is expecting the Charity Commission to charge?

Sir Stuart Etherington: I do not think they were necessarily, no. If they do charge, I cannot see that charge lobbying additional income in the Charity Commission, as I have suggested. I think it would be clawed back.

Cath Lee: Chairman, the only point I wanted to add was about proportionality. Following on from what Joe has said, the sum total of all the potential costs that have been put forward through Lord Hodgson’s recommendations would have a completely disproportionate effect on small charities. Membership fees generally have a higher proportionate effect on smaller charities than larger members. I have done some analysis, and the percentage that a small charity has to pay is far in excess of a larger charity, in terms of their total income. For example, they might have to pay 1% of their total income for a membership fee versus 0.00005%. If you aggregate all of those charges, that additional impact is a real disadvantage and a real disincentive to small charities to register. They do want to register; they see it is necessary for them to register to be transparent and accountable for the work that they are doing. If you then put on an additional burden of payment, it is going to make their lives even more difficult and create an imbalance in the sector.

Q56 Chair: Has anybody designed a charging scheme that might address equity between different sizes of charity? Those who are recommending charging perhaps have an obligation to suggest a proposal.

Sir Stephen Bubb: I did, Chair. Many charities that register also apply for limited company status, for which they then pay £14 online or £40 if they do it by post.

Q57 Chair: Regardless of the size of the company?

Sir Stephen Bubb: Yes, absolutely. Whether you would have a cut-off, I do not know, but that is not an onerous charge, in my view. It is a charge that they are happy to make if they want to register as a company. I would not suggest it is much more than that.

Q58 Chair: Is that an annual registration fee?

Sir Stephen Bubb: No, it is for a registration.

Q59 Chair: It is a one-off. If you are Sainsbury plc, you pay £14 to Companies House to register and that is it.

Sir Stephen Bubb: Yes.

Q60 Chair: That is not going to provide very much income, is it?

Sir Stephen Bubb: No, absolutely not, but it will provide some income. I suspect if Stuart’s argument was to hold and there were very large sums of money coming in, there would be a temptation for the Treasury to claw that back. At this level, I do not think there is. If you want the Charity Commission to be effectively resourced, and there is no question that Government will change its view on public spending and, therefore, the resources from Government for the Charity Commission will decline, it is entirely legitimate for the Charity Commission to look at a form of charging to bring in additional income. That is what our members said when we asked them and I think that is reasonable.

Q61 Chair: We will consider that issue. Does the panel think the Charity Commission should be charging for late filing of accounts as Companies House does for late filing of returns?

Sir Stuart Etherington: This has been an issue that has been around for a while, because the Charity Commission historically has had no alternative: either just accept that or ultimately strike people off the register, which is a bit of a nuclear button, but it is the only one that they have. There may be a case for fines for late filing; there are alternatives as well. It could
be: yellow card, red card, you are off the register, if you do not file. In a way, that is potentially a bigger threat for organisations than to be fined. The other thing that Companies House does well is it writes to individual company directors when they file late. It is quite a frightening letter—not that I have ever had one, but I have seen one. It would seem to me that the Commission could do more to make individual trustees aware of their responsibilities and to remind them of that, and maybe strike them off the register if they fail to submit accounts for two or three years running. That might be more effective than fining.

**Sir Stephen Bubb:** I think you could do both. I would support the idea of fines.

**Q62 Chair:** Is there a case for looking for some efficiency gains between Companies House and the Charity Commission? Shouldn’t the Charity Commission use Companies House to do all the filing and registration? They have the systems to do that very efficiently, and the Charity Commission could concentrate on what it is meant to concentrate on. It would avoid charities having to make two returns. Very often a charity is a limited company as well and has to make two returns: one to Companies House and one to the Charity Commission.

**Cath Lee:** Chair, a word on the fines: I am not sure they would be effective. The current mechanism of naming and shaming, the red border, is very effective for small charities. They are very put off by that. It is about the reasons why they are filing late. For many of those charities, it is around capacity issues. Perhaps they have lost their Chair or they have had some dropping-off in the trustees. Some of the mechanisms that Stuart has suggested around more prodding and perhaps more warnings, with the threat of being removed if the practice does not improve, may be greater incentives to improve the practice, but I do not think a fine would do it, and a fine could exacerbate the problems. If you are taking money away from a small charity that cannot fund a finance person to come in and do their returns, you are going to exacerbate that problem.

Moving on to your next point about the relationship between Companies House and the Charity Commission, there is a huge opportunity to simplify and to cut down the red tape that has resulted from organisations having to work both to Companies House and to the Charity Commission. When the CIO is implemented, that will address many of those issues for many charities, and we have waiting lists of people who are desperate to transfer.

**Q63 Chair:** Any other comments on all that? Just very briefly one final question, going back to the other issue: if resources were not an issue, would it be appropriate to rely on or fund the umbrella bodies to provide support to smaller charities?

**Sir Stuart Etherington:** Yes, I think it would, Chairman. The reduction in money to the Charity Commission has forced it to refocus its role. I have always believed that it is an appropriate role for the umbrella bodies to provide advice and information to their members and the wider sector, and for the Commission to focus more on regulatory activity. I think that is happening, but of course the advice work is not being funded, so I would support your view.

**Q64 Chair:** Any dissent from that view?

**Sir Stephen Bubb:** No.

**Joe Irvin:** No. In discussion with the Charity Commission, one of the things that they pointed out to Stuart and me is that, although they give advice, they feel quite constrained in the advice they can give, because of their position as regulator. It is very hard for them to say to somebody who is applying, “Really, you shouldn’t be applying to be a charity. You should do something else or join in with another charity.” That is very difficult for them, whereas it is something that we, or our members in our case, would be more able to do at local level.

**Chair:** Thank you.

**Q65 Charlie Elphicke:** Sir Stuart, morning. Turning to the case of the Independent Schools Council, the NCVO took the decision to officially intervene in the case between that council and the Charity Commission. Can you tell us why?

**Sir Stuart Etherington:** Yes. We have been engaged in discussions and debates about public benefit from way back, before the report was written that led to the 2006 Act. We felt that the Commission had not handled it particularly well, but we also felt it was important to establish whether or not public benefit was presumed or not presumed for other charitable objectives. We had always held the view that there were two hurdles that charities had to cross to be charitable. One was to have objectives that were charitable, and the second was to demonstrate a level of public benefit. Some people argued that, if you cross the first hurdle, it was presumed that you were providing public benefit. We thought that matter should be clear and clarified. In fact, the appeal tribunal’s judgment was extremely helpful in terms of the development of the law.

**Q66 Charlie Elphicke:** What impact will the Upper Tier Tribunal’s judgment have on the charitable sector as a whole?

**Sir Stuart Etherington:** There will be a number of different impacts. Firstly, the appeal tribunal makes it clear that this is a matter for trustees to determine. That is absolutely right; we agree with that. Secondly, there will have to be a statement of how public benefit is being provided, although it is for the trustees to determine that matter. That is important. Lord Hodgson saw that as important in terms of his report. It is established, clearly, that public benefit is at the heart of charity. That is why it exists and that is why it gets both public support and tax benefits.

**Q67 Charlie Elphicke:** Sir Stephen, you are the chief executive of the chief executives. Do you have a different perspective or are you in broad agreement with Sir Stuart?

**Sir Stephen Bubb:** I am in agreement with Stuart.

**Q68 Charlie Elphicke:** Are there any other views on this? Should we get rid of the whole concept of public benefit from the Act altogether?
Sir Stuart Etherington: No; I think it underpins the concept of charity and now clearly does. The difficulty that the Commission had in relation to public benefit is that, when Parliament debated the matter during the passing of the 2006 Act, it did not give any sort of steer to the Commission as to how it should interpret that. In Scotland, of course, they did. It is not true to say that there is a definition of public benefit on the face of the Bill in Scotland, but there is some guidance as to how it should be interpreted. I think, maybe, Parliament needs to look at that again. This is the place where the notion of public benefit should be discussed. Going back to the Scottish case, there are some guidelines that the Scottish Parliament placed on the Scottish regulator, which we do not do here. The courts have determined it to a certain extent, but that is a debate worth having. It is something that Lord Hodgson did not focus on too much, but it is now a matter for the courts and I wonder, at some stage, whether Parliament might want to revisit whether or not they wish to give some guidance as to how public benefit might be interpreted. It would certainly, I suspect, help the Commission.

Q69 Charlie Elphicke: Dame Suzi Leather basically said it would be enormously helpful if Parliament established a “partial definition” of “public benefit”. Is that your position as well then?

Sir Stuart Etherington: Not a definition on the face of the Bill. I think that would be unworkable; it would be too inflexible. We have the common law for that, so not a definition on the face of the Bill. We were persuaded, when we were involved in the passage of the 2006 Act, that unintended consequences might be arrived at that would be to the detriment of charity. We agree that it should be flexible. We agree that there should not be a statutory definition on the face of the Bill, but perhaps there should be some guidance from Parliament as to how public benefit might be interpreted. I do not know quite how that would work, but it would seem to be quite helpful.

Q70 Charlie Elphicke: There is a view that the concept of public benefit was already there in the case law and that including it in the 2006 Act makes no difference at all, except the Charity Commission suddenly thought it had the ability to issue guidance on what it thought that meant, skewing it to, shall we say, a more metropolitan viewpoint, in the view of some. Would you say that putting in “public benefit” was a codification, rather than any meaningful change of the law?

Sir Stuart Etherington: I do not think the law changed as a result of the Act. The appeal tribunal feels that. There was a debate, as I mentioned, about whether or not public benefit was presumed under the other heads. The appeal tribunal has made it quite clear that there is no presumption and you do have to demonstrate public benefit, and then it established some tests. They set a bar in relation to proving public benefit. That is what they did.

In terms of the debate in Parliament, there was no definition that public benefit ever changed, and what the tribunal did was throw a light on the fact public benefit should not be presumed. It has to be demonstrated. Lord Hodgson points out, I think rightly, that one of the consequences of that is that trustees now have to think about this quite seriously and they have to write it in their annual reports. That is quite important. To quote Lord Hodgson, the man in the Dog and Duck would expect some form of public benefit to be demonstrated by organisations that have public confidence and also receive tax concessions.

Q71 Charlie Elphicke: Finally, do you think that it is important for the Charity Commission, in applying this whole public benefit test, not to take such a metropolitan view but more a whole-country view? There was concern about the whole schools case; now they are trying to suppress the Plymouth Brethren and attack various religious groups, people feel, in my constituency and elsewhere outside London. Do you think it is important that the Charity Commission should recalibrate so that it does not look like it is just pursuing some kind of agenda dreamt up in Hampstead?

Sir Stuart Etherington: The issue in relation to independent schools was an interesting case study, because I think the Commission drew the terms of public benefit too narrowly and it should have been thinking more widely about how, in this case, independent schools provided public benefit, but it might apply to other institutions as well. It seemed to get very, very hung up on bursaries as a way of demonstrating public benefit, and I think you can demonstrate public benefit in much wider ways. Informally, we did talk to them about that. I do not know why they continued to pursue that particular way of defining public benefit. For me, it was too narrow. Others have argued, for example, linkages with local academies might be a way of doing that. There must be a range of ways of demonstrating public benefit, so I think that they were probably too prescriptive and too narrow in their definition.

Sir Stephen Bubb: I do not know what a metropolitan view is and whether that is what I am going to express, but historically, in the 19th century, the Charity Commission had a much more robust approach to this issue. For example, when they made a visitation, such as to the Bradford on Avon grammar school, they looked at the statutes for that school, which said that it was about educating poor people, and discovered it was educating toffs, so they closed it down. They did not have public benefit as a guide, but they knew perfectly well that the statutes for that school indicated it should be educating poor people, and they were not, so they closed it down. That is not a bad approach. I am not suggesting that you look at the statutes for Winchester and Eton, which also say that you should be educating poor people, and close them down, but it is an interesting point.

Q72 Charlie Elphicke: That is an issue to do with the objects and purpose of a charity, rather than public benefit, which is quite a separate matter. If a charity is not pursuing its objectives and it is pursuing something completely different, then clearly that is where the Charity Commission should do tests.
Sir Stephen Bubb: Yes, but I suspect they probably also took the view that the toffs that they were educating were serving no purpose, too.

Q73 Charlie Elphicke: Many people criticise the Charity Commission for issuing guidance and not going round, regulating and checking that charities are doing what they say on the tin and what their purposes are. Would you agree that is something the Charity Commission should be doing once again, rather than just issuing endless notes of guidance and pontificating?

Sir Stephen Bubb: It is a fair point. It is quite difficult. The tradition is to establish this on a case-by-case basis, which is very sensible.

Q74 Chair: Do you think the word “toff” is a pejorative term?

Sir Stephen Bubb: Probably, yes.

Charlie Elphicke: I was ignoring it.

Q75 Chair: I was just wondering if it is an appropriate objective test of whether a body should be a charity or not, if it is a pejorative term. Obviously it is a light-hearted remark I am making, but doesn’t this underline how basically it is very difficult to be objective about this public benefit test when it comes to contentious matters like independent schools?

Sir Stephen Bubb: Yes.

Q76 Chair: Therefore, wouldn’t it be better if Parliament made its view plain?

Sir Stuart Etherington: I suppose it depends how you make your view plain. If you write a definition on the face of the Bill, it is going to be okay for a while but not afterwards. Let me give you examples of how Scotland approached this. They asked, in terms of their test, that private benefit be balanced against public benefit, how disbenefit is balanced against benefit and whether there are any unduly restrictive conditions on obtaining the benefit. These sorts of things do set a framework for guidelines. I admit, ultimately, these are judgments that have to be made by individuals on the ground looking at particular charities. My point is that it is for Parliament to debate the nature of public benefit and also to provide some form of guidance for the Commission. That would be my perspective.

Q77 Chair: Is the panel concerned that the Charity Commission have spent an inordinate amount of time debating this matter? Is that a good use of the Charity Commission’s effort? Should Parliament not just cut through the knot?

Sir Stuart Etherington: The problem was that Parliament charged them with doing just that and, therefore, they did take a long time over it, because it was something that they took quite seriously. I think my honest view is that Parliament itself should have had some role in discussing the principles of public benefit that should have underpinned the Act. The failure to do that and passing that over to the Commission was part of the problem, not the whole, because the Commission did not interpret public benefit correctly. Parliament plays some role in not having had that debate and giving some guidance, and I would like to see that in terms of a parliamentary debate.

Q78 Chair: Is there not a danger that, instead of Parliament’s views being taken into account, it is the trustees’ political views or the Charity Commissioner’s political views that are reflected in the judgment on this issue? I should just place on the record that Dame Suzi herself was, in the end, excluded from discussion on this, because she had a conflict of interest. She has had a lot of flak on this issue, which really was down to her fellow commissioners.

Sir Stephen Bubb: It was not a political conflict though.

Q79 Chair: I appreciate it was not a political conflict, absolutely right, yes. Thank you for that. But are we just passing the buck? Is Parliament just passing the buck?

Sir Stuart Etherington: I think Parliament did pass the buck in the 2006 Act, because it did not really debate what it meant by public benefit. This is the place in which those debates should take place and guidance should then be given to the Commission. The appeal tribunal has done a good job in clarifying this, and ultimately it is the courts that determine common law and the intention of Parliament but, at the end of the day, there was insufficient debate about the nature of public benefit during the passage of the 2006 Act.

Q80 Greg Mulholland: Sir Stuart, you mentioned the man or woman on the Clapham omnibus or indeed the man or woman in the pub talking about this. It cannot be that hard, surely, because those said people in the pub or on the bus would have a very simple sense of what a charity is, which is to provide a benefit to people outside its own immediate community and clearly a wider benefit for society. Why is it proving so difficult to get to a simple workable—not even necessarily a dictionary-style definition—set of clear tests that could be introduced to stop the confusion?

Sir Stuart Etherington: There are now some tests established by the appeal tribunal. They set the bar in relation to public benefit. They also made it clear that you do have to demonstrate public benefit, but I think it probably has to be done on almost a case-by-case basis, because all charities are different. Some are small; some are large; some are providing social care; some are providing education. The exact application of public benefit will differ from organisation to organisation. The way in which the courts have acted in relation to this is appropriate. What I would have liked to have seen a bit more is the legislature a bit more engaged in this discussion.

Q81 Greg Mulholland: Just to quote from the NCVO’s own submission to the review, it said there should be “a single definition of charity and a single public benefit requirement for the whole of the UK [and] … for tax purposes” and then there should be further legislation to “clarify the law” upon public
Chair: We had better put that one in the report then.

Q89 Greg Mulholland: Turning to registration of charities and the recommendations for the registration threshold, first of all, do you all feel that the proposal to extend the threshold from £5,000 to £25,000 is a good thing? Clearly it has implications for certain organisations and it is something that is quite a difficult task to achieve because law is developing in different ways, different definitions in different parts of the UK, there is a passporting issue has been raised between the British Red Cross and the British charity. If you are a person who has been put in a position to review it. Do you think that is a failure?

Sir Stuart Etherington: I can see how you could not reconcile those two positions. One, Lord Hodgson can answer for himself, but I think he concluded that it would be far too complex to achieve, given devolution and the way in which politics and government in Scotland is developing, vis-à-vis England, Wales and Northern Ireland. I think he thought it was too difficult to get the public benefit altogether and have a much more laissez-faire approach, and allow charities to determine their own. Lord Hodgson, a Conservative peer, was appointed by David Cameron and charged with the review and has ducked that issue. The person in charge of the Charity Commission is William Shawcross, a right-wing commentator. Do you think there is a concern that things are drifting down a particular ideological path here?

Sir Stuart Etherington: It is terribly important that the Commission is apolitical in its operation. That is an important consideration. I do think that these issues are not easily resolved, and I do not perceive any ideological take in relation to this. There are issues that are complex about public benefit. They are emerging in different ways in different parts of the United Kingdom. I personally think that is regrettable, and I would have hoped that the legislature, during the passage of the 2006 Act, spent more time considering carefully what they meant by public benefit.

Q84 Greg Mulholland: I would like some comments from the other panel members, if they wish to, but this is now the review that is going to advise Parliament on what we do, and it has ducked that issue. If you are criticising the 2006 Act, you must therefore be criticising the failure in the review to deal with the issue that you are talking about. If the review does not recommend it, it is very unlikely Parliament will do anything about it whatsoever.

Sir Stuart Etherington: We made a firm recommendation to Lord Hodgson’s review that this matter should be considered again by Parliament. I still continue to believe that.

Q85 Chair: Isn’t there another way of approaching this question? Instead of trying to harmonise and de-devolutionise charity registration, just say that if the Scottish charity commission, OSCR, registers a charity, it is registering a British charity and that charity should be allowed to operate in any part of the United Kingdom. It is the same for Northern Ireland. The British Red Cross would register with the Charity Commission and therefore be registered for charitable purposes in all parts of the United Kingdom. Wouldn’t that be much simpler? Then the public benefit would naturally harmonise because, if it did not harmonise, there would be a certain amount of arbitrage between different authorities.

Sir Stuart Etherington: You may be right, but the passporting issue has been raised between the regulators and they have not been able to resolve this.

Q86 Chair: It requires a legislative change, doesn’t it?

Sir Stuart Etherington: Yes, I think it probably would.

Q87 Chair: Would you be opposed to that?

Sir Stuart Etherington: No.

Q88 Chair: Anybody?

Sir Stephen Bubb: No.

Chair: We had better put that one in the report then.

Q83 Greg Mulholland: There are two ways this could go. The mess not being tackled in the review is a cause of concern, but either it needs to be better clarified to give charities and indeed the public better guidance or you scrap the whole concept of public benefit altogether and have a much more laissez-faire approach, and allow charities to determine their own. Lord Hodgson, a Conservative peer, was appointed by David Cameron and charged with the review and has ducked that issue. The new person in charge of the
sized of charities, but do you think it is broadly good for your members and for the sector?

Joe Irvin: We do not think it is a good thing for the sector. I am sure that other colleagues will add to this as well. The threshold has gone up from £1,000 to £5,000 already. It is quite a big leap to go up to £25,000. If you bear in mind what I said earlier about the average size of a charity, it is quite clear that, with nearly half of charities being under £10,000 turnover, this means taking out quite probably a large majority of charities from registration. We have had a proposal for voluntary registration [under that] previously and that has never been enacted.

Why is this important? I am sure Members of the Committee understand this, but organisations want to be a charity and have a charity number because there is a great deal of public trust and goodwill invested in charities, which we all have to maintain as the whole charity sector, which we do. The Charity Commission every two years does Ipsos MORI polling on ‘who you trust?’, among various people in society, and charities have consistently come in the top three and, have I to say, unfortunately quite a lot higher than politicians although MPs do come above ministers in that. They have maintained that because of how they have acted; there have not been such great scandals. There is a lot of trust invested in charities and, therefore, many members of the public, foundations and even public authorities will only support registered charities because they see that as a mark of quality and of intent. That is why it is important. To raise the threshold to £25,000 and to say that those below are going to be second-class citizens, effectively, could have quite considerable consequences for those organisations.

Cath Lee: I can only wholeheartedly agree. I think it will be a very damaging move to raise the threshold. Small charities are very much like the people who are in the Dog and Duck. They are set up by the people who are in the Dog and Duck. They are ordinary people. They do not really engage with the law. They are aware of the Charities Act when they need to do something, for example change their governing documents. For them, the concept of charity is embodied in that charity registration number. They do not differentiate between the definition of charity within charity law and their charitable objects. They think that, because they are a registered charity, they are a charity. If you remove that possibility from what are about 120,000 charities, it will put them in a hugely disadvantaged position and potentially, if they are not able to raise money, result in a lot of very good work going undone and therefore our society being damaged.

Q90 Chair: Sorry; can I just correct you? There is no suggestion that their right to register should be removed. That seems to be what you take it to be.

Cath Lee: I know it was the intention that voluntary registration would come on stream. It would only be an acceptable policy if voluntary registration was not only possible but actually practicable. Given that voluntary registration has not been implemented, there is a lack of confidence in the sector, and particularly amongst members, that it is not going to happen with any timeframe that makes it practicable. If voluntary registration was available and it could be seen to be easily accessible and not done after all the other categories of charities waiting to register, it would be a better recommendation, but it is still not good, because basically charity is charity is charity, whatever your size. Judging a charity by its income level is not the only way to judge the impact, size, reach and the difference that a charity can make. Many charities have very little income. We have charities on our books that have £5,000 or less income and yet they have hundreds of volunteers. Now those charities do a lot. They do a high volume of work and they achieve great impact. They are never going to reach that £25,000 threshold. It implies that growth is necessary; growth is not always necessary in some of these small local charities, and yet they still need to raise the £5,000, £10,000 or £15,000 income that they need to keep going and continue to deliver their work.

Q91 Greg Mulholland: When we heard from Lord Hodgson, he was very confident that very few smaller charities would de-register below the new threshold and also was confident that the “overwhelming result will be charities below £5,000 revenue rushing to register”. The thrust is that this will allow and encourage more charities to be registered, not less. You clearly do not share that confidence. Why not?

Cath Lee: For me, the confidence is not there because voluntary registration has not been implemented. If voluntary registration is implemented, it will be implemented after all the accepted charities have been registered and the transfers to CIO status have happened. That is a long time. We have about 10 potential small charities phoning us wishing to start up every month, and that is the tip of the iceberg compared with the Charity Commission. If they are not compulsorily able to register and voluntary registration is not practical—it is not going to happen if the Charity Commission will not be able to do it—there is a block there for them to therefore continue and start their work.

Joe Irvin: If all the current charities are going to stay registered, which might well be true, then what is the purpose that is achieved by raising the threshold? What is the purpose? Is it somehow for the convenience of the Charity Commission? The case for that has not been clearly articulated. It seems to me that it is aimed at making it harder for new charities to register or deterring new charities from registering, perhaps just for the administrative convenience of the Charity Commission. I think that is a mistake because, as we have come to realise, in the business world, small companies and start-up companies are really important, and I think small charities and start-up charities are just as important. They are often the lifeblood; they are often where new ideas come from. I sat next to somebody at a charity awards ceremony last week who had set up a charity aimed at trying to tackle stalking. It was only set up in 2011, and already Parliament has taken notice of that and changed the law. They received an award on the back of that, because of their work. Why would you want to make
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it hard for new charities to register or deter them from registering? I do not see the purpose of that.

Q92 Greg Mulholland: Funnily enough, you have asked my next question, which was: why do you think this is being introduced? You have obviously answered rhetorically, so you are certainly not clear. If anyone else would like to comment, why is this being done? Clearly there are concerns, particularly from smaller charities. Sir Stuart, Sir Stephen?

Sir Stuart Etherington: I am not sure why it is being done. Lord Hodgson presents it as part of a package, which is about voluntary registration. He perceives that some of those currently not registered would also have registered, but there are a lot of assumptions built around what is being suggested, and I do not favour the increase of the threshold either. I think it would probably be detrimental in the end, because that package is not in place and there is no suggestion of the ease with which it could be brought into place. It is based on a number of assumptions, which I think need to be tested. Would for example more charities below the threshold voluntarily register? I am not sure that they would. To have the word “small”, not necessarily to have a registration number, and to suggest that you are not a registered charity would seem to me to be pretty detrimental to a lot of people. I do not favour the raising of the thresholds. I do not think the arguments are necessarily well worked through.

Q93 Chair: It does not seem it would have much effect.

Sir Stuart Etherington: I cannot see what it is for.

Chair: I think that is the point, isn’t it?

Q94 Greg Mulholland: It is hard to know until we have a sense of why it is being done, which I do not think is quite there. The key thing that we are hearing is that this absolutely should not be done unless voluntary registration is properly enacted. The two should be done at the same time. There is a sense that it certainly is not necessary and may be a concern.

Joe Irvin: It might well have an effect, if you did not have voluntary registration and you suddenly introduced this, not on the existing charities, as you say, but on new charities coming through, on the flow of charities coming through. It would have a detrimental effect in that case.

Q95 Chair: Thank you. This has all been very helpful. Moving on to the question of the payment of trustees, this seems like a bit of a horns’ nest. Lord Hodgson has nudged. The question is whether we should kick it into a fury by supporting this recommendation. Sir Stephen, you are in favour of this.

Sir Stephen Bubb: Yes; I do not think it is a horns’ nest at all. It has never been the case that it is illegal or unlawful to pay trustees, and there are charities that pay trustees. It is actually very difficult, however, to get the Charity Commission to agree, and a tortuous process. Our view is that those charity trustees that feel they can make a case to pay trustees should be allowed to do so. That is what Hodgson is recommending. I think that is entirely sensible. When we asked our members about this, the majority, around 75%, said that they would not want to take advantage of any relaxation and pay trustees, but 25% said that they would. The issue is not whether charity trustees should be paid, but whether those charities that believe payment would benefit the charity should be allowed to do so. Our belief is that absolutely they should.

There are three reasons for that, the three reasons adduced by members. First of all, they believe that it could increase diversity. There is evidence from public appointments, where now most non-executive appointments in the public sector are paid, that it has increased diversity in the appointment process. The second point is enabling people to acquire the skills that they feel they need, business skills for example, where people wanting non-executive-type appointments do generally expect to be paid. Thirdly, there is an issue about professionalism. There is a view that, if you make a payment, not a very large one, you establish a contract, which is around professionalism. You expect trustees to turn up, read their papers and behave, as opposed to it being a form of patronage.

Let me give you a few examples of where payments have been made, because it illustrates this. The Chairman of the RNIB is paid. There was a long argument with the Charity Commission about that, but he is paid because the charity took the view that to be their Chair, who is always a blind person and elected, is quite onerous and the person that they appointed had to give up their job. Why should they have to give up their job and income to become the Chair? They made the argument. Who are we to say that charity, and there are others in that case, should not be allowed to make a payment?

Q96 Chair: But there are contrary views.

Sir Stephen Bubb: There are.

Sir Stuart Etherington: I will kick off. This is a view that many of the umbrellas hold, not just NCVO, so this is not just a football match between ACEVO and NCVO; this is widely held by others.

Sir Stephen Bubb: Yes, but they are wrong.

Sir Stuart Etherington: I do not think they are wrong, Stephen, if that is what you just said. I was just going to argue why I think they are right. The voluntary principle clearly goes right to the heart of charity. That is absolutely of critical importance. This is the wrong time to introduce measures of this kind, and the existing mechanisms for charity trustees to obtain payment through the Charity Commission are not tortuous and onerous, as Stephen has suggested. I think it is pretty straightforward. There might be ways to simplify that and, indeed, the Charity Commission has simplified that.

I think it would ultimately have damaging effects on public perceptions and trust if it was felt that charities, large charities in this case, could pay their trustees whatever they wanted to from charitable funds at the will of those trustees. There are no checks and balances in the system. It might have a detrimental effect on other volunteers. It might cause quite serious conflicts of interest, create additional costs and
provide a slippery-slope argument, with pressure on other organisations to follow suit. There is no evidence that voluntary organisations would attract people with particular skills in relation to this and, if they do want to target people with particular skills, they are able to do so under existing legislation by seeking the views of the Charity Commission.

There is no evidence that it broadens the pool of potential candidates. Research actually shows that, within organisations that paid trustees, there was no increased diversity on the board or indeed more effective governance. I would just like to bring the Committee’s attention to the fact that this was debated at great length in pre-legislative scrutiny that took place before the 2006 Act. Indeed, the members of that committee commissioned a particular study to look at this, because it was raised again. It never seems to go away. I will just read a very short paragraph. The committee looked at the US experience. They were particularly concerned about the effect on foundations, particularly what we would call “family foundations”, but they would call “private foundations”. They concluded this: “The US experience carries warnings about the risk of loss of public confidence in charities generally through excessive payments to trustees. We are not satisfied that recruitment problems have reached such a level in this country that a power wider than that proposed in the draft Bill is necessary.” I do not think things have changed since the pre-legislative scrutiny committee drew that conclusion.

Nobody would have any control here over what trustees decided to pay themselves. I think Lord Hodgson was wrong when he said to the Committee that somehow it is important to exclude small charities from this, because they might make themselves large payments, on the assumption that large charities would not, necessarily. It is not the fact that they would or would not; they might. No one could stop them. The Commission, safeguarding public interest, would have no role in establishing what trustees decided to pay themselves. It would be, in my view, a retrograde step.

Q97 Chair: Trustees can be paid anywhere for their professional services.

Sir Stephen Bubb: Yes.

Sir Stuart Etherington: Exactly.

Cath Lee: Yes.

Q98 Chair: They can be paid for out-of-pocket expenses. We know that is already occasionally subject to abuse. Why is this the great cultural change? Why is there religious divide on this issue?

Sir Stuart Etherington: I go back to my point about the role of the regulator. The role of the regulator is to maintain public confidence in charity and to protect the public interest. My view is that the payment of trustees would be a highly visible area in which charities might be doing things. I think it would come under intense scrutiny as to how they were paying themselves, who was deciding, what their performance was and who was determining what rates of pay would be established. The Commission, charged with safeguarding public confidence, in an area where public confidence is potentially being eroded, would have no role to play. I think it is appropriate to pay trustees if necessary. It is also appropriate that the regulator takes a view on who should be paid and what they should be paid.

Q99 Chair: Sir Stephen, I think you want to come back, but many of the people you represent are already the most highly paid people in the charitable sector. One might describe you as representing the toffs of the charitable sector.

Sir Stephen Bubb: Thank you very much, Chair. The point you make is interesting, because historically staff in charities were not paid, of course. The first chief executives in charities were the clerks, the trustees, who brought the coffee and wrote the minutes and were not paid. There was a similar debate about whether paying people to work in charities would lead to a decline in trust and confidence, and it certainly has not. The fact that there are relatively highly paid chief executives running charities has not lead to a decline in trust and confidence.

There are two points to make in light of what Stuart said. First of all, the evidence: I have already pointed to one set of evidence, which is the change in public appointments from a position where people were not paid to a position where they are. These are not large sums of money, but that has had an interesting effect in terms of the people who are recruited to public appointments, both in terms of diversity and skills. The second point to make is that any one of my members who has tried to introduce payment has found it extraordinarily difficult, including the example I gave of the RNIB.

Finally, the point Stuart is making is important, around charities’ trustees just deciding to pay themselves what they want. In the evidence we gave to the Cabinet Office after Hodgson, we suggested that this would be an area where the Charity Commission would need to give guidance. Indeed, when they do give guidance to charities that are introducing pay, they usually propose that the charity establishes an independently chaired remuneration committee and that they publish what they pay trustees. There are safeguards that you absolutely should introduce to ensure that there are not any conflicts. I come back to the point that Lord Hodgson made, which I absolutely agree with, which is that we should trust the trustees themselves. If they want to make the case for payment, they should be allowed to do so.

Q100 Chair: What is the problem that this is designed to solve?

Sir Stephen Bubb: The three areas I indicated earlier. The reasons why charities want to do this, the ones that do, are the three areas of diversity, skills and professionalism. Let’s be clear as well: in terms of the survey that we did, 75% of my members said they would not want to take advantage of this, but 25% do. Why should we therefore say to those that they should not be allowed to pay trustees? Why should we say to the RNIB that they cannot pay trustees? That is the point.
Q101 Chair: Do you think the RNIB would be suggesting this if it was not quite a wealthy charity?
Sir Stephen Bubb: I do not know.

Q102 Chair: Isn’t there something intrinsically special about the fact that the people who have the ultimate responsibility for our charities are doing it as a voluntary effort, as a citizen, as part of our society? I hesitate to use the word “big” in front of that, because it gets political, but it is about being a citizen. Very often, trustees are people with particular skills, often people of higher-than-average means, who wish to put something back into society. Isn’t the whole business of paying trustees undermining that fundamental principle? Even your highest-paid chief executive is working for volunteers.

Sir Stephen Bubb: I do not think, given what I have said, that we will ever be in a position where the majority of charity trustees are paid. Indeed, even amongst my members that want to pay their trustees, some of them are arguing that they should pay only the Chair, because of the position the Chair holds, as in the example I gave. I do not see this as a major problem. To go back to the point, of course you can, if you have the strength and the patience, persuade the Charity Commission now. What Lord Hodgson is proposing is actually not a big change, but it would enable those charities that can make the case to do that without the Charity Commission’s permission.

Q103 Chair: Cath Lee and Joe Irvin, I think you support Sir Stuart’s view, but is there anything you want to add?
Cath Lee: No.
Joe Irvin: No; I think he put the case very well.
Chair: Very good. Very efficient, thank you very much.

Q104 Alun Cairns: Sir Stephen, complaints about charities: Lord Hodgson considered a charity ombudsman or extending the remit of another ombudsman to include complaints against charities, because in the current arrangements the Commission would only investigate serious mismanagement or misconduct. Do you think that an ombudsman or that power is required elsewhere?
Sir Stephen Bubb: It is an interesting proposal. Given the previous discussion we had on the question of resources, there must be some concern that, as you say, the Charity Commission can look at cases of only very serious misconduct. I think there is a case for that.

Sir Stuart Etherington: Everybody starts off thinking an ombudsman is a great idea and then they look at it closely and decide that, actually, it is not too good an idea. Where Lord Hodgson came down is to suggest that professional bodies and umbrella organisations might play a greater role in accrediting or monitoring complaints procedures. In general, if somebody has a serious legal complaint, it is for the Commission and dealt with by the Commission.

There is another area, where people might complain about something a charity did but it was not a regulatory infringement of any kind; they just might not like the way they had handled it or they might want to complain about the standard of service that they were offered or something of that nature. Our view, and we have always encouraged this, is for charities to have complaints procedures, proportionate to their size, of course. I think Lord Hodgson’s conclusions are correct. We might play a role, all of us, in promoting and accrediting complaints procedures. Where those complaints would then end up, if they were escalated to the charity and beyond, is an interesting thing. You are going to speak to people from the fundraising sector later. It is an interesting question for fundraising. There the solution is self-regulatory bodies. I would not want to promote too many self-regulatory bodies, other than the excellent ones in relation to fundraising. I have fallen out with the idea of an ombudsman a bit. It would be operating between the industry and the regulator, and I do not think there is enough space there to justify the expense. I started as an enthusiast, and I have become much more sceptical.

Q105 Alun Cairns: Sir Stephen, you seemed a little bit more pro. How do you answer the issue about cost and whether that should be borne by the taxpayer or elsewhere?
Sir Stephen Bubb: Going back to our previous discussion, if you were establishing that, it would have to be funded by the Exchequer. Certainly where else would that funding come from?
Joe Irvin: As we said, if there is a breach of charity law, or indeed other law—because charities and people are subject to other law as well—that would be dealt with. That is the issue we are talking about: the non-breach-of-law complaint. We have internal complaints procedures. We promote that among our members. Our members, who are councils for voluntary service, often act as an informal arbiter, if you like, in their local area, if local charities seek to do so. My indication from them is they would be wary of taking on a quasi-judicial role.

In the resources argument, you started by saying the resources of the Charity Commission are being constrained and, therefore, they cannot perform this role as well, so let us set up something else, but that is just going to cost the same amount of money. If there is not the money for the Charity Commission to do it, I do not see how there is money for an ombudsman to do it.

Q106 Charlie Elphicke: Sir Stephen, the charity War on Want is pressing for restrictions on charitable campaigning to be abolished, allowing trustees to direct all the charity’s resources to this end, if they are convinced that it is “the best way of achieving the charity’s … objectives in the long term”. They say that the restrictions are “the last hangover from an obsolete belief that charities should engage only in relief or palliative care”. Do you think they are right?
Sir Stephen Bubb: That quote is rather good and I agree with that. That is, in a sense, one of the historic roles of charities in the UK. They have always had that dual role. Most of them have a dual role of delivering services and also, as the Quakers would have it, of speaking truth to power. The RSPCA, when it was founded, absolutely was around helping and
supporting sick animals, but also campaigning for a change in the law. I think that has always been a strong role for our organisations and one that we should celebrate for two reasons. Reason number one is that a vibrant democracy needs a noisy, edgy, vibrant civil society. That is what we have in this country. That is what Putin is trying to stamp out in Russia.

The second reason is that when the state is deciding, as it is, in terms of public services and reforming public services and wants charities to deliver more services, what it is doing is intelligently commissioning from organisations, like the disability charities or mental health charities, that both provide services but also speak on behalf of their users and the people who make up that charity. I am not talking about War on Want, but if you take an organisation like the National Autistic Society, it is absolutely always going to be in a position where it wants to provide services for autistic people because it believes it can do that significantly better than the state—there is huge evidence to support that—and it will always campaign on behalf of autistic people if a change in the law is needed, as it has done. I think that is a great strength of our democracy and a great strength of public service reform.

Q107 Chair: Could we see if there is any dissent from those views?

Sir Stuart Etherington: I do not agree with the War on Want position and I am quite happy to expand on that, if that would be helpful.

Q108 Charlie Elphicke: Yes, please do.

Sir Stuart Etherington: Clearly people can form associations and campaign about what they want, within the law. This is about charities and campaigning. I think the law and the guidance that we currently have is good guidance, under CO9. It was debated. I chaired a debate—I think it might have been in this room—where on the one side Helena Kennedy was arguing pretty much the War on Want position, and on the other Greg Clark was arguing for the retention of the current system. The current system says that charities can campaign to further their charitable objectives: they can campaign with part of their resources, but not all of their resources, or they can campaign with all of their resources for a limited period of time. There was an argument, similar to the one put by War on Want, that charities, as opposed to other associations, can campaign all the time with all of their resources. It seems to me then that you are placing them much more in a political position. They have, it seems to me, to be balancing their campaigning with their knowledge, evidence and also the support of their beneficiaries or in concern for their beneficiaries. I am quite comfortable with the law and the advice as it currently stands. If we pushed any further, we would be into slightly more dangerous waters.

Q109 Charlie Elphicke: Could I just follow up on that, Sir Stuart? I do not know if you are aware of it, but Ipsos MORI did research this year on public trust and confidence in charities, and they found that respondents said their trust in charities had declined in the last two years, 7% of them ascribed the decline to political bias and pressure by charities. 7% said that is what had caused them to lose trust. They thought the charities should be walking the walk, rather than talking the talk.

Sir Stuart Etherington: I think charities have to combine the provision of services with trying to influence public policy. Some will just provide services, but it seems to me if you see a glaring need that you think public policy could address, you are almost duty bound to raise issues consistent with your charitable objectives around that. It seems to me to be absolutely central. We have seen recent evidence of that: RNID, for example, campaigning for digital hearing aids; we have seen the Gurkha campaign; we have seen the British Legion, for example, in relation to rate relief. You see a lot of campaigning activity that is directly related to beneficiary needs, whether those beneficiaries are homeless people, whether they are ex-service personnel or whatever they are. I think it is an essential part of that, and 7% does not seem a particularly high figure to me.

Cath Lee: I am not sure this is going to add very much. For most of our members, it would be a nice problem to have. They just do not have the capacity to do the high-level policy work that they would want to. But I would really agree with what Stuart said about the current legislation being okay and fit for purpose as it is.

Joe Irvin: I would just add that I agree with Stuart and Stephen, in most of what they said, because Stephen was saying that there ought to be independent campaigning charities and I think there should. Because a charity, whether it is a mental health, disability or any other charity, is paid by the public sector to perform a public good, that should not buy silence or compliance in everything that they say. I do not think that is right. They should be independent, so I agree with that. I do not agree with what War on Want said, which is that we should abolish the restriction. They are probably falling into the same camp as those who say, “Why aren’t political parties able to be charities?” The reason is that we are not allowed to be party political. The current rules are just about right: we do not get a lot of problems with them from our members. They stay within those rules.

The figure you quoted was not a 7% drop in public support, was it? It is a tiny drop in public confidence, I think, and out of 100% of the drop, 7% named this. Now, there will be one or two campaigns that are not very popular with sectors of the public. On the one hand, Life, for example, on anti-abortion or Stonewall saying on the side of buses, “Some people are gay. Get over it!” may jar with some people. That may have been offensive to one or two people, but I think it is right for those charities to be able to exist and to put those points of view, both of them.

Q110 Charlie Elphicke: Sir Stephen, just to come back to you on this, there is a lot of concern about political campaigning. Sir Stuart draws the distinction that, as an adjunct to what you are doing, you then educate, tell people about what you are doing and say, “This change is needed,” but some charities go...
completely the other way and just spend all their time campaigning. Indeed, people feel they politically campaign. Do you think that is fine and goes with the “anything goes” philosophy that you have?

**Sir Stephen Bubb:** I quite like your walking and talking analogy. For the vast majority of my members, that is exactly what they do. They are delivering services and they are also campaigning. I am not sure I would go completely extreme and abolish the guidance; I am not sure I would completely go down that route. Some of Stuart’s points on that are good, but I think I am probably a little more radical on this than Stuart, in the context that we always have to be very careful to safeguard the independence of charities from people who want to shut us up. I would like to always be in the camp of saying I am in favour of campaigning, because that is core to what we do as charities.

**Q111 Chair:** The War on Want proposal really would open the prospect of political parties becoming charities.

**Sir Stuart Etherington:** Exactly.

**Q112 Charlie Elphicke:** Why not? Is that a good idea?

**Sir Stuart Etherington:** I am sure you provide a good service, but I am not sure that it’s being a charity.

**Sir Stephen Bubb:** We had a very interesting debate in ACEVO when the Chief Executive of the Liberal Democrats wanted to join. In the end, we decided that he could.

**Q113 Chair:** Of course. Wouldn’t you say, Sir Stephen, that we all want a vibrant civil society? Is not one of the lamentable facts of our civil society at the moment that political parties seem to be withering away, because they are given a pariah status because they are not charities? They are nasty political parties. Notice I am using the word “they” here.

**Sir Stephen Bubb:** Many of my members have more members than the three political parties put together. I do not think that is a good thing, Chair.

**Chair:** This is part of a wider debate than I think Lord Hodgson intended us to have.

**Q114 Charlie Elphicke:** There is one thing I wanted to follow up on, if I may, Chairman, which is this: the IEA has criticised political campaigning by charities that are in receipt of income from the state. Sir Stephen, this is an issue you touched on, which is that your charities retain their independence from ghastly politicians who want to shut them up, suppress them and things like that, but there is a slight difference here, where the charity gets money from the state and then runs a political campaign to get more money from the state. Is that charity really independent and is that kind of campaigning really appropriate?

**Sir Stephen Bubb:** The campaigning is absolutely appropriate. Speaking truth to power and biting the hand that feeds you ought to be in the memoranda and articles of all charities. I mean that seriously. Going back to the two points that I made, one of the reasons that the state contracts with our sector to provide services—to get the hardest-to-reach back into jobs—is because of the particular skills that we have. Part of that is drawn from the legitimacy that our organisations have from working with people with addiction and the like. Part of that legitimacy is drawn from the political campaigning. Intelligent commissioning realises that, and realises that what you get from commissioning us, as opposed to A4e or Serco, is that authenticity and legitimacy, and that is something that you want to buy. The UK is actually in advance of many European countries in the way it commissions from our sector, because it understands that legitimacy. The idea that you would try to stuff out the role that we play in campaigning, through contracts, would be absolutely wrong.

**Joe Irvin:** I concur with that. If public authorities want to contract voluntary organisations to perform a public function, that should not buy silence and it should not buy acquiescence. My aunt by marriage was one of the early people starting Scope, which was then called the Spastics Society, and they made a lot of noise and they needed to, because there was segregation of people who had cerebral palsy.

**Q115 Chair:** How do you stop Government, controlled by a political party, buying a loud and independent supportive voice by giving money to a charity that campaigns vociferously for policies that it wants to implement?

**Joe Irvin:** We are talking about how charities behave and we are constrained by not being party political, within those rules that are explained by the Charity Commission very well. I am just saying that those charities should be independent. You should not buy silence; you should not buy cheerleaders; and you should not object if people continue to campaign, for example, for people with cerebral palsy. I would just say at the end that I did look up the Institute of Economic Affairs, which proposed this, and they are a registered charity themselves.

**Q116 Charlie Elphicke:** Sir Stuart, what do you think? You get money from the state. Should you campaign for more money from the state?

**Chair:** Who is campaigning for less money?

**Sir Stuart Etherington:** I would concur with my colleagues that, in fact, organisations are often funded to provide services by the state, because they often provide them better and in more niche ways to vulnerable people and others. They will use that experience in order to change public policy and favour their beneficiaries. I think that is inevitable and not undesirable.

**Chair:** This has been a very full session and you have been very self-disciplined, despite there being four of you, all with very well informed views about this matter. We are grateful for your evidence; it has been very helpful. Thank you very much indeed.
Examination of Witnesses

Witnesses: Peter Lewis, Chief Executive, Institute of Fundraising, Alistair McLean, Chief Executive, Fundraising Standards Board, and Sally de la Bedoyere, Chief Executive, Public Fundraising Regulatory Association, gave evidence.

Q117 Chair: Welcome to this second session this morning on the Hodgson review of the Charities Act. I wonder if you could each identify yourselves for the record, please.

Peter Lewis: Morning, Mr Chairman. I am Peter Lewis. I am Chief Executive of the Institute of Fundraising. We bring together 5,300 individual fundraisers and 360 of the biggest charities that fundraise.

Sally de la Bedoyere: Good morning. I am Sally de la Bedoyere and I am the Chief Executive of the Public Fundraising Regulatory Association.

Alistair McLean: Good morning, Mr Chairman. I am Alistair McLean. I am the Chief Executive of the Fundraising Standards Board.

Q118 Chair: Now I am a firm believer that you do not make an omelette without breaking eggs. The issue here seems to be that the act of asking people to give money to charities causes anxiety and unhappiness. Isn’t this an inevitable friction and why are we concerned about this?

Peter Lewis: I think that is a very good question. Normally, it is a pleasure for people to give money, and we forget too often that actually it is the pleasure in the donor giving money that we should be trying to elicit. Any charity that is asking for support is enabling the donor to give to a cause that donor cares about. As you quite rightly said, if you do not ask, you do not get. It is quite strange in this country at the moment that we expect more giving to happen without more and better asking. That is exactly what the Institute is about; it is about training people to do that. It is absolutely appropriate that charities should be able to ask.

Q119 Chair: Can I just suggest that, if you agree with what has just been said and you have nothing to add, we move on?

Alistair McLean: Yes, Mr Chairman, all I would add is that we have a role as the self-regulating body for fundraising standards in the UK. It is important that the ask is done properly, and that the public has a right of reply, in terms of how that ask is done. Also, it is absolutely appropriate that charities should be able to ask.

Q120 Charlie Elphicke: It is all very well to talk about omelettes, breaking eggs and saying everything is all just fine, but we do have a situation where a poll has shown that two-thirds of the public say that some fundraising methods used by charities make them feel uncomfortable. 70% say that more should be done to regulate the fundraising activities of charities. These are people who feel they are just harassed by chuggers and hard selling. Do you not think it is time to draw in and win back the public trust when it comes to fundraising?

Peter Lewis: No, I do not think so, with respect. There are various bits of data that you can look at that show a great deal of public trust and confidence in charities. Some of my colleagues earlier talked about how that public trust and confidence in charities remains high. That does not mean that we are complacent. We, as the Institute, started developing codes of best practice over 20 years ago, because fundraisers, more than anyone, understand that public trust and confidence in charities is absolutely crucial. Setting guidelines for how people do make that ask for support is absolutely crucial. The beauty of self-regulation is that it can develop over time and it can respond to things as the environment changes. Last year, there were more complaints about email fundraising. We set up a group to look at how we could improve the code and make sure the charities deal with that better. There was a case around the Three Peaks Challenge. Again, it is exactly the same: we take the evidence around the issues that are arising; we deal with them and we move on. The situation is ameliorated.

Peter Lewis: It is very important to understand that, if you do not ask, you do not get. We did YouGov polling earlier in this year. Even with social desirability criteria applied, 66% of people only gave as a result of an ask. You need to ask in order to get support. The codes set out exactly how you should ask. Where there is bad practice, it is our job, the three of us, to stamp out bad practice. However, we do acknowledge that some forms of fundraising do cause some public distress, and that is exactly where we come together to set the codes and to maintain that public trust and confidence.

Chair: Forgive me; I must ask for slightly shorter answers. That was a very full answer and, nevertheless, very helpful.

Q121 Charlie Elphicke: Hold on a second. You guys say it is your job to stamp out bad practice. Right? Effectively, you are the overseers and protectors of the consumer, judging by what you are saying. Mis de la Bedoyere, you are on record saying, “Many complaints made about face-to-face fundraisers are not about breaches of the Code of Practice or our own rules but simply about the presence or existence of fundraisers—some people just do not like to be asked to support charity.” I say to you, firstly, that does not indicate a great level of consumer concern. That sort of basically indicates a sense of explaining away. Secondly, what proportion of complaints about face-to-face fundraising do you think are caused by the inappropriate behaviour of a fundraiser?

Sally de la Bedoyere: There were two parts to that. Firstly, that comment in context is really referring back to what Lord Hodgson also referred to last week, which is about behaviour transference. There is an element of certainly face-to-face fundraising, which I and the PFRA are involved in enforcing and regulating, where people might feel guilty and do not like that. There are indications from the research that the Fundraising Standards Board did last year that could be 25%. We have our own internal research that suggests that could be higher. However, that is not to suggest that it is not important or that we do not take it seriously. The perception is sometimes greater than...
the reality. For sure, less than 3.5% of complaints that go to the Fundraising Standards Board are about face-to-face fundraising.

Having said that, what we have done, certainly in the last year, is respond to what is going on in the market and take our responsibilities very seriously. We have doubled our mystery shopping programme, we have increased our compliance work that is going on and we have increased our outreach programme so that we can do more local agreements with local authorities, because that is where we are getting the research and the feedback that we can really change the reality of what is going on, and improve the standards.

Alistair McLean: All I would say, in our role as the Fundraising Standards Board, is that we are the public-facing body responsible for public complaints. We have been set up by the Institute of Fundraising some six years ago and we are very much in progress. We have made enormous progress in the last five years, in terms of dealing with public complaints and being the place where the public goes when they wish to complain. I will accept that there are certain fundraising techniques that people do not like, but the reality is that every single case that is investigated, we have seen the evidence from the local authorities, and we have some 1,500 members who represent virtually 50% of all voluntary funds raised in Britain today. It is a sizeable percentage of all the funds raised in Britain. Face-to-face fundraising is certainly a significant area of complaint, but it is way down the predominant areas of complaint, like direct mail.

Q122 Alun Cairns: Yes but, Mr McLean, Ipsos MORI shows that 90% of the public have not heard of your body.

Alistair McLean: That is absolutely correct. In fact, I was going to turn that on its head and say that public awareness, from a standing start six years ago, has gone from 0% to 10%. You are quite right, our sums add up.

Charlie Elphicke: That is grasping at straws.

Alistair McLean: We have made progress. I turned it into a positive. From a standing start, prior to the FRSB being set up, the public did not have a formal route through which it could feed back about fundraising standards, and feed back about fundraising methods and techniques. It now has that body. In five years, we have grown from 0% to 10% of public awareness. I should add that the Charity Commission has got a public awareness of some 55%. Bearing in mind that the Charity Commission was established, as part of the Charitable Trusts Act, in 1853, we have a way to go in the next 150 years to try to get a public awareness of 55%, but it is definitely a challenge and it is something that Lord Hodgson mentioned. Our public awareness is not enough and we need to work harder on that.

Q123 Charlie Elphicke: We have a situation where Dame Judith Mayhew of the New West End Company said, “The activities of chuggers undoes much of the good work of businesses and the local authority to welcome visitors and create the friendly atmosphere that is needed to ensure that the West End [of London] remains the world’s top shopping destination.” She says what we actually have is chuggers going around and having a “harass-astic” time, as I am sure Boris Johnson would say, and there is much public concern. I am not hearing from you guys any engagement, understanding or acceptance of that public concern, and I would ask you what steps you take to assess whether face-to-face fundraisers actually abide by the code of conduct, in practice not in theory.

Sally de la Bedoyere: It is in all our remits, but what we are doing is enforcing the Institute of Fundraising’s codes of conduct, which are pretty strict. Harassment, obstruction and standing outside or within three metres of shop centres are against the codes. There are very clear guidelines on this. What we do, particularly PFFRA, is go out and mystery shop. We have compliance checks; we have a system of penalties and sanctions that was brought in just two months ago, I might say, which actually has financial implications for the agencies of the charities if there are breaches there. We do take it enormously seriously. One of the things we are doing and one of the important things to know is that our work with the Local Government Association and with the Association of Town Centre Management is a deliberate proactive stance to engage, look at some of these issues and ensure that, if we can create local site management agreements with these councils and authorities, we can then enforce those, enforce the codes that the Institute has in place and ensure that better practice and standards take place. It is an area that we take very seriously and respond to.

Q124 Charlie Elphicke: Let me press you. Do you guys accept that there is a problem when the Telegraph investigates chugging and finds that fundraisers deliberately mislead shoppers and break the code of practice that regulates their activity, and when a survey of local councils carried out by the LGA found that 81% of authorities have received complaints about the conduct of street fundraisers? Do you accept there is a problem or are you just in denial?

Alistair McLean: We have to accept there is a problem. That particular exposé of the Telegraph in June raised some serious concerns about the conduct of a fundraising agency on the streets of London, and it has been taken very seriously by the sector. We have investigated that particular case and we are due to publish that report. I am happy to supply that, Mr Chairman, to the Committee next week, when that will be made available.

Chair: That will be very useful, thank you.

Alistair McLean: It was considered very seriously by the sector. It is fair to say there was some evidence of poor fundraising practice that took place. That has been dealt with. I hope that, when you read the report, you will consider that it has been handled proportionately. Remember that we are a self-regulatory body and the sector is involved in trying to regulate based on the evidence that comes to us—the complaints that we receive. We respond to those complaints. We are increasing responding to those proactively and in a constructive way, but it would be foolish for us to sit here, wash our hands of it and ignore the issues of particularly something that
seems to divide society, which is face-to-face fundraising. But there are other fundraising techniques that irritate the public and we must accept and recognise that. We go back to this point where it is absolutely a requirement for the public to be asked to give, and it is also their right to say no.

**Peter Lewis:** We have to remember that I think we would all acknowledge that there is noise around face-to-face fundraising. It is noise that we have to address, because it is not productive. At the same time, we have to remember that, last year, as a result of face-to-face fundraising, on the street or on the door, 865,000 people gave long-term support to vital charitable causes—to support a homelessness charity, to support research into cancer—as a result of that ask. Another 400,000 people supported a charity long term through an approach in a private space, for example a shopping centre. That is over 1.3 million people last year who through face-to-face fundraising signed up to a direct debit to support a charity doing vital work, bringing over £130 million of income to those important causes.

We have to have a balance here between a charity’s duty, the need for charities to ask for support to get vital long-term support, and maintaining public trust and confidence. We are not complacent. I joined the Institute just over a year ago now, and I spend a lot of my time going around the sector talking to directors of fundraising, and they were concerned about the noise around face-to-face fundraising. As a result of that, we brought together a Summit just before the summer, and there are task groups now looking at whether we need to strengthen the code and make sure there is a framework for training face-to-face fundraisers, so we can have a better assurance that the standards are there. We are not complacent, but we do need to remember the purpose for which charities are asking for support.

**Q125 Charlie Elphicke:** Our concern is the cost at which that money is raised for those good causes, when you do so much reputational damage and the fundraisers do so much reputational damage to those good causes. Our message is that you guys should get your house in order or Parliament will act and legislate in this area.

**Peter Lewis:** The charities that you are talking about are large brands that we all know very well, and they are very well able to deal with their own brands. They are very brand-conscious. As well as developing important services, they monitor how the public is feeling about them. Organisations know what their return on investment is for their fundraising, using face-to-face funding. They know that, for every £1 they invest now, in five years’ time they will get at least £2.50 back. Over a 10-year period, they will get £4 back. For example, British Red Cross, over the next 10 years, is expecting to get over £500 million from face-to-face fundraising, as a result of signing up people to support them through direct debits.

**Chair:** Okay, I think you have made your point.

**Peter Lewis:** It is very, very important money for the sector.

**Q126 Chair:** Isn’t the problem that however strict your codes of conduct are, there are severe limits on how you can control street fundraisers?

**Sally de la Bedoyere:** The new penalties and sanctions regime came in recently, but with two months of data—I am not going to start spouting data out—the better evidence at the moment is anecdotal amongst our members. What is happening is they are taking any penalties that are being handed out by mystery shoppers and taking that on board to identify training needs and how they raise their standards. There is a real effect that is going to come through, in terms of what is going on with this.

The other thing is very much going back to these site management agreements with councils. There was another piece of research, also by the Local Government Association, which showed that, where they are in place, 81% of them are finding it works very well. Plymouth was getting 50 complaints a month; it is down to two. Cardiff, in the first six months, had one complaint. If you talk to Norwich Council, they will tell you how well it is working. We have 52 of these and another 20 in the pipeline. That is why we are forcing them through as much as we can, and would encourage and ask that there is more encouragement for them to work with us because, where they are in place, we can manage any breaches very quickly. This is not about a public complaint coming through to the Fundraising Standards Board.

This is about someone ringing up saying, “I am being blocked,” or “They’re in the wrong place,” or “Something needs to happen.” That is where we have people who can deal with it immediately and that is where the effectiveness happens.

**Q127 Chair:** That is an interesting bit of evidence you have given us there, but again none of your organisations have particularly high brand recognition and you are probably not getting the complaints that reflect what people feel. Isn’t there a role for the Charity Commission in this to be at least the conduit of complaints, so that there is a formal way of people complaining to the Charity Commission and passing the complaints on to you?

**Alistair McLean:** In our role as a self-regulatory body, we need the support of the umbrella bodies and the Charity Commission to build a brand and build awareness. Chair, you are right in that, probably, because we are not well known enough—either of us—the public does not necessarily have a route to make that complaint. But one thing is for sure: when they do make a complaint, those complaints are dealt with professionally, very thoroughly and very comprehensively. It is a journey; unfortunately, we have not reached that particular destination, but we do require the support of the Commission and the umbrella bodies.

**Q128 Chair:** What does the support of the Commission mean? What should be the role of the Charity Commission in this?

**Alistair McLean:** To build self-regulation, the critical piece here is exposure. I think one of the gentlemen in the previous session informed the Committee that the Charity Commission gets over 3.5 million hits
from either the public or indeed other charities in the sector, whilst the NCVO have only 0.5 million and NAVCA have only 150,000. If the Charity Commission had the FRSB tick logo on its website, and all the charities that were members of the FRSB on that website, that would be one way in which they could significantly assist us. This is something, I must say, they are considering at the moment, but it is one way that they would assist us in terms of exposure. There are other things that we are working with the Charity Commission at the moment to try to develop. We are working with them over the Christmas campaign. There are new developments with the Commission that we are intending to roll out over the course of the next few months. **Peter Lewis:** If I may, just as a word of caution, we do need to be very careful we do not invent a sledgehammer to crack a nut. Fundraising complaints are very, very small at the moment, 0.001% of complaints, compared with the number of asks. We have to be really careful because, in a self-regulatory system, this is donors’ money we are talking about. What we need to work together to achieve—and this is where we think a self-regulatory system is the best way—is an efficient and effective system that does not waste donors’ money unnecessarily but, at the same time, maintains public trust and confidence. We would not support loads of donors’ money going on promoting a complaints process. **Chair:** Anything to add? We have to be very quick now. I am sorry about that. We are very pressed for time.

**Q129 Alun Cairns:** Mr McLean, you tried to put the positive spin on it earlier, when we talked about 90% of the public having not heard about the Board. With fewer than 1,500 members, you are falling well short. Are you disappointed with the membership figures so far? **Alistair McLean:** Mr Cairns, I would accept that, when the Buse report was written in 2006 suggesting some of the targets that the Fundraising Standards Board might achieve, there were two targets set. The first one was that it may be reasonable to expect the Fundraising Standards Board to achieve, over the five years, membership accounting for 25% of voluntary income. The other target it set was a charity membership of between 2,000 and 3,000 members. On the first point, we were home and hosed; we well exceeded the 25%. Our 1,500 members represent virtually 50% of all voluntary funds raised in Britain, so that is a significant impact and those charities are doing a lot of that fundraising. But in terms of overall members, I fully accept that we have some work to do and that is part of the journey.

**Q130 Alun Cairns:** What efforts have you made to make the membership universal? **Alistair McLean:** There have not been any efforts to make the membership universal, because there are so many charities that do not do fundraising. Early on, we talked about the 160,000 charities in Britain. Nearly 50% of those have a voluntary income of less than £10,000. They do not need self-regulation overseeing them, because those charities are run by small communities and local areas that do their own regulation. Nobody is going to mess around with the small amount of funds that they have got. It is the larger charities, those charities that Lord Hodgson suggested have a voluntary income in excess of £1 million, that should all be expected to join the Fundraising Standards Board and to sign up to the self-regulation standards that we demand of them. That would be one of the many recommendations that we would strongly support, and would definitely help us grow our membership. **Peter Lewis:** We asked our members whether they would like a universal system. They would. They sign up to our codes; they would like everyone to have to comply with the codes, and we would ideally like the FRSB to be able to adjudicate against everyone, whether or not they are members of the FRSB.

**Q131 Greg Mulholland:** No one would suggest that there is not a fairly confusing public face in terms of charity regulation. I wish to refer to an article in the *Guardian* on 6 August by Joe Saxton, which said, “The Institute [of Fundraising] has queried whether the suppliers on the PFRA board have a conflict of interest, and the PFRA has asked the Institute the same question about its board. The Institute is holding summits without inviting the other two parties. If this is happening in public the mind boggles as to what is going on behind closed doors.” Are you part of the problem? **Peter Lewis:** I think we are trying to sort the problem out. You understand very much as MPs, who are part of the legislature, the system that we have here. We, as the Institute of Fundraising, bring the charities together to write the law. We are the legislature. The PFRA is the police in relation to face-to-face fundraising. They are the police going out checking practice. The FRSB is the judge, so it is absolutely right that we split those three roles. You do not want to be judge and jury in the same place. It is absolutely key that we get those relationships right. We have been discussing that over the last six months. The FRSB is now seen as the public-facing complaints body. We write the code. There should be a distinction between us and them, because that is the right tension. The PFRA is making sure that people are complying on the street.

**Q132 Greg Mulholland:** The legislature, the judge and the police never always get on, but are you getting on better than that article suggests? **Alistair McLean:** It is fair to say that the challenge put to us by Lord Hodgson was significant. It is his first recommendation in his report regarding self-regulation. He said it is behooven on the three of us to get together and agree who should be the public-facing body. In the face of not six months but about a month and a half, bearing in mind a month or that was summertime, we got together, and the Chairs and the Chief Executives of the three organisations sat down and agreed that the FRSB should be that public-facing body. We are reasonably fast and nimble on our feet; we pay attention to those criticisms that

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¹ Note from witness: Factual correction: less than 0.001% of complaints.
are levelled at us; and we move forward on it. Yes, there is good tension and there should be good tension between us, in terms of rule setting and enforcement, but we have made significant progress in the last few months in achieving that.

Q133 Greg Mulholland: Are you aware that Lord Hodgson said that the strong recommendation is that “there needs to be a single, central point of responsibility. This is not an easy challenge for the sector, but if the sector fails to address it, self-regulation will ultimately fail,” which of course then means we would be looking at statutory regulation. Heads having been knocked together, do you think that is avoidable and do you think you will make self-regulation work?

Alistair McLean: I fully agree. We have reached that point. There is lots of work that we have to do behind the scenes to finesse these decisions, of course, but that decision has now been made and it is a very powerful one for the sector to be able to step forward on.

Sally de la Bedoyere: We are all very confident we are working together. I came in only three months ago, so I am relatively new to that, but coming from a background of two years of fundraising has been enormously helpful. Certainly the conversation that we are all having is making the process as clear as we possibly can.

Q134 Greg Mulholland: There certainly seems to be progress and you are getting on perfectly well today, I note. Can I ask a more fundamental question, if I may, in the limited time that we have? We had a long discussion about chugging, which is an area of public concern, but do you think there is a mistake in looking only at the regulation, whether it is self-regulatory or statutory, of fundraising? Why do we not have more and more transparent regulation of equally important aspects of charitable activity, the obvious one being not just how the money is raised, which we have been talking about, but how the money is actually spent, and also how charities look at their accounts, the levels of pay for chief executives and administrative costs? Why are we so fixated on regulation of fundraising and do you think there is an opportunity now for this review to look at having regulation, and hopefully self-regulation, for charities in a much wider and more appropriate way?

Peter Lewis: I was involved in the NCVO advisory panel that fed into their response to the review. I would simply concur with Sir Stuart this morning, who said initially it looks like a really good idea but, actually, when you get into the detail, it is very confusing. Is there a space for any greater self-regulation to fill?

Q135 Greg Mulholland: Self-regulating or not, are you saying there should not be any regulation of how charities spend their money and being more accountable for that?

Peter Lewis: I would just concur with Sir Stuart, who, having looked closely at the space that there is for any greater regulation, came to the conclusion that there was not space for an ombudsman to look at complaints. In relation to how charities spend their money, fundraisers more than anyone know that they need to show their impact and they are absolutely focused on showing the impact that their charity has. Their expenditure around fundraising and administration is obviously part of that communication with their donors.

Q136 Greg Mulholland: Do you think charities are sufficiently transparent across the board?

Peter Lewis: I think charities take decisions on the basis of their own charitable cause, and know that the only way they get support from individual members of the public is by being absolutely clear on the impact they have.

Sally de la Bedoyere: The only thing I would add is to respond to your question of whether there is an opportunity there, in terms of the self-regulatory framework, to look at more of it. There potentially is, because of course face-to-face and particularly street fundraising has been so under the spotlight that it is probably, in a way, more transparent than a number of other forms of fundraising. The return on investment, what the costs are up front, what is happening with it and what it is going to deliver have had to become really transparent. Within the codes of practice and within the complaints system, there is an opportunity to see whether that form can be expanded even more. That is very much down to the trustees and the charities to deliver.

Q137 Chair: Are there any further questions? You were given six months by Lord Hodgson to get your act together, and you think you are going to succeed.

Sally de la Bedoyere: Absolutely.

Peter Lewis: Yes.

Alistair McLean: I think, Mr Chairman, the very significant recommendation in his report was requiring the three of us to get together and agree a public-facing body dealing with complaints. The public do not care about the FRSB, the Institute or the PFRA. They only care that, if they have a complaint, there is a public-facing body dealing with complaints. The public do not care about the FRSB, the Institute or the PFRA. They only care that, if they have a complaint, they can make a complaint and that complaint will be processed. We have reached agreement about that and that is a significant positive step.

Chair: If there are no further questions and no further comments, it just falls to me to thank you very much indeed for giving us evidence in a great spirit of what you can do. We look forward to seeing the results of that. Thank you very much indeed.
Tuesday 30 October 2012

Members present:
Mr Bernard Jenkin (Chair)
Alun Cairns
Charlie Elphicke
Paul Flynn
Robert Halfon
David Heyes
Kelvin Hopkins
Greg Mulholland
Lindsay Roy

Examination of Witnesses

Witnesses: Matthew Burgess, General Secretary, Independent Schools Council, Francesca Quint, Barrister, Radcliffe Chambers, and Philip Kirkpatrick, Partner, Bates, Wells and Braithwaite, gave evidence.

Q138 Chair: Welcome to this session on the review of the Charities Act. Would each of you identify yourself for the record, please?
Philip Kirkpatrick: I am Philip Kirkpatrick. I am the co-head of Charity and Social Enterprise at Bates, Wells and Braithwaite Solicitors.

Q139 Chair: Would you call Bates, Wells and Braithwaite one of the leading solicitors that serves charities in the country? I am not asking for an advertisement but for your experience in this.
Philip Kirkpatrick: Yes, I would like to say that. Thank you.

Q140 Chair: Mr Burgess?
Matthew Burgess: I am Matthew Burgess, I am General Secretary of the Independent Schools Council.

Francesca Quint: I am Francesca Quint. I am a barrister and I am a member of Radcliffe Chambers.

Q141 Chair: Presumably your chambers also specialises in charity law?
Francesca Quint: We do, more so than other chambers.

Q142 Chair: Thank you very much for being with us today. We are starting on the subject of public benefit. Do you think the Charities Act 2006 has been helpful in settling what public benefit means?
Francesca Quint: Yes, I think so, if I can step in ahead of others. I think it has brought to the fore the fact that the public benefit principle is an essential part of charitable status and that no purpose is charitable unless it benefits the public in some way. Therefore, I think it has helped to focus attention on what a charity is there for and explain the law as it has developed over the centuries. The way in which it was put into the Act is not necessarily the best possible way and I think there could be improvements, but as far as the fact that it is mentioned in the Act is concerned I am convinced that it was the right thing to do to put it in.

Q143 Chair: It appears a number of times in the Act and in a number of different contexts. How should that term be clarified? Is that a complicated business?
Francesca Quint: It is complex, as has been shown by the two cases that the Upper Tribunal has heard since the 2006 Act was passed. What the 2006 Act did was to say that public benefit meant what it always meant in charity law, and that was not particularly helpful in defining what it did mean, because one then had to work out what charity law said it was. One of the essential parts of public benefit is that it is not susceptible of an exact definition that could be put down in statute and left because, as in other aspects of charity law, the law changes and society has an effect on what we regard as charitable from time to time and what we regard as beneficial to the public.

Q144 Chair: Speaking as a barrister, isn’t that bad law? Shouldn’t Parliament make its intentions clear rather than perhaps leaving too much to the judges?
Francesca Quint: I don’t like to say anything in this place that would suggest that Parliament was not the best lawmaker that we have.

Chair: I think we will settle for that.

Francesca Quint: As someone who has spent their career involved with charity law and advising trustees and trying to solve their problems, one of the joys of charity law is that it is not laid down neatly in a statute and explained and unable to change. It is something that does change. It is a dynamic concept and public benefit is part of that.

Q145 Chair: It may be an intellectual and commercial joy for lawyers but I don’t think it is a particular joy for the charities involved.

Francesca Quint: It does mean that it can move with the times. The problem with a specific definition in a statute is that if it is clear enough to be meaningful it is going to be fossilised.

Q146 Chair: Doesn’t that mean that political issues, essentially political choices, are being left to jurisprudential decisions?

Francesca Quint: In my experience, those who practise in this field are very rarely affected by political considerations, particularly not party political considerations. In the sense that everything is political, I suppose that applies to what happens in court as much as to anything else, but as far as the conscious effort to decide what is charitable and what is not is concerned there is no political angle to that at all.

Philip Kirkpatrick: I absolutely agree that what the Act did was remove a presumption, which was always a rebuttable presumption, and I think to that extent it has clarified matters, but the idea that stating that charities must exist for the public benefit, which was
always there anyway, has not clarified the law. I do not think it is really reasonable to expect that an Act of Parliament could clarify 500 years of very varying case law, with contradictory statements about all sorts of different types of activity, in a way that would be accessible, understandable and that would not fossilise the law, as Francesca said.

Q147 Lindsay Roy: Could you clarify what the key criteria for public benefit are?

Francesca Quint: That the purpose of the charity should be directed at the benefit of the public, and that can be a direct benefit to the public like providing a public park, or it can be an indirect benefit to the public like making sure that people who are poor have enough to eat and so on, and that means that society as a whole delivers a public benefit that comes to specific arguments is in relation to the wider benefits that may result from charitable activity. For example, the argument that an independent school benefits the public through taking the burden of providing schools to a certain extent off the taxpayer has been described as a wider benefit that does not relate to the purpose, which is educational.

Chair: We are going to come to the independent schools question in a moment.

Q148 Greg Mulholland: I really think this is fundamental. We have had this very unsatisfactory and deeply unnecessarily costly situation, both in terms of the independent schools and now the Plymouth Brethren, and that is the subject of our second panel. So something is not right with the current interpretation or possibly definition, or perhaps simply the set of criteria for defining public benefit is simply not working at the moment because it is causing all this confusion. Do you not think that at the moment it is too woolly? There are many organisations that clearly deliver a public benefit that are not charities and luckily don’t want to be, a very good example being that a local community pub clearly has a very important community benefit, a demonstrable community benefit. Many social clubs and indeed many businesses and companies have a clear social benefit in terms of providing employment, treating their employees well and contributing to the economy and paying taxes, great examples being things like Rowntree’s and Cadbury and Titus Salt in the past. So surely public benefit can’t only be an incidental part of what any organisation does. Do you not think that we need to avoid this happening again and again and again? Do you not feel that Parliament now needs to step in clearly doing it with expert legal advice, to have a situation where instead of looking vaguely at whether an organisation may have some benefit as part of what it does, which is what we have at the moment, saying clearly a charity must fulfil this certain set of criteria and have a benefit for society in a certain way?

Francesca Quint: I entirely agree with you that public benefit is not enough to make something charitable. It is necessary but not sufficient. Every charitable purpose must be for the public benefit but not every purpose that benefits the public is also charitable. That has been the subject of a recent decision called the Helena Partnerships case where providing housing one could see was something that benefited the public but was not charitable because the people who benefited from that housing were not in charitable need. As far as the improvement of everyone’s understanding of what public benefit is concerned, I entirely agree that it would be helpful to have some further legislation just to give a bit of shape to what is meant by public benefit and also—and I think this is even more important—to assure the courts, the tribunals and the Charity Commission, who make most of the decisions in question, that public benefit is something that is not fixed, that it does depend on the social and economic surroundings of the time at which the decision has to be made. At the moment there are some very old cases that have stood for so long that they can’t be changed even if we have moved on in society. If we go to the courts we get these cases coming up again and being applied again. My view would be that it would be helpful if there was some guidance in legislation to indicate what has to be taken into account in assessing public benefit, rather as is done in Scotland, and also making it clear that the Commission, the courts and the tribunals are not bound by precedent in the sense that they can take account of social and economic circumstances.

Q149 Chair: We are spending a lot of time on this first question. We will have to move on quickly after this, but Mr Kirkpatrick, and then I want to bring in Matthew Burgess.

Philip Kirkpatrick: I think some guidance in the Bill would probably not go amiss but it won’t go to the root of it or solve all controversy over what is and what is not for the public benefit. We will always have difficult decisions. There is concern that there is now a lot of confusion about this but in fact all we are seeing now is a much more public playing out of arguments that have been had in the courts for the last 500 years in relation to what is and what is not public benefit. It is just that the Act has brought this to the fore and because of the removal of the presumption has brought light to bear on particular charitable purposes where we are again testing the law.

Q150 Chair: Mr Burgess, we are going to have some questions about independent schools specifically but do you have a general comment about public benefit?

Matthew Burgess: I was agreeing with a lot of what Francesca was saying until she got to the point of saying that further legislation was required, and that was when I was shaking my head. I agree that this is a more public debate that we are having about public benefit, but the meaning has not fundamentally changed. In terms of the judicial review that we took, what you have to recall is that we were not challenging the 2006 Act; we strongly support the principles that sit behind the 2006 Act. What we were challenging was the way in which the commission was interpreting that in its statutory guidance. So we have no difficulty with the way in which public benefit is captured in the 2006 Act. Given that the judgment in our case exceeded 100 pages, to boil that down into a series of pithy legislative statements that would be good for all time I think would be an impossible task.
Q151 Charlie Elphicke: Isn’t that the key point, that the concept of public benefit has been in the case law, the jurisprudence on this, for a very long time, and people thought at the time of 2006 Act that they were codifying the concept of public benefit and they did not anticipate the Charity Commission would then come along and issue guidance to try to reinterpret it? Isn’t the problem not the phrase “public benefit” but the Charity Commission trying to meddle with already well understood case law?

Matthew Burgess: I don’t think anyone could say the 2006 Act codified public benefit, because all it did, as Francesca said, was say that public benefit means what it has always meant, with one or two tweaks. The Charity Commission, to be fair to them, were given a very difficult task. They had to issue guidance, as a statutory obligation. From our perspective a further difficulty was that charity trustees had to have regard to that, and we felt that that guidance was incorrect and therefore trustees were being asked to take into account something that was incorrect. That went to the heart of our complaint.

Q152 Charlie Elphicke: Did you think it was cause led, politically led, rather than necessarily legal?

Matthew Burgess: No. We just felt that the guidance was wrong, and subsequently the court agreed with us.

Q153 Chair: So it was all a fair cop, guv?

Matthew Burgess: For who? For the Charity Commission?

Chair: The Charity Commission made a reasonable stab at this but did not get it quite right?

Matthew Burgess: They had plenty of opportunities to get it right and we, among many others, were telling them how they could get it more right than they did.

Q154 Chair: Can I ask a tangential question, particularly to the two lawyers? Are we disappointed that the Upper Tier Tribunal was so much like a High Court rather than the quick fix that we hoped it would be?

Francesca Quint: Terribly disappointed.

Philip Kirkpatrick: Unfortunately, it is just inevitable if you are dealing with charitable status. It is something that is essential for some organisations. They are not going to give it up lightly. They are unlikely to attend a tribunal that is going to be going to the heart of perhaps even their existence.........

Q155 Chair: Is it cheaper than going to a court?

Philip Kirkpatrick: Yes, I think it would be cheaper than going to a court but I shouldn’t think there was a heck of a lot in it. Matthew, you are probably better able to judge that one.

Q156 Chair: Shouldn’t Parliament treat their deliberations as sub judice? At the moment we don’t. Isn’t it odd that something that is behaving like a court is not treated as sub judice?

Francesca Quint: It was exactly like a court. Being in the case it felt exactly as if one were in the High Court, and it was in the court building and the judges sat above. There was none of the informality that the tribunal was—

Chair: I beg your pardon, the Upper Tier we do treat as sub judice but not Lower Tier. I have been corrected.

Q157 Kelvin Hopkins: There is another interpretation, that the Government, Parliament in 2006, deliberately did not choose to put too fine a definition on public benefit because they did not want to deal with the hot potato of independent schools. So they shoved it over to the Charity Commission and they now have the hot potato. It was described as a “hospital pass”. I think mixing metaphors with hot potatoes, but anyway. My question really is, the tribunal concluded that it is for Parliament to consider whether private schools should have access to the same tax relief as other charities, so should charitable status be separated from access to tax relief?

Francesca Quint: In my view it would be very dangerous to separate them because at the moment once a charity you are entitled to the tax reliefs. There are differences at the margins but generally speaking all charities are treated alike. Once you start saying some charities are good charities and can have tax relief and other charities are bad charities and can’t then in my view there is a terrific scope for unwanted political interference in what is charitable and what is accepted for other purposes, nothing to do with politics.

Q158 Kelvin Hopkins: I take a different view. I don’t like tax reliefs in general. If Government or elected bodies, local authorities, decide that a local body or a national body is worth supporting, it should get a grant rather than a tax relief. This would then overcome some of these problems.

Francesca Quint: Not all charities are the sorts of charities that are doing something that the Government would like to see done. They may be doing something that is of a minority interest but yet very valuable, such as research into the habits of some far-flung tribe in the wilds of Manchuria or something like that. They may be adding to human knowledge in a valuable way but not in a way that is one of the priorities of the Government or any Government Department. In my view, they should be allowed and encouraged to do that if they are doing it for the benefit of the public.

Q159 Kelvin Hopkins: With the case you use, there are Science Research Council grants for pure research and so on—I can see all sorts of ways of overcoming those sorts of problems. Of course, the whole point about democracy is that all these matters are publicly accountable. In a sense the public is, through its elected representative, taking a view about which bodies deserve support and which bodies do not. Isn’t that perfectly reasonable?

Francesca Quint: Yes, and charities also have to be publicly accountable. They have to produce their accounts and they are open to the public.

Q160 Kelvin Hopkins: But it is the specific tax relief rather than public support in other ways. That is what I am arguing.
Philip Kirkpatrick: One of the most important tax reliefs that charities get is the relief on donations given to them or the tax relief that the donors get on donations to them. What these tax reliefs do is generate vast amounts of personal giving that is essential for the delivery of the social and community public purposes. In relation to independent schools, I think if Parliament thought that it should remove the charitable status of independent schools then that is what Parliament should have done. If it thought that the Charity Commission was going to do that while not in fact changing the law—I don’t think it did think that, but if it wanted to remove charitable status then it would have had to actually take that step.

Q161 Kelvin Hopkins: I must say I am not convinced by the arguments. I am sure other countries do it in different ways. We come time and again back to the problem of the independent schools. If there were to be a grant for public benefit, to help children of rich parents have a higher status education than the rest of us, I think governments would be less likely to subsidise them as they do now through charitable status arrangements.

Philip Kirkpatrick: I think it has been established that a grant for that purpose would not be charitable.

Matthew Burgess: No, you are making a very stereotyped statement.

Paul Flynn: The argument put forward is that somehow you are creating an advantage to the general population by providing education for children, but you are also creating a disadvantage by taking out of the system that 95% of the children in the country enjoy some of the leaders and those who set the paces. In countries that don’t have this division between fee-paying, privileged schools and schools that—

Q167 Chair: Is that the problem, Mr Burgess, that some people think independent schools are a public dis-benefit?

Matthew Burgess: Indeed they do and views very similar to those were expressed by one of the intervening parties in our judicial review but those views were dismissed as being completely irrelevant to the context of charitable status, which is what we are here to talk about today.

Q168 Paul Flynn: You said when you started you did not want to say anything about poor legislation, Ms Quint, in this. Lord Butler, who is a great observer and commentator on these matters, said in the last Parliament 75 laws were enacted, went through the whole system, the Royal Assent, but were never implemented. Nothing happened to them. We are very bad at legislating. If you want to look at an example it is the 2006 Act, which intended to do one thing and clearly failed to do it. The intention was to make the fee-paying schools accountable, to justify the reason they should have charitable status, and now that is not happening. What do we need in 2015 when a new Labour Government looks at this again and introduces a new Act? How will they get it right next time?

Matthew Burgess: There are so many assumptions behind that question that I am not sure where to begin. I am not sure that the 2006 Act was there to do a new Act? How will they get it right next time?

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Francesca Quint: It was one of the intentions of the proposals that led to the enactment of the 2006 Act that the application of the presumption—which was wrong anyway, as we are now told it didn’t ever exist—to religious and educational charities meant that a lot of such organisations were accepted as charitable and registered without looking closely at what they actually did for society. One of the purposes of the NCVO’s recommendations that led eventually to the 2006 Act was that charity should be brought back to its fundamental purpose of benefiting the public, removing any presumption that there was and forcing charities such as those you may be wanting to discuss today to demonstrate that they are set up to benefit the public, and in fact if they are set up to benefit the public then the trustees have to make sure that they do so. That is one of the objects underlying the reforms in the 2006 Act but it could have been expressed more clearly and definitely if Parliament had chosen to do so.

Philip Kirkpatrick: I would agree that the idea was to make sure that all charities are accountable for their charitable status and have to provide public benefit. That is what Parliament intended. It asked what Parliament could do, and I look at what happened in Scotland. By the way, this is not an independent schools question alone. This applies to all charities that charge fees, including care homes and so on. In Scotland they introduced some guidelines for how to interpret public benefit, which included, if you charge fees or if you impose any condition, is that condition unduly restrictive on introducing the class of beneficiaries? In Scotland that has led to a number of independent schools being analysed, being found not to meet their charity test and taking extra steps to meet that charity test. Where that would leave us I am not completely sure, because there are very fine definitions here. The Charity Commission in its guidance talked about “unreasonably restricted” and the Charity Tribunal talked about “a minimum level of benefit that no reasonable trustee would fall below”. Where one finds the true answer within those, where you can slot the piece of paper between those concepts, I find difficult and I think we will find ourselves with more case law on it.

Chair: Mr Flynn, would you forgive me? We are on to Scotland. Can I go to question 4?

Q171 Lindsay Roy: You mentioned Scotland and the changes that were made in terms of charity testing and public benefit following the review of 13 schools. The Scottish Charity Regulator has now announced a two-year investigation into whether 40 independent schools are meeting public benefit. Do you think that will have an impact on the charitable status of independent schools here? Will there be some lessons learned from that?

Philip Kirkpatrick: I think there should be some lessons learned from it. The public benefit tests are not so far apart, as I have indicated. The other finding of the Independent Schools Council case was, quite correctly, that these are matters for the trustees but there is a level below which no reasonable trustee will go. I am very concerned to find that we have a regulator that is able to regulate that level in a reasonable way. It is difficult to say whether the level is exactly the same for an independent school or other fee-charging charity in Scotland as for a fee-charging charity here. I would have thought there should not be a difference.

Q172 Lindsay Roy: Should there be a similar investigation in England and Wales?

Francesca Quint: There has been. The Charity Commission did some assessments. In fact they added to the problems.

Q173 Lindsay Roy: How robust were these investigations?

Francesca Quint: They could be criticised and were criticised because it tended to indicate that the only thing the Charity Commission was interested in was how many bursaries were provided at independent schools rather than looking at the other ways in which an independent school could benefit the community. That was the flaw, in my view, in those assessments but there were some other assessments later into arts charities and sports charities and they were quite interesting in the way they dealt with it. There were investigations into some religious charities and I felt the way they approached that was rather weak. These are very subjective questions and every charity is different. It is very difficult to draw a conclusion from one to another.

Q174 Lindsay Roy: Can you sum up any lessons learned from the Scottish experience that can be applied here?

Francesca Quint: They have a statutory provision that indicates certain of the elements of what is meant by public benefit. That is something that we could learn from.

Q175 Chair: Mr Kirkpatrick, do you agree with that?

Philip Kirkpatrick: I do. I wonder whether we would be learning the same lessons if in fact the Office of the Scottish Charity Regulator was being challenged in the way that the Charity Commission has been challenged here, whether we would find that its guidance was also flawed. That has not happened and the schools looked at so far have been content to make the changes sought by OSCR.

Q176 Kelvin Hopkins: The tribunal concluded that public benefit must be more than de minimis or token benefit to the poor. It is very clear to me that if a charitable educational institution provides free education for poor and disadvantaged children it is a charity. It would be a public service in my view but it could be considered a charity. When rich people see this as advantageous and start paying money in and the poor get squeezed out it ceases to be a charity and becomes a privilege for wealthy people. I don’t think there is a problem, we are just shying away from it, as did indeed the Government in 2006. Should we revisit the Act and make it very clear?

Philip Kirkpatrick: I think if you revisit the Act in relation to independent schools you will need to revisit the Act in relation to all fee-charging charities,
and I am particularly concerned about the effect that would have on our care services. Our care services are by definition expensive, they are things that rely on a certain amount of private payment and a certain amount of Government payment in. So if you are looking at charities that charge fees you must, as indeed the Charity Commission has, look at care homes, for example, to work out whether they are also charitable. It is interesting that the challenges to the Charity Commission have—

Q177 Paul Flynn: Like Winterbourne for instance?
Phil Kirkpatrick: There have been a number of them. I don’t think that was one of the cases that was looked at as a matter of public benefit. It really needed to be looked at for other reasons, as we know.

Q178 Chair: May I ask two very technical questions? One is, if Parliament produced a taxonomy of organisations that should be charities, would that be a very complex task?
Francesca Quint: It would be very difficult because you would be trying to deal with the future as well as the present, which is evolving.

Q179 Chair: So it is not possible and should not be attempted?
Francesca Quint: I don’t think that that is possible.

Q180 Chair: Secondly, related to the Scottish question, at the moment for a charity to operate through the United Kingdom they have to register as a charity in all the different jurisdictions that are now devolved.
Francesca Quint: And now Northern Ireland as well. It is absolutely ridiculous, in my view.

Q181 Chair: Could we have a system where if you register in one jurisdiction that passes you into operating in the other jurisdictions? Wouldn’t that in fact promote a harmonisation of public benefit across all jurisdictions?
Francesca Quint: It certainly would. It would be extremely helpful if the various different interested, powerful organisations agreed. One of the problems is as soon as the Scots got their devolution and were able to have their own charity regulator they decided they were going to have a different definition from the definition that was being adopted for England and Wales and that they would apply their own rules in a specifically Scottish way. That is a cultural effect of having devolution. The awkward thing is that the tax relief is dependent on English charitable status law and therefore a Scottish charity could in theory be a charity in Scotland but not entitled to tax relief nationally. It would therefore be extremely helpful if there were one definition across the UK for charitable status, including public benefit, and for the purposes of tax relief.

Q182 Chair: In your view does that mean undevolving the whole question of charity law?
Francesca Quint: No. It would simply mean that the same test would be applied in each of the three jurisdictions.

Phil Kirkpatrick: It would be ideal to do it but I think it would be an attack on the devolutionary principle. The Scottish test is different from ours. There is one fundamental difference, in that if you are connected with the state you cannot be a charity in Scotland. That would have a huge effect on a number of charities here.

Q183 Chair: What about the idea that if you are registered in England you can be a charity in Scotland as well; if you are registered in Scotland you can be a charity in England? Would that work?
Phil Kirkpatrick: Yes, but it would be a different view on the devolutionary principle, I think. It would work, and it should work.

Q184 Lindsay Roy: That indeed was the recommendation of the Calman Commission, that there should be one definition. Am I right?
Phil Kirkpatrick: Yes.

Q185 David Heyes: Whether you subscribe to the view that there is a need for more legislation to clarify this issue of public benefit or whether you are agin that and don’t believe there is scope for it, we are where we are and it is unlikely that there is going to be any legislation in the short to medium term, certainly in my view. The Charity Commission still has to operate. They have an objective to promote awareness and understanding of the operation of the public benefit guidance. In the situation we are in now how should they best go about doing that?
Francesca Quint: They are in the process at the moment of revising their guidance. They have consulted widely on it. They have been a little bit ambitious because they have envisaged online guidance that not everybody can navigate particularly well. I think they still have some work to do on the draft that I saw last month. The best thing, in my view, that they could do is provide the guidance in as simple form as they can and indicate what is the minimum that is going to be acceptable so people know what is expected of them and just make it available to everyone and encourage debate on it.

Q186 David Heyes: Mr Kirkpatrick, you have raised the prospect of just sitting back and allowing the case law to emerge.
Phil Kirkpatrick: Only rather than Parliament trying to tie down public benefit, which as Francesca has said, would fossilise it. Certainly there should be guidance. This is something that Parliament, I think quite rightly, ducked and therefore probably should not criticise the Charity Commission too much for finding difficult. We all know it is difficult. The second stab is much better than the first. I think they are going too far. They are including in their current guidance, which trustees have to have regard to, things that really are not relating directly to the public benefit and they are also again, I think, in a number of areas developing new principles that are not there in the case law. I think what they have to do is be really committed to putting into this guidance the principles that are in case law that can be agreed. Hopefully the consultation process will deliver that. I
don’t think it did deliver it the first time round when a lot of us put in submissions in relation to it and found those submissions rejected because the commission was fairly sure at that time what its view of public benefit was.

Q187 David Heyes: Is there an inference from what you say that you fear the Charity Commission has not learned from their experience on the tribunal judgments?

Philip Kirkpatrick: There are a couple of elements in the revised guidance where I do think that is the case, yes.

Q188 David Heyes: Can you expand on that?

Philip Kirkpatrick: In one, I think they are developing new ideas applicable to trustee duties, for example proposing that there is a duty to act fairly, which I don’t think exists in case law, and a duty to be transparent. These are very different from the real duties of trustees, which are to act reasonably and prudently and not irrationally. So they are pushing the trustee duty away from that which I think you can find in case law. I think they are also being a little bit too restrictive on how we define what is for public benefit, the levels of proof that are required that something will produce public benefit rather than can reasonably be expected to. I worry that that will restrict the development of new case law and its interpretation of new and registration of new charities.

Francesca Quint: We have only seen the draft guidance so far and a lot of comments have been made. I was at a meeting recently about the guidance that is being produced in Northern Ireland and some of the Charity Commission people were there. One of the things that the Charity Commission in England had taken on board from the consultation was the need to differentiate between the statutory guidance, which is the guidance that the Act requires them to provide, and any other guidance such as good practice that they would provide under their general powers, which they can also do. I think the next version of the guidance is going to differentiate between those two things, so I think they have taken on board the sorts of points that Philip has mentioned.

Q189 Chair: Can I press on a point, which I think is a really important one: what are the lessons that the Charity Commission should learn from the Upper Tier Tribunal’s judgment? May I summarise it this way, that it is wrong to interpret the new law? The new Act has sought to transport the jurisprudence of previous judgments into the current law and therefore it is wrong for the Charity Commission to try to import new principles into their guidance that are not already reflected in the existing jurisprudence of the courts that preceded the Act. Is that a correct summary?

Philip Kirkpatrick: I would agree with that but I would add one more. I think the Commission did not recognise sufficiently the discretion given to trustees to determine how to pursue their charitable purposes.

Q190 Chair: That would be reflected in the previous jurisprudence?

Philip Kirkpatrick: Yes.

Francesca Quint: In my view, that is the nub of it.
The Commission did not respect the trustees enough. The Commission regarded itself as knowing better than the trustees sometimes.

Q191 Chair: Mr Burgess, carrying your scars of battle?

Matthew Burgess: I was going to agree with your summary. The duty to issue guidance is a duty to issue guidance that promotes an awareness and understanding. That is what it is meant to do. If it does not promote an awareness and understanding then it has failed in its task. It failed in its task the first time round. I hope it does not fail the second time.

Francesca Quint: I think they have an almost impossible task.

Q192 Chair: In view of the political disagreements that you have seen in this Committee?

Francesca Quint: Yes, that is a different aspect, but from a purely legal point of view they have an extremely difficult task to reflect in plain English centuries of case law.

Q193 Chair: In thousands of pages of judgments?

Francesca Quint: Yes.

Chair: I understand the point.

Philip Kirkpatrick: Often contradictory.

Q194 Charlie Elphicke: Mr Kirkpatrick, your firm provided a written submission to this Committee and said that the current restrictions on political activity are reasonable and proportionate, but then you say that some of them ought to be lifted and the law liberalised. Can you elaborate on that?

Philip Kirkpatrick: I think one has to be clear here that the law in relation to this is not clear. What we have is a document CC9 the Charity Commission’s guidance, which is guidance on the commission’s view about what the law is. We think that is very good guidance, we think it is a vast improvement on the previous jurisprudence of previous judgments.

Q195 Chair: I hope it does not fail the second time.

Philip Kirkpatrick: Yes.

Q196 Chair: Yes.

Francesca Quint: The report by the Institute of Economic Affairs says that these sort of charities are all sock puppets and they go on to say, “This campaigning subverts democracy, debases the concept
of a charity” and the current guidelines have “led to a free-for-all with some charities seemingly able to engage in political lobbying on a permanent basis”.

Do you agree with that view?

**Philip Kirkpatrick:** Only the last part of it, that it enables some charities to engage in political lobbying on a permanent basis, and only some charities. When I take, for example, a charity that exists to abolish slavery, I can imagine that most of its activities would be involved in engagement with people at the UN, engagement with legislators in other countries, seeking changes to the law, seeking proper enforcement of the law, all of which would be political campaigning. I think an organisation like that that genuinely pursues a charitable purpose should not be regarded as a political body and non-charitable for doing that. There are other situations where that would not be the case.

Q196 **Charlie Elphicke:** There are charities like Shelter that do not provide any shelter. The NSPCC went through a phase of just pure campaigning; they have now got back to more core mission. I think they took no lobbying engagements and are now engaged again in practical stuff. Do you think there is an element that the public will be concerned about charities that talk the talk rather than walk the walk?

**Philip Kirkpatrick:** I think there is always public concern about charities in one way or another. The public is engaged with charities because charities are engaged in all forms of human life. But taking Shelter as an example, I don’t think Shelter has provided shelter ever since *Cathy Come Home*, which set the whole thing off. They provide a huge amount of advice and they seek to ensure that there is a legislative framework that protects their beneficiaries, which I think is entirely justifiable, a proper use of charitable resources, and has been ever since they have existed. I don’t think it has changed.

Q197 **Charlie Elphicke:** Finally, if you are going to liberalise and basically say any old campaign can be a charity, do you think in that case political parties might well be charities?

**Philip Kirkpatrick:** No. You have to exist for a charitable purpose, and clearly political parties exist for a number of purposes, which may well be and ought to be, and I am sure are, for the public benefit. There would be no political party that thought it existed other than for the public benefit, but it is not seeking to deliver a defined charitable purpose.

**Charlie Elphicke:** Most of us are very concerned to alleviate poverty and promote education and better healthcare.

**Q198 Robert Halfon:** Agreed. Given what you have said that you think all charities should be able to do political campaigning and the law be liberalised, would you consider the Charity Commission has made arbitrary rulings allowing some organisations to become charities and some not on grounds of political activity? For example, the CSJ, the Centre for Social Justice, had problems in becoming a charity but the IPPR was allowed to be a charity and the Smith Institute and other examples.

**Paul Flynn:** What do these acronyms mean?

**Robert Halfon:** The Institute for Public Policy Research and the Centre for Social Justice.

**Chair:** The Adam Smith Institute is a charity, the IAA is charity.

**Robert Halfon:** When you are going under the line you are going under you make no distinction between pressure groups and charities and therefore all pressure groups should be charities, because they are all campaigning for something that people like, whether it is to do with the environment or whatever it may be.

**Chair:** What is the objective test?

**Robert Halfon:** Surely a charity should be about doing practical things, helping people, not just setting up a big lobby organisation and spending millions of pounds on public relations and public affairs and being in Parliament lobbying MPs or whatever it may be. Surely the real test of a charity is what it does on the ground to make a difference to people’s lives.

Q199 **Chair:** All right, what is the objective test?

**Philip Kirkpatrick:** The objective test is, do you exist for a charitable purpose and is that for the public benefit, and do you then act in the public benefit. Charities have never been as simple as you are only charitable if you are doing practical things on the ground. The charity law has always accepted the concept of indirect benefits so a grant funder, for example, is doing no practical work on the ground. This is one of the most difficult areas of charity law where there is no clarity as to what the law is. Many people, possibly most of the people in this room, would disagree with my analysis of what the law is on this and think the Charity Commission has it absolutely right, but the law is not clear and I think it should be. The example I give of the slavery charity, which would not really have necessarily any practical things it can do—it might choose to alleviate the suffering of particular slaves—should be able to act by lobbying, by trying—

Q200 **Robert Halfon:** Yes, but why does it need to be a charity? It could quite easily be a pressure group, and there are many pressure groups who are not allowed to become charities. Surely charities for the public good really means making a difference to people’s lives on the ground, not just coming into Westminster and spending millions on public relations. That is not a charity in my view.

**Philip Kirkpatrick:** Not all pressure groups exist for charitable purposes.

**Q201 Chair:** Is the Independent Schools Council a charity?

**Matthew Burgess:** We are not, no, but we are a not-for-profit company.

Q202 **Chair:** If you are campaigning for independent schools, and many independent schools are charities, that would seem a reasonable charitable purpose, would it not, Mr Kirkpatrick?

**Philip Kirkpatrick:** If their purpose is to advance education and they do that for the public benefit, and they do that by various means, mainly lobbying...
perhaps, that could be charitable. But if, in fact, that hides a political purpose that seeks a particular change in the law or a particular thing that is not itself a charitable purpose, that would take it outside. It is a hugely complex area.

Q203 Chair: Is this a matter that Parliament needs to address with legislation, in your view?
 Philip Kirkpatrick: If Parliament doesn’t address it through legislation, if there are organisations that wish to challenge the current guidance then it may to come to court. I would like to see legislation that deals with it, which encourages the Charity Commission to produce guidance on the limits of what I am suggesting. What I am not suggesting is an unlimited power.

Q204 Charlie Elphicke: Is there a deeper issue here? Just very briefly, if a member of the public puts a pound in a rattling tin and that money is then spent on press officers and Bell Pottinger to lobby a bunch of politicians, would that member of the public not be a bit concerned and a bit disgusted and feel perhaps a bit cheated?
 Philip Kirkpatrick: It depends whether the person putting the money in the tin knows what it is for. The expenditure of charities is never closely analysed by the public at large, it is analysed by large funders or by committed givers. It is very rarely analysed by—

Q205 Robert Halfon: Following on from that, do you not think it should be required by law for all charities to be absolutely transparent about how much they are spending on public affairs and lobbying on political campaigns, which is not possible to see at the moment? I can guarantee to you, people who donate to Shelter think that they help the homeless on the streets, which would be a very noble cause, but they don’t realise that they spend all their money just on political campaigning, often with a particular view. People do not realise that that is the case. That should be made known.
 Philip Kirkpatrick: I think that is a very interesting point. First of all, I would say that I think Shelter is a very noble cause in what it does but we have examples—

Q206 Alun Cairns: Just out of interest, are they clients?
 Philip Kirkpatrick: They have been. I am not sure if we are acting for them at the moment on anything.
 Alun Cairns: That says it all.
 Robert Halfon: You need to be transparent, not use your links with various organisations. I think that is a disgrace.
 Chair: Order, order.
 Philip Kirkpatrick: I think that is quite a shocking thing to say. Shelter is a noble cause, the charities out there are doing tremendous work, and I don’t say Shelter is a noble cause because I have in the past acted for them. I think that is really quite unfair.

Q207 Robert Halfon: You were paid by them?
 Philip Kirkpatrick: I am not paid by them.
 Robert Halfon: You said you acted for them.
 Philip Kirkpatrick: Yes, we did act for them.
 Robert Halfon: So you were paid by them.
 Philip Kirkpatrick: Yes. I am not saying it for that reason. I think that is a very unfair comment. But I do think that your suggestion that organisations that spend money on political lobbying ought to explain what they are doing to the public is right. We do do that in relation to fundraising costs, for example, so I don’t see why we shouldn’t do it. If people are concerned about that, and there is every reason why the public should be concerned and should be knowledgeable about it, then it should be explained. I am all in favour of transparency.1

Q208 Robert Halfon: So you think there should be a law that says it should be exact and transparent how much these charities are spending on political campaigning, and there should be some consistency in the fact some organisations are not allowed to become charities who do political campaigning as you describe but some others are?
 Philip Kirkpatrick: I think it is something that could be introduced, for example in the statement of recommended practice on charity accounting or in the accounting regulations. It is something that would need thought. I think it is a very interesting idea, yes.

Q209 Chair: Anything to add from our other panelists?
 Francesca Quint: The other thing about that is that it is very difficult to assess the impact. Sometimes you can have a direct result from campaigning, which you can then, as a charity, claim something you have achieved, for example the RSPCA and the Hunting Act. But on the other hand quite a lot of political campaigning and lobbying helps to create an opinion, helps to influence people, make people more aware of problems without your being able to say, “This is the effect of what we have done and it was money well spent.” So I think it is quite a subtle assessment to make to see whether a charity has made use of its resources in a sensible way in using some of them for campaigning.

Q210 Chair: But you agree with the transparency point?
 Francesca Quint: I certainly agree the more transparency the better.

Q211 Chair: You have been very informative for us and we are very grateful. I have two very brief supplementary questions. We are about to come on to

1 Note from witness: Mr.Kirkpatrick states that his firm does still act for Shelter but that he personally has not undertaken work for them for many years.
Q212 Chair: So that should be the principle?
Francesca Quint: That is one principle. Other cases have said advancing religion, which is what it is—not to be a religious charity, but to advance religion—doesn’t include private prayer, as was held in the case involving a closed community of nuns. The fact that they prayed very hard and that they believed that their prayers were helping everybody did not cut any ice with the courts or the House of Lords who said, “Well, we can’t test that.” Therefore they were not a charity.

Q213 Chair: For brevity’s sake, does Mr Kirkpatrick agree with that?
Philip Kirkpatrick: I do.

Q214 Chair: Marvellous. Finally, Mr Kirkpatrick, the Bates Wells and Braithwaite evidence very strongly defends the voluntary principle of trusteeship, and we are aware this is potentially very contentious. Would you like to enlarge on that in any particular way? Do you think we would be making a great mistake recommending acceptance of Lord Hodgson’s recommendations on this point?
Philip Kirkpatrick: I think it would be a mistake; a great mistake is probably putting it too strongly. I am nervous of the idea that just because you are a large charity you are more responsible than the trustees of a smaller charity, the suggestion that larger charities should be able to pay their trustees for being trustees whereas smaller ones need to get consent. So I am nervous about the creation of this idea of a two-tier scheme. I think the current system works quite well. There is no principle that trustees can’t be paid. There is no charity law principle that trustees can’t be paid. It is a simple law that applies to all fiduciaries that you cannot be paid for the things you do unless you are authorised in some way.

One thing I am also concerned about, which I just have not seen coming out of any of the arguments, is that if you are a paid trustee the courts will accept a much higher standard of care from you than if you are a volunteer trustee.

Q215 Chair: You mean the court will demand a much higher standard?
Philip Kirkpatrick: The court will demand a much higher standard of care. I haven’t really seen that coming across in any of the debates. I think that needs to be understood.

Q216 Chair: But if you are a trustee you are a trustee. Should there be a distinction?
Philip Kirkpatrick: There should. I think the courts need to be lenient with volunteer trustees who are doing their best to do good for society and those who are being paid can be expected to have a higher standard.

Q217 Chair: Anything to add, Francesca Quint?
Francesca Quint: I would only say that I agree with that in general. As a trustee myself of a large charity I have sometimes felt, “Oh, I should be paid for doing this,” when I have spent a lot of my spare time explaining the law to them, but in fact that was not why I became a trustee and I wouldn’t have felt terribly much as though I was doing the best I could for the charity if I wanted to be paid.

Q218 Chair: But you could charge for your professional services even though you are a trustee?
Francesca Quint: Yes, but it wasn’t the tradition of the charity I was in and I wouldn’t have wanted to ask. The other thing I would say is I believe there has been some research done that shows what happens if you do pay trustees and the result is that they attend more meetings. It doesn’t mean to say that they necessarily perform better.

Philip Kirkpatrick: I have seen examples of boards that are fully paid where the payment of trustees seems to me to be an underlying problem with the governance of the organisation. It is not a simple question.

Q219 Robert Halfon: In your firm, how many charities who do just political campaigning does your company advise and give assistance to?
Philip Kirkpatrick: I really couldn’t say. We act for thousands of charities right across the spectrum from campaigning organisations to independent schools to poverty relief.

Q220 Robert Halfon: You must have a general idea of roughly how many charities primarily indulge in political campaigning that you advise?
Philip Kirkpatrick: I don’t think I have any charity clients that primarily engage in political campaigning. I would think that many of the larger charities do quite a lot of it but almost none primarily, I would think.

Q221 Chair: I think Mr Halfon is asking whether you might be conflicted in that you derive a significant part of your income from advising such charities?
Philip Kirkpatrick: The charities we advise are absolutely across the spectrum of the charitable landscape.
Examination of Witnesses

Witnesses: Garth Christie and Bruce Hazell, Elders, Plymouth Brethren Christian Church, and Nicola Evans, Senior Associate, Bircham Dyson Bell, gave evidence.

Q222 Chair: What sort of proportion of your income would be reflected by political campaigning in charities?

Philip Kirkpatrick: At a wild guess, 3%.

Chair: Can I just state for the record that members’ questions are their own and that the Chairman of the Committee as a whole is not responsible for people’s questions? Thank you very much for your evidence.

Q223 Chair: I welcome you to this session on religious organisations and charitable law. Could each of you identify yourselves for the record, please?

Bruce Hazell: Bruce Hazell, representing the Plymouth Brethren Christian Church.

Garth Christie: Garth Christie, doing the same.

Nicola Evans: Nicola Evans from Bircham Dyson Bell.

Q224 Robert Halfon: Good afternoon, thank you for coming. Did you ever have the opportunity to make it clear to the Charity Commission that members of the public were free to attend your services?

Garth Christie: Yes, we did have that opportunity. We have made that clear repeatedly in our discussion and in the submissions to the Charity Commission, and indeed in September 2011 I personally attended a meeting with the Charity Commission where I stood up and told them of very recent examples. I am from Horsforth, Leeds so I am associated with the Horsforth Gospel Hall Trust, and I was down there representing them. We regularly would have visitors attending our services, they are very welcome and I made this very clear to the Commission. In fact I gave them an example of an Iraqi family that had visited the Sunday previously, that have been coming to our services for over 10 years now, and they had been tortured, murdered and been the subject of persecution because of their Christian beliefs in Iraq and fled to the UK, and we have helped that family in a charitable way. Does that answer the question?

Q225 Robert Halfon: Have you been given the opportunity to make the Charity Commission aware of the charitable work you have done in areas across the country? I know the work you have done in my area and I have seen that for myself, in what you have done in giving people food who have no religious connection with the Brethren whatsoever and so on, but have you given the Charity Commission examples of other charitable work that you do?

Garth Christie: Yes, we produced this document here Public Benefit: the Plymouth Brethren Christian Church, and that is full of examples that should be part of our evidence. Everyone here is welcome to a copy. It is full of examples of what we have done for the wider community. We don’t normally do this with our members, but over the last three months we asked our members to declare what they were doing personally by way of private giving to various charities. It came to just over £330,000. That would be from our charities and from members of our churches.

Q226 Robert Halfon: Has the Charity Commission made clear to you the area they believe you have failed in that means you can’t be classed as a charity?

Garth Christie: Not at all, we are totally confused. The refusal to register what was put forward as a test case charity, after discussion with them, came as a bolt out of the blue, if you like. What we feel is that we have been, to use an example, sitting in an exam and being asked for an answer but not being told what the question is. Does that make sense?

Q227 Robert Halfon: Have you asked why it is that the Charity Commission recognises Druids as a charitable organisation but refuses to recognise the Brethren?

Garth Christie: No, as far as I am aware we haven’t personally asked them that question, but it does demonstrate the inconsistency. Just for the information of people here, there are just over 16,000 Brethren in the UK, just over 300 churches or meeting halls, and I do believe the Druids are an organisation of about 350 members. I am not saying numbers should come into it, but the whole focus of what we do, our belief, our confidence, our guidance for life, is the Holy Bible, the teachings of the Lord Jesus and the apostles, and we try to take that fellowship out into the wider community.

Q228 Robert Halfon: Bigger Tesco-type charities, and especially ones that spend lots of money on political campaigning, can afford to spend hundreds and thousands on tribunals. What has been the total cost of the tribunal process to the Brethren so far and how hard has it been as a religious organisation to raise that kind of money?

Garth Christie: We started a dialogue with the Charity Commission seven years ago; it took seven years to end up in a refusal. We think that is far too long. The costs so far run into many hundreds of thousands of pounds. If we ended up going all the way to Strasbourg, which we are prepared to do because we think there is a principle involved here, we don’t know what the end costs should be. What concerns me, Mr Halfon, is that because of the size of our organisation, if you break that down per head it is manageable, but of course that is then a resource that can’t be used for other charitable activities, so it is wasted money as far as we are concerned. What concerns me is that across this nation there are many hundreds, thousands of small independent free churches full of genuine Christians, genuine believers, and if they were put under the pressure that we have been put under by the Charity Commission they would have to shut the door, it would be curtains for them.
Q229 Robert Halfon: Final question. Given the Charity Commission’s recognition of the Druids, do you accept the view of some people that there is anti-Christian bias in the Charity Commission and that the Brethren have not been treated fairly?

Garth Christie: I guess the Charity Commission, to be fair to them, have been given what would seem like an impossible task. Our belief is that it is Parliament’s matter to make the law clear and that law should be based on court cases and history that has been built up over hundreds of years. We had a High Court judgment as recently as 1981 that proved, one, that we are a charity and, two, that we are for the public benefit. So suddenly here we are, not all that long after, back into the same fight, and we would like this law to be so clear that in 30 years’ time we are not in this tangle again.

Q230 Alun Cairns: I wanted to pick up on a point that Mr Halfon mentioned. I am familiar with the work that the Christian Brethren do, certainly in South Wales, partly in my constituency, but largely in Cardiff. You mentioned in response to Mr Halfon that until you published this you were not necessarily familiar with the detail of the breadth of the work that was done. Has publishing a document like this detracted from the work that has gone on because you have had to focus your efforts on seeking to provide the evidence rather than getting on with the work that you would do instinctively?

Garth Christie: What has been a huge distraction, probably more than you are alluding to, is the many hours I spend. I am a business owner but I probably spend 95% of my time in charitable work. What has been a huge distraction, particularly for me personally, is the many hours, weeks and months that this tussle with the Charity Commission has caused, which I would far prefer to be using to help the public.

Q231 Lindsay Roy: The Brethren has done some excellent work in my constituency in Scotland. Does it still hold charitable status in Scotland?

Garth Christie: I am doing a lot of talking. Does one of my colleagues want to answer that question? The answer is yes, isn’t it?

Bruce Hazell: Yes. What we are concerned about is that a trust could be a charity in Edinburgh for example, but in London that same type of trust would have its charitable status called into question.

Q232 Lindsay Roy: Do you know why that is the case? Why is it accepted in Scotland and not in England?

Bruce Hazell: We would like to explore that further, as to why that should be. There should not be inconsistency across the border.

Garth Christie: The answer would be, Mr Roy, that we would believe the law, as set down by Parliament, is being interpreted fairly in Scotland but we have run into this problem in England.

Bruce Hazell: Furthermore, we are concerned that if there is this inconsistency, how far will it spread? They are looking at the Charity Commission in Australia, New Zealand and what will be the implications of this uncertainty?

Q233 Lindsay Roy: Are you suggesting the Charity Commission should look to Scotland to learn some lessons?

Bruce Hazell: Exactly. England needs Scotland.

Lindsay Roy: Good. I believe that too.

Q234 Paul Flynn: In your evidence you say, “In accordance with our belief, based upon the Holy Bible, we practise separation.” Where does that occur in the Bible?

Bruce Hazell: Can I answer that one, Mr Flynn? I would like to point you to the King James version of the Bible.

Paul Flynn: Please do.

Bruce Hazell: It has been said to be commanded to be read in churches and in Matthew’s gospel, the beginning of the Lord’s service on earth here, it says, “Man shall not live by bread alone, but by every word which goes out through God’s mouth.” Then John being the last writer, Mr Raven spoke of John’s gospel. He was a man who worked in the Admiralty and lived in Greenwich near where we live. He spoke of Christ coming in as the light of the world and the only thing they had against him was that he said that he was the son of God. He was crucified, and after his death, burial and resurrection, when he went on high, the Holy Spirit came at Pentecost. That was the inauguration of Christianity. What we hold is to the beginning, and St Paul’s teachings, the doctrine and teachings that are contained in the Holy Scriptures. That is our sole guide in our practice and in our lives.

Q235 Paul Flynn: Sorry to interrupt you, this is very interesting, but I haven’t noticed anything in the excerpts from the Bible that you have read that says that you should remain separate. What are your views?

Garth Christie: Look at 2 Timothy 2, where it says, “Nevertheless, the foundation of God standeth sure, having this seal. The Lord knoweth them that are his”. That means the Lord will know true believers, and that, “Everyone that nameth the name of Christ depart from iniquity.” That would be our basis.

Q236 Paul Flynn: So you regard anyone who is not a member of your group, Plymouth Brethren, Trinity Brethren, as people living in iniquity?

Garth Christie: Absolutely not.

Q237 Paul Flynn: That seems to be what you are reading out to us, are you not?

Garth Christie: It is saying, “Let everyone that nameth the name of Christ depart from iniquity.” The world is full, as I am sure you will appreciate Mr Flynn, of many true believers of the Lord Jesus Christ.

Q238 Paul Flynn: Can I give you an example of people who set up a church in order to get the tax breaks from their charitable status? They call...
themselves Pastafarians. They believe in a superior being who is a great blob of spaghetti in the sky. I raised this with the Charity Commission and they said they probably would be accepted as a charity because they believe in a superior being. When they are approached and told that it is ridiculous, they say, “Well, the idea of an old man with a grey beard in the sky is equally ridiculous.” Nothing against old men with grey beards.

**Charlie Elphicke:** They are ridiculous.

**Paul Flynn:** We are in an extraordinary position in that you come here as people doing work, which in your eyes is good work, and you are struggling to get charitable status, and we have just seen the greatly privileged public schools who have obtained charitable status. Do you think it is because you have never had a member of the Plymouth Brethren in the Cabinet or in politics? Do you take part in politics, or are you separate from that?

**Bruce Hazell:** We pray for the upholding of the Government. We believe that God sets up kings, deposition of kings. We respect authority as ordained of God. If I could just finish what I was saying to you, Mr Flynn.

**Q239 Paul Flynn:** Why doesn’t God give you charitable status?

**Bruce Hazell:** If I could just finish. We were speaking about the apostle Paul and his teachings. What he said in his epistle to the Galatians was, “Far be it from me to glory, save in the cross of our Lord Jesus Christ, through whom the world is crucified to me, and I unto the world”. That is the way that Paul lived. After his conversion, he preached Jesus as the son of God. That is simply what we are holding to as the truth, as contained in the scriptures. If I could just give you John, as the last writer, says, “I have set before thee an open door which no one can shut because ours are little powers and has kept my word and has not denied my name”. The word of scriptures means so much to us. Right at the end of the book, it says, “And if anyone takes from the words of this prophecy, God shall take away his part from the tree of life and out of the Holy City, which are written in this book”.

**Q240 Paul Flynn:** I won’t quote from the Bible, where there occurs things that you and everyone would find unacceptable, particularly in the Old Testament. If we can get down to who you are. I had a group in my constituency called the Exclusive Brethren. We have opened our hall in London. We are in an extraordinary position in that we have opened it twice for people to come in. The first time there were over 400 Bibles given away, over 200 leaflets were laid out for people to take. The second time there were 160 people; there was hot food and drinks, free Bibles and gospel booklets.

**Q241 Paul Flynn:** If you are exclusive and you believe in separation, that suggests that there is a division between your group and the rest of society, which would possibly be a reason why you should not be given a charitable status.

**Garth Christie:** We go out into society and we preach the gospel on the streets. I do not have the figure here, but I think as an organisation we probably give away more free literature on the streets through the street preaching. That has a beneficial effect.

**Q242 Paul Flynn:** In your view, yes. Why do you want charitable status so much? Why does it matter?

**Garth Christie:** We have always had it.

**Q243 Paul Flynn:** What advantage is it?

**Garth Christie:** All sorts of advantages.

**Q244 Paul Flynn:** Can you list them? We just heard from the public schools man that there were no financial advantages to charitable status. I am perplexed by that answer. Do you see it as a financial advantage?

**Garth Christie:** Certainly, one of the things that has helped us is the financial advantage. Being a charity there is no denying that. Members put in tax money. As believers in the Lord Jesus we are totally righteous in our business affairs, we do not evade tax and that sort of thing. We declare what we earn, and then we take advantage of the gift aid provisions, that the Government has set up to encourage charities, to fund our churches and to fund the good works that we then go out into the wider community with.

**Q245 Chair:** I do not think the Charity Commission has a particular grudge against you as individuals.

**Garth Christie:** Thank you.

**Chair:** Nor does it question whether you, as individuals, act for the benefit of the public, or indeed that your interpretation of Christianity demands that you do. The question is whether you as an organisation act for the benefit of the public, or indeed that the Charity Commission have ignored?

**Bruce Hazell:** The provision of meeting rooms and gospel halls, which are places of public worship, are open to the public. We distribute gospel tracts and Christian literature; we have regular street preachings in towns and cities throughout the UK. There are over 500 street preachings each week with 1,800 preachers, and 30,000 gospel tracts are given away every week across the UK. There is maintenance and support of families; we care for young people, care for old and disabled people, visiting old people’s homes and nursing homes. There is employment of 4,500 non-Brethren. We have opened our hall in London. We have opened it twice for people to come in. The first time there were over 400 Bibles given away, over 200 people came. The second time there were 160 people; there was hot food and drinks, free Bibles and gospel booklets.
Q246 Chair: It could be argued, Mr Hazell, that the Conservative Party also does this sort of thing, that we care about our people, we visit old people's homes, we disseminate literature about the Conservative Party, we think the Conservative Party is a good organisation, but it does not make us a charity. What is the point that the Charity Commission is missing that makes you eligible as a charity?

Bruce Hazell: If I can quote Florence Nightingale, "The old Romans were in some respects superior to us. They had no idea of being good to the sick and the weak, that came in with Christianity. Christ was the author of our profession. We honour Christ when we are good nurses. Kindness to sick man, woman and child came in with Christ."

Q247 Chair: That applies to you as individuals. How does it apply to you as an organisation?

Bruce Hazell: As we gather in these places of public worship and we represent a section of the public, the teachings that are in our meetings, they are disseminated as we go out in our businesses, shopping, travel, to hospitals, and to our neighbours.

Q248 Chair: So as an organisation you organise these activities?

Bruce Hazell: That is right.

Paul Flynn: I am sure your teachings are benign, but I think if I was lying in hospital ill and you visited me it is the most likely thing to give me a relapse than almost anything else I can imagine, someone standing at the end of the bed reading texts to me.

Robert Halfon: Everyone is entitled to their point of view, but can we treat the witnesses with respect?

Q249 Paul Flynn: The people that you visit in hospitals are they members of your organisation, of the Brethren, or do you visit members of the general public?

Bruce Hazell: That is a very interesting question Mr Flynn. We would visit members of the Brethren, obviously.

Paul Flynn: But you believe in separation.

Chair: Please let Mr Hazell answer.

Bruce Hazell: There would be many persons that would not be members of the Brethren that we would have spoken to, given tracts to, given succour to, in the last days of their life.

Q250 Paul Flynn: In spite of what Mr Halfon is saying, there are many people that would find your attentions, preaching in the street, handing out literature, visiting them in hospital, unwelcome.

Bruce Hazell: We would not resile from it, it is our life, Mr Flynn.

Chair: A very straight answer.

Q251 Robert Halfon: Going back to the Chair's question, is it not the issue that, compared to other religious organisations that have been given charitable status, you, the Brethren, have been singled out unfairly. Would you agree with that point or not?

Garth Christie: We certainly feel we have been singled out. One of our primary concerns would be if this is successful, going back to what Mr Flynn is saying, Christianity has been the backbone, you might say, of society in the United Kingdom and Christianity is under pressure in the secular society. People are entitled to their own views but for those that believe in the Lord Jesus Christ and love him, that view should be respected. The fact that somebody else might be from another religious persuasion, or of no religious persuasion, that is part of this great multicultural society in which we live. I would like to come back to the fact that we would be one of the biggest donors, as an organisation, for the British Heart Foundation. When I say as an organisation, it would be what the members are encouraged to do and for the British Heart Foundation we have recently collected over 2,200 bags that we have submitted to them. We could give you a whole list. In this publication, which the Charity Commission have, you will find a whole list of the different things we do for the wider community. I have probably lost sight a little of the question.

Q252 Robert Halfon: As someone of the Jewish faith, could you confirm that I would be welcome to come to your service on a Sunday morning and sit in your church?

Garth Christie: Absolutely.

Bruce Hazell: You would be welcome, Mr Halfon, as indeed would all the members of the Committee.

Garth Christie: Anyone who would like to attend one of our services, even Mr Flynn, are very welcome to come along.

Bruce Hazell: We would be glad to see you.

Q253 Robert Halfon: I recently attended an event you did, just literally outside my constituency, at which you were providing food for many hundreds of people, particularly those from disadvantaged backgrounds. Could you describe the event and what you did?

Bruce Hazell: We had some leaflets printed and we had younger members of the Brethren go into the high streets, and they would have had a sign on them saying, "Free lunch", and they would have been giving out the leaflets. Interestingly enough, just recently we had one in the London hall. As they came in, they did not say, "Where is the free lunch?", they said, "We want the free Bible." It was really wonderful to see them sit down and we talked to each other.

Q254 Robert Halfon: Can I confirm that those people who turned up at the event, and I saw there were many people there, were not asked whether or not they were members of the Brethren or had a particular faith before they were given food or welcomed?

Garth Christie: Absolutely.

Bruce Hazell: Interestingly enough, on our last one we did a little questionnaire. We did not want to intimidate anybody, but they very happily filled it in. What came out was really a demonstration of the love of God to the world. They said they were longing for more of this to be done so that the message of God’s salvation could be spread. That is what we are doing,
really. We are under the shelter of the blood of Jesus and we just like to proclaim that to all men. 

Garth Christie: This just a little story that might interest you. I am based in Leeds; I preach in the centre of Leeds. We were having an open-air preaching. We did not know at the time that a man going by was actually converted by a preacher on the street. That man went on to become a missionary in Africa, so he is doing his bit to move on God’s work. We only heard about it when he came back to England, where we picked up the story. So you do not know, the Lord speaks in the gospels about the sower scattering the seed, it falls where it will. That is God’s great work.

Q255 Charlie Elphicke: Nicola Evans, as a lawyer what really is the difference in what we have heard between the Plymouth Brethren and the standard Church of England or the Catholic Church? From a charity law point of view, what is the real difference? I am struggling to see that there is any difference at all here.

Nicola Evans: I would similarly struggle. Essentially, as you have already heard this morning, in determining whether an applicant for registration is a charity, it is the test that has been set out in the Charities Act 2006. The first question is, is the purpose within the list of purposes, or descriptions of purposes, in the Act. In this case, we are looking at advancement of religion. The second question is whether that purpose is for the public benefit. This is where we look to case law. As you have already heard this morning, it is not necessarily straightforward but there is some help in the case law. As we have also heard, in 1981 there was a case of a Brethren charity that was heard in the High Court and it was determined that it was a charity, for reasons that you have heard. For example, the fact that they go out and preach and that people are welcome to their services were reasons why the High Court found in their favour. The position we have now is that, apparently from something in the Act, that case law, and indeed other case law, may now be in doubt. That seems to be where we have an area of doubt arising. This seems to be because of the apparent removal of the presumption in the Charities Act, because the Charities Act preserved the meaning of public benefit, and in this case, we are looking at the removal of the presumption. The question is that, if any of that case law is thought to rely upon a presumption, that case law may no longer be good precedent. That is where the area of doubt comes in.

Q256 Charlie Elphicke: Just to follow up on that, does that therefore mean that a charity linked to the Church of England, or indeed a Catholic Church charity, would have similar problems with the Charity Commission in principle? Is this a case of the Charity Commission, under the old regime of Dame Suzi Leather, lashing out and attacking someone they think is weak in order to open up the thin end of the wedge?

Nicola Evans: I think, as has already been mentioned today, the Charity Commission has been given a very difficult task here and it is trying to interpret the law, the same as we all are. I think the difficulty is that when you have a question of case law that you think was established, as we have already heard, there are a lot of areas of doubt in charity law, but at least in some cases, there were some areas that we thought were not in doubt. When you have a question that case law that you thought clarified an area may no longer be good law, it does raise the question of what else is unclear. So it is difficult to answer your question about whether a charity of another faith group, for example, may have similar problems. The answer is possibly yes, depending on how the law is interpreted.

Garth Christie: Could I just read you out what was included in the refusal letter2 we got from Kenneth Dibble from the Charity Commission. This was the letter when our charitable status test case was refused. He says, “This decision makes it clear that there was no presumption that religion generally, or at any more specific level, is for the public benefit, even in the case of Christianity or the Church of England. The case law on religion is rather ambiguous. Our view is that the definition is rather dated. It is our job to define it adequately”. We would feel that was a job for Parliament rather than for the Charity Commission.

Q257 Charlie Elphicke: Do you feel in your heart of hearts, as the Charity Commission has carried on in your dealings with them, that they have a policy or an approach that effectively discriminates against faith groups?

Garth Christie: I would not be qualified to answer that question. You might say why did we not do more upfront? We followed the Act and we would feel that it was not the intention of Parliament that the situation we find ourselves in today should have ever happened. The Minister at the time was Mr Ed Miliband, and answering a question he said, “I want to reassure her that removing the presumption that the advancement of religion provides public benefit is not intended to lead to a narrowing down of the range of religious activities that are considered charitable, nor is the process intended to be onerous for individual religious institutions”. We found it a very onerous road we have had to tread.

Q258 Charlie Elphicke: That is the intention of Parliament. Moving to the Charity Commission and their dealings with you, the concern of many of us is that they are actively trying to suppress religion in the UK, particularly Christian religion, with a kind of North London, Hampstead secularist approach. Would you share those concerns that many of us hold?

Garth Christie: I think we would share the concern. Could I just read you something that Dame Suzi Leather said as Chair of the Charity Commission, which also gave us reassurance, so we do feel that we have been a little bit misled. She stated in her address to the church’s main committee in December 2007, “Religion is at the very foundation of charitable activity. Firstly, let me state categorically that advancing religion is, and continues to be, a

2 The Plymouth Brethren have submitted supplementary written evidence (CH 51) concerning this letter. Additional written evidence has also been received from the Charity Commission (CH 48). The letter from Kenneth Dibble has been published on the PASC website.
recognised charitable purpose”. She went on to say, “Please be assured there will be no political correctness ordered by the commission. We have no right, reason or desire to interfere with either the forms of worship or the teachings or ideas they further, unless, unsurprisingly, they are against the law”. You can probably sympathise a little bit as to how we feel today.

Q259 Charlie Elphicke: That is not true then, is it? What Dame Suzi Leather wrote to you is actually untrue, inaccurate and misleading given the events that have followed, is it not?

Bruce Hazell: Could I please add something here. Discrimination is a strong word; we do believe that this is an attack upon Christianity.

Q260 Charlie Elphicke: Would suppression be better?

Bruce Hazell: This amounts to suppression of religion, where charities have been given different treatment. Over a period of seven years, what we understood to be a constructive dialogue, there was an application for registration on behalf of the more than 200 trusts in 2009, and in 2011 the Charity Commission indicated they were going to make a reference, that would have included the Attorney General, to the Upper Tier Tribunal. After the two cases—the ISC case and the Benevolent Funds case—that was dropped, so we had no other option but to put in an appeal. After this long period of time and delay we feel that we have not been fairly treated.

Garth Christie: I would also go on to say that we believe this has human rights implications, bearing on the freedom of religion.

Q261 Charlie Elphicke: One last thing. The Charity Commission seem to claim that the reason they turned down the Exclusive Brethren is because it is exclusive, and no one else is allowed into a service. Yet you are saying that everyone is welcome to come in and join in our services. Even a Jewish person, like Mr Halfon, is welcome to come and join in those services. Is it then not the case that the Charity Commission are just incompetent, and they have got muddled, or are they wicked and have deliberately decided to skew the decision? Which do you feel it is, and do you not just find it generally odd given the evidence that has been given to this Committee?

Chair: You do not have to answer that question.

Garth Christie: I think we would be on safe ground if we just say that we agree that it does seem very odd.

Q262 Kelvin Hopkins: One very broad question. I have been waiting for some time to ask if we could not overcome all these problems by simply going to the German system where they have a church tax? The money is shared out according to the registered membership of the different churches, and humanists like myself are not required to pay the tax. That would solve all the problems. Churches would receive some taxation funding, given by people who support the churches, and others who do not support churches would not have to pay.

Chair: I have to say that question is slightly beyond the scope of our inquiry.

Nicola Evans: I would say it is something to be considered but it would mean a fairly fundamental change to how charity law has been created and evolved in this country. It is probably not something to be entered into lightly but worth considering.

Q263 Chair: Can I ask about the process that has led you into this situation? Maybe it is a question for Nicola Evans. Supposing the Charity Commission did legitimately have a view about religious organisations and their charitable status that was not reflected in decisions so far made about religious organisations, that they believe that the 2006 Act has moved things on, or public opinion has moved on, on how public benefit should be interpreted. How would they best go about implementing that view unless it is their chosen method, which is to test this matter through the tribunals?

Nicola Evans: The Charity Commission can only apply the law. My understanding in this case is that their difficulty is the point I made earlier about the presumption, and because of the reference in the Act to the fact that the previous case law, insofar as it relies upon a presumption, may no longer be good law. That is what is giving them the problem. It is not necessarily a point about a religious charity per se, it is a question of they think the case law is based on a presumption. They can only apply the law. One of the difficulties here—and maybe this is something that is within the scope of the inquiry—is that at the moment the process for trying to clarify an area of law seems to rely upon it being done at individual charities’ expense.

Q264 Chair: What is the alternative way they should adopt?

Nicola Evans: We think possibly one way that the Charities Act intended was by creating the tribunal. One difficulty is that, as you have already heard, this sort of very case heavy case is very “High Court”, if you like, in nature. It is quite difficult to fit that within a tribunal structure that is any more economical.

Q265 Chair: As at present there is no other way for the Charity Commission to test the law?

Nicola Evans: The only other way is also to talk to the tribunal, which is by way of a reference.

Q266 Chair: Are they allowed to apply to the tribunal for a declaration?

Nicola Evans: In essence, what happens is either the Charity Commission, with the permission of the Attorney General, or the Attorney General himself, refers a question for clarification to the tribunal.

Q267 Chair: This would have avoided picking on an individual charity, dragging an individual organisation into dispute and all the time and money that that involves? There is an alternative process that the Charity Commission could have pursued?

Nicola Evans: Yes, although the references, as you have already seen, do tend to involve charities because if a charity thinks that they may be affected by the
decision they can apply to be joined. Of course, if you think you may be affected, you may feel you ought to apply to be joined. It is not perfect in terms of not using charity money, but it is a mechanism.

**Q268 Chair:** But if all religious organisations thought themselves in danger from the implications of a ruling, they might not leave an individual organisation on its own?

**Nicola Evans:** Possibly, yes. One thing that we have been looking at in terms of possible recommendations is whether the Attorney General may take a greater role, for example whether there may be a process by which he could produce an opinion in the event of a lack of clarity in the law. If the Charity Commission followed that opinion then essentially that may prevent an appeal to the tribunal, unless the charity wanted to appeal the decision.

**Q269 Chair:** Have they exchanged information with you so that you know what their legal advice is in terms of counsel’s opinion, or do you not seek that?

**Nicola Evans:** They being?

**Chair:** The Charity Commission.

**Nicola Evans:** I am actually not representing in the tribunal case.

**Q270 Chair:** Have you seen such advice?

**Garth Christie:** Yes, we do have a lawyer here. Is he allowed to speak?

**Chair:** I am afraid not at the moment, no.

**Garth Christie:** I do have a list here that we would like to submit to you. It covers some specific recommendations for the Committee, which we would like to leave with you. What we feel is urgently required is clarity in the law, expediency in the Charity Commission—it has now been seven years for us, and we would suggest a recommendation that an application like ours should have a time limit on it, say three or six months—and greater checks and balances in the current process.

**Chair:** If you wish to leave that note with us as supplementary evidence, we would welcome that.

**Q271 Greg Mulholland:** I am not sure we are getting to the nub of the issue here, and how helpful some of the discussion has been. In the end, the problem seems to be, when I listened earlier to the discussions with the Independent Schools Council, that there simply is not an adequate set of criteria for establishing what a charity is. If I can put it to you and ask for a fairly simple answer—I happen to be someone who is religious, but would you accept that advancement of religion alone is not sufficient to achieve charitable status? A good example would be entirely closed orders of religious monks or nuns who deliberately choose to have no contact with people outside. That is not the position, so this is not me trying to pin you. I know people from the Independent Schools Council, that there simply is no input with people outside. That is not the position, so this is not me trying to pin you. I know people from

**Bruce Hazell:** If I could answer that, Mr Mulholland. We do feel it that we have to come here today and go over the detail of the fact that serves because we do believe as a section of the public and attending our services, our meetings, that does demonstrate public benefit on its own. You referred to the cloistered nuns, but we would go out from those services, meetings, and proclaim the word of God to all mankind. We do believe that as a public place of worship, and the advancement of religion, there is public benefit in that.

**Q272 Greg Mulholland:** Are you disagreeing when you say that you believe that the advancement of religion alone should grant charitable status?

**Garth Christie:** I may not have understood the question too well, but you might, for instance, have an extremist group who has views to incite violence. Obviously the Charity Commission has a role to fulfil because we would be of the view that anyone who was inciting violence is clearly not for the public benefit and clearly they should not be charitable. We follow that. But as somebody who is doing something for the promotion of religion, you might get an organisation who are printing Bible tracts or something like that—I am probably getting out of my depth here, Nicola.

**Q273 Greg Mulholland:** Forgive me, your view is perfectly valid, I am not saying it is not, but you are saying the advancement of religion alone is sufficient for charitable benefit, and I think you would probably understand some people would question that. If you are saying that, why have you produced what is very helpful about what the Brethren do in terms of what anyone would regard as charitable works, for example, in terms of giving people dinners and having that broader community benefit? Those two positions do not seem to really fit with each other.

**Garth Christie:** We feel that we are on safe ground because we are clearly, and I think we have demonstrated this morning, doing a lot for the public benefit. But let’s say there was an independent free church, a chapel tucked up in the Yorkshire Dales, and that chapel has a small congregation of 20 elderly people. I do not think, because of the new Charities Act, that a chapel like that should be under any threat of losing its charitable status.

**Q274 Greg Mulholland:** But again, 20 people in a chapel in the Yorkshire Dales will do a huge range of things inspired by their religion in their local community. That is how it operates. I must say the public benefit document you produced was very helpful, and of course you will be well aware that there is a big lack of understanding about the Brethren. I have learnt a lot about the Brethren that I knew little about before. I now know about the split in the 1840s when the Exclusive Brethren split from the Open Brethren, and they are quite different. It is important to know that this is focused on an Exclusive Brethren gospel hall. I am not for one minute saying that an Exclusive Brethren gospel hall is the same as cloistered nuns who deliberately choose to have no input with people outside. That is not the position, so this is not me trying to pin you. I know people from
my local Exclusive Brethren hall who do indeed engage in society. But I am asking you from a point of principle, you are clearly and helpfully showing that you do broader community works, so if that is the case do you not believe that there should be a clearer and more helpful— I am not saying definition, I accept that is difficult— set of things that it could be expected for any good charitable organisation, religious or not, to be performing that then benefits the community? I believe it would. Could that be a helpful way of avoiding this whole situation? If you then produce your document that fits within that. 

Bruce Hazell: Can I answer this, Chair? This public benefit document was a submission to the Charity Commission, so they were aware of the scope of what we did. This is why we are at a loss to know why we are here today. We believe the problems now facing the Plymouth Brethren Christian Church stem from a lack of clarity arising from the Act, combined with the statutory obligation placed on the Charity Commission to produce public benefit guidance. We do feel that section 4(2) of the Charities Act 2011, which has replaced section 3(2) of the 2006 Act, should be repealed. In the meantime, section 4(2) and the Commission’s public benefit guidance should be suspended pending a review by the Law Commission on the meaning of charity and the obligation of the Charity Commission to produce public benefit guidance.

Nicola Evans: Coming back to your point about whether you should have some criteria, albeit not a definition, as you have heard this morning, the concern I would have with that is that it could be inflexible and not grow with the law. You are saying that of course you want something that is clear. I think we would say that we thought the case law was clear. It seems to be this point about the presumption that has raised a doubt that we did not know was there. In this case, there is High Court authority that was very clear that said the Brethren live in the wider world, they let people in to worship, so that passes the test. In a sense we already had some criteria; the difficulty now is that that is in doubt. Even if you had a list of criteria, I am not sure it would necessarily solve the problem because we thought we had that here.

Q275 Greg Mulholland: Do you think perhaps some of the problem here is that you have not reached out sufficiently in the past? I do not mean that as a terrible criticism, I think we all need to look at ourselves in that situation. Many MPs have enjoyed meeting people from their local Brethren community and have heard about the work they are doing benefiting the community. It is unfortunate that we have been hearing this now as a result of this and not in the past. Do you think that from now you will have that communication and you will continue to demonstrate the work you are doing is benefiting the wider community?

Garth Christie: We are not a group that is apt to go round seeking publicity. When Christ himself was on earth He said, “I am among you as the one that serves”. He served in a very lovely way that was missed by many, and so we are not here to make a lot of razzamatazz about what we are about, the public benefit that we told you about this morning. For example, I grew up in Leeds as a young fellow; I probably started attending at that we call the open air preachings at the age of 16. It is something we have always done. 

Bruce Hazell: Could I just add to what Mr Christie is saying, Chair? We referred to Mr John Nelson Darby. He would have helped direct tens of thousands of Francs to the Franco-Prussian war effort in 1871. The Brethren would have helped in the construction of Montgomery’s cavalry during the war. I have a letter here from a member of the Brethren in 1957, distributed to the inhabitants of Luton, inviting them to the preaching. We put contact details on every one, at the back of every gospel tract now, and that has flowed right through to the present day. We feel that the binding precedent as set in the Holmes case in 1981 should not be called in to question through the abolition of presumption, when we feel it was only an assumption anyway. It has left a lack of clarity.

Greg Mulholland: We certainly agree with that.

Q276 Paul Flynn: You will see that this House is at prayer at the moment and it is a Christian prayer, an English church Christian prayer. It is not the Church of Wales, Church of Scotland, Catholic Church, or a Muslim church. There are huge advantages given to Christianity in this country, it is part of the tradition. You answered Mr Elphicke’s question suggesting that Christianity is being discriminated against or persecuted. I believe you represent perhaps 1%, 0.5%, of the Christian population of the country. If there was discrimination, there was any sense in which shouldn’t it show itself somewhere else, when in fact Christianity enjoys, as it always has, a hugely privileged position in this country?

Garth Christie: We are not here in any way to be critical of the Charity Commission. As we said earlier, we think they have been given a thankless task and really we think it is for Parliament to make the law clear on these points. It might interest you, I noticed a quote from a former Chairman of this Select Committee, Tony Wright, who said, “Reading all the documents and guidelines is like juggling with jelly, trying to bring religion under the orbit of this public benefit test”.

Q277 Paul Flynn: I remember that. We have been on this Committee for a very long time. Isn’t it true that it is because of your personality, your character, and your belief in separation and exclusivity that you are different to 99.5% of the rest of the Christians in the country? You do attract that attention that suggests you are not worthy of charitable status.

Garth Christie: Would you not agree that is our human right? Would you agree with that, Mr Flynn?

Paul Flynn: Absolutely, entirely. I have no desire to interfere with your rights. I think it is ridiculous to suggest that Christians are being persecuted as you and Mr Elphicke agree.

Garth Christie: Persecution is not a word that either of us has used here this morning.
Garth Christie: Mr Elphicke can probably remember the term he used.
Chair: Mr Elphicke used the term suppression, but it was not a term that you used yourself.

Q279 Charlie Elphicke: I understand why you are being generous to the Charity Commission, because you hope to negotiate with them. You hope they will see the light and be converted on the road to the Upper Tribunal, and I have to say I do not think they will. I think they are committed to the suppression of religion. I do not believe they believe in the freedom of religious association.
Chair: That is your opinion.
Charlie Elphicke: I have to say that I do think you should be a bit firmer and tougher because you are the little guys who have been picked on to start off a whole series of other churches that will follow you next. You should be strong.
Chair: Mr Elphicke is giving you his advice, not asking a question. Have you any comment?
Garth Christie: We appreciate your advice, Mr Elphicke. We will be strong, we will not be backing down.

Q280 Chair: Can I just finally ask, is it really the burden of your case in front of this Committee, whatever the merits or demerits of the Charity Commission view, that this process of testing the law on a relatively vulnerable organisation, putting you through huge time and expense is a rotten way to decide what the Charity law means? If I am correct, you are saying that there are alternative means of establishing what the law means without necessarily dragging a small organisation through this very difficult time.
Bruce Hazell: We would like to give you some recommendations, Mr Jenkin, and we can assure you that we are fighting for the community.

Q281 Chair: Is there anything that Ms Evans would like to add on that point I am making?
Nicola Evans: I would agree. Although, as I say, there is a reference process, it is not perfect. If there could be some facility that could pre-empt litigation rather than for every area of doubt having to go through an expensive litigation process, that would be very helpful.

Q282 Chair: Or for Parliament to make its views clearer?
Garth Christie: Correct.

Q283 Robert Halfon: Is it not the case that the many hundreds of thousands of pounds you have to spend on legal cases, you could have spent on charitable activities in the community?
Garth Christie: Absolutely true.

Q284 Robert Halfon: And is that not a tragic waste of money.
Garth Christie: Absolutely and totally.

Q285 Chair: Thank you very for much coming today. Nobody can possibly say you have not had a fair hearing today, even if some of the questions have been quite robust. We are very grateful for your robust responses. Thank you very much indeed.
Garth Christie: We are very glad for your time. We do not mind any of the questions. We welcome scrutiny, that is not a problem to us. If any of the members have further questions they would like to send in or approach us about, we welcome it. We have nothing to hide.
Chair: Thank you very much indeed.
Tuesday 6 November 2012

Members present:
Mr Bernard Jenkin (Chair)
Charlie Elphicke
Paul Flynn
Robert Halfon
Kelvin Hopkins
Greg Mulholland

Examination of Witnesses

Witnesses: Susan Pascoe AM, Commissioner Designate, Australian Charities and Not-for-Profits Commission Taskforce, and Murray Baird, Assistant Commissioner, General Counsel, Australian Charities and Not-for-Profits Commission Taskforce, gave evidence.

Q286 Chair: Good morning and welcome to this session of the Public Administration Select Committee in the United Kingdom on the operation of the 2006 Charities Act. I wonder if you could each introduce yourselves for the record please.
Susan Pascoe: Thank you. I am Susan Pascoe and I am Commissioner Designate of the Australian Charities and Not-for-profits Commission.
Murray Baird: My name is Murray Baird and I am Assistant Commissioner, General Counsel of the Australian Charities and Not-for-profits Commission.

Q287 Chair: Forgive me, but that means you are a lawyer, yes?
Murray Baird: I am a lawyer, but do not hold that against me.

Q288 Chair: We are particularly interested in your take on the debate we are having in the United Kingdom. I believe you have some opening remarks you would like to make.
Susan Pascoe: Thank you. Can I thank the Public Administration Select Committee on behalf of the Taskforce of the Australian Charities and Not-for-profits Commission for the opportunity to appear today? I will begin with a newsflash: since sending the background briefing to the Select Committee, the ACNC Act 2012 has passed both houses of parliament and the new regulator is set for commencement in the early weeks of December this year.
Mr Baird and I have noted the particular areas of interest of the Select Committee, and we will address these in our opening remarks. I will speak on the policy context in which the ACNC was established; Mr Baird will offer some observations on a comparison between the Charities Act and the ACNC Act. We will be able to offer limited comment on the topical issue of public benefit, as the matter was not explicitly addressed in the ACNC Act.

The creation of the Australian Charities and Not-for-profits Commission is marked by longevity, inquiry and advocacy. The not-for-profit sector has argued for a dedicated national regulator for the past two decades. The key policy drivers have been, firstly, exasperation with the complex, duplicative and onerous regulatory and reporting obligations across Commonwealth and state jurisdictions and consequent pressure from the not-for-profit sector to reduce or remove unnecessary requirements. Secondly, an explicit preference has been expressed by peak bodies in the not-for-profit sector to have comparable operating arrangements to business or government. In other words, they wish to function with a clear regulatory architecture, comparable to that provided for commercial enterprises and comparable to the clarity of parliamentary protocols and procedures. Thirdly, there is a keenness on behalf of donors and funders, as well as members of the public, for greater transparency on the purposes and activities of charities. Fourthly, there is a perception that the Australian Taxation Office was conflicted in its dual role of designator of charitable status and as revenue collection agency.
As noted in our background briefing paper, there have been numerous inquiries over the past two decades into the status of the not-for-profit sector and the definition of charity. This provided a solid foundation for the current Government to embrace a comprehensive and integrated reform agenda for the not-for-profit sector. These reforms cross regulatory, taxation and funding domains. The key element of the regulatory form is the creation of the ACNC. This is complemented by an initiative with states and territories, under the auspices of the Council of Australian Governments, to harmonise fundraising regulation, to specify governance standards for charities and to define reporting requirements. A review of the legal form of companies limited by guarantee is also foreshadowed.
The taxation reforms relate to the in-Australia requirements and efforts to better target tax concessions of unrelated business activities of charities. There is also a Government-sponsored working party reviewing the full gamut of tax concessions available to charities, with a view to simplifying current arrangements. The funding reforms relate to initiatives of the Australian Government to streamline contracts and grants for charities to reduce or remove unnecessary requirements.
Finally, the objects in the ACNC Act regarding transparency, sustainability and red tape reduction are a good summary of the policy imperatives that have driven this reform agenda. I now pass over to my colleague, Assistant Commissioner Murray Baird, to make some introductory comments on the Charities Act and the ACNC Act 2012.
Murray Baird: Chairman, the purpose of my opening remarks is to address the differences between the regulation of charities in England and Wales and in Australia. Pages 16 to 19 of our paper, prepared by Dr Joyce Chia, Policy Researcher at the ACNC, sets out a comparison of the key features of both the ACNC Act and your Charities Act. I want to draw attention to a few significant differences, and I am indebted to my fellow Assistant Commissioner David Locke—formerly of the Charity Commission of England and Wales, and now of the ACNC—for his insights into the differences between the arrangements here and in Australia.

Firstly, the scope of regulation: in England and Wales that Charity Commission only regulates charities. If you are a charity, you get the concessions; if you are not, you do not. This may put pressure on not-for-profits to squeeze themselves into the charity definition, whether it is the right fit or not. In Australia some tax concessions apply to the whole of the not-for-profit sector, whether they are charities or not: for example, deductible gift recipient status—the closest equivalent to your Gift Aid. Of the 25,000 organisations registered in England and Wales, 5,000 are not charities. A typical example would be a deductible gift recipient being a Government-controlled cultural organisation that would not qualify as a charity but qualifies for tax deductibility. There are other categories of tax exempt not-for-profits that are not charities. For example, many community organisations, such as Rotary or Lions, would be regarded as community service and not as charities, but they are entitled to income tax exemption.

Not-for-profit is a widely recognised definition in Australia, more commonly used than charity. This is very similar to countries of the world where the definition is non-government organisations or not-for-profits. The Australian Government has deliberately decided not to set up just a charities commission, but rather a Charities and Not-for-profits Commission. The legislation has been drafted in such a way as to permit incremental roll-out, first to charities and then to not-for-profits to cover the field. If I could comment on the basis of registration, in England and Wales there is a requirement to register if the annual income meets the registration threshold, whereas in Australia there is no minimum threshold for registration. Australia has followed the New Zealand model of not making registration mandatory, but rather linking registration to tax concessions. This tends towards a more complete register of all charities receiving either taxation or other funding breaks. The Australian Taxation Office has kept such a register for the last decade. The requirement for registration of all charities seeking tax exemption does not appear to have been a burden on smaller charities.

If I could turn to the models of the incorporated structures, in Australia as in the UK there are a relatively small number of charities that are companies limited by guarantee. The largest proportion of entities on the charities register in England and Wales are unincorporated associations or trusts. Australia, in contrast, has had in most states the concept of the incorporated association: a simple and less onerous option for not-for-profits to become incorporated, which has proved very popular. The difficulty for us has been that each state has different requirements. It is a structure not well suited to a national organisation, although it is often utilised for that purpose. The popularity of the incorporated association in Australia may augur well for the introduction of charitable incorporated associations under your Charities Act.

One of the key features of our legislation and the way it will be carried out is the idea of joined-up government: the concept of a one-stop-shop. On one form, an entity may apply for charity status, and the same material will constitute an application for concessions to the Australian Taxation Office—the file in fact goes from one office to another. That is consistent with the aim of the ACNC Act to cut red tape. While the ACNC is an independent regulator, it will have a memorandum of understanding with the ATO to share information and avoid duplication for charities. The public information portal of the ACNC will disclose the tax concessions granted by the ATO, whether the charity is a company limited by guarantee, or whatever the structure may be, and give the company number. A company limited by guarantee will be able to file changes of directors, information and annual returns with the ACNC. The ACNC will then make that information available to our Companies House, the Australian Securities and Investments Commission. Again, these arrangements will be worked out with a memorandum of understanding between Government agencies for the exchange of data. The ACNC database will create a charity passport of data that can be made available to all other Commonwealth agencies requiring information from charities. The ACNC legislation requires other agencies to seek such information from the ACNC, rather than require charities to provide it to the Government more than once. The tag for this arrangement is called “report once, use often”.

We intend that the ACNC register will be a thorough repository for all relevant information that Government agencies or the public may require about any charity and, in due course, every not-for-profit. It will include: the governing documents of charities; the contents of the annual information statement; the annual accounts of medium and large charities. It will include details of all members of governing bodies, unless that is suppressed for good reasons, such as public safety or donor privacy. The regulatory powers of the ACNC will be graduated and proportionate. I draw the Committee’s attention to the regulatory pyramid on page 15 of our written paper. Graduated and proportionate sanctions can include administrative penalties, warnings, directions, undertakings and injunctions. Suspension and deregistration will be reserved for cases of egregious, deliberate or persistent breaches. There are a variety of remedies should the Charities Commission need to intervene.

The question of the definition of charity is a work in progress in Australia. Although the case law in both countries relies on a common heritage, there are significant differences. For example, some co-operatives in Australia can be charities on the basis...
that they benefit the wider community, notwithstanding they exist for their members. Promotion of amateur sport and promotion of the efficiency of charities is charitable in the UK but not in Australia. We have included some examples of the active judicial consideration of the definition of charity in the paper at paragraph 1.1. Perhaps the most significant recent case is that of Aid/Watch, where an entity committed to promoting and campaigning for effective foreign aid policies through public debate was considered charitable under the fourth head of charity on the basis that it encouraged public discussion on charitable matters.

Q289 Chair: We understood this was going to be a five minute introduction; it is a bit longer than we thought.

Murray Baird: In that case, those are the only matters I wish to raise.

Q290 Chair: You are taking a very comprehensive approach to all this, but there is a certain amount of criticism that this will create greater burdens and bureaucracy. For charities and not-for-profit organisations in Australia. For example, we already have this dual registration point: a company limited by guarantee has to register at Companies House, and it has to register at the Charities Commission if it wants to be a charity. Are you not creating more regulatory burdens?

Susan Pascoe: If you take that example, the practice in Australia will be that there will be a single point of registration with the Australian Securities and Investment Commission, and then the regulatory oversight will be by the ACNC, the Australian Charities and Not-for-profits Commission. Any data that is required will be passed to ASIC by the ACNC. That is an example of the moniker we are using: report once, use often. Perhaps I could give you a couple of other examples. There will be a reduction rather than an increase in the regulatory burden if all Commonwealth agencies take the information that is provided by the ACNC. That is a requirement of Commonwealth agencies. That will also occur if some of the accompanying changes that the Government has brought in are enacted and become Government policy. So, for example, there have been changes made to the administration guidelines of the Commonwealth. For example, in the administration of contracts and grants, it is now a requirement that the financial reports provided to the ACNC suffice for the acquittal of grants for Commonwealth purposes, unless it is a very high risk grant—there is an exception.

Q291 Chair: What do you anticipate the budget of the Commission to be?

Susan Pascoe: It is £56.3 million AUD over four years; that includes the build of the IT in this establishment phase.

Q292 Chair: What is that in pound equivalents?

Susan Pascoe: It is about two-thirds in pounds, so my maths would probably very quickly put that at about £43 million.

Q293 Chair: About £40 million. That is more than our Charity Commission—oh, that is four years, so yours will cost about £10 million a year for four years?

Susan Pascoe: If you take out the IT build, you need to halve that. It is about £20 million.

Q294 Chair: We would be staggered if that was enough money, to be quite honest; that is my instant reaction. We spend a little short of £30 million. That has been cut, and our Charity Commission regulates about 280,000 charities, which is a much larger number, of course. They can barely scratch the surface of the regulation, in all honesty.

Susan Pascoe: Typically the main costs are staffing. The staff is around 95. That is probably another significant difference when you look at the budget.

Q295 Greg Mulholland: Good morning. It is very flattering that you are looking at the UK Charity Commission as something of a model. You spoke about the history, going all the way back to 1601 and being operational from 1853. This is obviously what we are particularly interested in: could you give us a sense of where you think you can draw on the particular expertise of the Charity Commission for England and Wales? Do you see that as a useful model to do what you are doing, which is clearly quite controversial in some ways in Australia?

Susan Pascoe: I will begin. Some of the features of the operation of the Charity Commission in England and Wales have been a good model: the approach that is taken to guidance and advice; the approach to building self-reliance amongst the charities through online access to materials. We like the way in which the materials specify what is a legal requirement, as distinct from good practice. I suppose where we might deviate—Murray might elaborate a little on this—is that our Act, you might have noted, has a wider range of enforcement powers. That does give us a chance to take a graduated and proportionate approach if a charity is non-compliant.

It is worth saying that we have looked to other countries as well. For example, we looked to New Zealand in the building of the UK and the accompanying changes that the Government has brought in are enacted and become Government policy. So, for example, there have been changes made to the administration guidelines of the Commonwealth. For example, in the administration of contracts and grants, it is now a requirement that the financial reports provided to the ACNC suffice for the acquittal of grants for Commonwealth purposes, unless it is a very high risk grant—there is an exception.

We have also looked at the conduct of charitable regulation in Canada and in the United States, where the function remains with the Internal Revenue Service in the United States and with the Canada Revenue Agency. The Australian Government is making a deliberate departure from that approach. That relates to the fourth of the policy drivers I mentioned: a widespread perception that the Taxation Office was conflicted in its dual role.
Susan Pascoe: Not at all. That will give you some sense of it. I suppose in summary, it is very much an international perspective. While we have drawn on the UK—and particularly we have focused on it in that paper—we have looked internationally.

Q297 Greg Mulholland: We will be interested to hear about your learnings from other countries as well, perhaps at another time. Setting up something from scratch is a great opportunity for you to look at where people are perhaps not getting things right, or where you can improve on things other countries are doing. Have you identified any weaknesses or flaws in the model of the Charity Commission for England and Wales that you are seeking not to replicate for that reason?

Susan Pascoe: We take a close interest, and we have noted the controversy in recent determinations. Without commenting on them, we would be seeking not to be placed in that circumstance. It is a debate as to whether that relates to the clarity in the legislation or the nature of the guidance and then the determinations themselves.

Q298 Greg Mulholland: That is very useful, and we will be coming on later to the public benefit definition, so I will leave that discussion for now. Obviously you are also aware that like Australia we are all facing the economic situation facing the world and smaller budgets. The Charity Commission, like every other public body, has had to bear the brunt of those reductions in spending. Have you been able to look at that, specifically? Being quite technical, despite some successes the Charity Commission will no longer be doing regulatory compliance investigations, which famously led to the winding up of Atlantic Bridge last year. Are you building that into your thinking and will you be facing similar challenges?

Susan Pascoe: We certainly have an adequate but modest budget. We will have a compliance function and the capacity to monitor and pursue investigations should the need arise.

Q299 Chair: Moving on, you basically have three statutory objectives: public trust, sustaining the not-for-profit sector and reducing unnecessary regulation. What do you think the most important objective is?

Susan Pascoe: If you were to ask the sector, they would definitely say red tape reduction, although they lobbied for the Charities Act. If you look at the rollout of the exposure draft of the legislation, there were five iterations in the end. It was first released on 9 December last year. It began with public trust and confidence, and that was then enhanced. The addition in the third iteration of the Act was the one that relates to sustainability. That was also from lobbying from the sector. I struggle to distinguish between them; I think they are all very important in the Australian context.

Q300 Kelvin Hopkins: Registration: why is it going to be voluntary and not compulsory? You touched on it; could you spell it out in simple terms?

Murray Baird: The reasoning behind the Act was that, if charities had concessions from the Commonwealth Government, then they ought to register and be subject to scrutiny and transparency. If they did not want or require those concessions, there was no need to register them. Although it is a voluntary system, it is the gateway not only to tax concessions but a number of other privileges charities have in our country. It was determined that it would not be necessary to register if no concessions were being given.

Q301 Kelvin Hopkins: In a sense, it is voluntary but you will not get any cash if you do not register?

Murray Baird: That is exactly the situation. We expect a high take-up.

Q302 Kelvin Hopkins: What proportion of charities do you estimate will voluntarily register with the ACNC? How many? What proportion?

Murray Baird: We expect that the vast majority of charities will register with us.

Q303 Kelvin Hopkins: There are some that will choose not to, presumably?

Murray Baird: There are some who will choose not to.

Susan Pascoe: A point of clarification: when we are established in a few weeks’ time, the Australian Taxation Office will pass over all the existing 56,000 charities and they will be deemed to be charitable until we review them against the statutory definition of charity, which is expected to be activated on 1 July next year.

Q304 Kelvin Hopkins: Thank you. Another question: the ACNC will have the power to charge charities for late filing of documents—another pressure on them, it seems. What evidence do you have that fines will act as a deterrent to late filing?

Susan Pascoe: None, to be honest, because we have not started yet. It is taken from the practice of other regulators. The Department of the Treasury, which has undertaken this work, looked very carefully at other regulators in Australia and at other charity commissions in the drafting of the Act. It has based this series of enforcement powers on the practice elsewhere.

Q305 Kelvin Hopkins: What is your best guess of revenues you could raise in that way? They could go towards funding the organisation. Looking at other parallel organisations, do late-filing fines make a significant contribution to their revenues?

Susan Pascoe: I do not have that information. I am sorry, but could I add that, if we do our job well through guidance, information and education to the sector and through alerts, there ought to be a very low rate of non-compliance. I can give you one parallel example in the Australian context, the Office of the Registrar of Indigenous Corporations. They have a 92% compliance rate, but then they have a high level of intervention and support if it looks like an indigenous corporation will not meet its obligations.
Q306 Kelvin Hopkins: It is not a formal question, but I was interested to learn there are some 600,000 not-for-profit organisations in Australia, which works out at about one for every 40 people. That is a staggering number. Only 56,000 are classed as charities; even that is quite significant. Administering an efficient tax organisation and tax reliefs on two-thirds of those must be an enormous task; I would have thought it was very costly. Is that not the case?

Murray Baird: Much of that is self-regulation. In fact, charities are those that have needed to register under the tax system, now under the ACNC system; we estimate that is 60,000. The others in the not-for-profit sector are largely self-assessing and just elect to declare themselves not-for-profit. They are simply subject to occasional Australian Taxation Office orders.

Q307 Chair: Is there any concern a not-for-profit organisation might register with the new body in order to avoid scrutiny?

Susan Pascoe: It would be a sorry state it found itself in if it chose to do so. Apart from the fact that at the point of registration or re-registration you need to provide your governing documents, your financial practice and quite a detailed set of information about your purposes and activities, there is always a chance you will be audited or that you will be in a class of entities that are the subject of interest at the ACNC. I doubt it.

Q308 Chair: The practicalities depend on your rather lean and small organisation being able to scrutiny the activities of individual trustees in thousands and thousands of different organisations. Your resource is going to be quite thinly spread.

Susan Pascoe: It is. Like other regulators we will be auditing in single digits, but like other regulators we will be asking individuals to attest to the veracity of the information that they provide to us, with very serious consequences for non-compliance. Like other regulators, the public will act as watchdogs and phone in when they have concerns. We will have a modest audit programme of our own.

Q309 Chair: In Australia, there are different levels of tax concessions to different kinds of charities and benevolent institutions and so on. We do not have that. We have a single tier. What would you say is the advantage of your system over our system?

Murray Baird: I think the Government would simply say the advantage is that it protects the revenue. It is true that a higher and better class of charity, and some other organisations, have, over the years, been granted deductible gift recipient status—

Q310 Chair: What constitutes a better charity?

Murray Baird: The most typical would be the public benevolent institution: the welfare organisation providing direct relief to people in need.

Q311 Chair: Organisations that actually do things for their clients.

Murray Baird: That do things directly to intervene for the relief of poverty and suffering.

Q312 Chair: A campaigning charity would have a lower level of tax relief.

Murray Baird: Exactly, yes. A charity that did not come within the deductible gift recipient status would not be able to give a tax deductible receipt for donors. The advantage that the charity gets is simply tax exemption and some indirect tax relief.

Q313 Chair: It would be able to reclaim purchase tax, for example. Do you have VAT in Australia? I cannot remember.

Murray Baird: In fact, the Goods and Services Tax: there is some relief, but only for the direct charitable work that has been done. Generally, a charity does not get relief from the Goods and Services Tax, but every charity would get relief from things like payroll tax, land tax and municipal rates.

Q314 Chair: For example, would an animal charity that campaigns to change the law on cruelty to animals be a benevolent institution and get the full level of tax relief?

Murray Baird: Not unless it were named in an Act of Parliament to be put into that category—for example, the RSPCA, the Royal Society for the Prevention of Cruelty to Animals.

Q315 Chair: It gets full tax relief because it is named.

Murray Baird: It would get relief because of its ability to find its way into that category.

Q316 Chair: I have not quite understood. What is the distinction between a good charity and a less good charity? I have not quite understood that yet.

Murray Baird: There are some categories, such as benevolence, that put you into that category. There are many other categories that are simply the result of historical lobbying.

Q317 Chair: Historically, then, you have inherited a situation which is a little inconsistent, shall we say?

Murray Baird: It is.

Q318 Chair: That does not sound like an advantage.

Susan Pascoe: The Government has a working party at the moment that is looking at all of the taxation arrangements for charities, with a view to simplifying and streamlining them. That working party is about to release a discussion paper. It has been in existence for about 12 months.

Chair: This, then, will overlap with the next question about the definition of charity. We have lots of questions on that.

Q319 Robert Halfon: I know you have some memorandums on this, but can I just ask how you define a charity, in a nutshell? I have some follow-ups to that.

Susan Pascoe: At the moment, the designation of charitable status is made by the Australian Taxation Office, and it does it on the basis of common law, but perhaps Mr Baird can talk about that. Are you interested in how we propose to define it?
Q320 Chair: In a nutshell, what is the common-law definition of a charity?
Murray Baird: It simply goes back to the 1601 Act and Pemsel’s case. We look for relief of poverty, advancement of education, advancement of religion, and other purposes beneficial to the community according to the common law.

Q321 Robert Halfon: You grant religious groups charitable status as well.
Murray Baird: We do.

Q322 Robert Halfon: Do you make any distinction between religious groups?
Murray Baird: We preserve the common-law presumption of public benefit and, accordingly, there is rarely a challenge to that presumption.

Q323 Robert Halfon: I am sure you are aware there is a controversy over here where the British Charity Commission have denied the Christian Brethren charitable status. Is there an equivalent of the Christian Brethren in Australia, and have you granted them charitable status?
Murray Baird: There is an equivalent of the Christian Brethren in Australia, and they have been granted charitable status on the presumption of public benefit.

Q324 Robert Halfon: How did you define that public benefit when it came to the Christian Brethren and the work that they do? Is it because of the charitable activities they do?
Murray Baird: Frankly, because of the presumption, it is unlikely that the Australian Taxation Office made a close enquiry on that question. It is presumed that bona fide religious organisations are for the public benefit.

Q325 Robert Halfon: Do you have a view as to the actions of the Charity Commission in Britain about their questioning of the charitable status of the Christian Brethren here?
Murray Baird: We would not express a view as a regulator and not as a policymaker.

Q326 Robert Halfon: What are your views on the removal of the presumption of public benefit for charitable status?
Murray Baird: Our Senate Economics Committee have looked at that in the last 12 months or so, and they are considering how they ought to define charity in a statutory definition of charity. We expect there will be a statutory definition of charity exposure draft, perhaps even before the end of this year, but certainly early next year. It will be up to our policymakers then to make a determination on whether to stick with the existing situation of the presumption of public benefit or to adopt the approach in the UK and other jurisdictions to abandon that common-law presumption.

Q327 Robert Halfon: If you grant charitable status to religions, how do you define what a religion is? My colleague over there quotes—is it the Pasta Society?
Paul Flynn: Pastafarians.

Murray Baird: In our country, the test case was the Scientology case. The High Court said that there needs to be a belief in a supreme being or idea, and a code of conduct that is consistent with that belief.

Chair: Would Pastafarians not qualify?
Paul Flynn: Yes, they would. They believe in a supreme being. They believe in a great blob of spaghetti in the sky.

Chair: Just a minute, Mr Flynn. We will come to you in just a second.
Robert Halfon: Could I just finish my question?
Chair: I am sorry he is answering your question, Mr Baird.

Q328 Robert Halfon: You test a charity for religious benefit, and you said you grant most religious organisations charitable status.
Murray Baird: Could I clarify that? The Australian Taxation Office has had that role up until our commencement, which is likely to be early December this year, but, in terms of a nation, yes.

Q329 Robert Halfon: Do you look at them not just for their religious activities but also their public benefit? For example, do you or the Taxation Office, or whoever it may be, assess whether or not that religious organisation does charitable works in the field, as well as just being a religion?
Murray Baird: Because of the presumption of public benefit for religion, it is assumed that a bona fide religion is for the public benefit. Whilst it would be open to the Australian Taxation Office to say that the detriment outweighed the benefit, I know of no case where that has occurred.

Q330 Robert Halfon: A final question: do you think that the rules that you have about public benefit being given for religions is the right thing, or should it change in the way that people are looking at over here?

Murray Baird: That matter is right at the forefront of our policymakers’ concerns at the moment. A consultation paper is out, the submissions are in, and we eagerly, as a charities commission, await the outcome of that debate. An exposure draft will come out very soon. I anticipate that will be subject to very close inquiry. Our Act was subject to three parliamentary inquiries in as many months, and I would expect that very issue will be subject to close scrutiny.

Q331 Chair: The consultation is not on a specific proposal of a definition.
Murray Baird: The consultation paper proposed the adoption of the UK approach of abandoning the presumption.

Q332 Chair: Are you surprised that the 2006 UK Act has resulted in such a major reassessment of what public benefit means? The Charity Commission in this country say they have been left a very difficult task with very little guidance.
Murray Baird: Clearly, a departure from the common law of many centuries will create a new playing field.
Q333 Chair: In your opinion, is that what the Act intended?
Murray Baird: I think I would not want to stray into policy on that question.

Q334 Chair: It is not a policy question; it is a legal interpretation. Do you think that the Act, as it is on the statute book, requires a reassessment of public benefit, or is it a matter of opinion?
Murray Baird: If the presumption is no longer there, it calls for a positive inquiry. As a charities commission, should the presumption be abandoned in our country, that would call for us to examine each application to assess the public benefit.
Chair: We need to move on quite quickly.

Q335 Robert Halfon: This is genuinely the last thing. Do you think it is a good thing that religious organisations in Australia are given charitable status?
Susan Pascoe: Yes, but I should declare an interest. I am a former director of Catholic Education in Australia.

Q336 Robert Halfon: Why do you think that is a good thing?
Susan Pascoe: As a citizen of Australia, I think that there is, if you like, a settlement that is expressed in common law that, to date, has not brooked any particular inquiry or dissonance in the Australian community, and one might venture there with some trepidation.

Q337 Paul Flynn: Just to correct any misimpression that was given about the religion of Pastafarianism, I have taken this up with the Charity Commission in the past and they do recognise it as a religion, because they believe in the supreme body of a blob of spaghetti in the sky. The scientific basis for that belief is not all that secure, but they will argue the scientific basis for most religions is often non-existent. In terms of interpretation of the charity law, however, it is a charity.

The group that has caused a stir here have given us their case for declaring themselves to be a charity as one of providing public benefit. They provide public benefit in their activities: preaching on street corners, handing out religious tracts and comforting the dying. There is a question about whether those activities would be welcomed by everybody. They preach separation—they were the words that they used—and they are exclusive. I understand what you say about what happens in Australia, but because of the difficulty we have had here, do you think we need a sharper definition of what public benefit is? Being comforted by one of the people who came before us last week is not something I would welcome in my final hours. I would not regard that as a public benefit at all in any way. In fact, it could make death seem more appealing. I would have thought, if these people turned up...

Murray Baird: My understanding of the common law is that, in Australia, we have regarded religion as being intrinsically for the public benefit, unless there is a strong detriment attached. Accordingly, the courts have kept away from value judgments as to comparing one religion with another. On a common-law basis, that would be presumed to be for the public benefit.

Q338 Paul Flynn: We are struggling with what has happened in the recent past here. The 2006 Act did what politics and Parliament often does: it has failed to come to a definition and waited for the courts, of all people, to try to sort it out, which was a recipe for the chaos that resulted in its wake. Are you determined to get a definition that will be a guide for the future, that will be binding in courts and one that we can copy?
Murray Baird: Mr Flynn, I think, in our country, the courts have been very active in determining these controversial matters and, generally speaking, having determined them, they have settled down. Perhaps the common law is an appropriate instrument to deal with those definitions, should there be uncertainty.

Q339 Chair: An appropriate instrument? Is it an appropriate instrument?
Murray Baird: In my view, yes.
Chair: Yes, sorry. I just wanted to make sure I heard that correctly.

Q340 Paul Flynn: Based on a clear definition from your Parliament.
Murray Baird: Based on whatever material they are given, whether it be the precedents in the common law or whether it be some direction from Parliament.

Q341 Paul Flynn: Do you have a tradition in Australia of giving charitable status to the sons and daughters of rich people that is denied to the sons and daughters of poor people?
Murray Baird: Certainly, it is the view in Australia that public benefit can be for rich or poor alike.

Q342 Paul Flynn: If there is a privileged school with powerful, privileged people sending their children there and paying the fees for boarding, they are people with a strong voice in society. Would they gain benefits and have benefits that are not enjoyed by people in a comprehensive school or inner-city estate?
Murray Baird: I think the view in Australia would be that education is, in itself, for the public benefit, regardless of whether it is given to the rich or the poor.
Susan Pascoe: Non-government schools have charitable status.

Q343 Paul Flynn: Do you have difficulty with your Catholic schools as they have here about the teaching regarding the rules on homosexuality? It was not the teaching—it was the adoption, involving discrimination against homosexual couples. Would that be a difficulty that would occur in Australia?
Susan Pascoe: There are exemptions under the equal opportunity legislation in Australia for the selection of students and the appointment of staff, and religious schools are able to teach their beliefs and traditions, as long as they are not in contravention of Australian law.

Q344 Chair: Just a clarification: any educational institution in Australia would be likely to be a charity,
be it a private institution, a fee-paying institution or otherwise.

Murray Baird: Yes, it would have the presumption of public benefit, so, should there be a substantial detriment, that would be examined, and it would be disqualified if it were simply an agent of Government, on the usual rule that Government is not a charity.

Q345 Chair: But if the term “public benefit” is brought into statute, this might open up the same kind of debate in Australia.

Murray Baird: I would anticipate it would.

Q346 Paul Flynn: If I can just come back on this definition of “any education”, if there were schools run by the Moonies, by the Scientologists or by religious groups who believe that female genital mutilation was the right form of life and practice—and there possibly are such schools doing that now—would all those be regarded as being charities because they are educational?

Susan Pascoe: They would be highly unlikely to get registration as a school.

Q347 Paul Flynn: Why?

Susan Pascoe: Because the practice of female genital mutilation is contrary to Australian law, for example. There are very strict criteria for the registration of schools. I can go into it, but that is perhaps not relevant. But they would be unlikely, in that circumstance, to be registered.

Q348 Chair: I appreciate you do not want to get involved in questions of policy in the UK system, but in summary you are in a pre-2006 Act legal environment at the moment, and if you passed a similar definition of charities as we have kind of imported into our legislation over here, you would finish up with the same kind of controversial judgments to be made by your new Charities Commission when it started operating under that Act.

Susan Pascoe: Mr Jenkins, there has been very close scrutiny in Australia of the UK situation, and many of the groups that might be affected are advocating already, in anticipation of what might be in the statutory definition of charity.

Q349 Chair: What is the key lesson that we should take from your scrutiny of what has happened over here over the last three or four years?

Murray Baird: We do not yet know the outcome of our discussion.

Q350 Chair: We will never know the outcome of that discussion, because it will always be a movable feast, will it not?

Murray Baird: Our Government will either continue the common-law presumption of public benefit or define public benefit in a new way.

Q351 Chair: Ministers, when they introduced our Act, suggested that they were continuing the common-law tradition of what a charity would be. They did not say there was going to be a big change by the introduction of the Act and, to that extent, the Act has not fulfilled expectations. What lesson do you take from that?

Murray Baird: I think, in Australia, there is little controversy about the need to codify the common law of charity.

Q352 Chair: We did not think we needed to over here either.

Susan Pascoe: Perhaps one lesson is just in the nature of the legislation. It left the Charity Commission to write the guidance and to try to interpret, and I think that was a very difficult circumstance. It is certainly a circumstance that we would prefer not to be in.

Q353 Chair: So you are going to have a tighter statutory definition, so that there is less chance for what you might call policy decisions to be made by the Charities Commission in Australia.

Susan Pascoe: I think it could go either way: you could either go for a black letter or you could go for maintenance of the presumption, so a continuation of a reliance on common law and interpretation of the common law.

Q354 Chair: I can see we are not going to get much further on this line of questioning.

Susan Pascoe: No, I am sorry. We are really not in a position to help, because of the circumstance.

Chair: I appreciate that.

Q355 Kelvin Hopkins: The question I was hoping to ask has already been asked. There is a range of views about whether or not private education should be subsidised, effectively, by the state through tax relief, especially for rich people. I take a view that it should not be; others would take a view that we should carry on with the present arrangement. If you tie the definition down very tightly and make it pretty rigid, there is scope for lawyers to say; “A charity that is looking after homeless people, yes; a charity that is subsidising private education for rich people, no,” but if you leave it a little bit open and a little bit flexible, and try not to tie it down too tightly in legislation, then the private-education schools get off the hook. It seems to me you have a very similar problem. Are there people in Australia who, like me, believe that we should not subsidise private education for the rich and that they should not have the tax reliefs, and is the establishment basically taking the view that, like us in Britain, the subsidy should continue?

Susan Pascoe: The matter was settled in Australia when a group called the Defence of Government Schools took the famous DOGS case to the High Court, and the High Court deemed that it was not unconstitutional for the Government to provide recurrent funding to non-government schools. If you like, that matter is settled. Interestingly, an inquiry has just been conducted into the relative merits of the funding, but that is the settlement. Interestingly too, in the United States, a similar case that went to their Supreme Court determined otherwise, so, we can see, with a similar body of law, different interpretations can be made.
Q356 Paul Flynn: Could we ask Charlie Elphicke’s question, seeing as he is disgracefully absent at the moment, which was one that he raised last week when he talked about the Charity Commission being used to “suppress religion”. Many of us would think this is a neurotic and irrational expression of victimhood that some people suffer, but do you really think there is any possibility in Australia of the Charities Commission being used to suppress particularly Christian religion? Is this in the world of fantasy?

Susan Pascoe: One way I will answer is to say it is obviously not the intent, but also, in the appointment of staff, we have deliberately chosen people who know, understand and support the sector, so I do not think that we would anticipate radical or aberrant interpretations of the law.

Q357 Chair: Can I just have one final go at asking this question? Do you want your body to have as wide discretion of interpretation as the Charity Commission for England and Wales appears to have, or do you think it would be better if the Australian Parliament took a bit of a firmer view about what a charity is and what public benefit is? Would that not help you in your work and reduce litigation costs and all that sort of thing? Which view do you take?

Susan Pascoe: I think that the intent in the statutory definition of charity is to codify the common law and to give us that clarity.

Q358 Chair: You take the latter view then.

Susan Pascoe: Yes, but that does not mean it will be prescriptive on the topic of public benefit.

Q359 Chair: No, but if there is a lesson that you have taken from our present controversies, it is that quite a lot of this heartache and uncertainty could be avoided if Parliament took a firmer view about what charitable status meant. Am I correct?

Susan Pascoe: Yes.

Murray Baird: Or the courts gave clear signals when required. I do not think it matters too much who gives the clear signal, as long as the regulators are not left in uncertainty.

Q360 Chair: Yes, but how much case law do you need? How many cases will there be?

Murray Baird: I think, as the Committee changes and as new issues arise, you need a continual stream of guidance.

Q361 Chair: You are a lawyer, aren’t you?

Murray Baird: I appreciate the point.

Chair: We wonder whether we can save the expenditure on lawyers. I think that is the burden of my question.

Robert Halfon: Could I just make a point of order, just to correct something the Member—

Chair: No, I am not taking a point of order. People are responsible for their own questions.

Robert Halfon: Just a quick statement for the record—

Q362 Chair: We are taking evidence from our witnesses, not making comments of our own. We will move on to the question of political campaigning. You have had a recent case where the Australian Taxation Office ruled that Aid/Watch “was an institution which did not itself distribute aid and thus was not charitable; and second it achieved its objects through campaigning which amounted to a political purpose”. Has this judgment had a big effect on the charitable sector in Australia?

Murray Baird: I think it has sent a signal that the assumption that charities ought not get involved in advocacy, and even advocacy that might be regarded as political, is no longer the case, and that a great deal of latitude will be given to use advocacy, should it be for a charitable purpose. It is a departure from the common law as would be known in the UK. Our High Court has said that is no longer the law in Australia, and so that signal will mean that charities will be more emboldened to get involved in advocacy and public campaigning.

Q363 Chair: More involvement?

Murray Baird: Yes. Whereas a charity would have been reluctant to make a statement that might be regarded as political in the past, I think the case has given them permission to say, “There may be underlying social issues that cause suffering in the community, and we want to address those as well as direct help to the people who are suffering.” Aid/Watch was, in fact, aimed at looking at the causes of poverty and the ineffectual way in which aid was granted.

Q364 Chair: Was the ATO’s decision overturned by the High Court?

Murray Baird: Yes, the ATO had said that Aid/Watch had gone too far in getting involved in campaigning. The High Court said, “No, it did that campaigning for a charitable purpose and is, therefore, still a charity.”

Q365 Chair: Are you not concerned that, if people see their charitable donations being diverted for political purposes, this will undermine public confidence in what a charity is? Did you have that concern?

Murray Baird: The High Court held that this was still a charitable purpose, I think the public will make its own decision as to the most effective way of meeting a social need. If it is by way of advocacy, the donors and volunteers will make their decisions as to whether that is appropriate or inappropriate.

Q366 Robert Halfon: Do you recognise charities 99% of whose work is campaigning as opposed to work in the field? Are those recognised as charities or are they seen as pressure groups?

Murray Baird: Aid/Watch was such a group that said, “We will benefit those in need of aid by our campaigning; that is how we will make our contribution,” so they were given a great deal of latitude to do that. I do not know whether it was 99%, but certainly the majority of their work was in campaigning, and that was held to be charitable.

Q367 Robert Halfon: My question was: if there are charities that do the vast majority—I am not talking
about 55% but 90%-odd—of their work in the form of campaigning as opposed to doing practical work in the field, do you think it is right that they are then recognised as charities?

_Murray Baird:_ Yes, I think our court was saying there are many methods of public benefit and of helping the poor, and that the method could be simply by stimulating public debate on these issues.

_Q368 Robert Halfon:_ Is that your view as well?

_Susan Pascoe:_ Certainly, as our role is to interpret and to administer the law, yes.

_Q369 Chair:_ Can I ask: political parties and political giving do not attract tax relief in Australia, do they?

_Murray Baird:_ Political parties are part of that wider circle of not-for-profit organisations.

_Q370 Chair:_ So they do get some tax relief.

_Murray Baird:_ They would get tax exemption.

_Q371 Chair:_ They get tax exemption but they do not get the full benefits.

_Murray Baird:_ They are not charities.

_Q372 Chair:_ They get the second-tier benefits of not being a for-profit organisation.

_Murray Baird:_ Perhaps even the third-tier benefits.

_Q373 Robert Halfon:_ Do you think it should be a requirement for these kinds of charities that we are just talking about to make it absolutely 100% transparent in their accounts and to the public that they do not do work in the field but that they are, in essence, spending all their money or the bulk of their donations on campaigning?

_Susan Pascoe:_ Yes, and that is the nature of the annual information statement that they will provide to us. They are required to detail their activities for the past year and the projected activities for the forthcoming year.

_Q374 Robert Halfon:_ Does that include spending on advertisements, public affairs, public relations and similar related matters?

_Susan Pascoe:_ If they are a medium or a large charity, they have to submit a financial report as well, and that is any charity over 250,000 per annum. They will be required and in a common format, so that the information is comparable across charities.

_Q375 Robert Halfon:_ You can see, then, if a significant proportion of their money was spent on public affairs as opposed to in the field doing charitable work.

_Susan Pascoe:_ Just to be clear, those forms are being finalised as we speak. The process was to wait for the passage of the legislation and then to have a final consultation on those.

_Q376 Chair:_ The principle is that they are to be transparent.

_Susan Pascoe:_ The principle is, indeed. Yes, absolutely.

_Q377 Robert Halfon:_ How do you then make a distinction between those kinds of charities that spend all their time campaigning as opposed to doing work in the field and normal pressure groups?

_Susan Pascoe:_ People can read and interpret their financial affairs. If you like, the three pieces of information should be their governing documents, the annual information statement that details their activities, and then their financial statements as well. There are three pieces of information that will be on the public register that people will be able to look at to make that determination.

_Murray Baird:_ We would then go to the question of: what is a charity? Are they for the relief of poverty, the advancement of religion or the advancement of education, or are the purposes beneficial to the community?

_Robert Halfon:_ I see.

_Q378 Chair:_ I think we have reached the end of our questioning. It has been very informative for us and a great honour for us to have you as our witnesses.

_Murray Baird:_ Thank you.

_Susan Pascoe:_ Thank you. We wish you well. We have been following your activities and will continue do so.

_Chair:_ We wish you well in your endeavours, and thank you very much for joining us today.
Tuesday 27 November 2012

Members present:
Mr Bernard Jenkin (Chair)
Alun Cairns
Charlie Elphicke
Paul Flynn
Robert Halfon
Kelvin Hopkins
Greg Mulholland
Lindsay Roy

Examination of Witnesses

Witnesses: Christopher Snowdon, Research Fellow, Institute of Economic Affairs, and Paul Hackett, Director, Smith Institute, gave evidence.

Q379 Chair: Can I welcome our two witnesses to this evidence session about charities, the role of the Charity Commission and the Charities Act? This is primarily about the role of charities in relation to politics and political campaigning, and we are interested in the perspectives that you each have. Could you both introduce yourselves for the record, please?

Paul Hackett: I am Paul Hackett. I am the Director at the Smith Institute, a not-for-profit think tank.

Christopher Snowdon: I am Christopher Snowdon. I am a Research Fellow at the Institute of Economic Affairs, which is an educational charity and think tank.

Q380 Chair: Mr Hackett, perhaps you could start for us. There was an inquiry into the Smith Institute after concerns were raised in the media, and you took over as Director shortly after the Commission reported, and the Smith Institute resiled its charitable status and became a not-for-profit organisation. Does that mean you accepted the Charity Commission’s report into the Institute?

Paul Hackett: I took over and set it up as a not-for-profit organisation in January 2010, so you have to take my comments on the Commission’s inquiry prior to that as those of an observer. I was not Director of the Smith Institute during the period in which the Charity Commission conducted its inquiry. Perhaps it would be most useful if I explain what my thinking was in converting it from a charity to a not-for-profit.

The Charity Commission report was influential in that decision, but I must say it did not necessarily say that the Smith Institute had committed a series of misdemeanours. In fact, I would not accept that. I took the report’s recommendations as a fairly clean bill of health for the Smith Institute, but that is perhaps something we can discuss. The important point for me was that I found there were a number of reasons why it was better for us to reconstitute as a not-for-profit organisation. There were two main ones. I found that, as a small think tank, the compliance requirements and some of the Charity Commission’s procedures around governance were quite cumbersome for a very small organisation, so we found we were more fleet of foot and more flexible as a not-for-profit. Certainly the experience that I witnessed, doing some work as a research fellow at the time for the Smith Institute, was that maintaining compliance with the Charity Commission took up an inordinate amount of time and money over an inquiry that lasted three years. I was quite fretful of spending my time as Director engaging with the Charity Commission. I preferred to be doing the work of a think tank for the Smith Institute. That was the first thing: bureaucracy and compliance.

Secondly, financially I find it more attractive to be a not-for-profit than a charity, and that is primarily because the Smith Institute became, and certainly is now, much more distinct from other think tanks in the charitable sector, in that the business model I am using is project-based, so all our activities will wash their face financially, project by project. I did not take donations; I was not seeking donations. Therefore, Gift Aid was not very significant to me; VAT was significant to me. As the Committee knows, charities cannot claim the VAT, so, at 20%, that is quite significant. Also, the corporation tax was not that great. We are a not-for-profit, so we were not making large profits or surpluses, so that was not a matter that concerned me. On the cost side, I found that the business model that I was putting together—and can I say that the Smith Institute financially was not in a brilliant position when I took it over, partly because of the work that it had to do to comply with the Charity Commission—ensured that we maintained a healthy financial position. I thought it would be more suitable as a not-for-profit.

The other thing to add, Chairman, was that I had some anxiety that we would lose the halo effect if we moved from a charity to a not-for-profit, but that never happened. In my think-tank world, no one seemed to be that bothered that we were not a charity. I think they liked the fact that we were a not-for-profit, but losing charitable status did not really affect our reputation.

Q381 Chair: You do not think you are any more political than you were before.

Paul Hackett: In hindsight, one of the advantages of being a not-for-profit is it has enabled us to be a lot more flexible. Whatever purposes you put on the tin as a charity, you roughly have to stick to, particularly in terms of educational purposes, which is what the Smith Institute was doing before. I have since taken it further and extended the remit from the original Smith Institute, which was primarily around economic policy. I do a lot more work in social policy now. I am doing some work on constitutional issues. I have done some work with China, for instance, that...
originally would have been outside the remit, so I have been given greater flexibility as a not-for-profit.

Q382 Kelvin Hopkins: You have given a broad description of the change, but can you be very much more precise about the kinds of things you did as a charity and you do now as a not-for-profit organisation? You have more flexibility now, you say, but give us some specific projects—name them.

Paul Hackett: Certainly, it would be my pleasure. As a charity, we were doing a lot more events. Obviously this was a different time. The Smith Institute set up in 1997 and, up until the period I took over, in 2010, it was engaged a lot more with events, discussions and forums for debate. There were quite a lot of events, as people are aware, at Number 11 Downing Street but also elsewhere. It was much more of a talking tank at the time than maybe a thinking tank.

Since then, I have reduced the number of events and I am doing a lot more research. To give a specific example, I have just completed a nine-month piece of work as secretariat to a commission that looked into the future of council housing in Southwark. After this meeting, I am going to give evidence to the Fairness Commission in Tower Hamlets, which we are helping. This type of activity never happened under the previous Institute. To give you another specific example, it was much more focussed on what were called “monographs”, perspectives of new thinking and policy ideas, which of course enabled the Institute to give a more balanced and politically broader view on issues. Those monographs still exist; we still do monographs, perspectives from across the political and professional spectrum, but I am also now much more engaged in detailed research reports on specific issues. For instance, just last week I published a report on local authority pension fund investment, which is a specific piece of work trying to discuss the advantages of enticing public sector pension investment in local communities.

Q383 Kelvin Hopkins: You can be more political now, in a sense. You can come up with recommendations politically that have a left or right flavour.

Paul Hackett: I think it is true to say that we can be more political. Whether we choose to be more political is another matter, but there is certainly a lot more opportunity to be more partisan, if you wish to be, and I certainly do not feel as restricted by the charity law as you would be as a think tank in the charity sector.

Q384 Charlie Elphicke: You talked about doing project-based work. Do you do project-based work for the Government and have you done any work recently for the Government?

Paul Hackett: No, I have not done any work for the Government, although obviously as an organisation I could compete under the procurement process for potential work. Our work is funded in a range of ways: by corporates; by the not-for-profit sector itself, other organisations; by foundations, sometimes charitable foundations; by trade unions; and a whole range of interested parties. I would quite like to have projects funded by the Government, but I do not have any at the moment.

Q385 Robert Halfon: What I did not understand is why the Charity Commission removed your charitable status, because there are other organisations, like Shelter for example, that campaign purely politically and do not do work in the field, and yet the Charity Commission singled you out to say, “Well, actually, your activities were deemed too political.” What is the difference?

Paul Hackett: As a matter of record, can I just clarify that we were not de-registered as a charity?

Chair: The Charity Commission did not remove the charitable status.

Paul Hackett: We chose to; we left. It was a party we left.

Q386 Robert Halfon: The Charity Commission did say that you had been too political. Why did they say you are too political, and yet other organisations that are classed as charities and do nothing but political campaigning are not deemed as political?

Paul Hackett: I have two things to say. First of all, the Charity Commission reacted to the claims by The Daily Telegraph and Bloomberg News that we were too political. The inquiry was instigated on the basis, as far as I understand it—it was never made perfectly clear—that certainly those two organisations complained that the Smith Institute, at the time, was being too political. As a result of that, the Charity Commission launched their investigation, and the investigation was based on the fact they claimed that the Smith Institute was too party political, as opposed to being too political.

Q387 Chair: Can we just be specific? The Charity Commission felt it was wrong for you to have Labour MPs always doing forewords to your pamphlets. It was wrong for your occasions to be used as a platform for senior Labour figures to make political attacks on other parties. They thought it was odd that 11 Downing Street was constantly being used as a venue, with the permission of the then Chancellor of the Exchequer, Gordon Brown. There were a number of other tell-tale things that suggested it was a Gordon Brown think tank.

Paul Hackett: That was the basis of the investigation but, if you read the report, there are a few examples whereby those claims were substantiated, but there were many others where they were not.

Q388 Robert Halfon: What I am asking is why you think you were singled out. Forget about The Daily Telegraph or whatever it may be. Why is it that you were singled out when other charities have political figures speak to them, have receptions in Downing Street or whatever it may be? What I am trying to understand is why the Charity Commission says you are too political, whereas an organisation like Shelter, which purely does political campaigning, has links with political figures and takes a view of regularly examining and analysing Government policy on homelessness, is perfectly acceptable.
Paul Hackett: That is a very good question. It is a question I put to the Charity Commission. I thought that their response was disproportionate. My personal view—I was not Director at the time—is that I think the Charity Commission panicked and set themselves on a path that led them to a full investigation.

Q389 Robert Halfon: Do you not think it strange that the Charity Commission allows the IPPR to be a charity and not yourselves? The IPPR are, to me, a very similar organisation in terms of their links to the Labour Party.

Paul Hackett: I am saying that I think it was disproportionate and that they panicked. Just for the Committee’s interest, the process led to some very bizarre and Kafkaesque outcomes. At one point I remember being asked to collate lots of publications, letters, correspondence and transcripts of meetings, and send them to an organisation in Cardiff, which I think was part of Cardiff Business School, to be investigated line by line for political bias. A huge report came back from the Charity Commission saying, “This comment here looks like it is party biased and this one is not.” It became a very strange and surreal situation, where it was almost impossible to identify what was political bias and what was not.

Q390 Robert Halfon: Do you think one way to solve this problem, because of the inconsistency that you set out very well, is to say that the bulk of the charity’s work must be practical activities, not political activities?

Chair: You are going on to somebody else’s question or are in danger of it.

Robert Halfon: It does not have to be all of it, but the bulk of it, and then the Charity Commission would know which charities were being political or not.

Paul Hackett: This is very difficult to draw the line on. I am aware of the law and how it defines charities. I am aware of the compliance for the Charity Commission. I find it very difficult, even myself, to define when something is political and when it is not political. It is easier to define something as party political perhaps, but even then it is quite difficult. You could find yourself trying to maintain, on the party political side, some sense of party political balance. Does that mean that I have to invite the BNP to speak on a platform? Where do I draw the line as to the extent of trying to get a balance? That is very difficult.

Secondly, where does the process of enforcement kick in and how proportionate should it be? Do not forget that the Smith Institute, at the time it was being investigated, still only had five staff. Some of the recommendations in this report required it to set up an audit committee, an advisory committee to trustees, for the trustees to meet on a more regular basis, etc. Just complying with that bureaucracy alone would have meant no other work was done. Somehow or other we have to try to get the balance, although I must say, having read the evidence that has been given to the Committee—I had a look at it last night—most organisations seem to be fairly relaxed about the situation regarding political activity and campaigning.

My point to them would be they have not been investigated. It is more the enforcement and compliance element to it that I found disturbing, rather than the principle.

Q391 Charlie Elphicke: Do you not think that it is fundamentally unfair that you guys had the book thrown at you, were given all this hard time, this massive investigation, this ridiculous report from the Cardiff Business School and all the rest of it, when the IPPR just gets off scot-free and continues to have charitable status? There is not really much difference between you and the IPPR.

Paul Hackett: I accept that. What I did not understand was that they also did a very cursory investigation of Policy Exchange and I think another think tank, but I cannot remember which one it was, which were very short inquiries that led nowhere, with very grand statements that they had not committed any political activity, which I found rather strange. It was very inconsistent. If you are going to do it, do it consistently, and if you are going to do it, do it proportionately. I felt that we were singled out. You would have to ask the former Director of the Institute, Lord Stevenson, who is in this place, if you wanted a definitive view, but my view is, as I said, I think they panicked and found themselves in a place that they perhaps did not even want to be in themselves.

Q392 Charlie Elphicke: Do you think the fair thing would have been to investigate the IPPR at the same level as you guys were? Would that be fair?

Paul Hackett: Maybe they should have set up some sort of broader inquiry or maybe thought about looking at think tanks in the round, getting a general position and then moving in on some of the specifics.

Q393 Lindsay Roy: Before I move on to question 3, you have just clarified that the Smith Institute removed itself from charitable status. Have you any notion that the Charity Commission would have removed you?

Paul Hackett: No, I don’t think so. I don’t have the correspondence with me. I know it is in the office, because I checked it. They were happy with our compliance. I had personal meetings with the Charity Commission to explain that I wanted to move on and that the relationship perhaps had reached its point of termination, but they were happy to keep us as a charity if we wanted to remain as one.

Q394 Lindsay Roy: That is helpful. It leads on nicely to the next question. Should think tanks be entitled to charitable status? Can I ask both of you that question?

Paul Hackett: My answer to that would be, in a liberal democracy, I like a bit of choice. I do not think there is anything wrong in having a choice. The Charity Commission could do more to be a little bit definitive about the way in which it goes about ensuring enforcement of charity law and its own regulations on the matter of political activity and campaigning. I think it is a good position to be in. My colleague on my left can be a charity and I can choose to be a not-for-profit. As I said, in some organisations
that do not require or rely on donations, so therefore the taxpayers’ element is not relevant, what is in it for me? The halo effect, as I mentioned earlier on, is probably more relevant to a charity involving donkey sanctuaries than think tanks. In that sense, I am quite comfortable where I am as a not-for-profit.  

Christopher Snowdon: I basically agree. So long as education is considered to be a public benefit, then the think tanks that are providing education should be charities. If you did not have think tanks as charities, so long as they are providing education and are not party political, you would have to get rid of an awful lot of charities, because so many of them do have their primary purpose to be educating the public about whatever issue it may be.

Q395 Chair: Before we move on, Mr Snowdon, can I just be clear? You are not really here to speak on behalf of IEA. You are speaking on behalf of your publication and yourself, or are you representing the IEA?  

Christopher Snowdon: I will do my best to represent the IEA where I can, but I am only fairly new to the IEA.

Q396 Chair: You are actually employed by the IEA, and therefore you can speak on behalf of the IEA.  

Christopher Snowdon: I will try to speak on their behalf.

Q397 Lindsay Roy: Mr Hackett, we may be covering a bit of ground that has already been covered, but I just want to ask you this again. How does influencing the shaping of public policy differ from lobbying, and is it appropriate work for a charity?  

Paul Hackett: My view, not the Smith Institute’s view, is that I do not think lobbying is appropriate for a charity, but then what is the distinction sometimes between being lobbied and being campaigned? Again, we are into a definitional area that is a quagmire and a nightmare to pin down. I think you can pin it down on the lobbying side, because it is probably easier to draw a line in the sand. Certainly as a think tank I do not do lobbying, but I could as a not-for-profit have an activity that is around public relations and lobbying if I wanted to; whereas for as a charity, again it would be moving away from what is on the tin. One of the things about being a charity is that it does pin you down, and as a not-for-profit there would not be anything wrong with me lobbying, if I wanted to, although I do not want to, because it is not my purpose; it is not what I am in the think-tank world for.  

Again, it is back to the same point: somehow in this part of the forest, for the Charity Commission, they are going to have to be a bit more definitive, because it is inconsistent at the moment. As far as I am concerned, I can see how a charity campaigning and engaging in political activities related to its other purposes makes sense—in Shelter’s case, it is lobbying and campaigning for its greater purposes—but in other cases I can see where it is open to abuse. Maybe it is an area that needs some greater clarification, which is why this inquiry is a very good idea.

Q398 Lindsay Roy: The message is loud and clear: greater clarity is required.  

Paul Hackett: I think so, yes.

Q399 Lindsay Roy: Mr Snowdon, what benefits does charitable status bring to the Institute of Economic Affairs?  

Christopher Snowdon: It is basically confined to the tax benefits of being a charity. We do not use the charitable halo. When we go on the radio or television, we do not get introduced as “the charity the Institute of Economic Affairs”. We could if we wanted change our name to something cuddlier, go on there and make various policy proposals as a charity, but I think that would be rather disingenuous. It is purely because people are giving us money out of their own pocket without getting anything in return, and to me that is what a charity is about. We are a non-profit, but the benefit is purely the tax breaks.

Q400 Lindsay Roy: What does that mean in terms of financial gain?  

Christopher Snowdon: I am not too sure, I am afraid. I do not know the financial position of the IEA.

Q401 Lindsay Roy: Could you let the Committee know what it means in terms of financial dividend?  

Christopher Snowdon: In the future?  

Lindsay Roy: Not just now, in writing.  

Christopher Snowdon: Yes. I will make a note of that.

Q402 Kelvin Hopkins: Just very briefly, I make a distinction in my own mind between commercial corporate interests lobbying for profit—“We want to get your contract to make money”—and a philosophical ethical view. For example, I am a member of CND. I campaign against nuclear weapons not because of corporate interest; it is about a moral view. There is an overlap; it is difficult, but can you not make those distinctions, both of you?  

Paul Hackett: I certainly make those distinctions. I have purposes, aims and objectives at the Smith Institute that I try to fulfil. The difference would be, as a charity, I would have trustees in position to make sure that I do fulfil them. It is a slightly different position from a not-for-profit. Your reputation is all, of course. If you try to honour that, then people see you in that light. Members of Parliament are aware of caveat emptor. When you are approached, you have a responsibility too to distinguish whether you are being approached by someone who is actively lobbying you or actively campaigning you. It is very important to make sure that they are aware of what is on your T-shirt, in that sense. As I said earlier on, they do not often ask, “Are you a charity?” You put your case and you make your argument. Kelvin, I am sure you are very astute at it; you soon realise whether they are actually lobbyng for a vested interest or for a cause that you might have some empathy with. To that extent, we live and die by what we do.
Q403 Lindsay Roy: Mr Snowdon, do you find that having registered charity status curtails activities that you may wish to pursue?

Christopher Snowdon: I cannot really speak on behalf of the IEA there. It is something that does not make any difference to me as a writer. I had better not answer that question. I do not think so, but I do not know exactly.

Chair: In my experience, it allows you to be diplomatic. You can send back texts to troublesome MPs and say, “I am sorry, we cannot publish this, because we are a charity.”

Paul Hackett: That would not be charitable.

Q404 Robert Halfon: Do you think the way to solve this problem of the difference between charities, think tanks and pressure groups is for the Charity Commission to make two definitions, one of a charity and one of a not-for-profit enterprise? There would be different benefits for each.

Paul Hackett: The thing they need to look at, and perhaps you need to look at, is the way in which Gift Aid operates. Gift Aid is, in some cases, depending on the charity, a significant financial incentive to be a charity. One of the things you need to be aware of that I remember from my time working as a research fellow at the Smith Institute, and you will have to check this, is you cannot take Gift Aid for specific projects, which is now what I do. You have to take it for general purposes, which then can be applied to specific projects—i.e. I could not take Gift Aid for Project X in relation to donations and endowments. I would have to take it in regard to a donation to the Smith Institute.

Q405 Chair: How would anybody know what conversation you had had with the donor?

Paul Hackett: Exactly. One of the issues that came up with the compliance was to prove that that was the case, and that did require considerable paperwork, including details of correspondence, etc., regarding how that Gift Aid was being used. If it is taxpayers’ money, there is every right to know how that is being applied, as opposed to looking at further classifications. In a way, you could find yourself in a labyrinthine world with a huge range of classifications for pressure groups, campaign groups, political organisations, etc.

Q406 Lindsay Roy: Finally, Mr Snowdon, how does the IEA actively ensure it remains independent of political parties?

Christopher Snowdon: I am not sure if we have a written guideline as such, but we open our door to anybody who is interested in the purpose we have, which is to educate people about the benefits of free markets and free society, so we very much have an open-door policy. We have MPs of all political colours come into the IEA for the various events that we have. We absolutely do not have any political preference at all. Our Director General, Mark Littlewood, used to work for the Liberal Democrats. He had to resign from the Lib Dems.

Q407 Paul Flynn: Why was that? Why did he have to resign from the Lib Dems? What do you have to do to resign from the Lib Dems?

Christopher Snowdon: No, the Lib Dems did not make him resign. The IEA will not allow their Directors General to be affiliated with a political party, so it was a condition of him becoming Director General that he had to resign from the party.

Q408 Lindsay Roy: Have there been any allegations of political bias with the IEA?

Christopher Snowdon: Not that I am aware of, but we have been around a long time. So possibly, but not that I am aware of.

Q409 Paul Flynn: You say there have been no examples of political bias from the IEA. I have just read this remarkable document and I would suggest it is not a balanced document, but we will come back to that. The Atlantic Bridge: what lessons do you draw from the fact that the Atlantic Bridge was advised by the Charity Commission to end their activities?

Christopher Snowdon: I don’t know enough about the case, I am afraid.

Q410 Paul Flynn: Would you describe the Atlantic Bridge as having a “militant agenda”? Christopher Snowdon: I don’t know anything about them.

Q411 Paul Flynn: I can fill you in on it. The Atlantic Bridge was an organisation dominated by prominent members of the Conservative Party and prominent members of the Tea Party tendency in America. They existed to promote things like the Iraq war, the Afghan war and other American agendas in Britain. They also imported brainwashed young people as researchers in this place, who were distributed to Conservative MPs and bored us all stiff on the Terrace with their extreme views. You are not aware of it.

Christopher Snowdon: Not really, no. Sorry.

Q412 Paul Flynn: Just on the question of “militant”: you describe certain organisations as having a “militant agenda” in the non-political view of the IEA, and the militant groups are the Child Poverty Action Group, War on Want and Pesticide Action Network. Can you enlarge on why these people are militants?

Christopher Snowdon: Militant? Both War on Want and the Child Poverty Action Group are on the far left politically.

Q413 Paul Flynn: That is militant, is it?

Christopher Snowdon: I think that is a reasonable viewpoint.

Q414 Paul Flynn: You have a fixation about smoking and the smoking ban. You claim in your document, you pray in aid evidence, that taxes on alcohol are intrinsically unpopular with the population, and you would say the same about tobacco—that it was unpopular to ban tobacco. The evidence you offer is a report from the World Health Organisation in 2004. Are you happy that that is a
Q415 Paul Flynn: The theme running through this book is that popularity should determine causes. If it is a popular cause, is should be an Act, and if it is an unpopular cause, it should not be supported. Could I just say that, if you had got figures more up to date than 2004, you would find that there was 56% support for the smoking ban in 2003 and 81% support in 2011? I can give you each individual year. Clearly this has been an example of a ban being imposed—obviously smokers objected—that then became very popular and very successful, which is absent from your document.

Christopher Snowdon: That is not relevant to my point, which is that, at the time the campaign was ongoing for the smoking ban, most people were against it. This is the argument I am making.

Q416 Paul Flynn: Do you think Government should just do those things that are popular, not the things that are necessarily right?

Christopher Snowdon: No. I am suggesting that Government should not fund lobby groups to campaign for causes that may be dearer to their hearts than they are to the public’s.

Q417 Paul Flynn: Does not Government have a duty to do good things in their simplest form? There are already hugely well funded organisations like Forest and others that are in the pay of the tobacco industry and are encouraging young people into this addiction that will lead to their early deaths. Does the Government not have a responsibility to ensure that another point of view is put forward and that is funded as well?

Christopher Snowdon: No, I don’t think so. What you are making there is basically what the European Commission’s argument is for funding all these environmental groups and, indeed, think tanks: to act as a counterweight to all the industrial lobbying that they receive. I do not think it is the place of Government to deliberately create front groups.

Q418 Paul Flynn: Would you agree there should be a balance between those who are lobbying for their own greed, their own profit, and those who are advocating the public good with health? If you are a lobbyist with a bottomless pocket, you can pay £250,000 and have a dinner with the Prime Minister to lobby him personally. Is that reasonable? In those circumstances, should the causes that are lobbying for the public good have some assistance?

Christopher Snowdon: No, because it is dishonest.

Q419 Paul Flynn: Is it not dishonest to buy an MP, and for countries like Azerbaijan and Israel to invite lots of MPs to their country, butter them up, pay for their hotels, pay their expenses and then bring them back and expect them to deliver? Is that dishonest?

Christopher Snowdon: I don’t know if it is dishonest. It is an attempt at persuasion. Even if it were dishonest, two wrongs would not make a right. If the Department of Health wishes to bring in a smoking ban, plain packaging for cigarettes or a ban on display, which it clearly does, then it should just get on and do it, rather than go through this charade of creating numerous front groups, using public money to finance campaigns that, on the face of it, do not look like Government-funded campaigns. They look like civil society campaigns to try to persuade the public on a policy that has already been decided within the bureaucracy and has not been decided democratically or through reasoned debate. It has been decided on high, and then these policies are pushed to the people using what we would describe, if industry was involved, as front groups.

Q420 Chair: It is passing off organisations that purport to be independent but actually are agents of government.

Christopher Snowdon: Of the state, yes.

Q421 Paul Flynn: You make no apologies for the fact that the piece of research you quote is eight years old and you did not check the subsequent research.

Christopher Snowdon: No, because it is completely irrelevant that it is eight years old. The point being made there is that, at the time the Government was funding groups to campaign on their behalf, the policy was unpopular. My argument throughout this report is that many of the things that the Government did create groups to campaign for are unpopular. There would be no need to go through this charade if they were popular policies. If you have popular policies, you simply put them in your manifesto and then you bring them about.

Q422 Paul Flynn: In your ideal world, Mr Snowdon, because there was not a majority among smokers for a smoking ban, we should not have had a smoking ban. The great benefits that have resulted from that would not come about.

Christopher Snowdon: I personally hate the smoking ban and I wish it had never come in, so it does not have any great benefits for me. The fact that 80% of the people may approve of it still means that 20% of the people disapprove of it. Incidentally, 20% of the population are smokers, so we probably disagree on how beneficial the smoking ban has been.

Q423 Paul Flynn: Do we judge all Government policies on the effects they have on Mr Snowdon? Is this a rational argument?

Christopher Snowdon: No, we do not, but nor do we judge them on Mr Flynn. Whether the smoking ban is a good or bad thing is by the by. I am using it as an example to show a tendency that has been in government for the last 15 years.
Q424 Paul Flynn: You claimed quite erroneously in this book that people who advocate the smoking ban, and I would class myself amongst them—having had all my family die of lung cancer, I am a fanatical person for the ban—all intend to prohibit tobacco in the long run.

Christopher Snowdon: I do not say that.

Q425 Paul Flynn: I have never come across anyone anywhere else who wanted to prohibit the use of tobacco.

Christopher Snowdon: I don’t think I say anything about prohibition in this paper.

Paul Flynn: Yes, you do suggest it. You may have forgotten it, but could we just have a general view of prohibition? Prohibition of tobacco would set off the biggest wave this country has ever seen.

Chair: I am not sure this is relevant to the inquiry.

Paul Flynn: It is. It is relevant to whether Mr Snowdon is a competent witness. I think this is a really shoddy piece of work. The most remarkable thing about this document is that it was actually published.

Chair: By a charity.

Paul Flynn: By anyone.

Q426 Kelvin Hopkins: My earlier question was about the division between corporate interests and what can be seen to be possibly a moral view—an ethical view, Are you funded by the alcohol and the tobacco industries?

Christopher Snowdon: I have no idea who we are funded by. There is a clear wall between the fundraising side of the organisation and the writing side.

Q427 Kelvin Hopkins: Can I suggest that my impression of you is you are simply a front for corporate capitalism and have no interest in the health of the nation?

Christopher Snowdon: Thank you for your input.

Chair: Every Member of this Committee is entitled to his or her own views.

Robert Halfon: Can I just make a point of order?

Chair: No.

Robert Halfon: Just a quick one.

Chair: No, you cannot. Mr Mulholland.

Q428 Greg Mulholland: As perhaps a slight respite, can I ask you to comment on some other organisations? Just looking specifically at the guidance, which is what all organisations that are under the remit of the Charity Commission have to seek to adhere to, the guidance says that a charity “may choose to focus most, or all, of its resources on political activity for a period”, the idea clearly being, looking at the rest of the guidance, that it does not become the “continuing and sole activity of the charity” or “the reason for [its] existence”. Can I ask you both if you think that all campaigning charities act within the spirit of that guidance?

Paul Hackett: To get technical, this is Guidance 9, which I have had a look at, which is the guidance on Campaigning and Political Activity. That is based on charity law, which is what has shaped the Charity Commission’s Guidance. You have to look at the legal version and the legal case law on this, which defines it as, as far as I understand it, political activity that is in support of charitable purposes where they are a means to an end. I think that is effectively what it is saying—that a charity cannot exist for a political purpose, especially one that has party political objectives, but can engage itself in the political process. If it could not engage itself in the political process, then in many cases they probably would not have a purpose, because a lot of decisions and, as we have just heard, a lot of decisions on big issues of public policy are conducted, quite rightly, within our democracy inside the political process. The issue is more about where those boundaries are, in terms of trying to understand the political process as legitimate and the political process as illegitimate, in the sense that it would be clearer if we knew where, in the Charity Commission’s mind, the interpretation of charity law goes and where it is illegitimate. The law does not say when a political process is illegitimate; it just says “the political process”. The Charity Commission is left to enforce that. Certainly at the Smith Institute, we found their definitions of where the political process begins and ends as quite difficult to understand, and almost at times impossible to comply with. In that sense, maybe they need to fatten it out a bit and give a little bit more detail. You can take what you want from the fact that the written evidence to your inquiry, from almost everybody, seems to be quite satisfied with the system as it is. That means either they are fairly relaxed, or are finding it very convenient and there is nothing wrong with it, or that it suits everybody at the moment to continue in the way it is, even though there are problems with it in that, as I have said, defining it is very difficult.

Christopher Snowdon: As I see it, the problem with this clause about being able to campaign for a certain period is twofold. Firstly, I am not sure that it reflects case law, which has been the problem with a lot of the Charity Commission guidelines over the last five or six years; and secondly, certainly they have never defined what period it can be. Can it be 10 or 20 years? Can Shelter continue campaigning indefinitely? It seems that they can. It does not seem as if this has been tested.

My own view is that I do not have a problem with a charity campaigning permanently. I do not have a problem with lobbying. I am wary about reducing and restricting the free speech of charities. Many charities do say that their charitable purpose can only be pursued through political campaigning. I am sure that is true in some instances. You can say that the most appropriate thing to do there would be to join a political party and stand for office, but I am wary about restricting the free speech of charities. Either it should be liberalised significantly and charities should be able to be more political, and the restrictions, such as they are on charities, should be clearly laid out; or we need to go back, look at the case law for charities and have the guidelines reflecting what case law has said. As I understand it, case law has said, in fact, that charities cannot spend most of their time campaigning. Being a pressure group cannot be the
dominant activity. It does seem to me we have two problems here. The current guidelines do not reflect reality. Whether that should all be changed, I do not know. Maybe it should not be down to case law, and we should just set up a whole new system and be much more relaxed about what charities do. I do not have a strong preference either way, but it does seem to be a problem.

Q429 Chair: The corollary of the view of War on Want and the National Council for Voluntary Organisations, which seem to share the view that all charities should be allowed to do as much political campaigning as they consider appropriate—and charities against slavery or child trafficking seem to be very good examples of campaigning charities—is that political parties ought to be charities as well, because are political parties not campaigning for the public good, or at least we all think we are, even if most of the public thinks political parties are pretty odious bodies. How do you distinguish?

Paul Hackett: It is a hell of a challenge to define political purposes and neutrality, let alone public political good.

Q430 Chair: That has been the current framework. The NCVO and War on Want’s view is that charities should not be politically neutral. They should be free to express their political views.

Paul Hackett: The key thing, going back to my earlier point, is: should the taxpayer fund that?

Q431 Chair: The taxpayer already does through various means. There is even a suggestion from the Committee on Standards in Public Life that donations should be replaced by taxpayer funding instead.

Paul Hackett: That is the crunch issue. Certainly, as far as I am concerned in running a not-for-profit, that is a key issue: the degree to which one organisation, the organisation on my left, your organisation, can take taxpayers’ money to subsidise their activities, and my organisation does not. That does not necessarily by default mean that one of us is being more politically active than the other one.

Chair: I have a certain amount of sympathy for that view.

Christopher Snowdon: You have hit on my main point, which is taxpayer funding. I do not mind charities campaigning on the side, ad infinitum, so long as they do it with their own donors’ money and not with taxpayers’ money. That I see should be an absolute rule: that taxpayers’ money is not used.

Q432 Chair: If political campaigns are being run by charities, they are getting taxpayer funding because they are being excused VAT and given tax relief on donations, so the taxpayer is assisting those organisations.

Christopher Snowdon: Which I guess is why there needs to be an exception for political parties and for industrial lobbying, as it were. I have struggled with the same question as Paul and indeed the question you ask. Why can political parties not be charities? I suppose the answer is that you are then subsidising people getting into power. There is an element where people are benefitting.

Q433 Chair: Can you have democracy without political parties? I submit not, and therefore political parties are a public good.

Paul Hackett: I think it is really important that we bear in mind that the rich political process that we have is partly there because we have this growth of political parties, think tanks, lobbying groups and campaign organisations, which makes our democracy the envy of many countries in the world. I would not like to see that sacrificed on the altar of draconian views on funding, but it is important to establish where the line is between what is and is not legitimate funding.

Q434 Chair: In summary, each of you, what is your advice to the new Chairman of the Charity Commission: tighten up, loosen up or leave well alone?

Paul Hackett: I like that. Do you want me to go first? There are two things. One is that we should maintain a system where there is choice and diversity.

Chair: Very briefly, should there be tighter controls?

Paul Hackett: Briefly, tighten up on the rules.

Christopher Snowdon: On balance, loosen up on the rules. There is an issue of free speech. Charities should have a right to do as much campaigning as they want. All the rest of us can do so, so long as it is not party political and so long as it is not taxpayer-funded.

Q435 Robert Halfon: Do you think it should be a legal requirement for charities to clearly set out on accounts that are easily accessible how much money they spend on political campaigning and PR, as opposed to practical work in the field? At the moment, when you go to charity websites, they are very opaque.

Paul Hackett: I think that is a very sensible suggestion, although let us keep it fair and proportionate. One of the things that strikes me about charities is there does not seem to be sufficient insight into small, medium and large. You must make it proportionate, if that is the case, for a very small charity or any of the think tanks in that camp.

Q436 Robert Halfon: You would say, “We raised £100,000 this year. £60,000 was spent on political campaigning. £40,000 was spent in the field,” or whatever it is, so people would know the total that you raised.

Christopher Snowdon: I think it is very difficult to make that distinction. I know that the charities would like us to believe that they ring-fence a certain amount of money for lobbying, campaigning or frontline services. In practice, I think it is unrealistic. “Lobbying” is perhaps the wrong word. I think “campaigning” is a better word. “Lobbying” implies that you are setting a certain amount of time to go and have a drink with an MP. “Campaigning” is much broader. It is all the campaigns on your website. It is informal meetings with people. It is bits of literature
that may not be greatly political but support a particular campaign that you are running.

Christopher Snowdon: Quite possibly, but I think that is fully justified. I sense people are getting a bit frustrated with charities, when it seems that, every time there is some move to raise taxes or restrict our liberties, some enormous charity seems to be doing all of the legwork, in terms of the advertising, the media, parliamentary briefings and what have you. People are sick of being harassed in the streets by chuggers; this is something that really does need to be looked at. People are aware that there is this enormous disparity, with the richest 1% of charities getting two-thirds of the money of the entire sector. Anybody who has worked in a large charity or knows somebody who works in a large charity is aware that this money does seem to be rather frittered away.

Q441 Chair: What distinction do you make between a chugger and an old soldier wearing his medals, holding out a collecting tin and selling poppies?

Christopher Snowdon: One is more aggressive and also being paid. That is the thing. Chuggers are on commission. The old man rattling the tin is not even allowed to rattle the tin any more, I gather, because of the law made a few years ago. He has to just stand there, and hope people give money, whereas these young people on commission just go up to people and hassle them.

Paul Hackett: I think it is important, in the time we are in, when charities are struggling and the political process seems under strain, that at the same time we try to promote the good things that charities do and the fact that they are part of our democracy. That is certainly how I feel, and think tanks are part of that good too. There is a separate debate to be had about certain charities. I would not want to go into my own political views on why the taxpayer is funding private education, for instance. I think there are aspects that the public is probably uncomfortable with but, in general, I think it is important that we all try to support as pluralistic a society as we can. Therefore, the reputation of charities is important to us all, in that sense. Therefore, raising this debate in terms of putting the spotlight on some of the enforcement and compliance is important, but I hope it does not distract people or bias people against the usefulness of charities in our society, because many of them do great things.

Q442 Alun Cairns: Of course they do. Going back to the point that the Chairman made a bit earlier, should the Chairman of the Charity Commission be tightening up, should he be loosening up or keeping it the same; if he tightened up, would that instil greater confidence in charities, which would encourage more people to give?

Paul Hackett: I think good charities have got nothing to hide and that the public would expect the Charity Commission to do its job and make sure that the charities are working within the rule of the law. The problem comes sometimes when it is disproportionate in terms of their enforcement, which was my experience.

Q443 Paul Flynn: You say in your book, Mr Snowdon, that the current rules on political
campaigning have “led to a free-for-all, with some charities seemingly able to engage in political lobbying on a permanent basis”. Which charities are those?

Christopher Snowdon: Which charities are lobbying on a permanent basis? Somebody like Alcohol Concern or Friends of the Earth.

Q444 Paul Flynn: Are you serious? Alcohol Concern is lobbying politically on a permanent basis?

Christopher Snowdon: Yes. It does not provide services for alcoholics or anything like that. It is there entirely to be an advocacy group, pushing for fresh legislation.

Q445 Paul Flynn: Taking your thesis that it needs popular support before there should be the support of charity status, if you went out on the street rattling your tin asking for donations for Harrow and Eton, or even employed chuggers to collect money for Harrow and Eton, do you think you would collect a great deal of money?

Christopher Snowdon: No, I do not think you would. The case for the charitable status of Harrow and Eton is twofold. One is that education in itself is a public benefit and, secondly, by taking 7% of the school-aged population out of the state system, you are saving the taxpayer money.

Q446 Paul Flynn: In this diatribe of bile and prejudice, there seems to be no mention of public schools and their status.

Christopher Snowdon: No, because it is not about public schools. It is about Government-funded lobby groups. As far as I know, Eton does not lobby and is not funded by the taxpayer.

Q447 Paul Flynn: You would be offended if it was suggested there was political prejudice in the writing of this document, would you?

Christopher Snowdon: Yes.

Q448 Paul Flynn: You would be. You would be entirely wrong anyway. Are your concerns restricted to charities? There was one that was mentioned by Mr Halfon, which was Greenpeace, which I believe takes no money from Government.

Robert Halfon: No, I was saying they were not classed as a charity, so what is the difference? The whole point is why some people are classed as pressure groups and some people, who do exactly the same thing, are classed as charities.

Paul Flynn: I understand. Are your concerns, Mr Snowdon, restricted to charities that receive income from the state or other ones, such as Greenpeace, which have no public money? Do you object to their campaigning?

Christopher Snowdon: Greenpeace’s? No, not at all. I do not object to any of the campaigning of the Green 10, being the very large environmental groups in Europe, nine of which are funded by the European Commission. I do not have a problem with any of them campaigning. They may well see that as the best way to pursue their charitable purpose. I just don’t think that the European Commission should be giving them up to 75% of their income from the taxpayer.

Q449 Paul Flynn: I don’t think you have fully answered the question that it is a matter of balance. It is not a question of winning government opinion, which might be settled, as you rightly say, but it is winning public opinion over. With the endemic cowardice of politicians of all parties, they won’t move forward unless they have a comfort blanket wrapped around them of public support. That process is necessary. On one side, you have commercial interests with bottomless purses; on the other side, you have charities wandering around rattling tins. It is entirely reasonable that a benign government and the European Union should give the charities a helping hand. Surely that is entirely right.

Christopher Snowdon: What they should do is invite the civil society groups in to have a chat about their concerns. There is no need for them to be giving them millions of pounds so they can go out and lobby the public, which is really what we are talking about: it is campaigning amongst the general public, going to the media, presenting themselves as grassroots groups, when they are in fact just reflecting the Government in power. You may agree with many of their causes; other people would not. I suspect that, if the Government suddenly decided it was going to set up an anti-abortion charity, a pro-gun-owning charity or indeed a pro-smoking charity, to provide some balance to the debate, you would not be so happy with it.

Q450 Paul Flynn: I think your view is a utopian, impractical and ill informed one. That is the best part of it. I think you should check on how much access groups like Greenpeace and Friends of the Earth had on, say, the London airport developments compared with the commercial organisations. It was a ratio of about one to 12.

Christopher Snowdon: I think we come from fundamentally different perspectives here. You seem to think that it is the Government’s role to fund anti-industry groups and various pro-environmental or pro-public-health groups, because that creates balance. What I say is it fundamentally does not create balance. There are civil society groups out there campaigning for the kinds of things you would applaud. All I am saying here is that the great campaigning successes over the centuries, anti-slavery and votes for women, were pursued by genuine civil society based on voluntary donations. They did not come about because the Government decided they were going to rig the system using public money.

Paul Flynn: It took decades to get that in because of the huge amount of pull that the slave owners had in this building, and they opposed it for years and years because they had the money. It would have been quite right for those who wanted to abolish slavery to be funded by Government. It is a wonderful example of slow progress, because of vested interest in the West Indies by Lords and ladies in this House. I will leave it there.
Q451 Chair: We will move on, shall we? Mr Hackett, for clarification, when you say you want the rules tightened up, do you mean you want more restrictive rules or do you just want more precise and clearer rules?  
Paul Hackett: Sorry if I misled you there. More precise if possible, and more proportionate.  
Chair: More precise and more proportionate. I think that is very important, thank you.

Q452 Charlie Elphicke: First of all, just to return briefly to chugging, do you not think that chugging is one of the great infestations of our modern life, lashes out at people in the street as they are trying to do shopping, and is highly damaging, even toxic, to charity brands?  
Christopher Snowden: Yes.  
Paul Hackett: We live in such an in-your-face society, don’t we? It is just mirroring other marketing efforts that intrude into your privacy. Phone calls in the middle of the night from insurance companies are very similar. Yes, but I don’t think that is the worst thing that one could say about charities. Yes, it is a nuisance and it is annoying, but again I don’t think the concern that most people would have, if they thought about the role of charities in civil society, would be the fact that there are aggressive people trying to get money off you. It is not necessarily the most important thing, although I personally find it really annoying.

Q453 Charlie Elphicke: If Parliament acted to stamp out this abuse and invasion of our personal space that goes on, on our high streets, up and down this land, do you think that would be the right thing to do?  
Paul Hackett: Providing it was sensibly discussed and enforced in a way that again did not lead to some regulations of the kind that would discriminate against not-for-profit and therefore be in a situation where you are discriminated against.

Q454 Chair: Can I just be clear? Is this your view or is this the view of the Smith Institute?  
Paul Hackett: This is my view. The Smith Institute has yet to study this matter, although perhaps we should. It is an interesting angle. My concern would be that I can see how it would become a populist issue and may distract from some of the more serious and important issues that we need to get to grips with in the charitable sector.

Q455 Charlie Elphicke: Thinking of the guidelines on the boundary between appropriate and inappropriate levels of political activity, let me give you an example. A little old lady is a pensioner. She gives £5 a month to War on Want, thinking that her money is going to help a starving child in Africa to make their life better. We get rid of all these guidelines, and War on Want tells us they want to go campaigning all day long. She thinks she is putting her money to a good purpose, and yet all they spend their money doing is campaigning to get the Government to spend more taxpayers’ money on international development.

Paul Flynn: Very successfully too.  
Charlie Elphicke: Possibly so, but nevertheless is it the right thing for a charity to be doing or would a charity be better off walking the walk rather than just talking the talk?  
Paul Hackett: It was made clear, also by my colleague here, that transparency is important. Making things as transparent as possible must surely be one of the objectives, and then I am afraid caveat emptor comes into it yet again. If you want to give £5, you should think about whom you are giving it to and at least inform yourself a little bit. There is a responsibility on the donor; it is not just a one-way street. Maybe the Charity Commission could look at ways in which charities could make it clearer what their activities are, as opposed to what their purposes are. I am sure you have discussed this in terms of the law and how difficult that might be. It has to be two-way, and sometimes one wonders if there is too much pressure on the organisations to be transparent perhaps, without encouraging some onus of responsibility on the donor.

Christopher Snowden: Yes, I think caveat emptor. Anybody who visits War on Want’s website cannot be under any illusion what their money is going to go towards. It has to be left to individuals to decide whom they give their money to, so long as it is fairly obvious where it is going to go. The Government should probably pull away from giving significant sums of money either to the far left or the far right. There are plenty of charities that will distribute foreign aid, and I don’t think we need to settle for giving money to people who are so dogmatic in their politics.

Q456 Chair: Would you say Oxfam is pretty dogmatic?  
Christopher Snowden: Increasingly so, yes.

Q457 Chair: Would you remove their charitable status?  
Christopher Snowden: No, I would not. It is not about removing the charitable status. It is really the responsibility of the Government to decide who they want to give this kind of money to and if there need to be any restrictions on how it is being used.

Q458 Charlie Elphicke: Hold there. Let us just take this transparency point and caveat emptor point. That is a powerful point. The question is: should it be regulated or should it be controlled so that misleading advertising can be dealt with? I will give you an example. On the London Underground currently, there is a Shelter advert that says, “Help people get housed for Christmas. Your donation can make the difference.” That is the implication of the advert, but Shelter does not provide any housing or shelter whatsoever. They are an advisory service. Should that kind of advertising be stopped by some regulatory intervention or should we just say, “Caveat emptor; let anything go?”  
Paul Hackett: No, there should be regulations. I am not sure how many homes are provided by housing charities either. One could go down a whole range of charities to see where there are inconsistencies. Let
us be more transparent. Let us have some rules and regulations that make the system more explicit and more transparent. We live in that sort of society, where people do want to see more detail on the activities of organisations, charities or not, including Her Majesty’s Government, of course, and this place. I don’t think transparency is a bad thing, but you have to keep it proportionate, otherwise you could put such onus and pressure on an organisation to make its information so detailed that, in a sense, it drowns it.

Q459 Charlie Elphicke: Like your Cardiff Business School report. There is transparency, and transparency gone mad.

Paul Hackett: That is my proportionate point, yes.

Christopher Snowdon: I think this could be another instance where we already have the existing laws to deal with it. If the Shelter advert is misleading, then that is for the Advertising Standards Authority to look at. Similarly, it is high time somebody brought a case under existing common law for these charities that are, as far as I can see, going beyond what the 1948 vivisection case decided, which is that you cannot have political campaigns being your dominant activity. If somebody would bring a case, then we might have a bit of clarity in this matter.

Q460 Charlie Elphicke: Do you think the Charity Commission should revise their guidelines in line with that law, because they seem to have just created their own regulatory guidance case law thing?

Christopher Snowdon: They have, and under pressure from the previous Government, which wanted the guidance to be as relaxed as possible. In fact, the Charity Commission did not go quite as far as Tony Blair wanted them to go. He wanted, more or less, to make party political campaigning a perfectly legitimate charitable activity.

Q461 Charlie Elphicke: Do you think, given we have talked about transparency, charities should be required to publish how much they spend on political campaigning and how much they spend on public affairs, known as “lobbying”, and things like that?

Paul Hackett: I don’t think there is anything wrong with that. I think we should also extend it to corporations, certainly the larger ones. We have talked about politics, but we have not talked about power, although it was mentioned briefly in regard to slavery, which somehow or other slipped in.

Q462 Chair: So corporations, as with political donations, should have to declare what they spend on lobbying.

Paul Hackett: Let us have a bit more transparency across the board. I do not think it would do us any harm. What have you got to hide?

Q463 Charlie Elphicke: Finally, I think I am right in saying that the British Pregnancy Advisory Service has charitable status. There are a lot of pro-abortion groups that have charitable status. Could either of you envisage a situation where an anti-abortion group would get charitable status under the current Charity Commission?

Paul Hackett: I cannot speak on behalf of the Smith Institute, but personally we are back to my earlier point about how far you go. Are we looking to give all political parties charitable status? Does that include the BNP? When you come to campaign groups, does that include those that are anti-abortion? I would hope that we keep a sense of respect for the law here, where we would not be funding groups that are campaigning to break the law. That would be one of the lines in the sand that I would draw in this particular instance, and I am sure there are many other lines one could draw where we are funding an organisation that seems to contradict and directly oppose what is the law and government policy that has been enacted as public policy. I do not think that is correct. It is a very tricky area.

Q464 Charlie Elphicke: Before we come to Mr Snowdon, let me give you a different example where the law is not affected. We have anti-smoking charities. Could you envisage a situation where you would have a pro-smoking charity?

Paul Flynn: There is one: Forest.

Christopher Snowdon: They are not a charity.

Paul Hackett: They are not a charity, are they? Forest is not a charity. I don’t think the state should be funding activities that undermine the state.

Chair: It is like the RSPCA and the Countryside Alliance.

Christopher Snowdon: I am not sure what “undermine the state” means. Are you suggesting anybody who is campaigning for a change in the law is undermining the state? There is an anti-abortion charity, is there not, the Society for the Protection of Unborn Children? Is that not a charity?

Charlie Elphicke: I don’t think so.

Christopher Snowdon: Isn’t it? I don’t see any reason why it should not be allowed to be a charity. It would seem to be an imbalance if you were allowed to campaign for all sorts of things but not for the repeal of the Abortion Act.

Q465 Charlie Elphicke: My point is it seems to me the Charity Commission was very ready to give charitable status to all manner of cause-led-type organisations of a particular viewpoint and not to others that do not have that viewpoint. Do you think that that is a defect in our current Charity Commission and the way we do charity law in this country?

Paul Hackett: You are getting to the nub of the matter of how we define all this. It is very difficult. As I have said before, I can see where you can have rules and regulations over what is and is not legitimate, in terms of activities that are defined in regard to your purposes, but when you are starting to get into the idea of defining it by balance, you are getting into the sense of trying to define political neutrality here. The idea is if you support one organisation, you have to support the other, and therefore you have neutrality or balance; that is not necessarily always the case. My view is that we have to think long and hard about how the state, through tax breaks, funds organisations that
Christopher Snowdon: There is a large abortion industry in this country, so presumably the Government is obliged to fund some anti-abortion groups to provide balance, according to Mr Flynn’s argument.

Q466 Robert Halfon: What has come up today is clearly the issue of inconsistency, in my view. The Charity Commission picks some organisations out as being political and not others. What is your view on charities and the public benefit of religion, because the charity group has singled out—in a similar way, I would argue, to the way they singled you out—the Christian Brethren. I am not a Christian Brethren member; I am actually Jewish. They have been forced to justify themselves before a tribunal, and yet the Charity Commission allowed druids to become a charity. I have no problem with druids either, but do you agree that this whole argument shows just how inconsistent the Charity Commission is when it comes to charities? Actually, what we really need is a wholesale review.

Paul Flynn: It shows you how gullible you are, I am afraid, if you believe—

Chair: Order, Mr Flynn. Order. Paul Hackett: I think this is a problem with maybe the way that the Charity Commission interprets its responsibilities for compliance and enforcement. They take this attitude of looking at certain cases, swooping in on certain cases and then exploring what is happening through the Brethren or through the Smith Institute, and then trying from there to extrapolate a wider set of rules and regulations, so it is a minimum-risk or proportionate-risk based approach to compliance, which I think does have its faults. I agree. If you run a system like that, where you swoop in on organisations willy-nilly almost, without any sort of clear rationale, you are going to get these inconsistencies. Members here have made the point. Why not IPPR? Why not Policy Exchange? Why not Reform? There is a whole list of them. Why not the IEA? Why the Smith Institute for three years, with huge amounts of money and effort? I do not know; you would have to ask the Charity Commission that. Sorry to repeat myself, but it is the proportionality of it. It did not seem proportionate in compliance terms, not necessarily in regulatory terms. It is the compliance component there.

Christopher Snowdon: Religion absolutely should have charitable status. I really think that the only exceptions from charitable status should be party politics and blatant industrial lobbying. On balance, the very fact that people are prepared to voluntarily give money to an organisation is almost by definition proof of its charitable purpose.

Q467 Robert Halfon: People voluntarily give money to political parties as well, so what is the difference?

Christopher Snowdon: They do indeed. It is because it could be misused to get somebody into power, in the same way that commercial lobbying can be used to gain a significant advantage.

Q468 Robert Halfon: Some people would argue that the bigger charities have huge influence on political power. They may not be elected members, but they have huge influence, so what is the difference?

Christopher Snowdon: It is very messy. There is no doubt about it. It is the way that charity law has always been. Party politics is an absolute no-no, and I think that is justified because you do have issues of corruption and blatant self-interest.

Q469 Chair: We must draw our session to a close, but can I just ask two points of clarification? Mr Snowdon, your reference to the National Anti-Vivisection Society case suggests you want to elevate that case and that you want the restrictions to be tightened up, but previously you said the restrictions on political campaigning should be relaxed. Can you just clarify what your view is?

Christopher Snowdon: I was providing two points of view, because I have not really made my mind up in this matter. On the one hand, I do feel that they should be relaxed and we should start from scratch, as it were, and have a system in which campaigning has clear limits but, in general, more liberal boundaries: but if we do not do that, then we should stick with the existing system that has been in place for many decades, and which the Charity Commission, over the last 10 to 15 years, has misrepresented. We should go back to case law, like the anti-vivisection case, in which case it should be tightened up and campaigning should not be the dominant activity. We have a choice here, but we need to know where we are because, at the moment, we do not.

Q470 Chair: You both expressed a concern that charities should be free to campaign but, on the other hand, you do not want taxpayers’ money used for political campaigning. Does that suggest you would both like to see a separation between charitable status and the tax relief that charitable status confers on organisations? Should these be two different things?

Paul Hackett: I did not say that we should not have any taxpayers’ money used for political campaigning. It was the party political bit. In some cases, some charities have more power and influence than others by just the sheer nature of what they are doing.

Q471 Chair: Charitable status and the tax relief that goes with charitable status should remain concomitant.

Paul Hackett: Yes. I just think that the rules need to be examined in a bit more detail, so we can be a bit clearer about where the line is.

Chair: I have got that bit.

Christopher Snowdon: I fundamentally disagree with the premise of the question. It comes from the idea that all money belongs to the state unless it is given back to the people. Having a tax break is not the same as being funded by the taxpayer. It just means you are not paying as much tax. You are not taking from anybody; the Government is just taking less from you.

Q472 Chair: I think we will leave it there, but thank you very much to our two witnesses and to colleagues. I should just suggest that, if any of the charities
mentioned in this session felt that they wanted to write us a note to clarify anything that they feel has been said about their charity, we would welcome their evidence. For the record, it is worth just pointing out that the Society for the Protection of Unborn Children is not a charity, although they control a small educational research sub-charity with an income of £230,000 a year. Forest is not a charity.

**Greg Mulholland:** However, to ensure that there is not a false impression created, LIFE, which is a pro-life organisation, is a charity because it provides care as an alternative to abortion. **Chair:** Thank you for that further clarification. It just shows that there be dragons in this swamp and we need to be very careful what we say.
Tuesday 4 December 2012

Members present:
Mr Bernard Jenkin (Chair)
Alun Cairns
Charlie Elphicke
Paul Flynn
Robert Halfon
Kelvin Hopkins
Greg Mulholland
Lindsay Roy

Examination of Witnesses

Witnesses: William Shawcross CVO, Chair, Charity Commission, and Sam Younger CBE, Chief Executive, Charity Commission, gave evidence.

Q473 Chair: Can I welcome you both to this witness session on the operation of the Charities Act? Could I ask each of you to identify yourselves for the record, please?
William Shawcross: William Shawcross, Chair of the Commission.
Sam Younger: Sam Younger, Chief Executive of the Charity Commission.

Q474 Chair: Thank you. Can I just start by asking about the statutory objectives of the Charity Commission set out in the 2006 Act: public confidence, public benefit, compliance, charitable resources and accountability? Are these appropriate objectives for the Charity Commission?
William Shawcross: Yes, I think they are. The 2006 Act was a very important piece of legislation for us, clearly. It changed the nature of the Commission. Under my predecessor, Dame Suzi Leather, the previous chief executives, and Sam Younger in particular, the Commission carried out a very effective strategic review to make sure that the Commission evolved in the ways that were required by Parliament under the 2006 Act.
Sam Younger: I do not have anything to add. If you look at that set, they are all relevant. The one that has given me some pause, in the context of reducing resources in particular, is the one about the effective use of resources across the charitable sector, and the degree to which it is for the Commission to drive efficiency and effectiveness in the charities world, which I do not think it is. While our guidance necessarily is about making sure that charities comply with what they need to comply with, we would look to focus much more on the specific regulatory role than on the encouragement of charities to be more effective.

Q475 Chair: Lord Hodgson’s recommendation was that you should focus more tightly on your regulation of the sector. You seem to accept this recommendation.
Sam Younger: Yes, absolutely. In the strategic review we did in the wake of the last spending review, we concluded that we needed to focus on those things that only the regulator can do. That is in the field of regulation: we have to register charities; we have to provide generic guidance; we have to provide a range of consents; and we have to involve ourselves in the compliance work, if and when things go wrong.

Q476 Chair: Have you got the budget necessary to increase your regulatory purpose?
William Shawcross: I do not think we will ever have the budget necessary. As you know, the budget has been cut by 30% in the last few years. That obviously makes our task of regulation more difficult, but I agree that regulation is the principal responsibility of the Commission. It is above all the organisation that is designed to convince the public and to enable the public to believe that the charities sector is being kept charitable. Regulation is our most important responsibility. Obviously budget cuts have an impact on that but, under Sam in the last two years, we have reorganised to take account of the budget cuts and to be able to continue our regulation as effectively as possible.
Sam Younger: There are two dependencies in particular, in terms of the resource levels we have now, in terms of the ability to do the job. I am confident we can do the job. One of the dependencies is to reduce the demands on us. Part of that is through technology and trying to push people more to the website; part of it is through developing partnerships with umbrella bodies across the sector to try to shift some of the things that, historically, the Charity Commission has done to others. Those are both very important areas.
At the same time, the most difficult area for us is the reworking of our risk framework for what we do and do not take on. That is a rigorous framework. What we are looking to do through that, having restructured to triage the incoming demands more effectively, is make sure that we put our limited resources where there is most need. Inevitably, given the sheer number of things coming at us—we have almost 900 calls, e-mails and letters every single working day of the year to deal with—when we make those decisions, I would accept, as any organisation would, that we are not going to get it right every time. There will be occasions when we triage and say we are not going to look at something that, in hindsight, we should have looked at. Equally, we are then in danger of putting resources into things that are not necessarily worth the candle.

Q477 Greg Mulholland: Good morning. The Charity Commission is facing a difficult financial situation over the next few years. The figures are quite stark in terms of the reduction in funding, all of which comes from here, effectively, over the next few years,
Lord Hodgson’s recommendation for changing the threshold would lead to a lot of voluntary registrations. Do you think that is something the Charity Commission would be able to handle in the new financial climate? When will the Charity Commission start to be able to administer those voluntary registrations?

William Shawcross: We will have to try to handle it, whatever the financial climate. There could come a point, if there were huge new reductions in our budget, when we would have to come to you and say, “With the greatest respect, we cannot any longer carry out our regulatory function efficiently enough.” Lord Hodgson’s recommendation of raising the threshold of registration to £25,000 from the present £5,000 is obviously one that we have considered. It is a quite controversial suggestion and there has been a lot of debate about it. On the whole, our feeling is that, if you did that, about 28% of all charities now registered would come off the register, and they would be below the radar. It is important for the whole charitable sector that people have confidence that the overwhelming majority of charities are registered. It would be a problem if they no longer were.

Sam Younger: In terms of the regulatory burden, if you look at the package of measures that Lord Hodgson suggests, along with the raising of the threshold to £25,000, I do not think it is necessarily the case that it would significantly reduce our burden. While there would be some organisations that would not be registering, there will also be voluntary registration at every level. Also, part of his proposition is that any organisation that is a charity but wishes to benefit from Gift Aid and other tax concessions has to be registered. There would be a balance there. The danger, as we see it, is losing some of the transparency in the sector, which actually has also been quite an important theme of the Hodgson review.

Q478 Greg Mulholland: That leads very nicely into the next question, which is on exactly the concern that you express—that raising the threshold could create a “hidden sector” of charities that are then not required to provide key information, either to the Commission or the public. Taking that point head on, do you think that presents a real risk to public trust in charities, and do you think that that risk outweighs the benefit of reducing the regulatory burden on those charities, which is clearly the aim?

William Shawcross: It is a risk and that is why we have said that. Public confidence in the charitable sector is crucial and it is probably our most important function. As I said before, 28% of charities would come off the register, which is quite a big proportion. It is worth pointing out that, in Scotland, there is not even a £5,000 threshold; everybody has to register. Our experience is that most charities do want to register, despite the fact that there is a certain regulatory burden. It is not huge, I think, and not many charities complain that it is overwhelming, but charities want to have the benefit of being registered with the Commission. It gives them a certain seal of good housekeeping, if you like.

Sam Younger: I think it is important to note that the Lord Hodgson recommendations are very much in the spirit of saying there ought to be more regulation through the provision of good information to the public, which allows the public to take decisions about whether to support charities or not. In that context, potentially to take significant numbers of charitable organisations off the register and off the requirement to provide information and detail goes against that. I would be wary of it from that point of view. From a regulatory point of view, if organisations are charitable and something goes wrong, we are still required to take a look at it even if they are not on the register. That becomes less easy if we do not have ready access to details of those charities.

Q479 Greg Mulholland: How would you deal with that situation? That is a very interesting case study—when a charity is not registered and is not required to be, but needs to be looked into. How do you do that when you do not have the information?

William Shawcross: With greater difficulty, because we have to find ways of accessing it, but I would not overweight that point as against the point about broader transparency, which I see as more important. Nevertheless, it creates extra difficulty for us.

Q480 Greg Mulholland: Being blunt, you would rather not have this change to the threshold.

William Shawcross: Yes. On the whole, our position has been that the present threshold works well. Most charities are comfortable with it, and there would be, as you pointed out yourself, a hidden sector if the threshold were raised to £25,000. It is a subject on which reasonable people can differ.

Sam Younger: It is worth adding that we did a certain amount of public opinion work and public focus groups, in the context of our own strategic review, two years ago. The overwhelming view coming back from those focus groups was they did not understand why there was a threshold of £5,000. Any organisation that calls itself a charity and wants to have the privilege and kudos of being a charity should come under the same framework. It seems to me that, in public opinion terms, there is a clash there in what I can see is a very legitimate sense of whether there is a way of deregulating. From our point of view in taking the burden off us, the areas that are important to us are those where we can raise the threshold and reduce the number of areas where permission is required from the Commission formally for charities to undertake things. That is the area where we think it is more important to see deregulation.

Q481 Alun Cairns: Mr Shawcross, I want to raise charging for registration and returns. In your pre-appointment hearing, you thought that Lord Hodgson’s suggestion was a sensible option, yet you have recently conducted a survey of 100 voluntary sector organisations in which 47 agreed, 47 disagreed and six were undecided. Do you still stand by your previous statement and do you think you can achieve consensus?

William Shawcross: It is a perfectly plausible suggestion. The reason for doing it would be to help...
our financial flow. At the moment, any monies that we raised thereby would go to the Consolidated Fund. We would need to have primary legislation for any fees from charging to come to us, so it is a big change. Secondly, it is not clear how much money we would actually raise from charging. Thirdly, it would be a huge change for most of the charitable sector. What you have pointed to is a really crucial question: how this Commission will be funded over the next 10 years, for example. We have to look at all alternatives. One of the other suggestions that was made to me—not in jest but quite seriously—was that charities in the end will have to pay for regulation. Other sectors pay for their own regulatory bodies, so why not the Charity Commission? That is something we will have to look at, but that also would be a huge change and one that would be much resisted by charities.

Q482 Alun Cairns: Do you think that it could be used by the Government as a reason to reduce your budget even further over the long term?
William Shawcross: If we introduce charging?
Alun Cairns: Yes.
William Shawcross: Yes, it might well be. As I said, at the moment the fees would go to the Treasury, not to us, so there would be no financial advantage to us. It might be quite expensive to collect those fees. We would need to have the bureaucracy to do it.

Q483 Alun Cairns: Would you prefer a situation where the charges would come to you and you would just become self-sufficient financially?
William Shawcross: As I said to you, it would require primary legislation to do that.

Q484 Alun Cairns: Yes, but would you prefer that as an option?
William Shawcross: I do not know that I would prefer it as an option, but I think that we have to look at all options because, to be effective, the Charity Commission has to be properly funded. If there are further cuts, as there perhaps will be in many areas of government, we will have to look at how far we can be effective. As I just said, that is an alternative we have to look at, but it is not going to happen immediately.
Sam Younger: It is important to add, with the modelling we did, that if you look at the current amount that comes to us from public funding and model what it would take for that to be replaced by other funding, it seems to me that looking at realistic charges for transactions, if you like, is liable only to fund at the margin rather than comprehensively. If you were to do it comprehensively, it would have to be much more in the context of a levy on charities. When you run the figures, the levy that would be required from charities is actually pretty significant. It would run into great opposition. In particular, we have a concern that, if you went down that route and had contributions related to the income and resources of charities, you would land up with the vast majority of funding coming from the largest charities. There is a danger there to the independence of action of the Commission, because of that sense of ownership coming from those who are paying the most.

Q485 Chair: Is there not something rather daft about the Government handing out tax relief to charities with one hand and then scooping it back to fund the state regulator with the other? It is not rather messy?
William Shawcross: I can see that. One suggestion that has also been made is that we should be paid out of the Gift Aid that charities receive. That is another possibility. Again, that is something that the charities would resist, but all these options have to be looked at very seriously. Over the next couple of years, that is one of our priorities.

Q486 Chair: How much would it cost to introduce a charging regime?
William Shawcross: I do not know. Do you know how much it would cost?
Sam Younger: I do not know the figures. There is a concern, depending on the charging. If you had something that was, as I was saying a moment ago, a sliding scale with quite significant charges for the larger charities as a single system to fund the Commission, you could actually see that that would work in terms of the cost of administering it. If you are thinking about small charges for charitable registration or annual returns, given the number of charities, and particularly small charities, and given the realistic figures you would be able to charge, there is a question of whether the cost of collection would actually justify the outcome.

Q487 Chair: You do not send out any invoices at all at the moment, do you?
William Shawcross: No.

Q488 Chair: You would have to introduce a completely new operation.
William Shawcross: Yes. It would be quite expensive. Someone said to me the top 5,000 charities in terms of income should each pay £5,000, which would get you £25 million a year. As Sam says, then they might indeed think that they owned the Commission and owned the regulator. That would not be a healthy thing, but it would certainly be the easiest thing to do.

Q489 Chair: The most efficient thing to do is for the Treasury to carry on providing a block grant.
William Shawcross: I do not know if “efficient” is the right word, but it is obviously the simplest. However, the Treasury may not wish or be able to do that. In Ireland, they have just legislated to create a charity commission, but they have not decided how they are going to fund it, so it has not yet taken off.

Q490 Chair: Finally on this topic, are you aware that this is the one response to the Hodgson review on which the Government have not given us a decision? There is obviously some disagreement. Are you aware of any unhappiness between the Cabinet Office and the Treasury on this matter?
William Shawcross: No, I am not aware of anything like that.

Q491 Chair: I am purely speculating, but it does seem likely that the Treasury wants the money and the Cabinet Office wants to keep everything the same.
William Shawcross: Yes, but the striking thing is that we have had so few requests for permission to pay trustees.

Q496 Charlie Elphicke: Could I ask you about chugging: the practice that is described by its apologists as “face-to-face fundraising”? I noticed in an Ipsos MORI research paper commissioned by the Charity Commission this year that 67% of respondents agreed that some fundraising methods used by charities made them feel uncomfortable, which represented an increase. The Guardian did a poll on it as well back in July, and it found that 93% of respondents said that the practice should be regulated, should face greater restrictions or should be banned altogether. Does that concern you?

William Shawcross: Yes. I think it is very upsetting to people, as those polls indicate. Most people do not like being accosted in a sometimes quite belligerent and persistent manner in the streets. My view is that it is up to the trustees of charities not to let that happen. It is the trustees’ responsibility to make sure that their fundraising is collected not only in a legal and proper way, but in a way that does not offend people.

Q497 Charlie Elphicke: Looking at the comments on The Guardian’s website, there was one person who said, “I’ve seen these people step directly in front of people, follow people down the street, yell at people across the street, and a few times even lightly grab people’s shoulders. Can we really not just ban them?” That was recommended by 200 people. These are Guardianistas, not the red meat of the Daily Mail readership. These are the people who would be more sympathetic, one would think, to fundraising for charity. The really worrying comment was one that said, “Arm the unemployed with AK47s and allow them to shoot chuggers down like dogs.”

Paul Flynn: Is this Tory policy?

Charlie Elphicke: That was recommended by 134 Guardianistas—people reading The Guardian’s website. Does that not highlight the level of concern and that action ought to be taken?

William Shawcross: It does highlight the level of concern, absolutely. It is for the charities, above all, to restrict that sort of activity. Local councils can impose more restrictions on the extent to which chuggers can operate on their streets.

Sam Younger: I think it is important to note, for the record, that it is true that the 2006 Charities Act provided a provision for the Charity Commission to have a role in public charitable collections. That part of the Act was never commenced, so there is no locus for the Charity Commission in that area. What was put into the 2006 Act was the self-regulatory framework for fundraising, which in the Lord Hodgson review has been seen to have been—let us say—sufficiently successful to be worth seeking to develop further. I noticed only earlier this week or late last week that the Public Fundraising Regulatory Association, which was a witness before you a few weeks ago, along with the Local Government Association, has established an initiative to try to make sure that they get proper licensing through local...
Q498 Charlie Elphicke: Self-regulation is not working though, is it?
William Shawcross: That is for Parliament to decide, in a way. As Sam says, it is not within our remit to govern chugging.

Q499 Charlie Elphicke: But there are powers in the 2006 Act which we have previously canvassed. Should we not move towards bringing them in?
Sam Younger: If what was in the 2006 Act came in, and we were talking about this in the context of funding earlier, there would be a significant resource issue. That has been part of the brake on it up to now and part of the reliance on self-regulation of fundraising.

Q500 Chair: If Parliament decided to exercise these powers or required you to exercise these powers, you would require more resources in order to do so.
Sam Younger: Undoubtedly.

Q501 Chair: Can you quantify that?
Sam Younger: It predates me, but the figure I have—and I will come back to the Committee if it turns out to be wrong—is that it would require something like £4 million per annum to make sure that you could undertake this properly and actively. I will come back to the Committee if that is not the right figure.

Q502 Charlie Elphicke: I think the public could live with a spending commitment of £4 million to deal with this invasion of the personal space of people just going about their daily business, which has got out of control.
Sam Younger: That may be so. First, there is the question of what the costs would be, and, secondly, there is the question of whether the Charity Commission is the right place to administer it. There is a case that historically local authorities have had the licensing responsibility.

Q503 Chair: Are you expressing a view here that, in an ideal world, the Charity Commission does not want this obligation, or the money to carry out this obligation? You think this is the wrong place.
William Shawcross: It would be a huge new responsibility for us, if we were to be active on the streets in a way that we have never been before. It would be a big change of our duties. The sum of £4 million is actually quite large compared with our existing budget, so it is not something that the Treasury would hand out lightly. It seems to me more sensible that this should be handled, perhaps more effectively, by local councils. People should put pressure on trustees of charities that they think are abusing the position.

Q504 Charlie Elphicke: My concern is this: this is so serious it is damaging the brand of all charities in this country. It is so serious that Third Sector Magazine, the Bible of the charities industry, is having an active debate about whether to censor my comments and my inquiries into chugging. That is how serious this has become. I am concerned that, if I said to a person in the street or on the doorstep, “Look, for £4 million we could actually deal with the problem of chugging in this country and boost the charities’ brand across the whole nation,” they would say, “This would be money well spent.”
William Shawcross: I certainly hope that none of your comments were censored by any publication—I cannot understand why that should be the case—but I repeat that I think it would be a huge departure for us to have to police chuggers. It seems to me that it is more effective for local councils, trustees and the police themselves to be called in when necessary. I quite agree with you that it is a blight on the charitable sector and it has to be dealt with.

Charlie Elphicke: I should just finally say, for the record, that it is clear to me that Third Sector Magazine is saying that they are not going to hide away from this. They are going to expose all sides of it, and I think that is the right thing to do—it is what a free press should do.

Q505 Chair: Of course, if there was regulation on chugging, that might reduce what charities raise from chugging. Has that been quantified?
William Shawcross: I do not know if it has.
Sam Younger: I do not know of its quantification, but in all these areas, as I understand it, there is a constant debate within the charitable sector and fundraising about the relationship between the methods that are used and the return. Charities, with the environment as it is at the moment, will look to what produces a good return. The responsible charities will make sure that they do not do this in a way that is importuning the public excessively, but that will not always be the case. I very much take the point Mr Elphicke makes—that is something of real concern. It is absolutely right to point to the survey of public trust and confidence that we did and this being one of the key potential drivers of lack of confidence.

Q506 Chair: I am just going to follow up. Reflecting on this, nobody really minds being approached in the street by someone they know and trust like the Poppy Appeal or someone raising money for the local hospice. It is the unfamiliarity of some charities that are raising money. They feel that this is an intrusion. Do you think there would be some way of making a qualitative assessment as to whether a charity was sufficiently trusted in order to be allowed to approach people in the street? It might be different in different localities.
William Shawcross: I do not see how you could do that, and I do not think it would be for the Charity Commission to issue that kind of imprimatur or licensing. Again, it seems to me that that is the job of local authorities, particularly if it is a local charity.

Note from witness: £4 million represents the annual running cost at the time the calculation was made. There would be an additional set-up cost.
Q507 Charlie Elphicke: My concern is not simply anonymous charities. There is a comment here in The Guardian: “My favourites are the ones from Scope, who regularly engage in tactics that, if they did it to somebody with severe anxiety, might well cause a panic attack.” That is a “highly recommended” comment. Would you, as experts in this area and leaders of the Charity Commission, recommend to Parliament that it is time for Parliament to look at this area and seriously consider statutory regulation or, indeed, a statutory ban?

William Shawcross: This whole conversation demonstrates that it is a concern. It is a concern of ours. It should be a concern of the entire charitable sector, and it is clearly a concern, quite properly, of this Committee. What Parliament legislates on is your responsibility, not ours.

Sam Younger: It is worth noting here that the joint statement made in the last week by the PFRA and the Local Government Association acknowledges that, while they wish to do it within the self-regulatory framework, it may be necessary for there to be a statutory framework. That is for Parliament.

Q508 Paul Flynn: Did you follow the precedent of case law in producing the Charity Commission’s public benefit guidance of 2008?

William Shawcross: Under the 2006 Act, we were required to write the public benefit guidance. It is not an easy task, as you can understand of public benefit. The definition of public benefit was not written down by Parliament. I can quite understand why Parliament did not decide to define it; it is incredibly hard to decide. Parliament was correct: it has to evolve under case law. The tribunal was set up to judge and produce such case law. We produced public guidance in 2008, before either Sam or I were there. That guidance was considered by the tribunal in the case of the Independent Schools Council. Some of it was accepted and some of it was rejected. We are rewriting our guidance in the light of the tribunal’s judgments and that, it seems to me, is as it should be.

Q509 Paul Flynn: In your first foray into the public domain in your role, you did mention fee-charging schools, yet still ratepayers are subsidising them to a large extent. I have a figure here for the three public schools in Yorkshire. If they were not classed as charities, the taxpayer would have collected £863,000 from them rather than £183,000. Is this not the most egregious abuse of the charity laws and shouldn’t you be tackling it with some vigour?

William Shawcross: As I say, we made public benefit guidance an issue with the independent schools sector. That went to the tribunal, and the tribunal’s judgment was that the Commission should not be defining what public benefit each school or any other charity should be giving. It was up to charitable trustees to define and decide how much public benefit they should give.

Q510 Paul Flynn: This is the headmaster marking his own homework again. They can decide their own laws, whereas the schools that the great majority of the children in the country go to have to pay their full domestic rates. Is that fair and reasonable? I think the verdict on your chairmanship thus far is so far, so bad.

You have chosen to attack three charities that are all favourite targets of the far right of the Conservative party. You have attacked the British Pregnancy Advisory Service, Save the Children and the RSPCA. Does this not prove that you are doing the bidding of your Tory masters who appointed you, rather than acting as a fair Chairman?

William Shawcross: Mr Flynn, that is a very interesting question. I am not aware of having personally attacked any of these charities.

Q511 Paul Flynn: You have certainly spoken about them. I have a quote here: “Several charities have recently become embroiled in controversy over alleged politicisation. Last month the family planning charity the British Pregnancy Advisory Service was accused of ‘cynically exploiting’ the controversy over abortion limits.” Is that not you? This is a report of yours last week: “Earlier … Save the Children was forced to defend its first ever fundraising campaign to alleviate poverty in Britain after Tory MPs claimed it reflected a ‘political agenda’. ” In another case, farmers’ leaders attacked the RSPCA. Is this what your views are?

William Shawcross: I have a terrible memory, but I am not aware of ever having said those things.

Chair: Can I suggest, Mr Flynn, that there seems to be some confusion about this? By all means write to Mr Shawcross.

William Shawcross: Certainly, I will write to you, sir.

Q512 Paul Flynn: What line are you taking on this? You have taken the line, I believe, of this document, which we heard about. Is this something that has impressed you?

William Shawcross: I have read that document. I made a speech last week in which I did not identify any particular charities in the way that you have just suggested, but I said that one important issue facing the charitable sector is the extent to which charities have become dependent upon the Government. That is an important issue, because it is confusing for the public if charities become less independent than they have always been. It seems to me that one of the jobs of the Commission is to guarantee, and help charities to retain, their independence of everybody, not only the Government. I think it is true that, in the 1980s, 10% of charitable funding came from Government; now it is close to 50%. That is a huge difference. I just think it is something that should be debated.

Q513 Paul Flynn: Which charities do you have in mind?

William Shawcross: I was just talking about the sector in general.

3 Notes from witness:
The words cited here are not those of Mr Shawcross but of various different sources quoted in a newspaper article: http://www.telegraph.co.uk/news/politics/9711825/Charities-warned-to-stop-interfering-in-politics-by-new-watchdog-chief.html.

4 I.e. the Sock Puppets report as presented by Mr Flynn.
Q514 Paul Flynn: The point of this booklet, which we went into in some detail last week, is that the person who wrote it believes that the tobacco ban was a mistake. He was critical of the fact that Government money was used to help those campaigning for a tobacco ban. Would you regard it as essential that charities can compete with the vested interests of the tobacco industry, whose mission is to make money by spreading addiction to a dangerous and addictive drug in a way that is unfettered? There is a need to have a balanced debate. It is essential that Government help the charities that are putting forward a progressive point of view that has been hugely popular, reduced smoking and probably saved tens of thousands of lives.

William Shawcross: I agree with you on that. The second part of your question is a matter of what the Government fund charities to do is a matter for the Government and a matter for those charities, not a matter for us. The issue for us on guidance, which was referred to in that Sock Puppets report from the Institute for Economic Affairs, is to have guidance that we are satisfied is consonant with the purposes that have been set out, that it is not. The law says that campaigning for charities is entirely legitimate, that political campaigning is acceptable in support of charitable objectives, and for a limited period, and that party political activity is not acceptable at any stage. Those are the rules they are. We have had no challenge to that as guidance.

Q515 Chair: Can I return to the Upper-tier Tribunal case on independent schools? This seems to us to be an extraordinarily cumbersome way—and an expensive and stressful way—of dealing with the question of whether the public benefit test is being met. What can be done to make this much more straightforward, much less contentious and much less confrontational? Are you satisfied that, actually, the guidance you have issued was what Parliament intended when it passed the Act, or are you trapped by wording in the Act that forces you effectively to challenge the jurisprudence of previous judgments?

William Shawcross: To deal with the second part of your question first, we were required under the 2006 Act to produce public benefit guidance. We did so, and the tribunal in the Independent Schools Council case found that some of our guidance was correct and some was wrong, so we are changing our guidance accordingly. As to your point about expense and the cumbersome nature of the tribunal, this was set up by Parliament in the Act. The tribunal was a necessary way of charities being able to appeal against any judgment or decision that the Charity Commission made. We should not be the final arbiter of what is charitable and what is not, and what is public benefit and what is not. That is the duty and responsibility of the courts to decide, not us, but you are absolutely right that it is an expensive procedure.

I feel for charities that have to go into the expense of representing themselves before the tribunal. There is no call for them to employ expensive counsel, but naturally any charity fighting for its position will feel that it has to be represented in the best possible way. Counsel in any court process is expensive. The tribunal was set up in order to be much cheaper than having to go to the High Court, and it is an institutional problem that has developed since 2006. You are quite right that we should all be looking at how to make it easier for charities.

Q516 Chair: There should be a relationship between the charities and the Charity Commission that enables proper conversations to take place so that reasonable and rational compromises can be reached without resort to very expensive tribunal processes. Are you looking at alternative methods of dispute resolution about your guidance, which would be very sensible?

William Shawcross: We do have such conversations. Of course that is true.

Sam Younger: It is something we think about a lot, but it just seems to me that we cannot have it both ways. It seems to me it is important for Parliament to be clear about what public benefit means, and then we would be in a position to implement without this stage of the tribunal. Our public benefit guidance had to go into a vacuum, and it was put in after a very wide consultation with no complaint that it is not. Mostly it was a matter of consensus by the end that that was appropriate, although it has been subsequently said that we were too detailed in it. If you are not going to define clearly on the face of the legislation what public benefit means, the Charity Commission has to take a view that, if you are going to have it developed through case law, you need the case law to do it. Indeed, my message since I have been at the Commission to ourselves is that we should not be afraid of going to the tribunal, because the tribunal is there as part of the architecture specifically designed in order to clarify difficult areas of law.

Q517 Chair: To challenge you directly on this, this seems to be the bureaucrat’s answer: pass the buck to a tribunal, instead of reaching a rational judgment that you think you can defend.

Sam Younger: No, as far as I am concerned, it is Parliament’s answer. Parliament said “public benefit” and made us define it. We can only take a view.

Q518 Chair: I do not accept this. You say, “We will take the least-risk approach to this. This is what we will put in our guidance and we will let them come for us and settle it in the tribunal,” instead of taking responsibility as Chief Executive of the Charity Commission and reaching a rational judgment that avoids all this absurd expense of going to law with millions of pounds spent on litigation. The tribunal is meant to be a last-resort process, not a way of designing policy. It seems to me that you are using it as a tool to design your policy.

William Shawcross: The problem is that the definition of public benefit is incredibly complicated, as you know as well as I do. It is a matter of dispute. All law is argument in the end, and that is what we have to deal with. Whether a particular charity coming to us for status displays enough public benefit, as is required under the 2006 Act, is something that we can have an opinion on, but we cannot make a judgment on in every case.
Q519 Chair: Do you feel that the Act intends to challenge the status quo pre-Act—that it intends the Charity Commission to start changing the definition of public benefit, just because the words “public benefit” appear in the Act?

William Shawcross: No, but it is a question that has to be defined more clearly than before, as I understand it. The Act sets up the tribunal for just such difficult cases. I agree with you it would be much nicer if we could resolve all cases, or almost all cases, without going to the tribunal, and we certainly try to do that.

Chair: Moving on to religious charities, Mr Halfon.

Q520 Robert Halfon: Could you explain to me the decision-making process within the Charity Commission that sees that recognising the druids as a charity passes the public benefit test, but recognising the Brethren’s Preston Down Trust does not? Can you just explain to me how you came to that decision?

William Shawcross: Both these decisions were made before I came to the Commission, so I was not intimately involved in them.

Robert Halfon: Perhaps the Chief Executive can answer.

Sam Younger: Every request for registration—and there are a huge number—is looked at on its merits against the law as we understand it. They are looked at first by the experts in our registration team. There are many—indeed the majority of applications for registration that come in—that are slugged as low risk and go through very quickly indeed. The ones that are regarded as raising issues at the margins or questions about law are passed on to more expert people within that registration team, in collaboration with our legal service. In the case of the Druid Network that you refer to, that went through to a decision. There was a decision review, and that happened to be taken as a full board discussion.

Q521 Robert Halfon: Did that go to tribunal?

Sam Younger: That did not go to tribunal.

Q522 Robert Halfon: Could you just explain what public benefit the druids give to society, just for the record?

Sam Younger: Again, I would have to come back to you on the specifics of it, and I will do so happily.3

Q523 Robert Halfon: The Brethren have been permitted to go to tribunal—and to spend hundreds of thousands of pounds—because you say they do not pass the public benefit test. You have forced them to go to tribunal, and yet for the druids you say that you have some little committee that decides internally. They seem to pass without question. Surely that shows that there is a significant inconsistency. Why is it this particular organisation—this particular religion—that has been singled out in this way?

William Shawcross: It is not a particular religion being singled out in this way. The Brethren are a Christian denomination and there is no way in which we would single out Christianity in this way. I made the point the other day in a speech that we are very much aware of the hugely important role that Christianity has played in charitable purposes for the last four centuries. There is no way in which the Commission would wish to discriminate against Christians or indeed any other religion. In the case of the Brethren, my understanding is that there was concern in the Commission, because of their doctrine of separation and exclusiveness, which is in their title, as to how much public—as opposed to private—benefit they could give. This was the argument about their public benefit responsibilities.

Q524 Robert Halfon: As a Jewish person, I cannot do Holy Communion in a Catholic or Protestant church, so there is an essence of doctrinal separation, yet they have no problem in getting the public benefit. The Holmes v. AG case in 1981 set a precedent that the Plymouth Brethren were for public benefit, and the current challenge to the Preston Down Trust seems to fly in the face of this court judgment.

William Shawcross: With regard to your question, particularly about communion, I can go to a synagogue and I do quite often go to synagogues. On Sunday, I went to Brompton Oratory. Although I am not a Catholic, I could take part in communion, although I did not take the sacrament. Similarly, my wife, who is a Catholic, can come to my Anglican church. There is no question, I think, that the Brethren are slightly different from that.

Q525 Robert Halfon: I am absolutely allowed to go to a Brethren church and sit in the church. I may not be able to take Holy Communion, but I can sit there and participate in their activities, and yet they have been singled out. Is it really your role—was that really the public benefit test—for you to single out a religion and adjudicate over different kinds of religious persuasions? The doctrine of separation is totally different from whether or not the Christian Brethren actually provide public benefit—and they clearly do provide public benefit, with all the charitable work that they do. Whether or not they have a doctrine of separation should really not be your business. What should be your business is whether they provide public benefit. I could say to you that the public benefit that the Christian Brethren provide across the country, with their 16,000 members and 300 churches, is a lot more than, let us say, the druids, who seem to pass your public benefit test with very little question and are not forced to go to tribunal. Can you not see the inconsistency in this?

William Shawcross: I can see the argument about it and I absolutely understand that. I understand the concern of the Brethren, and I am sorry that the tribunal, as the Chair said, is very expensive for charities that have to go before it. On the question of the Brethren, as you know, there are different views. Lady Berridge expressed a different view about the Brethren in the upper House recently, and these are facts that have to be discussed and adjudicated by the tribunal.

Q526 Robert Halfon: But there will be different views about druids; there will be different views about

3 Note from witness: Please see supplementary written evidence CH 62 and CH63.
my own religion. I could point to examples of certain branches of my own religion that I may not agree with. They would certainly have ways that I do not necessarily follow or agree with, but that is not the same as whether or not they provide a public benefit. The public benefit test is, in essence, charitable works and activities, and the Brethren have a clear record of providing charitable activities, and yet you have single out these people. You have forced them to go to tribunal and you still do not provide the answer, so why are they being single out?

William Shawcross: I accept that you are saying it is very difficult for the Brethren and I regret that, but I repeat also that there are different points of view on the Brethren’s activities. Lady Berridge expressed them very forcefully.

Q527 Robert Halfon: As I say, there are different views within every religion about the activities of that religion. Finally, there was a debate in the House of Commons recently, as you are well aware, in which MPs from every single party in the House of Commons, virtually got up and condemned the Charity Commission. I myself genuinely feel you to be a vindictive organisation, as you have single out this religious organisation in this way. Do you not worry about your reputation in the House of Commons, or do you just think that all the MPs are wrong and you were right to single out this particular religious group?

William Shawcross: Of course we worry about it. It is very upsetting for the Charity Commission to be described and seen in this way. As the regulator of the charitable sector, it is very unfortunate for us and we do not want that to happen. I regret that there is such strength of feeling against the Commission as such, when I think what we were trying to do was to carry out our statutory duty.

Robert Halfon: Which you did not do for the druids.

Chair: Order, Mr Halfon.

William Shawcross: Sometimes we make mistakes, inevitably, like all organisations and like all humans. I hope that we try to discharge our functions responsibly and decently, and that is what I hope we have done in this case.

Robert Halfon: What are you going to do?

Chair: I call Mr Mulholland.

Robert Halfon: I just want him to comment on my question.

Chair: You have had a lot of questions.

Robert Halfon: I think the Chief Executive should comment on the question.

Chair: You have just said you were going to ask your last question.

Robert Halfon: I do not want any more questions; I just want the Chief Executive to comment on the question that I asked.

Chair: I will give Mr Younger an opportunity to comment.

Q528 Greg Mulholland: Some of us take a different view from that, I think you will be relieved to hear. To try to take this back to a more rational position, is this difficult issue—and it is a difficult issue for you and a very difficult issue for the Plymouth Brethren, with the understandable worries that they are facing—not an example very simply that the definition of public benefit is wholly inadequate? Specifically when it comes to religion, there is an unwillingness to say whether or not religion in itself is a public benefit.

William Shawcross: I do not think I would quite agree with that. Some 20% of all charities registered with us are religious charities. They are overwhelmingly Christian, but also Jewish, and there are other faiths as well. I do not think the fact that a charity is religious causes any problems for its definition in terms of public benefit per se. You are right that, under the 2006 Act, we have to develop case law on public benefit in religions, education and a whole variety of charitable purposes. It takes time and is difficult. I am very sorry that the Brethren have had to go to this expense on this occasion. As the Chair said, the tribunal is turning out to be more expensive than I think Parliament envisaged in the 2006 Act. It is certainly true, as the Chair said, that we seek to resolve these issues in house, as it were, in the overwhelming majority of cases, and I think we have done this.

Q529 Greg Mulholland: Specifically on this issue, I believe that this is the nub of the issue. The Plymouth Brethren are the specific case that has been brought, but equally the Brethren as a whole were just an organisation that was not particularly well known in this country. Since the ruling of the Charity Commission, they have come forward and been much more open and engaging with MPs and their local communities to demonstrate their benefit. Certainly I have seen the community benefit that they have been providing by engaging with people in my community. That being the case, would it not be better, if there was an initial ruling, to then say, “Actually, now we are convinced that there is a public benefit”? Is there not a better way of doing it than the process that is currently there, which is going to cost so much money unnecessarily, when the benefit can and has then been proved?

William Shawcross: If new evidence comes forward, we would consider that and the tribunal would consider that on both sides. That is something that we have to wait for. The question is before the tribunal and I hope that it is decided promptly.

Q530 Paul Flynn: The debate attracted the attendance of an unusually large group of MPs—a total of 47—though those numbers dropped immediately and considerably when it was announced by Fiona Bruce that the Plymouth Brethren do not vote. The tone of the debate was such that a group of rather gullible MPs who had been intensively lobbied by the Plymouth Brethren—they have been here as well, and they have given a certain point of view—interpreted this not just as an attack on the Plymouth Brethren, but an attack on Christianity. It is unbelievable that people could think that a body like the Charity Commission could be attacking and trying to undermine Christianity. The evidence, as you suggested, that is coming in from the blogosphere and in Baroness Berridge’s speech suggests that this is a cult that is very different from any other Christian
group. Could you confirm that the Charity Commission is not running a crusade against Christianity?

**William Shawcross:** I can certainly confirm that. I would not be Chairman of any organisation that was running a crusade against Christianity or indeed any other religion. The Commission has registered, I think, 1,000 new Christian or Christian-related charities in the last year, and 400 new charities of other religious faiths. I was asked by a Member of Parliament recently whether the Commission was part of a plot to secularise British society, and I said, “Absolutely not.” I can confirm that: the Commission has never been in the business of doing that and it never will be, as far as I am concerned.

**Q531 Chair:** Mr Shawcross, I was intrigued to hear that you immediately jumped to Lady Berridge’s comments when there have been many comments, particularly in the Westminster Hall debate, that were pretty universal, I felt, having attended part of that debate. Can I put it to you that a bad decision was made by the Charity Commission before you became its Chair? You are now in the position of defending the tribunal, which was set up by Parliament for just that purpose, as it comes to light. Could you confirm that the Charity Commission has never been in the business of doing that and it never will be, as far as I am concerned.

**William Shawcross:** I am certainly not going to comment on the first part of your question. My predecessor and Sam Younger, the Chief Executive, ran the organisation extremely well before I came in. I am very grateful to them for being able to take charge of such a well-run organisation as the Charity Commission. You are correct; I could have, I suppose in theory, have said, “Let me look at the evidence. I think this should come back,” but my view was that the evidence was disputed, as the testimony from Baroness Berridge suggests, and it would have been improper for me to interfere with the judicial process that had already begun. It had already begun before the tribunal, which was set up by Parliament for just such complicated issues in the 2006 Act. I thought that, given where we were, it should continue.

**Q532 Alun Cairns:** Surely if new evidence has come to light, it would be incumbent on the Commission to look at that evidence and potentially to come up with a new decision, whatever that may be. It may well be to uphold the existing decision, or it may well be to change the original decision, if new evidence has come to light. I suggest, in all of the debates that have taken place and the evidence that has been made available, there may be something new that therefore would place on you a new responsibility, as Chairman, at least to consider that evidence.

**William Shawcross:** You are absolutely right. Of course we consider new evidence in every case, not just the Brethren’s case, as it comes to light.

**Q533 Alun Cairns:** Would that not be the most straightforward decision?

**William Shawcross:** It might be, but the evidence that has come to light since this decision was taken is contradictory, which you know, Mr Cairns, as well as I do. It is quite difficult for us, now that the case has gone to the tribunal, suddenly to say, “We will take it back.” We might view all that evidence and decide that the original judgment was correct and that it should go back to the tribunal. That would just delay the process even longer for the Brethren.

**Q534 Charlie Elphicke:** Mr Shawcross, this obviously did happen before you came on board, but the matter of the druids was a decision of the full Commission, from what Mr Younger is saying. Does it not concern you that the matter of the druids and the Plymouth Brethren is turning the Charity Commission into a laughing stock?

**William Shawcross:** I certainly hope it is not turning—nor has it turned or will it turn—the Charity Commission into a laughing stock. We do a lot of very serious work and it is difficult to make judgments on these issues, of course. On the matter of the druids, I understand that a decision was made that they were a charity that was principally involved in education from a religious point of view and that they gave clear public benefit on those grounds. On the matter of the Plymouth Brethren, my understanding is that it was the doctrine of separation that caused most concern as to whether their benefit was more private than public.

**Q535 Charlie Elphicke:** I am an Anglican—an evangelical Anglican but an Anglican nevertheless. I go to a Catholic church. I cannot take communion, because those are the rules of the Catholic Church. Do they or do they not therefore display public benefit? These are the same principles on which your organisation has ruled out the Plymouth Brethren.

**William Shawcross:** I do not think that the Catholic Church’s rules on sacrament are quite the same as the doctrine of separation of the Brethren.

**Q536 Charlie Elphicke:** Let us turn to the Westminster Hall debate. It is just on the issue of the reputation of, and people’s trust and confidence in, the Charity Commission on this side of Parliament. To use the words of the Minister in the debate, he noted down the description given of the Charity Commission as “rotten”, “discriminating”, “a bureaucratic bully”, “pressuring the little guy”, “a hidden agenda”, “unjust”, “inconsistent”, “arbitrary”, “a wolf in sheep’s clothing”. He then said, “This has been quite a rough day for the members of the Charity Commission.” Would you agree with the Minister and what are you going to do about it?

**William Shawcross:** Would I agree with the Minister in what sense?

**Charlie Elphicke:** That was what he said. I read out his speech.

**William Shawcross:** Those are phrases that he read out but, no, of course I do not agree with the Minister on that. I do not believe that the Charity Commission is any of those things. I think the Charity Commission has a very difficult job in adjudicating the 160,000 British charities and making sure that, under the regulations, those charities are kept acting according to their own charitable purposes and nothing else, and that they do not abuse those purposes. It is not an easy
Q537 Charlie Elphicke: We are all concerned about Baroness Berridge and what happened to her family some 20 years ago; it is a matter of considerable concern. Of course, you often get situations where there are fragments and elements of any religious organisation that go to extreme ends in any religion. We know all about those sorts of situations. But would it be right to tar the whole organisation, or the whole religious group, with that same brush, particularly given that these events seem to have happened some time ago?

William Shawcross: No. It is not right to tar any organisation with one brush; I quite agree with you. This case concerns one meeting hall, Preston Down, and that is the organisation in question.

Q538 Charlie Elphicke: Can I urge all the Charity Commission to come back and look at this case? I am concerned about the lack of confidence that so many parliamentarians expressed in the Westminster Hall debate—47 MPs is a lot of MPs, particularly concerning a group that does not even vote, so we have no electoral interest in the organisation. That should give pause to the Charity Commission. You really ought to corporately come back and review this decision, and review where the balance lies, because to have this amount of concern in Parliament indicates that the balance has not been got right by the Charity Commission.

William Shawcross: As I mentioned to you before, Sir, we do review these cases all the time, and in this particular case, as I say, there is other evidence from Lady Berridge and other Members of Parliament who have expressed concerns that are very different from those set out in the debate to which you refer. Of course, the strength of feeling in Parliament is very important to us and we bear it in mind. As I said, if we took the case back from the tribunal, which I am not sure would be entirely proper, we would have to consider it all again, and we would have to take in all the new evidence from Lady Berridge and others, and it would delay the decision for Preston Down. That would be even more unfortunate for them. At the moment it is with the tribunal, and the tribunal can adjudicate on all this evidence—old and new.

Q539 Robert Halfon: When you talk about bearing in mind the strong parliamentary opinion of dismay at the role of the Charity Commission, as has been evidenced by my friend sitting next to me, that is all you are doing. You are bearing it in mind, and then you are just ignoring it. What you are doing is taking evidence from one or two individuals who have their own personal stories. Now, if you take the example of the Roman Catholic Church, which I have huge respect for, it has recently been the subject of a child abuse scandal. No doubt there are individuals who could come to you and say that terrible things have happened within that Church and that they should not pass the public benefit test, but I doubt for one moment that you would force the Roman Catholic Church to go through a tribunal and to suffer indignity in the way that you have forced the Christian Brethren to do, and refuse to review the thing and take the evidence of a few people who have had unhappy experiences. My point to you is that in every religion there are issues that go on and people who have unhappy experiences, but you still have not explained why you have singed out the Christian Brethren in this way.

William Shawcross: I am sorry if you think I have—

Chair: Is there anything further to add on this?

Robert Halfon: I want a comment from the Chief Executive, who says nothing on this issue.

Q540 Chair: Mr Younger, is there anything to add?

Sam Younger: I do not think that there is anything to add, really. I would only say that the descriptions that Mr Elphicke read out were described by the Minister—he did not add this—as “quite wild”.

Q541 Charlie Elphicke: That was a mishearing. I specifically said, “These are the comments that the Minister recorded,” and the Minister then said, “This has not been a great day for the Charity Commission”.

Sam Younger: Yes.

Robert Halfon: Of which you care nothing. You only take the evidence of the people you want to hear from.

Chair: Mr Halfon, please.

Sam Younger: I was not saying that those were things that were the views of the Minister, but I was saying that he added that the descriptions he quoted, which had been brought out to him, were actually “quite wild”. I have been in the Charity Commission for two years. All I see is dedicated public servants working as hard as they can to interpret the law in very difficult circumstances. I must say that I resent—and I know my staff enormously resent—those accusations that have come on. Of course it was a difficult day for the Commission, and of course it was a worry to people in the Commission, but I think the overwhelming sense was that these were very unfair attacks on dedicated public servants doing as good a job as they can.

Q542 Lindsay Roy: Can you confirm, gentlemen, whether the Plymouth Brethren are a registered charity in Scotland still?

William Shawcross: I believe they are a registered charity in Scotland, are they not?

Sam Younger: I think there are meeting halls registered in Scotland. It is important to note that a number of times it has been said the Commission are “picking on”. We have applications for registration and we have to consider each one on its merits against the law. In this case of the Preston Down Trust, we did not feel able to register it. The correct way of then proceeding is to go to the tribunal to clarify the elements of law, and that is what is happening.

Q543 Lindsay Roy: Are there different criteria for public benefit in Scotland than in the UK?

Sam Younger: The law is different, yes.
Q544 Charlie Elphicke: The issue with the Westminster Hall debate is this: the independence of the Charity Commission is really important, and it is an important part of our democracy, but we are now having a situation built where so many MPs in a parliamentary debate are expressing a lack of confidence and going round saying, “Maybe we should start legislating, take away that independence and have a greater sense of control.” My point is that that should greatly concern the Charity Commission. It should be a real cause for concern. Do you take on board the fact that there is a feeling in Parliament that decisions made by that Charity Commission do not strike the right balance?

William Shawcross: I am really concerned that you should say that. Obviously it is a matter of huge importance to us what Parliament thinks. Going back to what Mr Halfon said, we certainly do not ignore the sense of Parliament. All I can repeat—and I am sorry to be repeating myself—is that there are other judgments that have been expressed not only in Parliament but elsewhere about the Brethren case. Lady Berridge congratulated us on not giving instant charitable status to the Brethren.

Q545 Robert Halfon: As I said to you, I could find Catholic people who would condemn the Catholic Church and say that they should not get the public benefit test, but I doubt they would have to go through what you have put the Christian Brethren through. William Shawcross: I am very sorry for the Brethren to have to go through this. I do not like any Christian charity to have to go through this process, but this process was created by Parliament, not by us, for the adjudication of public benefit.

Q546 Chair: May I just ask you a question about process? The decision on the druids gives rise to 21 pages of reasoning why they passed the public benefit test. What have you published, in terms of reasoning, as to why the Preston Down Trust does not pass the public benefit test?

Sam Younger: As always, there has been extensive discussion with the Brethren and their legal advisors throughout, and a letter detailing the reasons why we felt we needed the law to be clarified and why we were not able to—

Q547 Chair: That is not published on your website, is it?

Sam Younger: It is in the public domain.⁶

Q548 Charlie Elphicke: Were you Chief Executive of the Commission when the druids were approved?

Sam Younger: I had been there a week when the board meeting took place.

Q549 Paul Flynn: Can we just say of the Westminster Hall debate that instead of it being a bad day for the Charity Commission, it was a very bad day for Parliament, because it showed a group of MPs of extraordinary gullibility and a heightened sense of victimhood falling for one line of an argument? The Baroness Berridge case, which is a very powerful one that has been presented by her and others, makes it clear that the Exclusive Brethren are distinctive in many ways, in so far as no other religion refuses to live in semi-detached houses in case they are contaminated by their non-Brethren neighbours. It is a very different group of people, because they believe so powerfully in separation, and if they believe in separation, they have no claim on making a contribution to the public good.

Chair: Was that a question?

Paul Flynn: Yes. Would you agree?

Chair: Anything to add, Mr Shawcross and Mr Younger?

William Shawcross: No. I would just add that the letter that Sam refers to—to the Brethren—was sent to you, and I think it is on your website. Secondly, I would like to reiterate what Sam said: I have been at the Commission for only a few weeks, but I have been very, very struck by the extraordinary diligence and integrity with which people at the Commission are working on this and many other issues. I can assure you that there is no anti-Christian bias or anti-anything else bias on the Commission that I have seen, and I am sure that there is not.

Q550 Chair: This letter does not run to 21 pages, does it?

William Shawcross: No, I do not think it does.

Q551 Chair: It is not published on your website. I am just wondering if it would improve the accountability and the transparency of decision making—

William Shawcross: I am not sure what rule we have about publishing documents on ongoing investigations, but I agree with you—I do not see any reason why it should not be on our website. If it is on yours, it certainly should be on ours.

Robert Halfon: You certainly do not have any anti-druid bias; no one can accuse you of that.

Chair: I think you have made your point.

Q552 Alun Cairns: I accept that, Mr Younger, you were there only for a short time and that, Mr Shawcross, you were not there at the time the decision was made. I accept the comments you made about diligent staff working very hard—everyone can make an error, and errors are made by many on regular occasions. Surely it would be incumbent on you to look at things in the light of new evidence that has arisen, and hopefully save many organisations and individuals a lot of heartache, and also a lot of money at the same time.

William Shawcross: I think we have already answered that question. Of course we would continue to look at new evidence on this and every other case. My concern on this case is that it would delay a decision for the Brethren even longer.

Chair: We have two further questions on political campaigning, but I am going to ask the Committee whether we would like to deal with them in

⁶ Note from witness: the Charity Commission’s decision letter was available on the committee’s website at the time of the hearing: http://www.parliament.uk/documents/commons-committees/public-administration/ LetterfromKennethDibble.pdf
correspondence, given that the Minister has now been waiting 15 minutes, or whether we want to pursue this orally with the Charity Commission now. Shall we move on? I am grateful to the Committee for that indulgence.

Thank you very much for dealing with some very contentious issues. I would just like to put on record my appreciation of the Charity Commission staff, who are working under very difficult circumstances dealing not only with these issues, but with the downsizing of the organisation. We understand how hard-pressed the organisation is and we are grateful for their diligence and hard work. I would be grateful if you could pass that on from the Committee.

Examination of Witness

Witness: Nick Hurd MP, Minister for Civil Society, gave evidence.

Q553 Chair: I now welcome you, Minister, to this session on the review of the Charities Act 2006. Will you first of all identify yourself for the record?

Mr Hurd: Nick Hurd, Minister for Civil Society.

Q554 Chair: Can I first ask about the Hodgson review and just enter a little plea? We were looking forward to taking evidence from you in the absence of your response to the Hodgson review, and we got your preliminary response to the Hodgson review at 5.30 last night. Well done, but we would have preferred it a little sooner. What held it up?

Mr Hurd: Well, Mr Chairman, thank you for inviting me this morning. I am sorry if the letter arrived later than the Committee would have liked; these things are ready when they are ready, and unfortunately it was not ready until yesterday afternoon. I should say, of course, that it is in large part an interim response to Lord Hodgson’s excellent review. I wish to wait and see the report of this Committee before issuing my final response, because I would expect that your beginings and your review will help to shape our final response as well. So, it is an interim response; the final response will come after the publication of your report.

Q555 Chair: Can I take it therefore that there are areas of disagreement within the Government? Let us be open about this and transparent—there are contentious areas in the Hodgson review about which there is disagreement.

Mr Hurd: No. On this occasion, in this context, the Government are in a relatively harmonious position. As you know from the response, if you have had time to look at it, we operate a traffic light system. In terms of the recommendations raised on the issue of Charity Commission fee-charging, we are not going to go there. In terms of the very emotive issue in the sector, we have put up a red light—we are not going to look at it. In terms of the recommendations raised on the issue of Charity Commission fee-charging, we are not going to go there. In terms of the complex debate around registration and thresholds, that merits another amber light.

Q556 Chair: I will take a minute, Chair, to set out the framework for this review, which I think has been well executed. I have made it clear from the start that there are two lenses through which I will view every recommendation and they are around two very simple questions: first, what does this do to make life easier for a charity; and, secondly, what does this do to help increase the public’s trust in the charitable sector? If there is not a good enough answer to either of those questions, I am not really interested in looking at it further, because those are the priorities.

Those are the two filters through which we looked at it. As the letter sets out, in what I hope is a helpful way, we have identified a traffic light system to look at things. In terms of the recommendations raised on the definition of “charity” and “public benefit”, we side with Robin’s view on that—that on balance we should continue to rely on case law rather than seeking to make a statutory definition of “charity”. In relation to the remuneration of trustees, which is a very emotive issue in the sector, we have put up a red light—we are not going to go there. In terms of the rule, form and functions of the Charity Commission, we basically accept his recommendations. In terms of the issue of Charity Commission fee-charging, we have got an amber light, so more work needs to be done. In terms of the complex debate around registration and thresholds, that merits another amber light.

In terms of the whole transparency agenda, we accept his recommendations, as we do on the various other
deregulatory proposals. In relation to social investments, we have given it a green/amber, and in terms of his recommendations in relation to fundraising, self-regulation and charity collections in public places, we give that a green light—we are not prepared to accept his recommendations.

Q558 Chair: Thank you. Do any of your accepted recommendations require legislation?

Mr Hurd: Off the top of the head, no. That is obviously quite important to us, because legislation takes time, and our instinct is to try and support recommendations that could be implemented reasonably quickly.

Q559 Chair: Fee charging would require primary legislation.

Mr Hurd: I believe so, which is why it is not something that we are going to stampede towards.

Q560 Alun Cairns: Minister, the Charity Finance Group say that it is difficult to assess the impact of the 2006 Act because of its failure to implement several priorities due to financial constraints. Would you accept that, and do you think the Act was over-ambitious?

Mr Hurd: The Act gave the Charity Commission a very difficult job in the sense that Parliament basically said, “We accept that the definition of ‘charity’ will continue to reside in common law, but we will place an obligation on the Charity Commission to help with the definition through an obligation on them to publish some guidance.” Now, distilling several hundred years of case law into a useful, clear piece of guidance is a very challenging task. I happen to think that they made a decent fist of it. I happen to think the process set up, whereby they are effectively challenged in law, is perhaps not ideal, or as quick, cheap and effective as perhaps Parliament had hoped, but it is not a bad system in itself. It is quite fashionable and easy to dupe up the Charity Commission, but we probably should recognise that in this place we gave them a very difficult job to do.

Q561 Alun Cairns: Why were several parts of the Act not implemented?

Mr Hurd: In terms of the licensing, the whole issue around fundraising, the emotive issue around face-to-face chugging and all that, it is a case of prioritisation. There is also recognition that we needed to take into account the position and capacity of the Charity Commission to respond effectively to new regulation. Is new regulation absolute priority and is the Charity Commission set up to respond in an effective way to it? Those are two considerations that probably underlie why some aspects of that Act have been deferred.

Q562 Alun Cairns: Can I tie both answers together in terms of the obligation to publish guidance and their capacity in your second response? Do you think that the Charity Commission therefore is forced to refer to the tribunal instead of making decisions off their own back?

Mr Hurd: I do not think that anyone could accuse the Charity Commission of not taking decisions. Those decisions have, on some occasions, unleashed hell, but the backstop is the tribunal and a legal judgement. I do not think that that is a bad process; on some occasions it has maybe been a bit messy and a bit noisy, but I do not think it is necessarily in itself a bad process. The Charity Commission takes a view, that view is challenged and effectively a judgment is made in law, which sits in law and is the frame for the debate from thereon. That was what we saw in the case of the independent schools, where eventually the tribunal made a judgment that has settled the issue for the moment.

Q563 Alun Cairns: As a result of the lack of capacity in the Commission, does it therefore mean that more costs are put on to a charity that needs to go to the Commission? We have been debating the Plymouth Christian Brethren and the additional costs that will be forced on to them.

Mr Hurd: I am not sure I accept the premise about lack of capacity. The Government need to be mindful—need to be absolutely sure—that the Charity Commission is in a position to act in the most effective way, in its regulatory function, in response to new regulation. The fact of the matter is, as this Committee will well know, that the budget for the Charity Commission has been reduced quite significantly. Therefore, what the Charity Commission has been able to do, and what it does now, is different from what it has done in the past. It is hunkering down on its core regulatory function.

We have to be mindful of its capacity. I am reassured by the leadership of the Charity Commission that they feel that the regulator is in good shape, and in a good position to do what it needs to do. Governments, and those people who set its budget, always need to be mindful of that.

Q564 Lindsay Roy: You have said that the threshold for compulsory registration is an amber light. Is that because of the tension between the two criteria you set out earlier: being easier to operate and trust?

Mr Hurd: The whole architecture of registration and thresholds now is a bit messy, probably not ideal and a product of evolution over many years. It is in large part an amber light because I need to be very clear about what I might call the net-net benefit of the package that Lord Hodgson has presented—and it is a package. I am also very clear, because we have done some pretty rigorous listening with the sector, that reaction to it has been very mixed, so it needs a bit more time for the arguments to be had and concluded about that.

Q565 Lindsay Roy: Is there a considerable concern about public confidence?

Mr Hurd: What Robin was proposing was something that starts from a deregulatory instinct, while allowing smaller charities the opt-in, because, as most of us know, lots of small charities attach a lot of importance to their registration with the Charity Commission—it is something that they feel they need. Robin’s package—and it is a package—is quite neat, but I
have to balance that against a concern that it might leave large sections of the charitable sector under the radar, and the implications that that might have for public trust.

Q566 Lindsay Roy: You would still have an opt-in opportunity.

Mr Hurd: Yes, but that is why I say the Hodgson package has two or maybe three important parts. Raising the threshold is the bit that has caught everyone’s attention, but it also contains a recommendation that those charities below that threshold that want to register with the Charity Commission should still be allowed to do so, and the Charity Commission should be obliged to process that registration. It is, then, a raising of threshold and, if you like, an opt-in.

Q567 Lindsay Roy: Your feedback would be that the majority of charities in that category would want to opt in?

Mr Hurd: In conversations I have had in the past, not least with the Commission and those organisations that claim to represent smaller charities, they have said to me that they have not been in favour of raising the threshold. The music from the sector has been quite mixed; that is why it merits an amber light at this stage. It just needs a bit more time.

Q568 Chair: Returning to the question of whether the charities should make a contribution to the funding of their own regulator, for you, are the Government deciding that this is an issue of principle, or is it just a question of practicalities? Previously, the Government have always been minded in principle against asking the charitable sector to pay a levy or charges for the Charity Commission. Have you already crossed that boundary? Is this just a question of practicalities, or is this, for you, a big issue of principle?

Mr Hurd: The default position of the Government is that the Government will continue to cover the bulk of the Charity Commission’s costs.

Q569 Chair: The bulk of. At the moment it covers all the Charity Commission’s costs.

Mr Hurd: For the future that I can foresee, I expect the Government to continue to be the majority funder of the Charity Commission.

Q570 Chair: The Government are now the 100% funder of the Charity Commission.

Mr Hurd: Yes. We have not pushed Robin Hodgson in any sense on this; this is something that he has come back to us with. My position is that, as I stated before, this is an extremely difficult time to introduce the concept of additional charging to the charitable sector. That is my position. The Government have to be mindful, again—this comes back to the point Mr Cairns raised—about the capacity of the regulator. The bit that interests me, where I think there is, in the short term, room for a discussion, is where charities are taking up a lot of the Commission’s time with registration applications that are very non-standard. They carry with them a degree of complexity and soak up a lot of time, not least legal time. I am told, for example, that the druids’ application took three years of the Charity Commission’s time. There may be an argument in that context for what you might call differential charging—the right for the Charity Commission to recoup some of those costs. That is a principle I am open to some discussion on, but my personal view is that politically it would be quite wrong for the Government to move away from the current situation in which, effectively, the taxpayer funds the regulator, to something that is significantly different from that. From the horizons I can see, I cannot see a very big shift.

Q571 Chair: We have just heard from the Charity Commission that they issue no invoices whatsoever and that they have no system for charging, invoicing and chasing up bad debts—all that. There would be additional cost involved in introducing a charging system, which is not currently necessary, because the money comes in a grant from the Exchequer.

Mr Hurd: Yes, Chairman, that information from them is relevant. If I could just finish my point, we have to look at the net-net on that. In terms of the principle, that warrants some discussion. If the Charity Commission’s resources are being used up in a big way by an organisation, there could be an argument about charging something to that organisation.

Q572 Chair: You do not look very comfortable with this.

Mr Hurd: I am not comfortable with the idea of adding to the cost burden of charities at this moment in time.

Q573 Charlie Elphicke: Minister, did I hear you correctly saying the druids took three years to have their application approved?

Mr Hurd: That is what I understand, yes.

Q574 Charlie Elphicke: Had you been the decision maker, do you think you would have granted them charitable status?

Mr Hurd: My personal view on it does not matter, not least because I have never seen the evidence.

Q575 Charlie Elphicke: Following that debate in Westminster Hall, are you quite concerned that people are putting the druids and this Plymouth Brethren together, and drawing conclusions that lead them to have a loss of confidence in the Charity Commission, as you recorded in your responding report?

Mr Hurd: It was a very emotive debate. I come back to the most important position: the Charity Commission is an independent regulator; it took a decision; and that decision has generated a very big debate. As things stand, the tribunal will make the final judgment on that. That is not a bad process. What my view is, as a Minister, is irrelevant.

Q576 Robert Halfon: Given the Westminster Hall debate—and you read out all the criticisms of MPs from all parties—does it not concern you that Members of Parliament from all parties have a very negative view of the Charity Commission and its role?
Mr Hurd: It is part of my job, as I did in that debate, sometimes to stand up for the Commission and say what I said at the start, which was I think that it has been given an incredibly difficult job by Parliament in this process. We can all have different views on individual decisions; what concerns me is not the individual decision, but whether the underlying process is robust and the right one. All I am concerned about is the integrity of the charitable system that underlies this.

Q577 Robert Halfon: Your role is, as you say, to be independent—not just a person who defends the Charity Commission willy-nilly—and to represent the views of Members of Parliament as well.

Mr Hurd: Yes.

Robert Halfon: Given that clearly, as you read out, the views of so many Members of Parliament from all kinds of political parties were so negative about the Charity Commission, do you believe that the Commission has a significant reputational problem that it needs to repair with Members of Parliament?

Mr Hurd: That debate served a useful purpose in terms of making crystal clear, if it was not clear before, to the Charity Commission the strength of feeling on this issue. It knew that already, because it has been inundated with letters, but the debate was extremely powerful in terms of crystallising the problem that it has in terms of that individual decision. I would say, Robert, that the fact is that none of us has seen the full evidence on which the Charity Commission took its decision. It is difficult for us all to reach final judgments on it if we have not seen the evidence, and none of us has.

Q578 Robert Halfon: A final question, and then I am off. Do you not think though, given the clear public and parliamentary upset about the decision that has been made regarding the Christian Brethren, and the inconsistencies highlighted by my Hon. Friend of the druids, that the Government need to look seriously at the role of public benefit and how it applies to religion, and possibly step in and legislate so that we do not have these kinds of situations arising again?

Mr Hurd: In relation to the Brethren, the bit that I regret most is the amount of money that they have apparently had to spend in terms of their process. I do not have a view on the individual application, because I have not seen the evidence—and even if I did, it would not matter. The substantial point is: is the process that we set up from the 2006 Act the right one? Is it sufficiently robust?

What I have said in my letter is that, on the whole balance of evidence, I tend to side, or have sided, with Robin Hodgson’s view that we are better off sticking to definition through case law built up over hundreds of years, rather than seeking to try and distil that into a piece of statutory guidance, which will inevitably be rigid. By continuing to rely on case law, and appeal to law, you have a more flexible process that allows for some evolution. The Committee may have a different view about that.

I have looked at the process. It can be frustrating—it is perhaps not ideal—but in relying on case law rather than Parliament revisiting the whole issue of whether we can distil hundreds of years of case law into a statutory definition that will work, on balance we are better off with the current situation.

Q579 Robert Halfon: If you see injustice being done, do you not think it is the role of the Government to correct that injustice, rather than going with the status quo and, dare I say it, the Sir Humphrey option?

Mr Hurd: Yes, but your premise is that an injustice has been done. I do not have a view that an injustice is being done. I am waiting for a tribunal to review the evidence—evidence that I have not seen, because it is not my business to see it, and nor have you seen. You have taken a view; I have not taken a view. The view that matters is the view of the tribunal, if it gets to that point.

Chair: Minister, you said that you may be concerned about whether this is the best process. I can assure you that we are going to be looking at this process and we will be making recommendations about process, which I hope will be useful.

Q580 Greg Mulholland: Following on from Mr Halfon’s question, let me quote a couple of passages from your letter to Lord Hodgson, Nick. You say, first of all, “We look to the tribunals and courts to quickly provide legal clarity where questions arise”. Let’s face it, that does not happen quickly, and realistically it probably cannot happen quickly. Secondly, in terms of the guidance, the letter says, “It is little surprise that the Charity Commission’s statutory guidance on public benefit, which is itself an attempt to distil the principles of public benefit derived from case law into several dozen pages of guidance, has proved a difficult challenge.”

Is the reality that your decision not to pursue even a part-definition is not only a bit of a cop-out, but is putting the Charity Commission in this invidious position of having to somehow distil the case law into guidance, which has caused a problem with the independent schools, and is now a problem with the Preston Down Trust, and which is leading to these unfair, quite evident and sometimes hysterical accusations that it is somehow pursuing some agenda? It is trying to do this, but surely the better thing would be to have at least part-definition so that the Charity Commission would not be put in such a position.

Mr Hurd: I have said from the start that I think the Charity Commission was put in a difficult position by Parliament. I have said from the start that I think it has made a decent fist of the guidance. Of course it has been challenged, and a process has been set up to resolve those challenges. Of course, Greg, I would like it to be a quicker process. I would like it to be a cheaper process for those involved, and any ideas that the Committee has to improve that process I would be extremely interested to hear.

There is a reason why Parliament effectively passed this ball, because we have to recognise that condensing 100 years of case law into a statutory definition that works and stands the test of time is a very hard thing to do. That is the conclusion that Lord
Hodgson has reached, and it is a conclusion I share. Alongside that, there is some merit in having a relatively flexible process that is allowed to evolve, rather than relying on a rigid definition that may have to be revisited. I have some misgivings about the potential politicisation of this process, whereas I think definition by law is a better way to go. Is any of this ideal, Greg? No, it is not, but it is a case of choosing the best option.

On part-definitions, I note that they have introduced them in Scotland. We will watch the progress there carefully. I am not entirely convinced that a part-definition will help to bring the clarity that the people are looking for. I will keep an open mind on that and we will review how things go in Scotland, but I have not been persuaded up to this point that a part-definition is going to add a huge amount of value.

Q581 Greg Mulholland: A very quick supplementary: do you not think that leaving this role to the Charity Commission of having to distil this guidance has precisely led to an unfair politicisation of this whole debate, and it being attacked of having a certain agenda—of being anti-religion, anti-Christian or left wing—or bias when it is trying to do what Parliament has set out that it should do?

Mr Hurd: There have been two areas of controversy. The first is independent schools, which we know is politically very charged—people come to that debate with all kinds of baggage. That is a given. It is a hot potato and, in hindsight, we will all have different views on how wise the approach of the Charity Commission was to that issue. In relation to the Brethren, and the concerns about wider implications for religious organisations, I have said in the debate— I continue to believe it—that I take the Charity Commission at face value in saying that all it is concerned about in the Plymouth Brethren case is the Plymouth Brethren case. A fact that did not come out of the debate was that the Charity Commission continues to register hundreds of religious organisations each year. We probably have to accept the fact that the Plymouth Brethren case is about the Plymouth Brethren.

Q582 Greg Mulholland: The process is key here. In your letter you rightly say, “We also think it is right that all charities should be able to demonstrate their public benefit in return for charitable status”. That is key and is important in this case. The first point there is that, since the original ruling, the Plymouth Brethren have got out. It is not in their nature to get involved in PR and telling people what they are doing, but they have had to do that, and they have done that. The problem then is the process by which they can challenge the original decision only by going through the tribunal.

There is a very interesting quote from your speech in the debate, when you said, “Unless the Charity Commission takes a different view on the evidence presented to it by the Brethren, it is for the tribunal to decide”. You suggested in that debate that the Charity Commission could change its mind on the basis of subsequent evidence presented by the Brethren, and the Brethren themselves have suggested the possibility of going to the Attorney-General for a clarification that the Commission could then accept.

That being the case, do you accept not only the frustrations of the Plymouth Brethren at having to go through this costly process, but also the point about the cost to the taxpayer? Is there not a better way of allowing the Commission to say, “Okay, we have had more evidence, we have now looked at it again and changed our minds,” or going to the Attorney-General? Could that process be improved so that we do not have this costly and lengthy process?

Mr Hurd: I certainly regret the length and the cost. Coming back to your first point: should the Plymouth Brethren and other charities demonstrate public benefit? Yes. Is it in their interest to demonstrate public benefit? I would argue yes as well. Have the Plymouth Brethren been stirred up to be a bit more expressive and vocal in terms of communicating their public benefit? Yes. Does the Charity Commission have an opportunity to stand down the case? I understand that it does, but it has to take that decision itself, and there will not be any political pressure on it to do so. Can the Attorney-General intervene? Yes, he can, but that is up to him.

Again, if there is a choice between this process and Parliament trying to seek a definition that puts hundreds of years of case law in some neat, punchy, clear way, that would be very hard. There is a very good reason why Parliament passed this ball in the first place. We have been round this track before. If there is a way to make the Commission’s process and the tribunal process crisper, quicker and cheaper, I am all ears. But, if it is one of those choices, I would advocate we come down on the side of looking for definition in case law, rather than putting pressure on Parliament to try to condense hundreds of years into a new statutory position.

Q583 Chair: Minister, you are aware of what they are doing in Australia, which is precisely the opposite of what we have done in our Act. They are producing a taxonomy of types of charity in order for Parliament to much more closely control what is a charity. Is this something that has crossed your radar and that you have considered?

Mr Hurd: Coincidentally, I have a meeting with the relevant Australian Minister this afternoon, and that is one of the things we will be discussing.

Q584 Chair: We had a meeting with them. They are struck by our experiences and want to avoid some of the issues that we have dealt with. Can I ask you to amplify something else that you said, which I think is rather significant? You do not want the process of deciding what a charity is to be politicised. Can you tell us what you mean by that?

Mr Hurd: I think there is a risk. For example, some of the proposals around what a part-definition might require would perhaps secondary legislation taken through by Ministers. That sort of process does lend itself to some degree of politicisation, whereas the current system, whereby a judgment on the Plymouth Brethren is taken independently in law, is instinctively, for me, a better process than some definition debated through Parliament.
Q585 Chair: Do you think that the 2006 Act has given rise to these very vexed disputes? If so, what is wrong with the 2006 Act that has given rise to them? I do not think that anybody particularly thought there was anything wrong with the law before.

Mr Hurd: No. What the Act changed, in terms of what was required of the Charity Commission, was a requirement to publish some guidance. As you remember, the thrust of the Act was to raise the profile of public benefit and give that greater weight.

Q586 Chair: That does constitute a change in the legal environment.

Mr Hurd: It required a change in terms of what was required of the Charity Commission, which was to publish guidance, and the law also required it to do more in terms of promoting the public benefit requirement. It took a view, in relation to independent schools, that it was going to be proactive in terms of investigating the public benefit, as demonstrated by schools. That was very politically charged and that created a great deal of noise. That eventually got resolved through an upper tribunal.

In relation to the Plymouth Brethren, I do not think it has gone into this process with a view to causing a great row about the status of religious charities. I genuinely think—I may be a bit naive about this, but I do not think so—it was presented with an individual case, about which it has misgivings, and therefore this process was reached.

Q587 Chair: May I just be absolutely clear? You are of the opinion, and it is implicit in the Act, that the Charity Commission carries out a quasi-judicial function when it decides who shall and who shall not be a charity, and that that should be beyond political influence.

Mr Hurd: It is required to publish guidance, and it ultimately has the decision on who to register as a charity.

Q588 Chair: That is a quasi-judicial decision, is it not?

Mr Hurd: I do not know if I would describe it as that, but that is its power.

Q589 Chair: It is trying to interpret the law, is it not?

Mr Hurd: It has the power to decide who qualifies for registration as a charitable organisation, but it is subject to challenge.

Q590 Chair: It is ultimately a legal question and not a question that should be subjected to political opinions—that is your view.

Mr Hurd: I think it would be very hard for this place to reach an effective statutory definition of charity and public benefit.

Q591 Chair: That is a different question. Can I ask you to reflect on these questions and write to us, perhaps after you have taken legal advice? This is a very important question. To what extent should the Charity Commission be responsive to public opinion and, indeed, opinion in Parliament; and to what extent is it established in order to deliver decisions that are based soundly on law and insulated from subjective political judgment? That is the question, is it not?

Mr Hurd: Yes, it is an independent regulator and therefore not subject to political interference, and its judgments or decisions are there to be challenged in law through a legal process.

Q592 Chair: If the Charity Commission is deemed to be making the wrong decisions, and these are upheld by tribunals, it is the law that needs to be amended and not the Charity Commission that should somehow be held accountable, because it is accountable to the law in these matters.

Mr Hurd: It is ultimately a legal judgment. Where there is a difference of opinion and where there is a challenge, it is decided by the tribunal.

Q593 Chair: When you have perhaps reflected a little more on this, you could write us a more definitive response to these questions, because I think it would be very useful for our inquiry.

Mr Hurd: Of course.

Q594 Greg Mulholland: Given the level of interest in the Preston Down Trust case, I have a quick final question. I absolutely agree with the view you espoused in the letter, which is that charities should be able to demonstrate their public benefit. In 2009, the Charity Commission felt that the Plymouth Brethren had not demonstrated that public benefit. In 2012, if the public benefit test was passed and the Charity Commission accepted that, from the evidence that has been presented since then, the issue need not go to tribunal. Is that correct?

Mr Hurd: I understand that there is a window of opportunity for the Charity Commission to review any new evidence and take a view on that. There is no political pressure in that process at all.

Q595 Greg Mulholland: No, you have established that.

Mr Hurd: That is my understanding.

Q596 Charlie Elphicke: Do you find it invidious—even frustrating—that you effectively have responsibility without power?

Mr Hurd: Responsibility for?

Charlie Elphicke: For the Charity Commission. But no power over what it does.

Mr Hurd: I have responsibility for reviewing the legal framework under which charities operate, and the Charity Commission is the independent regulator of the sector. It is independent of me.

Q597 Charlie Elphicke: You do a strong job of representing the Charity Commission to Parliament and the people. How do you represent the concerns of people and Parliament to the Charity Commission?

Mr Hurd: You are trying to present me as an advocate of the Charity Commission and its decision. What I will advocate and stand up for, because I think someone has to, is its independence. We set it up in a specific way, and we can agree or disagree with its individual decisions, but this is what we asked it to do, and it is an independent regulator—sometimes we
have to respect that. As we laboured in a previous day, ultimately its decisions are subject to challenge in law, and that challenge is resolved in law. Obviously it is there as an independent regulator in a way to protect the integrity of the charitable system, and to protect the interests of donors and the taxpayer. Therefore, it has to be responsive to the public in that respect; that is part of the challenge of that role. I do not think it does a bad job in that respect.

Q598 Charlie Elphicke: If Mr Shawcross came to you and said, “As a new Chairman, I want to rework the Commission and rework the board, and have some new appointments,” would you support him in that process? What would your role be in that process?

Mr Hurd: He is an independent Chairman. We obviously lead the process of appointing him. We think he is an excellent appointment and we look to support him in any way we can. The Commission has a fantastically difficult job to do, and it is incumbent on us at the Cabinet Office to help in any way we can. We wish him every success.

Q599 Charlie Elphicke: There is a lot of public concern about chugging—opinion polls are off the chart in terms of the level of worry about it. Mr Shawcross said it was for Parliament and the Government to take action. Do you think it is time for action?

Mr Hurd: I think three things. I think, ultimately, it has to come into the licensing regime, but anything that requires primary legislation is going to take a bit of time. My instinct is always to try to see whether self-regulation works, preferably with the hint of a big stick behind it. Having looked at what is going on in terms of what are called voluntary site agreements, which are agreements between the regulator and the local authority—there are around 50 in place at the moment—the evidence seems to be that they are working quite well in terms of reducing public concern about chugging, which is very real. My instinct is to encourage more of that before hitting it with a big stick. I am also wary of imposing too many more burdens on local authorities at this point in time. The final consideration is that while you and I may not like chugging—you and I may cross the road—and while it may annoy lots of our constituents, chugging raises something like £85 million a year for charities. There are lots of people out there who respond positively to that conversation on the street—unfathomable as that might be to you and me—and that £85 million is extremely valuable to the sector at the moment.

We will be moving to bring face-to-face chugging into the licensing regime. My current instinct is to give as much air and space to self-regulation and testing the effects of the voluntary site agreements, which now contain mystery shopper arrangements, the ability to raise fines and other provisions. My instinct is to give that as much space as possible before the big stick.

Q600 Charlie Elphicke: Finally, my concern is that the poll of the Charity Commission shows that over two thirds of people think that there ought to be action. In July, when The Guardian said, “Should there be more restrictions on chugging?”, 93% said yes. Some of the highest recommended comments were, “I’ve seen these people step directly in front of people, follow people down the street, yell at people across the street, and a few times even lightly grab people’s shoulders.” Another highly recommended comment said, “Arm the unemployed with AK-47s and allow them to shoot chuggers down like dogs”. These are Guardianistas; this is not the Daily Mail—not the red meat eaters. There is substantial public concern and a desire for action to be taken. Will you look at taking action?

Mr Hurd: Charlie, your premise is that no action is being taken, but it is being taken through things called voluntary site agreements, which are regulating chugging in agreement with local authorities. The evidence is that in the 50-odd areas where it is happening, it is working quite well. That has been stiffened by the ability to raise fines, so something is happening and it appears to be working, which is why I want to encourage more of that, rather than relying on a legislative process that will take a long period of time and impose some burdens on local authorities, which may not relish that at this moment of time.

Q601 Charlie Elphicke: Are the chuggers in the last-chance saloon? Is this the last chance for them to clean up their act—or else?

Mr Hurd: I want to see self-regulation work. I want to see more voluntary site agreements, because I want chugging to come into licensing regime and I want it to be regulated effectively. On the evidence I have seen, the voluntary site agreements seem to be a very welcome step in the right direction. Where we will end up ultimately will be chugging in some comprehensive licensing regime, but I want to see self-regulation given a bit more space to work, because the evidence I have seen in the areas where voluntary site agreements are in place is that they do work.

Q602 Lindsay Roy: In the interim, what advice would you give to citizens who feel threatened, harassed and intimidated by people on the street who are chugging?

Mr Hurd: They could always do what I do: cross the road. You can avoid a chugger.

Q603 Chair: Where can they complain?

Mr Hurd: There is a regulatory body for chuggers. That is a legitimate point of complaint. They can also complain to their local authority.

Q604 Chair: Or to Cabinet Office.

Mr Hurd: If they ultimately want to complain to me, of course that is their right.

Q605 Lindsay Roy: Police.

Mr Hurd: If there is a case of genuine harassment, of course, yes. We all ultimately have the opportunity to avoid them.

Q606 Chair: I will simply ask, if I may, about whether you think the rules on political campaigning by charities are operating effectively.
Mr Hurd: I think they are about right, in the sense it is quite clear that charities can get involved in campaigning only when that clearly serves their charitable purpose. I would also be very reluctant, Chairman, to go down a path that sends any message to charities that somehow their campaigning role, their advocacy role and their independence from the state are being challenged or undermined in any way. Their ability to speak truth to power is part of their value to society, and that sometimes involves saying very uncomfortable things to us. I would be very wary about undermining that power they have.

The law is extremely clear: political campaigning can happen only when it clearly serves a charitable purpose. We have had millions of examples of charities that have campaigned around things like public smoking, when the cancer charities were very much in the lead on that debate. That should be welcomed and encouraged.

Chair: I think we have nearly got you in on time—a few minutes over, but thank you very much.

Mr Hurd: I will write to you as requested.

Chair: I am most grateful for that.
Written evidence

Written evidence submitted by Independent Schools Council (CH 18)

A. SUMMARY

— We support the approach taken by the Charities Act 2006 and the Charities Act 2011 to charitable status and public benefit.

— We welcome the analysis and conclusions reached by the Upper Tribunal in our judicial review regarding charitable status, public benefit and the responsibilities of charity trustees in these areas.

— We support and agree with Lord Hodgson’s recent conclusion that questions regarding public benefit are better left to the courts than by means of new and untested legislative definitions.

— We support the independent regulation of charities including charitable independent schools by a neutral body accountable to Parliament.

— We support conclusions reached in the Goodman Report that differences of opinion regarding independent education should not be disputed on the battleground of charitable status.

— We believe that there is no justification for treating charitable independent schools differently to other charities for the purposes of taxation.

B. COMMENTARY

We support the approach taken in the Charities Act 2006 and the Charities Act 2011 to charitable status and public benefit.

1. The Independent Schools Council welcomes the opportunity to give our views on the questions posed by the Public Administration Select Committee, in particular the question “to what extent has the Charities Act 2006 achieved its intended effects of … providing a clear definition of charity, with an emphasis on public benefit?”

2. We focus on three aspects of the legal definition of charity in the Charities Act 2006:

(a) The emphasis on “charity” as an organisation rather than a concept.

(b) The essential linkage between charitable status, public benefit and the charity’s purpose.

(c) The retention of public benefit law and the so-called “presumption” of public benefit.

3. Charity as an organisation, not a concept

(a) The Act opens with the words: “For the purposes of the law of England and Wales, “charity” means an institution which …”

(b) When we talk about charity, therefore, we are talking about organisations and not concepts. This must be kept in mind in any discussion about charitable status, because popular concepts of what charity means are often far removed from legal definitions of charity. For example, for many “charity” is synonymous with “love”, as most famously described in 1 Corinthians 13. Legislators can of course take note of public sentiment, but this should not cloud judgments on matters of legal complexity. Indeed, as one recent survey concluded, “one of the strengths of the legal meaning of “charity” and the way in which the concept has been and still is allowed to evolve is that it is largely immune from the vagaries of political fashion or popular opinion and, by its ability to resist those forces, can accommodate needs and aspirations as they evolve within society.”1 As will be evident from our comments below, we strongly support this independence and believe it would be a lasting mistake to try to affix static notions of public benefit to any class of charity.

4. Charitable status: a question of purposes and not activities

(a) One of the reasons we pursued a judicial review of the Charity Commission’s public benefit guidance was its failure to distinguish properly between what a charity is established to do, and what it does. Charitable status depends on the former, not the latter. The proper administration of a charity involves an examination of the latter, but that does not go to the organisation’s status (see below).

(b) The Act is clear on this point: section 2(1) states that a charitable purpose—the pre-requisite of charitable status—is a purpose which falls within the list of descriptions of purposes and is (ie: the purpose is) for the public benefit. The “public benefit test” in section 3 is equally concerned with an organisation’s purpose.

(c) In other words, charitable status is conferred upon an organisation which is established with purposes which are for the public benefit. The charity’s assets are thenceforth irrevocably dedicated to charity (ie: must always be used for charitable purposes). The charity’s trustees

will be in breach of trust if they act in a way inconsistent with the purposes of the charity, including if they fail to act for the public benefit, but their lapses will have no effect on the status of the charity itself or its assets. This is a crucial distinction.

(d) The Upper Tribunal agreed, “The status of an existing registered charity and the duties of the trustees have not been changed by the 2006 Act. As to status, either it was entitled to be registered before the 2006 Act or it was not. If it was, its purposes must have been for the public benefit as that term was then understood and, since we are dealing with schools where there is no presumption made under the pre-2006 Act law for the reasons we have given, it thus fulfils the public benefit test under the 2006 Act. Accordingly, whether such a school is a charity within the meaning of the 2006 Act does not now turn on the way in which it operates any more than it did before. Its status as a charity depends on what it was established to do and not on what it does.”

(e) This contrasts with the approach indicated by the Commission’s former Chairman, that the threshold to qualify schools for charitable status would be raised every year to ensure that they provide the maximum possible public benefit. It cannot be right to hold a sword of Damocles over an organisation and threaten to strip its assets (which is effectively what removing charitable status would do) based on a periodic, fluctuating assessment by an external agency, against hazy benchmarks, of its activities.

(f) In summary: debating whether a school (or indeed any charity) is “doing enough” to justify charitable status is, as far as charity law is concerned, the wrong question. Schools have charitable status because they are established for public benefit purposes. What the schools do—and more particularly, what their trustees do—in furtherance of those charitable purposes is of course of interest to all, and we support the Upper Tribunal’s approach on this question (see below, paragraph 8 onwards). But it does not engage the question of charitable status.

5. Public benefit law and the “presumption”

(a) The Act retained all pre-existing public benefit law and did not attempt to graft on new definitions. Given the longevity of charities and the legal system underpinning them, this was the right approach. Lord Hodgson agreed: see paragraph 14 below.

(b) The Act also declared that “it is not to be presumed that a purpose of a particular description is for the public benefit.” This received much attention and was described as a reversal of a previous presumption of public benefit for charities relieving poverty, advancing education or advancing religion. Many commentators, however, were sceptical as to whether there had ever been such a presumption in the first place. This debate continues.

(c) We believe the academic arguments here are less significant than the practical interpretation of the Act, as expressed by the Upper Tribunal: “what the 2006 Act has done is to bring into focus what it is that the pre-existing law already required, and what the law now requires by way of the provision of benefit and to whom it must be provided.”

6. To sum up: we believe that the Act, as interpreted by the Upper Tribunal, brings into focus what public benefit law requires of charities and their trustees. We therefore answer the Committee’s question affirmatively: there is now a clear definition of charity, with an emphasis on public benefit.

We welcome the analysis and conclusions reached by the Upper Tribunal in our judicial review regarding charitable status, public benefit and the responsibilities of charity trustees in these areas.

7. We comment above on the importance of remembering that charitable status is conferred on organisations with public benefit purposes, and does not depend on what the charity trustees do in furtherance of those purposes. We repeat this here, as it formed an important part of the Upper Tribunal’s conclusions in our judicial review of the Commission’s approach to public benefit. The charitable status of a school, and the proper conduct by its trustees, are two quite separate matters.

8. Turning now to the question of what proper conduct by charity trustees looks like, the Upper Tribunal clarified the scope and nature of trustees’ responsibilities in furthering a charity’s public benefit purposes. The conclusions reached by the Upper Tribunal emphasise the key principles:

(a) A school charity must not become a place where the education on offer is exclusively the preserve of those who can afford to pay full fees: “when we refer to a school failing to act for the public benefit, we mean that it is making inadequate provision other than the provision of education to fee-paying students.”

(b) The question of how schools reach out to fulfil their charitable objects is one for the trustees to resolve: a “fact-sensitive assessment … to look at what a trustee, acting in the interests of the community as a whole, would do in all the circumstance of the particular school under...”

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2 The Independent Schools Council v The Charity Commission and others [2011] UKUT 421 (TCC) paragraph 191 (emphasis added) (referred to below as “ISC v CC”).
3 Charity audit threat to private school fees, The Times 18 August 2007.
4 ISC v CC paragraph 88.
5 ISC v CC paragraph 214.
consideration and to ask what provision should be made once the threshold of benefit going beyond the de minimis or token level had been met”.9

(c) On questions of whether trustees are acting properly in the discharge of their responsibilities regarding public benefit, it is not for the Commission to substitute its own assessments for those properly made by the trustees: "This is all a matter of judgment for the trustees. There will be no one right answer. There will be one or more minimum benefits below which no reasonable trustees would go but subject to that, the level of provision and the method of its provision is properly a matter for them and not for the Charity Commission or the court".7

9. The ongoing significance of the “public benefit requirement” is therefore in the arena of trustee responsibility. Its relevance is driven by a simple syllogism: a charitable school has purposes for the public benefit; the trustees must act within the school’s purposes; the trustees must therefore act for the public benefit. Put more simply: the school is a charity, its trustees must therefore act charitably.

10. What does it mean to act charitably? It means to act so as to meet the school’s purposes—be they “the advancement of education”, or “the operation of a school for London girls”, or however else described—and to do so by overseeing activities which are of benefit to a sufficiently open section of the public. The importance of how each school’s charitable purposes are described cannot be overstated: they direct and prescribe the parameters within which the trustees must act. They are at the heart of every discussion about what the school can do for “the poor”: what are we established to do and who are we intended to benefit? By definition, the answer to this second question will be a section of the public wider than those that can afford full fees.

11. The Charities Act 2006, as interpreted by the Upper Tribunal, has assisted in bringing these matters into sharper focus. The Upper Tribunal formulated the following proposition: “a trust which excludes the poor from benefit cannot be a charity” before going on to note that “such a school is in practice unlikely to exist”.8 We agree with this conclusion: we know of no school that exercises such an exclusionary practice. The challenge for each school is therefore how to deal with the practical need for the school to levy fees in order to continue to operate, whilst providing educational benefits to those who fall within its public beneficiary class who cannot afford the fees. As the Upper Tribunal has confirmed, it is not for the Commission or the Tribunal to dictate what is or is not the right balance. And it will inevitably be a balance, taking into account the resources of the school, the needs of the pupils and the wider needs of the community, all set against the background of the school’s particular charitable purposes. In essence, the question for trustees is: how can the school best deliver its charitable purposes whilst living within its means and maintaining a viable future?

12. The charity trustees are best placed to make these decisions, and for this reason it would be a lasting mistake to be prescriptive about how all schools must meet the public benefit test. It is completely understandable that, for example, the chairman of the British Olympic Association would like to make investment in state school sport a condition of charitable status for independent schools, just as it isn’t a surprise that advocates of the Coalition’s academy programme see the threshold in terms of academy sponsorship, or that the Charity Commission puts emphasis on fee discounts and bursaries.9 These are all valid ambitions and, of course, independent schools are already performing strongly in all these areas and more besides: £284 million each year in bursaries; 970 schools in active sporting partnerships; 30+ schools sponsoring or soon to sponsor free schools and academies. But, as the Upper Tribunal confirms, “it is not possible to be prescriptive about the nature of the benefits which a school must provide to the poor nor the extent of them. It is for the charity trustees of the school concerned to address and assess how their obligations might best be fulfilled in the context of their own particular circumstances”.10

13. Above all, public benefit is not a compliance issue. Schools are charities, and public benefit is charitable DNA. No headmistress would reduce the ethos of her school to one of “compliance” with statutory or contractual obligations to educate children. No trustee of an animal welfare charity would think that his responsibility was limited to assisting a de minimis number of animals. And no school governor should regard public benefit as being a compliance hurdle or tickbox. The significance of the Upper Tribunal’s ruling, therefore, is that it reinforces the independence of schools which have, in many cases, been pursuing their charitable purposes for centuries. The success of independent schools depends upon preserving the autonomy of those who run them to take the right decisions for the schools, and the pupils and communities they serve. Each school is different and delivers its public benefit in unique but equally valid ways. In upholding ISC’s judicial review of the Charity Commission last year, the Upper Tribunal recognised that there is no “one size fits all” requirement of public benefit.

We support and agree with Lord Hodgson’s recent conclusion that questions regarding public benefit are better left to the courts than by means of new and untested legislative definitions:

14. Lord Hodgson was appointed as the independent reviewer of the Charities Act 2006. We support his conclusion regarding the suitability of case law and precedent over new and untested legislative definitions:

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6 ISC v CC paragraph 215(b).
7 ISC v CC paragraph 220.
8 ISC v CC, paragraphs 177 and 178.
9 Although, as we comment in this submission, charitable status is the wrong target.
10 ISC v CC paragraph 217.
“This question [should public benefit be defined in legislation] was also considered by the Strategy Unit in the development of their report, Private Action, Public Benefit. Their conclusion was that the flexibility of case law was to be preferred. I agree. Further, the overwhelming majority of views gathered in the course of the Review’s consultation took the view that a statutory definition would be too inflexible to cope with the diversity of the sector and the need for change and adaptation over time. Given that the Upper Tribunal has only recently delivered its ruling on the meaning of public benefit and new guidance on the point has recently been published for consultation by the Charity Commission, it seems only sensible to wait and see how these developments play out.”

We support the independent regulation of charities including charitable independent schools by a neutral body accountable to Parliament.

15. Independent schools are some of the oldest charities in the country. Lord Hodgson opens his review of the Charities Act with the following statement:

“Charities have a long history in this country. The oldest charity in England is believed to be the King’s School Canterbury, which was established in 597 and, despite some gaps in its history, still exists today.”

16. Independent schools represent a substantial, established part of the charitable sector. In addition to the intrinsic value of the education they provide, those schools and their pupils strive to serve and to provide for others within their communities in all manner of ways, often unheralded but widely valued. But we are concerned that it has become commonplace to dismiss independent schools as poor relations to “proper” charities. For the hundreds of thousands of pupils our schools educate, and the tens of thousands of teachers and other staff our schools employ, the current narrative of regarding charitable independent schools as somewhere between historical anachronisms and tax avoidance shelters is deeply corrosive.

17. The Commission has, as its primary statutory objective, the “public confidence objective” of increasing public trust and confidence in charities. We expect the Commission, therefore, to support, not undermine, the right of independent schools to take their place on the Commission’s register of charities. This is not to ask the Commission to take a political or ideological stance on independent education, any more than it would take a theological stance on different types of religious charities.

We support conclusions reached in the Goodman Report that differences of opinion regarding independent education should not be disputed on the battleground of charitable status.

18. There will always be opponents to the existence of independent education. Their voices are constantly heard across a wide range of subjects, from social mobility, to university admission, charitable status, academy sponsorship and even the Olympic success of Team GB. But their narrative remains the same.

19. We believe that the charitable status/public benefit debate is often no more than a smoke-screen for those who wish to see the demise of independent education for ideological or political reasons. Our judicial review of the Commission’s public benefit guidance, for example, attracted the attention of an anti-independent pressure group who intervened and raised issues wholly irrelevant to the legal questions at stake, introducing “evidence” which was described by the Upper Tribunal as no more than a manifesto of strongly held beliefs, an “attack on the whole system of private education and its allegedly socially divisive effects and detrimental consequences for social mobility... what we have are the views of certain educationalists drawing on research in support of their conclusions...the material comes nowhere near establishing clearly the “dis-benefits” which it identifies.”

20. These attacks, apparently focused on legal definitions of charity and public benefit, in fact engage a wholly different set of issues regarding the fundamental right of individuals to choose systems of education for their children, protected in many international treaties and conventions.

21. As long ago as 1976, the Goodman Report on charity law observed acutely that:

“We are of course aware that there is a body of opinion concerned to eliminate private medicine and private education. This is a matter falling wholly outside the province of this Committee and must be determined according to political decision, but not in our view by depriving institutions providing these services of charitable status.”

22. We strongly support this view.

We believe that there is no justification for treating charitable independent schools differently to other charities for the purposes of taxation.

23. One of the tactics of those who oppose independent education is to question the legitimacy of tax reliefs available to charitable schools. Indeed, independent schools are often portrayed as “clinging on” to charitable

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12 ISC v CC paragraphs 96 and 108.
status for the sole purpose of continuing to take advantage of these tax reliefs. The value of these reliefs is often quoted at around £100 million per annum.

24. There are a number of false assumptions here to expose, and we refer the Committee to the authoritative report and survey carried out by the Charity Tax Group in 2011, “Charity Tax Map”, on each of these:14

(a) FACT: Charities pay tax. All charities are subject to taxation and independent schools are no exception. The Charity Tax Map sets out in detail the 18 different taxes that can affect charities, and the multiple tax regimes and procedures with which charities have to comply in order to administer them. The single largest category of tax paid was employer NICs, followed by irrecoverable VAT, with VAT estimated to cost the charitable sector between £1 billion—£1.4 billion each year, all to the benefit of the Exchequer.

(b) FACT: Estimates of charity tax reliefs are inherently unreliable. The Charity Tax Group noted that “it has not been possible to attempt to quantify the total value to the sector of all the tax reliefs and exemptions available to charities. For example, a charity might not know what it would have been required to pay if it had not been given relief from a tax or if some of its supplies had been standard-rated instead of VAT exempt or zero-rated. With income/corporation tax exemptions, were the existing reliefs available charities might choose to route more activities through trading subsidiaries so as not to pay tax.”15 The same report notes that estimates of charity tax reliefs by HMRC include reliefs, such as Gift Aid and inheritance tax reliefs, that benefit individual donors rather than the charitable organisations.

(c) ASSUMPTION: Tax reliefs are “concessions”. There is a prevalent view that tax reliefs for charities are essentially a form of Treasury finance: expenditure by the Government. The Charity Tax Map notes a “fundamentally different rationale”, as expressed by the Charity Law Association. The overriding purpose of taxation is to raise funds from individuals and organisations within society in order to meet the expenditure required to service the needs of that society: in short, expenditure for the public benefit. Charities are by definition established for public benefit purposes and must be administered consistent with those purposes. So, in the broadest of terms, charities exist to serve society in a way that is comparable to (or at least complementary to) the way in which Government exists to serve society. On that basis, organisations established for purposes recognised as charitable (ie: for the public benefit) warrant exemption from tax without further interrogation of the level of popular or political support that particular charitable purposes attract.

25. We completely refute the suggestion that independent schools are somehow using charitable status as a tax dodge—indeed it is somewhat facile given that many schools were established before income was routinely taxed. Independent schools are properly charities because they have public benefit purposes. They are no different to other educational charities, such as academies, colleges of further education or university colleges, and enjoy no treatment which is different or special when compared to other charities. In fact, independent schools are in a considerably worse position to academies, for example, in relation to VAT. Independent schools, along with many other service-providing charities, are unable to reclaim VAT and as mentioned above the cost of irrecoverable VAT across the charitable sector is estimated above £1 billion each year. Academies, on the other hand, can reclaim VAT on costs associated with educating their pupils.

26. The implication that the taxpayer is subsidising independent schools and their paying parents to the value of the tax reliefs is also fundamentally one-sided, ignoring as it does the more significant financial contributions of independent schools to the taxpayer:

(a) Independent schools provide fee assistance worth hundreds of millions of pounds each year to those who cannot afford the full fees. Our latest Census gives the headline figures on school support for fees in 2012, with schools providing fee assistance worth more than £595 million. The lion’s share of fee assistance is in the form of means-tested bursaries: more than £284 million to 39,545 pupils. By way of comparison, in 1998 at the high point of the Assisted Places Scheme, 40,531 pupils were assisted financially. In other words, ISC schools are now supporting—from their own resources—almost the same number of children who benefitted from state support provided by the APS.

(b) Independent schools educate hundreds of thousands of children each year who are entitled to a place at state-funded schools. Ignoring overseas pupils, there are currently 482,000 children at ISC schools who would be eligible for places at state schools. It is difficult to assess the cost of providing these additional places—a conservative estimate would be around £3 billion additional funding each year, based on the Department for Education’s “funding per pupil” estimate of £6,230.16 To impose tax on that activity would be illogical as well as inefficient.

14 Referenced at footnote 1 above.
16 This also presupposes that sufficient available places are available at no additional capital cost, which is patently not the case. For example, London Councils is reported this month as predicting that the cost of meeting a primary and secondary school places shortfall will reach £2.3 billion by 2015, representing a shortfall of 90,000 places: http://www.bbc.co.uk/news/uk-england-london-19475124.
27. In other words, independent schools form a vital part of the mixed economy that makes up the UK’s education system. Education is, by its nature, expensive and all schools, colleges and universities must be funded by one means or another. As the Upper Tribunal noted:

“Who a school is able to admit depends on the financial state of the school, the size of its endowment and the way in which those running the school choose to prioritise expenditure (eg on providing scholarships or keeping class sizes down by employing more staff) and the facilities which it provides. It is necessary for all of the schools to charge fees. They do not, it seems to us, choose the majority of their students because of a preference for students who have as a characteristic an ability to pay fees; they do so because they cannot afford not to choose such students. And, of course, the charging of fees does not, as we have seen, per se preclude charitable status.”

28. We end our brief submission with these common sense words. Without state support, independent schools must charge fees to fund their operations. Charging fees is not inconsistent with charitable status. There is no justification for treating independent schools any differently to any other type of charity.

September 2012

Written evidence submitted by Institute of Fundraising (IoF), Fundraising Standards Board (FRSB) and Public Fundraising Regulatory Association (PFRA) (CH 19)

This is a joint statement to the Inquiry from the Institute of Fundraising (IoF), Fundraising Standards Board (FRSB) and Public Fundraising Regulatory Association (PFRA), the main fundraising self-regulation organisations. We share a commitment to maintaining the high levels of public trust and confidence in charities with a view to increasing funding into vital charitable causes. This statement supports the individual organisational submissions. In summary, we believe:

— Self-regulation of fundraising has been successful and is effective, but where there is a need for clarification and enhancements to the current scheme, we will work together to resolve it.

— The chief executives and chairs of the three organisations are united in their determination to work co-operatively to meet the challenges of self-regulation and have already made significant progress in agreeing a way forward.

— Substantial further work is needed to develop a suitable solution to Public Collections reform.

1. There is general agreement in the sector that self-regulation of fundraising has been successful and is effective and responsive to fundraising practices as they develop. The collective commitment of the sector has led to improved compliance with best practice which is confirmed by the relatively low proportion of complaints recorded by the FRSB in its Annual Complaints Return.18

2. However, the sector is not complacent and is committed to continuing to improve practice and enhance the framework for the scheme. The concerns raised during the review of the Charities Act 2006 about the current system are appreciated—including potential confusion about the respective roles and responsibilities of the bodies, the level of membership of the scheme, and enforcement for non-compliance. The ongoing challenges in the current regime for public collections are also well understood.

3. The IoF, FRSB and PFRA have held the first two in a series of meetings and discussions between the chief executives and chairs of the three organisations, designed to clarify their roles and responsibilities in relation to the public and their members and to strengthen the existing scheme.

4. There is unanimous agreement that the FRSB should be the single public facing regulatory body and point of contact for the public with regard to complaints relating to any kind of fundraising. The IoF will be the standards setter and writer of rules and codes for all fundraising, against which the FRSB will adjudicate. The PFRA continues to play a specialist business-to-business role focused on distribution and enforcement of face-to-face fundraising.

17 ISC v CC paragraph 210 (our emphasis).

5. We are committed to working together to ensure that self-regulation is as efficient and effective as possible. We will be reviewing the fundraising landscape of the future and looking at how our individual organisations might evolve structurally and financially to meet those potential changes.

6. Public collections form a vital and efficient way for charities to raise funds. At the same time we acknowledge that the current public collections licensing regime has its problems. On this basis we have already started a project to explore potential long-term solutions for public collections which includes the three fundraising self-regulatory bodies and wider stakeholders, including the Local Government Association, Charity Retail Association, Textile Recycling Association, National Association of Licensing Enforcement Officer and others.

September 2012

Written evidence submitted by Public Fundraising Regulatory Association (PFRA) (CH 20)

SUMMARY

1. The PFRA's remit extends only to face-to-face fundraising. Therefore, this submission focuses on those aspects of the Charities Act 2006 that would have applied to public collections.

2. Self-regulation of fundraising has been successful and is effective. While there is always room for improvement, the key organisations involved (ourselves, the Fundraising Standards Board, and the Institute of Fundraising) are committed to working together to clarify and enhance the current scheme. These organisations will work with wider stakeholders (for example, the Local Government Association, the National Association of Licensing and Enforcement Officers, and the Association of Town Centre Management) to achieve necessary improvements.

3. Substantial further work is needed to develop a complete and suitable public collections regime.

4. The PFRA recommends that the Public Affairs Select Committee encourage all local authorities who perceive problems with face-to-face fundraising in their area to work with the PFRA to regulate the activity.

1b. To what extent has the Charities Act 2006 achieved it's intended effects of improving the regulation of charity fundraising, and reducing regulations on the sector, especially for smaller charities?

5. The sections of the Act that relate to public collections were never implemented, so in short, the Act has not significantly improved the regulation of public collections. Along with the Institute of Fundraising and the Fundraising Standards Board (FRSB), we believe that substantial further work is needed to develop a complete and suitable public collections regime.

6. The uncertainty and inefficiency of the existing regulatory landscape has been well canvassed and documented, so we have not rehearsed these arguments here.

7. An appropriate and balanced unified licensing and regulatory regime would lead to significant improvements for both charities and local authorities, by establishing greater efficiency and clarity. The logic of the regime established in the Act would have allowed for local preferences to be accommodated within a national framework.

8. According to the logic of section 60 of the Charities Act 2006 legitimate collections should be facilitated unless they are likely to cause undue inconvenience. This logic provides for the duty of charities to ask for support on behalf of their beneficiaries to be balanced with the rights of members of the public not to be put under undue pressure to give.

9. With sufficient co-operation from the relevant bodies already involved in the self-regulation of public collections, the logic of the regime in the 2006 Act could potentially be built upon and implemented, without the costly Public Collection Certificates element. Membership and participation within the self-regulatory regime could replace the requirement to apply to the Charity Commission for a public collections certificate, and should be sufficient to demonstrate the bona fides of a fundraising organisation.

10. Despite the relevant sections of the 2006 Act not being introduced, the PFRA has been self-regulating face-to-face fundraising in a way that seeks to balance the duty of charities to ask for support on behalf of their beneficiaries with the rights of members of the public not to be put under undue pressure to give.

11. In 2011–12, PFRA members recruited approximately 240,000 new donors on UK high streets. Donors recruited this way give around £45 million a year to charities and good causes. While face-to-face fundraising on the street receives significant attention from mainstream and social media, it is subject to comparatively few formal complaints according to the Fundraising Standards Board’s annual complaints audit. Out of the 30,848 complaints recorded in the Fundraising Standards Board complaints audit for the same period, only 1,098 were registered about street face-to-face (only 3.6% of all complaints about fundraising). All of these complaints were resolved to the satisfaction of the complainant by the charities concerned, with none having to be escalated to the Fundraising Standards Board for adjudication. Unless prompted, people tend not to
identify face-to-face fundraising as a major or widespread concern. For example, the Charity Awareness Monitor, which is conducted several times a year, has consistently found that when asked "which of the following activities undertaken by charities annoys or irritates you?" fewer than 20% of the public select street Direct Debit fundraising. This chimes with our own research, conducted by YouGov, which shows that 70% of the population see "regulating" face-to-face as a very minor priority for local authorities, or none of a council’s business at all. Surveys conducted for Heart of London, the Business Improvement District that covers some of the most frequently used fundraising sites in the UK, have also consistently shown that around 80% of visiting shoppers are "content with" or "indifferent about" the level of charity fundraising activity taking place there.

12. Many complaints made about face-to-face fundraisers are not about breaches of the Code of Practice or our own rules but simply about the presence or existence of fundraisers—some people just do not like to be asked to support charity. However, making an effective ask is how fundraising works—people don’t give if they’re not asked.

13. Talking to a fundraiser, who can answer questions in person, is welcomed by many people and allows them to make an informed decision to support a particular charity or cause. Charity collections should not be considered a “problem” from which the public requires “protection”. Charities need to fundraise and attract new donors in a variety of ways to provide individuals with a range of different opportunities to donate. Given the limited risk profile of face-to-face fundraising, we propose that a regime that allows for rigorous self-regulation, of the sort that the PFRA currently delivers, is a proportionate (and cost-free) response, and is able to develop and innovate according to identified needs. The agreements we enter into with local authorities define sustainable levels of fundraising activity that mitigate against undue inconvenience. We report diaries to our local authority partners according to the terms of these agreements. We have been able to develop new processes and practices (such as our penalties and sanctions regime) to respond to trends and challenges identified, and will continue to do so. Being a part of this regime demonstrates the bona fides of those collections.

14. We now have 52 formal, signed, agreements to regulate street face-to-face fundraising with local authorities. Research by the LGA demonstrates that these agreements lead to improvements, and the vast majority of local authorities that have agreements with us are satisfied with them.

15. Our model of self-regulation operates as follows:

- We accredit our members to ensure they have adequate systems in place to enable them to comply with best practice, and undertake non-financial audits to confirm systems and processes (including observing training of fundraisers).
- We police and promote the Institute of Fundraising’s Code of Practice, which is the benchmark for best practice standards. We have also developed Rule Books for both street and doorstep activity introducing a range of detailed operational rules (which complement the Code of Practice) that allow us to issue penalties and sanctions against any of our members who breach the rules and fail to meet agreed standards. These rules also provides the standards for our council co-regulatory partners, such as town centre wardens, to police best practice and work with us to rectify rule breaches.
- We ensure that complaints are managed and resolved.
- We negotiate agreements with local authorities (or town centre managers, business improvement districts, etc.), which define the terms and conditions for face-to-face fundraising to occur on the public highways in their areas (location, frequency, team-size, etc). We now have over 50 such agreements, with a further 19 in various stages of negotiation. These agreements allow for local preferences within a simple framework, guided by section 60 of the 2006 Act.
- We work closely with local authority partners to monitor and enforce these agreements, the Institute of Fundraising’s Code of Practice, our own rules, and issue penalties and sanctions to members who breach agreed standards.
- We allocate fundraising spaces fairly to all members, big and small, according to the conditions agreed with local authorities, managing diaries and reporting them to local authorities.
- We run a programme of mystery shopping across the UK, which we have increased this year. Every month our professional mystery shoppers aim to assess 56 street fundraising teams. In addition, our own compliance staff undertake spot-checks of our members’ activities to monitor and raise professional standards.

16. All of our services are proportionate and targeted and have been developed to respond to specific needs that we have identified. We are able to quickly and effectively develop and implement new procedures (such as our penalties and sanctions regime) to respond to trends and challenges identified, and will continue to do so. Being a part of this regime demonstrates the bona fides of those collections.
as diaries and site management arrangements to minimise undue inconvenience to the public) where issues or concerns are identified. We deliver these services to local authorities at no cost to them.

17. The PFRA recommends the committee encourage local authorities to work in partnership with the PFRA to regulate face-to-face fundraising in their areas.

9. How successful is the self-regulation of fundraising through the Fundraising Standards Board?

18. Self-regulation of fundraising has been successful and is effective. As per our joint statement with the Institute of Fundraising and the FRSB, where there is a need for clarification and enhancement to the current scheme we will work together to resolve it.

19. The FRSB should be positioned as the single public facing regulatory body and point of contact for the public with regard to complaints relating to any kind of fundraising. This is complemented by the role of the Institute of Fundraising, which sets the standards and writes the rules and codes for all fundraising, against which the FRSB will adjudicate; and our specialist business-to-business role focused on distribution and enforcement of face-to-face fundraising.

THE PFRA: WHO WE ARE AND WHAT WE DO

20. The Public Fundraising Regulatory Association (PFRA) is the nationally recognised self-regulator for face-to-face fundraising activity—the solicitation of committed gifts—conducted in public spaces by charities and good causes anywhere in the UK. The PFRA seeks to promote responsible face-to-face fundraising practices by working in partnership with local authorities, town centre management, and business improvement districts. Without drawing on public funds, we provide and enforce bespoke and free-to-user, durable, local voluntary management solutions within the framework of the Institute of Fundraising’s national Code of Practice for face-to-face activity. Together with the Institute of Fundraising and the Fundraising Standards Board we form an effective and accountable, co-operative self-regulation regime.

21. The PFRA’s model of self-regulation is delivered free to local authorities, is proportionate to the level of risk involved in the activity, targeted, and effective.

22. Our work and effectiveness is recognized by the Institute of Licensing, National Association of Licensing and Enforcement Officers, Local Government Association, and the Association of Town Centre Management, all of whom occupy observer seats on our executive board. The PFRA has a seat on the board and was a founding member of the Fundraising Standards Board. We are a corporate affiliate of the Trading Standards Institute—committed to fair trading and consumer protection.

September 2012

Written evidence submitted by Plymouth Brethren Christian Church (CH 21)

SUMMARY

— This response is made on behalf of the Plymouth Brethren Christian Church, representing 16,000 Brethren and over 300 gospel halls across the UK.
— We have great concerns that the Charities Act 2006, far from clarifying the meaning of charity, has created confusion and uncertainty which previously did not exist.
— In particular, as a direct result of the Charities Act 2006, and its implementation by the Charity Commission, the charitable status of the Brethren gospel halls in England and Wales is under threat.
— The confusion and uncertainty extends also to the tax position, causing difficulties for the charities, donors and HMRC.
— Valuable charity resources are having to be spent on recourse through the charity tribunal.
— Faith charities must now have cause to fear for their status (contrary to the Charity Commission’s published guidance and Parliamentary assurances).
— The Charities Act 2006 created the circumstances which allowed this to occur.

INTRODUCTION

1. We are grateful to the Committee for instituting this inquiry into the impact and implementation of the Charities Act 2006 (the Act). We have grave concerns that the Act has not clarified the meaning of charity. Instead, it has created uncertainty by allowing an inappropriate latitude in the way the meaning of charity, particularly public benefit, may be interpreted by the Charity Commission (the Commission). Unless challenged, that interpretation stands in substitution for the law, as enacted by Parliament and interpreted by the courts.
2. This response concentrates on question 1c of the Committee's inquiry: To what extent has the Charities Act 2006 achieved its intended effects of … providing a clear definition of charity, with an emphasis on public benefit? It also touches on issues of the functions, duties and accountability of the Commission (question 1d).

ABOUT THE PLYMOUTH BRETHREN CHRISTIAN CHURCH

3. The Plymouth Brethren Christian Church is a progressive, growing, worldwide Christian movement established in 1828 when a number left the established church and began to celebrate the Lord's Supper (Holy Communion) in simplicity in accordance with the original directions of the Holy Scriptures.

4. In accordance with our beliefs (based upon the Holy Bible), we practise separation. This is based in a moral distinction between right and wrong, good and evil. It means that Brethren will, as a matter of conscience, mix socially and by association with other Brethren. However, it would be wrong to assume that Brethren do not take their place in the local community. We do not advertise our presence, but we live as normal members of the community and take an active part in community life. Our moral code, derived from our beliefs, means that Brethren feel a strong impulse to offer assistance where it is needed, whether to Brethren or non-Brethren. This can take many forms, from singular acts of generosity to community projects. Brethren children are encouraged from an early age to be generous and to engage in fundraising for charity.

5. It is fundamental to our beliefs that we spread the news about our faith through regular street preaching and distribution of gospel tracts, which are also freely available at our places of worship. Details of our services can be obtained via our gospel halls (either directly or through contact details provided at the hall). Non-Brethren may attend our services. Generally, our Holy Communion service alone is for Brethren, but we would not expect to turn away a non-Brethren.

6. In short, we believe that our gospel halls advance the Christian religion through advancing the beliefs of the Plymouth Brethren Christian Church. We are not a closed order, but live in society, take part in open preaching and our gospel halls are open to non-Brethren.

7. The charitable status of gospel halls was confirmed by the High Court in 1981. Due to a problem created by the Act, charities are bearing the cost of the same question being decided again.

PROBLEMS ARISING FROM THE ACT

8. Although the Act was passed nearly six years ago, some grave problems arising from the meaning of charity in the Act are only now surfacing.

9. In particular, the Commission recently refused to register the Preston Down Trust (the Trust), a Plymouth Brethren gospel hall, as a charity. The decision stands to have wider ramifications; out of the blue, the gospel halls, including registered charities, are suddenly facing an uncertain future. The decision arises directly from the Act (and the Commission’s interpretation of it).

10. The decision was the more surprising as it came without warning. For over a year the Commission had been considering a reference to the tribunal to help it interpret the law regarding the Trust’s status. Then, without notice or consultation, the Trust was informed that the Commission had decided not to refer the matter and had refused registration. There was no offer of dialogue with the Commission; the Trust was given no opportunity to respond other than to appeal to the tribunal.

11. This volte-face raises serious concerns over the way the Commission administers its statutory functions and objectives. Does it now see it as its duty to drive to the tribunal any question of public benefit which, following the Act, it (perhaps alone) perceives to be in doubt, for hard won clarification at charities’ expense?

12. The Trust is having to resort to litigation, at immense cost, to challenge the Commission’s decision. The Horsforth Gospel Hall Trust, a registered charity since 1988, has been joined to the appeal because it faces having its charitable status removed.

13. This submission is not about that litigation, which must be allowed to run its course according to the tribunal rules and procedure. Our concern arises from the circumstances which have allowed this situation to arise, something which is a shocking turn of events for these charities never prefaced when the Act was passed. On the contrary, the message from the then Government was that charities created to advance established religions had nothing to fear.

EFFECT ON CHARITIES

14. The charities which we represent are now having to spend funds on legal fees to defend their charitable status; they would rather be expending those funds on good works.

24 Holmes v Attorney General, The Times, 12 February 1981
25 For example, House of Commons, Hansard, 25 October 2006, Col 1608, Ed Miliband MP: “… First, I want to reassure her that removing the presumption that the advancement of religion provides public benefit is not intended to lead to a narrowing down of the range of religious activities that are considered charitable. Nor is the process intended to be onerous for individual religious institutions.”
15. The Commission’s decision puts the tax status of hundreds of charities in doubt. This is a novel situation for HMRC. We are trying to deal with HMRC over how each gospel hall should communicate with its donors. Those donors, who run into thousands, will be making donations with gift aid declarations and making claims through their self-assessment returns. The charities do not know what to tell them. This is happening at a time when charities and donors alike are severely stretched financially.

16. The situation is made more challenging (and unexpected) because gospel halls are registered charities in Scotland. The Commission’s decision raises the alarming prospect, for both charities and HMRC, of inconsistent recognition of charities across the UK.

17. Also looming over the charities is the fear of what happens to their assets if the appeal is lost. Many worry that the assets will be taken away, and possibly applied for purposes contrary to the donors’ beliefs. This fear and uncertainty is causing great anxiety among the charities we represent.

18. It should not be assumed that this is a problem for gospel halls only. If the Commission’s decision were to cast doubt on the public benefit conferred through proselytising or public services, or that a service is “public” where non-believers may attend but not participate in all aspects, then many faith charities will have cause to worry over what would be a new interpretation of the law, seemingly not contemplated by Parliament.26

19. It would also be an interpretation of the law not laid bare in the Commission’s published guidance. Faith charities cannot therefore rely upon that guidance for assurance.

Difficulties Arising From the Act

20. The difficulties in which the gospel halls are now mired arise as a direct result of the Act. It created uncertainty, which previously did not exist, and it created a mechanism to permit a new interpretation of case law which is susceptible to the subjective interpretation of the interpreter, rather than to the more objective framework established over centuries by the courts.

21. Creating the first statutory definition of charity in English law was no mean feat. Parliament did not attempt to set out a complete definition (correctly, we think). Save for some small additions in some descriptions of purposes, the statutory definition did not seek to change the meaning which had previously evolved through case law, save in one seemingly insignificant respect.

22. The explanatory notes to the Act set out that s3(2) of the Act27 “abolishes the presumption [of public benefit] that organisations for the relief of poverty, the advancement of education, or the advancement of religion enjoy, putting all charitable purposes on the same footing”.28 This abolition was said “not by itself [to] have the effect of depriving poverty relief, educational and religious organisations that were registered as charities while the presumption existed of their charitable status”.

23. No meaning was ascribed to “public benefit” in the Act, which preserved the meaning from case law, subject to the “abolition” of the presumption. The Commission was charged with producing guidance “in furtherance of its public benefit objective”, ie to promote awareness and understanding of the operation of the requirement that, to be charitable, a purpose must be “for the public benefit”.

24. On the face of it, the statutory definition changed little, if anything; but the effect for charities, especially now faith charities, of the definition and the Commission’s interpretation of it has been profound.

Lack of clarity

25. The Act has created new uncertainty over the meaning of charity. No analysis was offered at the time as to the effect, if any, of the supposed abolition of the presumption of public benefit. Such abolition stood to affect pre-existing registered charities, but also had the potential to affect pre-existing case law to the extent that it rested on any presumption.

26. The failure to explain the effect of s3(2) has caused it to be considered in the tribunals at the cost of several hundred thousand pounds of public and charity money. So far, the Upper Tribunal has considered the effect of s3(2) for charities for the advancement of education29 and for the relief of poverty,30 ie two of the three former heads of charity which supposedly benefited from the presumption.

26 For example, House of Commons, Hansard, 25 October 2006, Col 1617. Andrew Selous MP: “… Given that the Charity Commission will interpret these matters, I should like the right hon. Lady to put it on the record that proselytising activity will still be deemed to be a public benefit.” In reply, Hilary Armstrong MP: “It certainly will; my understanding, based on my discussions with the Charity Commission, is that it has no problem with that at all.”


28 At paragraph 26 of the explanatory notes to the Act.

29 ISC v Charity Commission, UKUT 421 (TCC)

30 AG v Charity Commission & Ors, FTC/84/2011
27. In each case, the Upper Tribunal has determined that there never was a presumption of public benefit. At most, there may have been a predisposition that, say, education is generally beneficial, but the courts made their decisions based upon evidence, rather than a presumption.31

28. Sadly, the existence of any presumption, and the effect, if any, of s3(2), for charities established for the advancement of religion remains unclear. In the case law, the courts have accepted that religious practice has an inherently beneficial moral effect on society. It is not clear that this amounted to a presumption in the sense meant in s3(2) or a mere predisposition: if public benefit was in doubt in a given case, the courts assessed it on the evidence. The Act has left room for subjective interpretation.

29. Six years after the Act was passed, and at further expense to the charity and public sector, the tribunal will now be required to consider the same question a third time, this time in relation to charities for the advancement of religion.

30. In enacting s3(2), Parliament appears to have assumed that a presumption existed, which needed to be removed in order to put all charitable purposes on an equal footing. It now seems Parliament was in error in its assumption and the effects of enacting s3(2).

31. The enactment of s3(2) has caused, and is still causing, a great deal of uncertainty, stress and cost for, it seems, no effect.

Controversy

32. Prior to the Act, public benefit did not seem to be a controversial subject. There was not much case law on it, generally because the question of whether or not any purpose was “for the public benefit” was obvious. The Commission acknowledged as much in its general guidance on public benefit.32 It was only in cases where it was not obvious, that the matter came to be considered by the courts.

33. In the context of the advancement of religion, we are not aware of public benefit being considered a problem. Such controversy as there was, prior to the Act, tended to relate less to public benefit and more to the question of what constituted a “religion” under charity law.33

34. Since the Act was passed, however, the Committee will be well aware that public benefit has become an issue of great controversy. Yet, the Act changed little, if anything; the tribunal has made no decision to precipitate a change of views on what is or is not a charity. Why then has the controversy arisen; and to what benefit?

The Public Benefit Guidance and the Commission’s approach to Public Benefit

35. The responsibility for explaining the meaning of public benefit was passed to the Commission under the Act. This was probably a pragmatic decision, given the impracticality of trying to draft (let alone agree) a statutory definition. However, it gave the Commission a difficult task.

36. Unfortunately, we do not consider that the Commission has succeeded in that task. The Commission’s guidance was controversial from the start, with many charity lawyers disagreeing fundamentally with its legal basis. Although the Commission was required to consult publicly on its guidance, it is unclear to what extent, if at all, the Commission paid heed to the responses to its consultations. (In contrast to Government consultations, no full report was published of the consultation submissions and the Commission’s response).

37. The Commission stated that it would welcome challenge to its guidance, but, despite the controversy, took no steps to test it itself.

38. The Commission’s untested guidance, given added authority by its production pursuant to statutory duty, became the law for all practical purposes.

— Who applies the law? The Commission.
— What interpretation does it use? Its own interpretation as (generally) in its guidance.

39. The guidance became, effectively, a self-fulfilling prophesy, no matter that it was widely believed to be wrong in material respects.

40. The guidance was eventually challenged, by way of judicial review, in the Upper Tribunal.34 a brave and expensive challenge necessitated by the Act. Following that challenge, the Commission is required to
change its guidance, but it is not clear that it is changing its approach. It is also now unclear to what extent it stands by its guidance. Our recent experience suggests an approach by the Commission out of tune with its published public benefit guidance for charities for the advancement of religion.

41. Charities are now in a position where they may receive a decision from the Commission, based upon an interpretation of the law which differs from both established understanding and the Commission’s published guidance on public benefit. Charities’ only recourse is to appeal to the tribunal, an expensive and stressful process.

42. Parliament may have thought that, in passing the Act, it was bringing some clarity to the charity sector. It seems instead to have opened the way to charities being forced to a succession of litigation as they are subjected to new areas of doubt, identified by the Commission, which may arise without warning or consultation. It is not clear to us what is driving this, but its origins must lie in the Act.

Possible reform?

43. We acknowledge that amending the Act is not a straightforward, or cheap, process and that any reform may be years away. We would, therefore, urge the Committee to consider what may be done now to bring some calm and certainty to the situation in a measured manner.

44. Some authoritative clarification is required. Absent an analysis and determination by the Supreme Court, we wonder whether this may be done through a paper (perhaps of the Law Commission):

(a) analysing the presumption and the effect, if any, of s3(2) of the Act (provided, of course, this did not interfere in the current tribunal case); and

(b) providing advice on what should happen to a charity’s assets should it be stripped of charity status.

Alternatively, perhaps the Attorney General may take a greater role in providing clarification of these points, without recourse to litigation.

45. We would welcome a return to the pre-Act status quo. On the face of it, the Act changed little or nothing, yet it set a hare running, leading to confusion and litigation. If the Act were to be amended, we feel that care must be taken to save a bad situation turning worse.

(c) We would welcome the repeal of s3(2).

(d) We caution against any other attempt to change the definition of charity: the definition and effects for the sector of any change must be considered and explained clearly.

(e) If guidance is considered necessary on any aspect of the definition of charity, it should be subject to some level of appraisal.

46. Although not perfect, the meaning of charity has evolved over centuries through careful consideration by the courts (up to the highest level) of the decisions themselves and, crucially, their potential consequences for hundreds, sometimes thousands, of other charities. It is the basis by which thousands of today’s charities have been accepted as such. Parliament should be cautious of changing the meaning without a full and serious review of all the potential consequences for existing charities and the future development of the sector.

Conclusion

47. We hope that the Committee will consider seriously the issues raised in this submission. We are happy to provide further evidence or to discuss matters with members of the Committee if that would assist.

September 2012

Written evidence submitted by National Council for Voluntary Organisations (NCVO) (CH 29)

Established in 1919, the National Council of Voluntary Organisations (NCVO) represents over 8,500 organisations, from large “household name” charities to small voluntary and community groups involved at the local level. The framework set by charity law is relevant to all types and sizes of organisation, and for this reason it has always been a key policy area for us. The following submission to the Public Administration Select Committee’s Review of the Charities Act 2006 is based on our long standing role in charity law, including the lead we took in campaigning for charity law reform.

Our responses also draw from the more recent work carried out by NCVO’s “Charity Law Review Advisory Group” chaired by Baroness Howe of Idlicote. The Group undertook an independent review of charity law, targeting areas identified as being most relevant to ensuring that charities and the people who govern them operate effectively, within a clear and enabling framework, so that in all their activities—including the more controversial ones such as fundraising and campaigning—they engage with the public in a way that ensures trust and confidence.

Taking into consideration both the Advisory Group’s final report, and on-going discussions with NCVO member organisations, our general conclusion is that the Charities Act 2006 has proved to be a good piece of
legislation: whilst the law would benefit from some rationalisation and minor modifications, the legal framework is robust and remains fit for purpose.

In particular, our paper highlights that:

— the Act has helped simplify some of the administrative and governance procedures that charities are subject to;
— the decision to establish a system of self-regulation of fundraising was the correct one;
— the renewed emphasis on the public benefit requirement brought by the Act is a positive step, having prompted many charities to renew their charitable mission and strengthen their governance;
— the Charity Commission is generally perceived as a modern, independent regulator;
— the establishment of the Charity Tribunal is a beneficial development for the charity sector; and
— the rules on campaigning by charities are reasonable and proportionate.

However, it also recognises that some key improvements need to be made to the current framework. In particular:

— further legislation is necessary to clarify and simplify the definition of charity with regards to the public benefit aspect;
— steps should be made to unify the existing differences between charity law and tax law, and between devolved jurisdictions, to have a single definition for the purpose of charity regulation/registration and for tax purposes throughout the UK;
— the Charity Commission should focus its resources on enforcing charities’ compliance with legal requirements; and
— self-regulation of fundraising needs to be strengthened in a number of ways to ensure a culture of responsibility and maintain public trust and confidence.

1. To what extent has the Charities Act 2006 achieved its intended effects of:

(a) enabling charities to administer themselves more efficiently and be more effective?

(i) There is general agreement that the Charities Act 2006 has overall proved to be a good piece of legislation. One of the general thrusts of the Act was clearly deregulatory, wanting to give charities greater flexibility so they could fulfil their purposes more efficiently. This can be seen in a number of provisions aimed at enabling trustees to work with less bureaucracy and simpler procedures. Individually these provisions could appear modest and of little effect, but when considered all together they have had a positive impact on the work and efficiency of charities.

(ii) Unfortunately other pieces of legislation and regulation affecting charities continue to represent an obstacle to the smooth carrying out of their activities: we have long lamented the fact that charities are subject to a number of different, but overlapping regulatory regimes, depending on their geographical scope, the activities they carry out and their income level. In addition to the generic reporting requirements that derive simply from being a charity, many organisations are involved in service delivery and therefore have to comply with further monitoring and reporting as outlined in the contract or funding arrangement. There has also been a considerable increase in the number of licensing rules with which charities have to comply.

(iii) Taken together, all this adds up to significant complexity in the system, causing considerable costs and bureaucracy, the burden of which can be too high for many voluntary sector organisations, especially the smallest.

(b) improving the regulation of charity fundraising, and reducing regulation on the sector, especially for smaller charities?

(iv) NCVO shares the majority view that Parliament’s decision to defer statutory regulation of fundraising in favour of allowing the sector to develop a self-regulatory framework was the correct one. Statutory intervention could restrict fundraising activities and therefore stifle charities’ ability to gather public support. It would also have the disadvantage of causing higher costs to both charities and tax-payers, and would provide less flexibility to adapt to changing circumstances. Self-regulation therefore continues to be the most appropriate way to ensure an operating framework in which charities are encouraged to fundraise effectively and responsibly.

(c) providing a clear definition of charity, with an emphasis on public benefit?

(v) This is an area where five years may not be enough time for the relevant legislation to bed down, given the complexity of applying principles of public benefit across the wide range of charitable purposes. The Act certainly served to bring the public benefit of charitable status to public attention, and more importantly emphasised its centrality to the duties of charity trustees. However, doubts remain about its practical effect for charity trustees, and the relative simplicity which the NCVO and others were hoping for has not been achieved. NCVO’s Advisory Group has concluded that further legislation is highly desirable to clarify the law.
particular, it would be helpful for the legislation to set out the main principles by which public benefit is to be judged, as has been done in the Scottish legislation.

(vi) At the moment there is too much uncertainty surrounding what public benefit actually means in charity law terms. While most trustees would think of a requirement to demonstrate “public benefit” as a need to show that their charity’s activities have a beneficial impact on the community, the legal concept involves complex and highly technical aspects which relate to the charity’s purposes and, in many cases, the nature of its beneficiary class. And because there is no codified law on public benefit, the position has to be inferred from case law which is neither comprehensive nor fully consistent.

(vii) Further confusion arises from the following:

— the different definition of charity for tax purposes set out in the Finance Act 2010; and

— the lack of consistency with English law in the Scottish and Northern Ireland jurisdictions, which both have separate definitions of “charity” (with significant differences both with regards to the specified heads of charity available and also the public benefit requirement).

(viii) NCVO’s Advisory Group found that, while some might argue that these differences are small, they are sufficient to cause considerable difficulties for charities, especially those working on a cross border basis. There is strong reason to believe that the vast majority of charities would welcome legislative changes to unify these differences and give a single definition for the purpose of charity regulation/registration and for tax purposes throughout the UK, and that this would help to reduce the extent to which resources are applied to technical compliance issues as opposed to a charity’s real work.

(ix) We have therefore recommended that the Government, the devolved administrations, the three regulators and HMRC should work towards agreeing on a single definition of charity and a single public benefit requirement for the whole of the UK, which would also apply for tax purposes.

(d) modernising the Charity Commission’s functions and powers as regulator, increasing its accountability and preserving its independence from ministers?

(x) NCVO agrees with Lord Hodgson’s conclusion that there seems little need to revisit the constitutional arrangements put in place by the 2006 Act. The Act significantly modernised the status of the Commission and increased its accountability by:

— recreating it as a body corporate, rather than a body of individual commissioners;
— introducing a clear statement of the objectives, functions and duties of the Commission;
— creating the Charity Tribunal, able to hear appeals against legal decisions of the Commission; and
— introducing a number of practical and legal mechanisms designed to ensure that the Commission is accountable to both Parliament and the public at large.

(xi) In particular, the more specific statement of the purposes of charity regulation have helped the Commission present its aims and activities more clearly to charities and the public, and have provided a clearer framework of accountability.

2. What should be the key functions of the Charity Commission?

(xii) NCVO has always maintained that the Commission’s primary role is that of independent regulator. The key statutory functions to perform this role are:

— determining charitable status and registering charities;
— setting the framework of accountability of charities; and
— ensuring charities comply with the legal requirements deriving from their constitutions and charity law.

(xiii) We therefore agree with Lord Hodgson on the point that, although the Commission has for some time operated as both a regulator and a “friend” to the charity sector, it should focus on enforcing charities’ compliance with charity law. Although we understand that the Charity Commission’s provision of individual advice is valued by many within the sector, the existence of a strong and effective regulator is the overriding priority.

(xiv) At a critical time for the sector, and in the context of significantly reduced resources, the focus must be on the Commission’s ability to provide robust and effective regulation that is necessary to our organisations. This is a competency that cannot be replaced by, or delegated to any other body. On the other hand, it is more appropriate that functions such as enabling charities to maximise their impact, and championing their work, are carried out by the sector itself, where there is a wealth of experience in promoting effectiveness and innovation, as well as championing the interests of charities.
3. How should the Charity Commission be funded?

(xv) After considering alternative funding options, we have concluded that the current arrangements (whereby the Commission negotiates its own budget directly with Treasury) should remain as they are.

(xvi) Following the cuts to the Commission’s budget in the last Spending Review, there has been a lot of debate about additional forms of income generation, such as introducing fees for registering new charities and filing annual returns, or imposing penalties. NCVO is strongly opposed to any of these measures: it would be counterproductive to put more obstacles in the way of charities being created or to charge existing charities for complying with a legal requirement. Levying penalties also raises serious concerns, such as the potential conflicts of interest for the Commission and a negative impact on the perception of its independence, liability of trustees, not to mention the costs of setting up such a system. Furthermore, it would be naïve to assume that any income thus generated would not be effectively lost by a correspondent reduction in funding on behalf of Treasury. So there is the danger that the overall resources of the Commission remain the same, but the burden is transferred to charities.

4. Is the current threshold for registration with the Charity Commission set at an appropriate level?

(xvii) NCVO believes that the current threshold is appropriate, and there shouldn’t be any further increase. The current level strikes the right balance between allowing registered status (and the associated charity number) to those organisations that see it as a valuable benefit, and avoiding bureaucracy for the smaller charities that have limited capacity to cope with the registration and reporting requirements.

(xviii) However, we also note that the £5,000 level was set with the understanding that voluntary registration would be made available for charities below this amount. We are therefore concerned that the relevant provision is not yet in force.

5. How valid are concerns that there are too many charities?

(xix) NCVO has always maintained that the arguments about there being too many charities are neither valid nor compelling. Charitable impulse is often individualistic and independent: the creation of a charity is in most cases a personal response to a tragedy, or taking action about something the individual feels passionate about. This is why the majority of charities are small, local, volunteer-led and connected to their communities.

(xx) Also, the more charities there are, the more opportunities there are for people to contribute to their communities. So, if the government’s vision of a Big Society is to be fulfilled, people should be encouraged to engage in community activity, and the benefits of choice should be highlighted. It appears contradictory to be saying that new initiatives should be stifled or that the proliferation of voluntary endeavour should be avoided.

(xxi) NCVO would therefore strongly oppose the suggestion that has sometimes been made, that the Charity Commission should refuse registration if an organisation does not offer anything “new”, and push towards its amalgamation with already established organisations: the right to organise and come together is a fundamental one in our society, and a power to prevent people from setting up a charity would run counter to this.

6. Exempt charities, such as academy schools, are regulated by principal regulators, rather than the Charity Commission. How well is this system working?

(xxii) NCVO’s Advisory Group has already highlighted its concerns over the recent trend of extending exempt charity status to more groups of specialist charities.

(xxiii) Registration as a charity with the Charity Commission gives donors and the general public a degree of certainty and comfort about an organisation. It is generally understood by the public that registered charities are established for purposes accepted as charitable, are run for the public good by trustees acting solely in the interests of the charity’s objects/its beneficiaries, and are properly regulated, with accounting and other information about them readily available.

(xxiv) Exempt charities do not appear on the Charity Commission register and have different reporting requirements from registered charities. For example, they are not required to automatically produce or publish an annual report under the charity accounting framework, or to report on public benefit. Placing more and more groups of charities outside the Charity Commission’s jurisdiction would therefore lead to a meaningful reduction in their accountability and transparency, and would be detrimental to the integrity of the legal framework that supports public trust and confidence in charities.

(xxv) There is also growing anxiety in the charity sector about how this movement could negatively impact the preservation of its independence: for example, having regulators that are either part of the sector themselves or part of Government would inevitably involve conflicts of interest in the management of the charities concerned.
7. There has been an increase in the number of organisations that operate for the public good such as social enterprises and mutuals, which are not charities, and are not regulated by the Charity Commission. What impact may this have on the public perception of what a charity is, and how charities are regulated?

(xxvi) It is important that public perception of charities recognises and understands the uniqueness of what a charity is. It must always be made absolutely clear to the public that registering as a charity and the charitable status thus acquired are subject to a number of legal requirements that are unique to the charity brand, the key one being that a charity operates solely for the public benefit and not for profit.

(xxvii) But the voluntary sector has always been characterised by, and praised for, its diversity. In particular, the changes in society and the economic and policy environment, especially over the past decade, have led to a whole new range of activities and arrangements being embraced. It is therefore necessary that different legal forms are available for organisations to choose from, so that the most appropriate model is adopted and differing needs can be accommodated.

8. How successful has the introduction of the Charity Tribunal and its replacement, the First-Tier Tribunal (Charity), been in making it easier to challenge decisions of the Charity Commission?

(xxviii) The Tribunal was one of the most important innovations arising from the Act. It has a number of advantages compared to an administrative court, especially following the Tribunals and Courts Enforcement Act 2007. In particular:

— it has very wide case management powers, which can help ensure flexibility and facilitate improved access to justice; and
— its operation costs are relatively moderate, in particular the new centralised system means that costs are spread across different tribunals because the judges serve on a number of jurisdictions.

(xxix) Furthermore, one of the real benefits of the Tribunal is that it is a court that can effectively specialise in charity law, and will therefore develop a body of expertise that will not only enable it to achieve its aims in the longer term, but also be beneficial to the sector. Indeed it should be acknowledged that, despite the low number of cases heard so far, the Tribunal has dealt with some significant issues affecting charities, including the two landmark rulings clarifying the public benefit requirement.

(xxx) It may also be too early to draw conclusions on the issue of caseload, and certainly to predict that it will always be so. On the contrary, there are signs of further progress, for example in the increased number of litigants feeling comfortable enough to bring a case without legal representation. It is therefore reasonable to conclude that the key issues have been a lack of familiarity by charity practitioners, and a perception by clients that using the Tribunal process would be costly and long.

(xxxi) This leads us to share Lord Hodgson’s prediction that, if the adjustments recommended as a result of the review are implemented, the Tribunal will be able to fully establish itself as the low cost and accessible forum for justice that was originally envisaged.

9. How successful is the self-regulation of fundraising through the Fundraising Standards Board?

(xxxii) NCVO agrees that the self-regulation system developed by the sector has been an effective approach in encouraging charities to comply with good practice. However, public trust and confidence are our priority concern, and we understand that they have been negatively affected by frequency of practice and sometimes aggressive behaviour.

(xxxiii) Therefore further efforts are necessary to ensure a truly successful fundraising framework: one where fundraising is effective in gaining support, and is also undertaken responsibly and in a way that doesn’t antagonise the public. This is an area where we recognise that the sector itself needs to take stronger action, by not only tightening up the self-regulatory framework, but also developing an better fundraising culture, where the key consideration is the relationship with the public and maintaining its trust and confidence.

(xxxiv) Some key changes that would help improve the current system have already been identified. These are:

— the FRSB membership model needs to be addresses, as currently compliance is “self-selecting” because organisations are only members by choice, and the number of charities that have signed up to membership remains relatively small, so there are obvious concerns about “free-riding” and about non-member charities not behaving properly bringing the whole sector into disrepute;
— the FRSB should be equipped with the ability to issue more effective sanctions for non-compliance; and
— a clarification is required both within the sector and the general public about the respective roles and responsibilities of the FRSB, IoF and PFRA and their interaction.

10. Are the rules around political activity by charities reasonable and proportionate?

(xxxv) NCVO’s Advisory Group carefully considered the regulatory framework in which charities carry out campaigning activities, and concluded that the existing legal and regulatory framework provides a reasonable
and proportionate balance between upholding charities’ freedom to campaign whilst also ensuring that they operate for the public benefit, are not party political, and are transparent and accountable in what they do. This balance means that charities can speak with an independence of voice, which gives the public and donors confidence in their work.

(xxxvi) In particular, the Charity Commission’s guidance on campaigning and political activity by charities sets out sensible and balanced rules, making it clear that:

— a charity cannot exist for a political purpose nor have political activity as any of its charitable purposes;
— nor can a charity undertake political activity that is not relevant to supporting its charitable purposes;
— any charity can become involved in campaigning and in political activity which further or support its charitable purposes, unless its governing document prohibits it;
— political campaigning, or political activity, as defined in the guidance, must be undertaken by a charity only in the context of supporting the delivery of its charitable purposes and, unlike other forms of campaigning, it must not be the continuing and sole activity of the charity;
— when campaigning, charity trustees must comply not only with charity law, but also with other civil and criminal laws that may apply and, where applicable, with the Code of the Advertising Standards Authority;
— any claims made in support of a charity’s campaign must be well founded on robust and objective research; and
— charities should exercise caution and pay particular consideration to the consequences of working with politicians in order to protect their reputation and ensure public perceptions of neutrality.

(xxxvii) This provides an appropriate framework in which charities are able to campaign, whilst ensuring they do so legitimately and responsibly.

(xxxviii) Therefore, there is no need for any additional regulatory or administrative requirements in this area, as such a change would cause a disproportionate regulatory burden on charities and restriction on their ability to campaign, with the risk of substantially curtailing their contribution to civil society.

September 2012

Written evidence submitted by Institute of Fundraising (IoF) (CH 30)

EXECUTIVE SUMMARY

— Self-regulation of fundraising has been effective, but there is a need for clarification and enhancements to the current system. The Institute of Fundraising will work collaboratively with other sector bodies to continue to develop the scheme to ensure that it is as efficient and effective as possible.
— The chief executives and chairs of the Institute of Fundraising, Fundraising Standards Board and Professional Fundraising Regulatory Association are united in their determination to work co-operatively to meet the challenges of self-regulation. They have already made significant progress in agreeing a way forward, but work on this will continue.
— The implementation of the Charities Act 2006 has not addressed the issue of public charitable collection licensing which is in serious need of reform. Substantial further work is needed to develop a suitable solution to public collections reform to meet the needs of the sector, local authorities and the public. The Institute of Fundraising has already established a working group to progress the work.

ABOUT THE INSTITUTE

1.1 The Institute of Fundraising (registered charity in England and Wales (no. 1079573) and Scotland (no. SC038971)) represents fundraisers and fundraising throughout the United Kingdom. Its mission is to support fundraisers, through leadership, representation, standards setting and education, to deliver excellent fundraising. It is a membership organisation committed to the highest standards in fundraising management and practice. Members are supported through training, networking, the dissemination of best practice and representation on issues that affect the fundraising environment. The Institute of Fundraising is the largest individual representative body in the voluntary sector with over 5,300 individual members from 2,200 organisations and more than 340 charity organisational members.

1.2 The Institute of Fundraising is a key part of the self-regulatory framework for fundraising, and brings together lead fundraisers and sector experts to determine and set the Codes of Practice.33 A huge amount of time and professional expertise is volunteered each year to write and develop the codes, and it is these

fundraisers and sector experts who are the “self” in “self-regulation”, ensuring that practices raise the maximum amount for good causes in a sustainable way. These Codes are the standards for fundraising which all Institute of Fundraising and Fundraising Standards Board (FRSB) members are required to comply with, and are used by the FRSB to adjudicate complaints.

1.3 The Institute promotes these high standards to the sector; and supports fundraisers through advice and training to maintain best practice. 36

1.4 The Institute also works with charities who are not members to develop their practice, including a significant training programme specifically designed for small charities and an advice line and email support service, which is available to professional and volunteer fundraisers, including non-members. 37

RESPONSE TO INQUIRY QUESTIONS
Below are responses to selected questions, focusing on our areas of expertise.

Question 1: To what extent has the Charities Act 2006 achieved its intended effects of: b) improving the regulation of charity fundraising, and reducing regulation on the sector, especially for smaller charities?

1.5 Public Charitable Collections

1.5.1 Public collections form an important and efficient way for charities to raise funds. Hundreds of millions of pounds are raised each year from organisations large and small through collections in the street and doorstep in the form of cash, direct debit or stock collections. Charity fundraisers and charity shops rely on these collections to raise funds for their vital causes and collections provide an occasion to ask on behalf of their beneficiaries who may not be able to ask themselves. They provide donors with an opportunity to give and millions of people choose to give to collections each year. Charities receive over £130 million a year in direct debits from donors recruited face to face on the street and doorstep and it is a very effective way for charities to recruit long-term supporters, with charities typically raising over £2.50 over five years for every £1 spent. 38 Charity shops generate over £170 million each year in profits for good causes. Cash donations remain a popular way for people to give.

1.5.2 At the same time, we acknowledge that the current public collections licensing regime has its problems and the failure to enact Part 3 means that the Charities Act 2006 has not improved the regulation of charity fundraising in this area.

1.5.3 The current legislation covering the licensing of charitable collections is out-dated. Failure to implement Part 3 of the 2006 Act, which would have introduced a unified system, means that the current framework of existing legislation for regulating public charitable collections fails to cover the full range of collecting activity. The current system is challenging and costly to comply with, difficult to enforce, hard to police and can be confusing to both public and collecting organisations alike. The inconsistency of the application of current licensing laws is costly for both the charities who have to jump through a variety of hoops, and the local authorities who are forced to respond to perceived problems.

1.5.4 In his review of the Charities Act 2006 published in July 2012, Lord Hodgson made recommendations for a new regime for the licensing of charitable collections. However, concerns have been raised by some of our members that the proposals put forward will be even more expensive than the model of the 2006 Act (which was not enacted mainly due to being evaluated as too expensive), do not address all the current issues, and would make some fundraising activities unviable, reducing income to vital causes. In particular the proposal for the removal of the National Exemption Orders and the impact that it may have on stock collections is likely to force the closure of many charity shops.

1.5.5 The Institute of Fundraising has already started a project to explore potential long-term solutions for public collections, including Institute members, Professional Fundraising Regulatory Association, Fundraising Standards Board and wider stakeholders including the Local Government Association, Charity Retail Association, Textile Recycling Association, National Association of Licensing Enforcement Officers. The project aims to identify new solutions that meet the needs of the charities, licensing authorities and the public which are proportionate to “the problem” with the aim of

— maintaining public trust and confidence in charities;
— minimising administrative burdens and keeping costs of regulation down;
— facilitating a positive environment for fundraising;
— balancing the needs of key stakeholders; and
— balancing local agendas and national needs.

1.5.6 The principles identified by the group for a successful framework are included in Appendix 4.1. This is just a starting point for the work of the project which will be built upon in coming months.

36 http://www.institute-of-fundraising.org.uk/events-and-training/
38 http://www.pfra.org.uk/face-to-face_fundraising/how_much_does_f2f_raise_for_charity/
1.5.7 Alongside the issues relating to licensing and space allocation for public collections, the Institute of Fundraising is working with the Professional Fundraising Regulatory Association, Fundraising Standards Board and other stakeholders to define and maintain the highest standards in relation to conduct of public collectors, to ensure that the high levels of public support are sustained. Working groups have been established to review standards of conduct and explore accredited training for direct debit fundraisers.

1.5.8 When potential effective long-term solutions to public collections licensing have been identified and explored by the project group, we hope that the Government will support reforms that aim to make the systems work better for everyone.

1.6 Solicitation Statements

1.6.1 In a membership survey conducted by the Institute, 63% of respondents stated that the current solicitation statements requirements are too difficult to understand, too lengthy and complicated to read or to apply and that they should be simplified. This indicates that the Charities Act 2006 has not improved regulation in this area.

1.6.2 Many described the current legislation as confusing, obstructive and unnecessary. Comments from respondents included the fact that the statements are too open to interpretation and that there is a lack of logic in the statements—for example, not all categories of fundraiser are covered.

1.6.3 Charities and consumers would benefit if solicitation statements were simpler and clearer. In line with the desire to reduce red tape and bureaucracy, deregulation may be the answer, with the legal requirement to make solicitation statements being scrapped. However, the Institute recognises that in the interests of transparency and accountability, the current requirement for commercial companies to explain how much of the value of a sold good is passed on to a charity is important, and means that donors are able to make informed choices.

1.6.4 Our suggestion is that the requirements currently enshrined in law could be incorporated into the Code of Fundraising Practice, with simple and clear guidance as to what is required. This would provide a solution to the current lack of clarity around what is law and what is good practice, for example regarding the issue of notifiable amounts. There would also be acknowledgement of the fact that charity trustees are in any case required by law to exercise due diligence and act in the best interests of the charity when entering into arrangements with commercial organisations.

Question 4: Is the current threshold for registration with the Charity Commission set at an appropriate level?

1.7 Registration thresholds

1.7.1 Registration with the Charity Commission is important for public fundraising. It is relied on as an indicator of legitimacy by donors, but also some suppliers. Increasing the threshold may limit access to fundraising for some smaller charities. The success of promoting the requirement to use charity numbers on all materials to properly identify your organisation in recent years has meant that they are consistently used by charities, and donors often expect them, meaning that those without a charity number can be viewed with suspicion.

1.7.2 We would strongly oppose the raising of the threshold for charity registration. Although the intention may be to relieve burdens, it will actually increase the pressure on organisations by removing an important signifier of trust that helps them attract donations. It also adds to inefficiencies. Donors, particularly trusts, will need to complete a review for each applicant to check legitimacy where this could be much more effectively done once by the Charity Commission. Some trust funders will only fund charities registered with the Charity Commission so raising thresholds may limit opportunities to fundraise for small charities. It also may not reduce the legislative burden, as it will add additional burdens for HMRC when these organisations not registered with the Charity Commission register for Gift Aid.

1.7.3 If the threshold is to be increased, it is vital that voluntary registration is allowed from a low level, to allow registration for those that need to for funding and fundraising purposes, and that equal priority is given by the Charity Commission to voluntary registrants as those over the compulsory threshold.

Question 9: How successful is the self-regulation of fundraising through the Fundraising Standards Board?

1.8 Self-regulation

1.8.1 There is general agreement in the sector that self-regulation of fundraising has been effective and responsive to fundraising practices as they develop. For example, work is currently being undertaken to review digital fundraising guidance in response to fast-moving developments in technology and practice and increased complaints about email marketing. The Institute of Fundraising held a summit in July bringing together charities following reporting of poor conduct of a minority of face to face fundraisers. As a result an action plan is being implemented which includes reviewing fundraising standards and implementation, accredited training of fundraisers, and support for more effective agency management.
The collective commitment of the sector has led to improved compliance with best practice, which is confirmed by the relatively low proportion of complaints recorded by the FRSB in its Annual Complaints Return.\textsuperscript{39} The majority of complaints are resolved by charities—in 2011 only three complaints went on to FRSB adjudication and only one was upheld.

Room for improvement

1.1 Fundraisers are not complacent and are committed to continuing to improve practice and enhance the framework for the scheme. The concerns raised during the review of the Charities Act 2006 about the current system are appreciated—including potential confusion about the respective roles and responsibilities of the bodies, the level of participation in the scheme, cost effectiveness and enforcement for non-compliance.

1.2 There are limitations within the existing system, and the Institute believes that there are improvements that could be made. One of the major problems is that the current system is not universal. Take up levels in terms of membership of the FRSB have not met expectations. At the end of 2011, membership of the FRSB stood at 1,233 charity members. Furthermore, the FRSB only has jurisdiction over its own members (in 2011, the FRSB received 67 complaints about non-members, the majority of which were about cash and clothing collections). The FRSB reports that 37\% of complaints coming directly to FRSB from members of the public are regarding fundraising practice of non-members.

1.3 Feedback from our members suggests that the current system is also overly complicated and expensive for charities, who pay separate fees to different organisations. The Institute of Fundraising is keen to explore how the functions of the self-regulatory system could be delivered more efficiently and effectively to make better use of donor funds by delivering more for the current costs. It is vital that the costs of the scheme do not outweigh the benefits so that the scheme continues to have the support and engagement of charities. The largest charities have reported that their fees to sector membership bodies and regulators can already be in excess of £150,000 per annum. The Committee should note that these fees are made up of donors money for vital causes: hence the drive from our charity members to make the system as efficient and effective as possible.

1.4 The framework includes three separate bodies of charity members, which is inefficient, but also may be perceived to create conflicts of interest. For example, members may not be honest in annual returns of complaints to FRSB for fear that a higher complaint rate may lead to them being audited; meaning they are thus not getting the support that they need to address issues. In addition, the Fundraising Standards Board is required to adjudicate against its members with the potential result being expulsion from the scheme, which will reduce income in the fees to the Fundraising Standards Board (up to £5,000 per organisation). This may impact the independence of decision making for an organisation with limited budgets. Fee and other structures should be reviewed to ensure the greatest efficiency and effectiveness in the functions delivered.

1.5 The Institute is also of the view that more auditing of standards is required and stronger sanctions against those who break the Codes of Fundraising Practice should be considered. Capacity for “mystery shopping” and auditing have been limited and the scheme may not be providing the reassurances needed—including from charities who would like to have greater confidence in the compliance of their suppliers. Enforcement needs to be thought about carefully, but could include restricting an organisation’s ability to use a certain funding technique, compulsory re-training, and/or naming and shaming. We believe that fines should be a last resort, as again it is donors’ money in question.

1.6 In an ideal world, our members would like to see the introduction of a single universal system that applies to everyone and which is implemented at no additional cost to charities. A universal system would mean that all fundraising organisations would have to comply with the Codes of Fundraising Practice. Fundraising organisations have a duty of care to ensure that the trust invested in the voluntary and community sector by the public is maintained. The Institute of Fundraising believes that developing and encouraging standards in fundraising is key to achieving this and therefore is of the opinion that all fundraising organisations should adopt the Codes and commit to their standards.

Developing self-regulation

1.10 The Institute of Fundraising, FRSB and PFRA have held the first two in a series of meetings and discussions between the chief executives and chairs of the three organisations, designed to clarify their roles and responsibilities in relation to the public and their members, to address potential shortfalls in the scheme and to agree how best to extend its reach.

1.10.2 There is unanimous agreement that the FRSB should be the single public facing regulatory body and point of contact for the public with regard to complaints relating to any kind of fundraising. The Institute will be the standards setter and writer of rules and codes for all fundraising, against which the FRSB will adjudicate. The PFRA continues to play a specialist business-to-business role focused on distribution and enforcement of face-to-face fundraising.

1.10.3 With the dual objective of maximising trust and confidence whilst not wasting donors’ contributions on unnecessary bureaucracy we are committed to working together with the FRSB and PFRA to ensure that

\textsuperscript{39} \url{http://www.frsb.org.uk/english/advice-and-regulation/complaints/frsb-annual-return/}
self-regulation is as efficient and effective as possible. We want to create an environment to help charities raise funds effectively whilst maintaining the high levels of trust and confidence charities enjoy.

1.10.4 The Institute is committed to working with the FRSB and PFRA to review the fundraising landscape of the future, and to look at how our organisations might evolve structurally and financially to meet those potential changes ensuring at all times that they are as effective, efficient and coherent as possible.

1.10.5 The Institute of Fundraising is committed to being a part of an efficient and effective self-regulatory system, and will continue to support its evolution and enhancement to meet the current and future needs of the sector and the public. We hope that the Committee and the Government recognises the achievements of the self-regulation scheme to date and continues to support the process of development which is underway.

APPENDICES

1.11 Principles for a successful public collections framework

The aim of the principles is to inform work going forward—both in focusing thoughts about solutions but also to test different proposals against. This list is being further worked on by the project group, but provides an initial indication of the direction of the work.

1. Cost effective and proportionate

Effective in delivery and administration costs for charities and local authorities and proportionate to outcomes eg no requirement for audited reports of amount collected or other additional burdens.

2. Universal but responsive

Universal over all collections (street and doorstep; direct debit, cash, stock, and prospecting) but recognises the diversity of activities in nature and approach within it. Consistent in process and requirements nationally (preferably centrally administered), but local control over specific issues within a framework (eg location, time, frequency, no of fundraisers for each type of fundraising). There also needs to be the facility for national activities to be easily co-ordinated and a need to be flexible and responsive for unforeseen circumstances eg disasters or to be responsive to local needs or emergent issues that may arise.

3. Simple and accessible

Easy to understand and clear requirements including relevant application/booking/notification requirements. Accessible eg could be done by volunteers and as an “offline” option for those without access to technology and fairly accessible for everyone—including small charities. It shall maintain mechanisms for disagreement resolution over space allocation to maintain fair access.

4. Robust and transparent

Gives confidence/prevents fraud. It should be transparent to public, local authorities and charities and accountable with a consistent complaint process and clarity of roles. Objective—recognising the role of trustees and the business cases for activities and not restricted by crude short-term income/cost calculations. It should include clear standards—simple codes, clear enforcement mechanisms and agency management and accountability [will also apply to private sites].

5. Sustainable

Balances public perceptions and charity beneficiary needs and not overly restrictive—right to fundraise and facilitates a positive environment for fundraising whilst protecting reputational concerns. Future-proof—flexible to grow with technology and fundraising development.

6. Contextualised

Appreciates other sectors operating in the same spaces and is mirrored by other relevant restrictions (eg licensing of commercial stock collectors).

1.12 Charities Act Responses

1.12.1 Further evidence is provided in the previous responses of the Institute of Fundraising to the Charities Act Review.

Public collections:

Self-regulation:


September 2012

Written evidence submitted by Bates Wells & Braithwaite (CH 34)

About Bates Wells & Braithwaite

Bates Wells & Braithwaite is one of the leading charity law firms in the country. We have over 2000 charity clients. Our Senior Partner, Stephen Lloyd, was appointed by the Cabinet Office as Legal Advisor to Lord Hodgson in relation to preparation of Lord Hodgson’s report on the Charities Act 2006.

Stephen Lloyd would be delighted to give evidence to the Select Committee on any aspect of the submission.

Structure of this Submission

Our submission cross refers to the following previously published material which we have included as supplementary material in the Appendices to this submission.

Appendix 1 BWB Main submission to Lord Hodgson
Appendix 2 BWB submission to Lord Hodgson on Social Investment
Appendix 3 BWB Report “Ten Reforms to Grow the Social Investment Market
Appendix 4 BWB submission to Lord Hodgson on the Property Aspects of the Charities Act 2006
Appendix 5 “Good News?” A report by the Advisory Group on Journalism & Charitable Status

Responses to Questions Posed in the Issues and Questions Paper

1. To what extent has the Charities Act 2006 achieved its intended effects of:

1.1 enabling charities to administer themselves more efficiently and be more effective?

The Charities Act 2006 has achieved good things and it contained a number of key reforms that have been very helpful to specific charities (for example, new powers for unincorporated charities to amend their administrative powers and procedures.)

We did identify in our submission to Lord Hodgson (see Appendix 1) a number of further reforms that would enable charities to administer themselves more efficiently and be more effective. See Appendix 1, paras 1.15, 1.18, 1.19, 1.22, 2.6, 4.9—4.17, 5.6 and 8.1—8.7.

1.2 improving the regulation of charity fundraising, and reducing regulation on the sector, especially for smaller charities?

The Charities Act 2006 made only one change to fundraising, which was to require professional fundraisers and commercial participators to disclose the “notifiable amount” of payment to them or payment by them to charity. This has we think been helpful, it has increased transparency.

It is lamentable that the parts of the Charities Act 2006 dealing with public collections have not been implemented, meaning that a key area of fundraising from the public is still governed by legislation dating back nearly 100 years.

1.3 providing a clear definition of charity, with an emphasis on public benefit?

Further clarification of the list of charitable purposes in the 2006 Act (now found in the 2011 Act) would, we think be helpful. Specifically, in relation to a charity’s objects:

— The Charity Commission should accept applications to register charities which have objects drafted to mirror one or more of the charitable purposes listed in the Charities Act 2011 (it currently does not).
— To facilitate social finance projects, new categories could be added to section 3(1) of the Charities Act 2011.
— We think it follows that the charitable purposes “the advancement of citizenship and “the advancement of human rights” (which was set out in the Charities Act 2006) should be interpreted to include the promotion of democracy and freedom of information.
— Additionally, we support the recognition of a new charitable purpose being “the pursuit of impartial investigative journalism”—see Appendix 5 for more details.
In relation to public benefit, we do not think any change to the public benefit test is necessary at this stage, for example, by the introduction of a definition of public benefit. For more detail, please see para 2 of Appendix 1.

1.4 modernising the Charity Commission’s functions and powers as regulator, increasing its accountability and preserving its independence from ministers?

Our main comment here is that independence of the Commission is vitally important. In terms of accountability, we would like to see a refined process for challenging Commission decisions, which involves for all decisions the opportunity for an internal Commission review after which an appeal to the Tribunal can be made.

2. What should be the key functions of the Charity Commission?

Broadly we think the statutory functions set out in the Charities Act 2006 (and now in the Charities Act 2011) work but:
— there is a continuing need for clarity between the role of the Commission and HMRC; and
— we suggest in our answer to Question 7 an additional useful function for the Commission relating to engagement with the wider social economy.

3. How should the Charity Commission be funded?

We do not support charging by the Commission if it is intended to replace Government funding. For more detail, please see paras 1.7 to 1.22 of Appendix 1.

Our overall view is that the Charity Commission must be sufficiently well-resourced to provide an effective service and we have real concerns about the effects of the recent cuts to the Commission’s funding. We are noticing that small charities are finding it increasingly difficult to get the advice they need. And a lack of funding means that the Commission does not have the resources to be as helpful as it has in the past for example in making orders to transfer large property portfolios on a merger (which can mean huge savings on conveyancing costs). We are also concerned that a lack of Commission resources to fund new policy areas will lead to stultification of charity law.

4. Is the current threshold for registration with the Charity Commission set at an appropriate level?

We do not want to see any increase in the threshold for registration and we strongly encourage the Government to implement Section 30(3) of the Charities Act 2011 which would allow charities below the current registration threshold to register voluntarily.

We have a concern that the Commission has recently changed its policy in relation to proof of the £5,000 necessary to register. Money pledged conditional on registration should be sufficient.

5. How valid are concerns that there are too many charities?

We do not have concerns that there are too many charities. A key to much good work by charities is the voluntary involvement of motivated individuals. If that motivation is triggered by working for a new, small charity, then that opportunity for engagement should not be crushed because there are already other charities working in the same field.

In our experience, charities themselves are alive to issues of duplication and to that extent many do consider merger. In legal terms, merger is an area where more could be done to make it easier for charities to merge. We outlined several recommendations in our submission to Lord Hodgson—see Appendix 1 paras 7.14—7.20.

6. Exempt charities, such as academy schools, are regulated by principal regulators, rather than the Charity Commission. How well is this system working?

A simple, clear and consistent choice needs to be made in relation to the regulation of unregistered charities for charity law purposes. Either the Commission’s authority should be extended, or the charity law capacity of other regulators, such as HEFCE, should become more central to their functions, with some mechanism for ensuring consistency.

7. There has been an increase in the number of organisations that operate for the public good such as social enterprises and mutuals, which are not charities, and are not regulated by the Charity Commission. What impact may this have on the public perception of what a charity is, and how charities are regulated?

7.1 Our view is that, while the landscape of organisations working for social purposes is changing, the public is reasonably clear that a charity is a unique type of social purpose organisation. Specifically, the public recognise that a registered charity number brings with it certain expected standards and an involvement with the Charity Commission.
7.2 We do not see the evolving social enterprise and mutuals movement as a threat to charity or a dilution of what it means to be a charity. Some social enterprises are themselves charities and many charities view social enterprise as a way to develop and expand their operations. We view the opportunity for organisations to work in different ways and with different structures as a positive aspect of sector which should not be curtailed.

7.3 That said, in our report “Ten reforms to grow the social investment market” (a copy of which is attached at Appendix 3), we make several recommendations that relate to the relationship between charities and other social economy organisations. For example:

7.3.1 Recommendation 8—Company law and co-operative law should be reformed to encourage the formation of more start-up companies with a social purpose and more new co-operatives.

7.3.2 Recommendation 10—The registration of co-operatives and community benefit societies should be moved to Companies House and the CIC Regulator, to create a new Social Economy Commission.

7.4 In addition, given that the charity sector is a large part of the growing social economy, it is vitally important that the Charity Commission engages actively with other parts of the social economy. This could be achieved by amending the Charities Act 2011 to give the Commission an additional objective relating to working with the wider social economy. The Commission should, in our view, also be more supportive of and open to innovative work being undertaken by charities with other organisations within the social economy.

8. How successful has the introduction of the Charity Tribunal and its replacement, the First-Tier Tribunal (Charity), been in making it easier to challenge decisions of the Charity Commission?

As a firm, we welcomed the creation of the Charity Tribunal by the 2006 Act and we believe that it can provide a very useful forum for challenging Charity Commission decisions once it is more fully established and subject to some changes to its processes.

— The right to appeal to the tribunal should apply to any official decision or failure to make an official decision by the Commission, not a statutory list of permitted causes.

— The time period for bringing an appeal should be extended from the current 42 days, to give charities more time to consult internally and if they wish, make use of the Charity Commission internal review process (which should also be amended so that it extends to cover any decision or non-decision of the Commission).

— Changes should be made to the Charities Act 2011 and the Tribunal’s powers so that charities no longer have to seek orders or consent from the Commission to bring an appeal or other court cases but can instead seek comfort from an order of the Tribunal or court that sanctions the actions of the trustees in bringing or defending the case.

— The Tribunal powers to manage cases should be reviewed and strengthened if necessary, particularly to empower the Tribunal to take steps which will keep costs down where there are potentially large numbers of charities wanting to join in proceedings.

9. How successful is the self-regulation of fundraising through the Fundraising Standards Board?

The decision by Parliament to effectively defer statutory regulation of fundraising in favour of allowing the sector time to test out self-regulation was we think the correct one. We are clear however that some form of regulation is necessary. To the extent current legislation regulates fundraising, it is helpful to have a method of enforcement. And to the extent there are areas of fundraising currently unregulated by legislation, but regulated say by sector Codes of Practice, it is again desirable to regulate against those Codes.

We note surveys carried out by the Fundraising Standards Board and the Institute of Fundraising show general support for an equivalent of the current system of self-regulation with:

9.1.1 all charities bound by the regime; and

9.1.2 stronger sanctions for non-compliance.

We think it is helpful to look at other sector regulators (such as the Advertising Standards Authority and PhonePay Plus) to compare the models where “universality” is achieved either by legislating for it or by ensuring sufficient buy-in to mean there are practical, effective sanctions (like the ASA). This is an area which requires further thought and we would be happy to contribute our experience of advising the ASA and PhonePay Plus.

We feel strongly any system of regulation should bind not just charities but also commercial organisations involved with fundraising, particularly “commercial participators” and “professional fundraisers”.

One solution may be for the Minister of the Cabinet Office to use his/her power (under section 64A of the Charities Act 1992) to put in place a system of regulation “with teeth”. The submission to Lord Hodgson from the Charity Law Association includes more detail on this.
10. Are the rules around political activity by charities reasonable and proportionate?

We believe that the rules on political activity by charities are reasonable and proportionate. The Charities Act 2000 did not change the law on political activity and after taking extensive evidence, Lord Hodgson did not see this as an area in which reform was required. We are, in fact, of the view that the law could be further liberalised to allow charities to carry out as a main or exclusive activity, advocacy and policy work to change law or regulation, provided that at all times such activity is supporting a charitable purpose.

Accordingly it is our view that:

Charities should be able to engage in political campaigning in furtherance of their charitable purposes as long as they do not support political parties. In particular:

— Charity trustees should be free to decide to engage exclusively in political campaigning in furtherance of their charitable purposes.

— A charity should not have limits placed on the resources that can be committed to political campaigning activities.

11. Other Issues

We support recommendations made by Lord Hodgson in relation to charities and social investment. This fits with wider work we have been doing, including our publication “Ten reforms to grow the social investment market” (see Appendix 3).

September 2012

Written evidence submitted by Fundraising Standards Board (FRSB) (CH 35)

Executive Summary

1.1 Self-regulation for fundraising is a successful, independent and robust scheme. More than half of all voluntary income (nearly £5 billion) is now raised by organisations that demonstrate their commitment to fundraising at the highest standard through membership of the Fundraising Standards Board (FRSB).

1.2 The successful establishment of this self-regulatory scheme should be further strengthened (Self-Regulation Plus), with greater incentives for joining and further sanctions against those that contravene best practice, posing a threat to public trust and confidence. The FRSB will work collaboratively with other sector bodies, regulators and enforcement agencies to continue to develop the scheme to ensure that it is as efficient and effective as possible.

1.3 The chief executives and chairs of the Fundraising Standards Board (FRSB), Institute of Fundraising (IoF) and Public Fundraising Regulatory Association (PFRA) are united in their determination to work cooperatively in meeting the challenges of self-regulation, and have already made significant progress in agreeing a way forward.

1.4 We hope that the Committee and the Government recognise the achievements of the self regulation of fundraising through the FRSB and, where possible, continues to support its growth and development.

2. About the Fundraising Standards Board

2.1. The Fundraising Standards Board (FRSB) is the independent, self-regulatory body for charity fundraising in the UK, working to ensure that charity fundraising is always honest, legal, open, respectful and accountable.

2.2. Independently structured—The FRSB Board has 12 members, six sector members and six lay members, one of whom is the independent chair. The six sector members include the National Council of Voluntary Organisations (NCVO), the Welsh Council of Voluntary Associations (WCVA), the Scottish Council for Voluntary Organisations (SCVO), the Northern Ireland Council of Voluntary Associations (NICVA), the Institute of Fundraising (IoF), the Public Fundraising Regulatory Association (PFRA), the Charity Law Association (CLA) and Which? (the consumer rights organisation). Along with the lay members, this structure ensures that the self regulation of fundraising is run independently and transparently. The casting vote on any policy is with the independent lay chair who must favour the public interest.

2.3. Engaging the charity sector—Launched to the public in 2007, the FRSB now represents approximately 50% of all voluntary income raised in the UK, with over 1,450 members (comprising both charities and sector suppliers). Membership is wide-ranging and representative. While 70% of members have a voluntary income below £1 million per annum, 81% of the top 100 charities in the country are members signed up to self-regulation. The FRSB Board membership includes representation from the four largest voluntary organisations in Britain and along with the IoF, represent well over 14,000 charitable organisations and tens of thousands of individual fundraisers. As well as working in partnership with other sector and public bodies, we run an Advisory Forum where we actively engage with the membership to seek their views on key issues.
2.4. Commitment to standards—Our members make a commitment to adhere to the highest standards of fundraising practice through the principles of the Fundraising Promise and compliance with the IoF Codes. Members display the FRSB’s distinctive tick logo on fundraising materials and appeals, encouraging the UK public to give with confidence.

2.5. Accessible and public focussed—The FRSB scheme requires members to clearly identify their complaints process to the public, who also have access to independent adjudication by the FRSB if their concerns cannot be addressed by the charity directly. We also have a public facing website.

3. Response to Inquiry Question 1: To what extent has the Charities Act 2006 achieved its intended effect of improving the regulation of charity fundraising, and reducing regulation on the sector, especially for smaller charities?

3.1 Improving the regulation of charity fundraising

3.1.1 The Charities Act 2006 gave the charity sector an opportunity to regulate its own fundraising activity, without imposing undue bureaucracy or financial burden. The successful introduction of an independent self-regulatory scheme for fundraising, as delivered by the FRSB, was a timely and critical initiative that has served to raise standards within the industry and to build and strengthen public trust and confidence. A proportionate, transparent and comprehensive scheme, it ensures the public’s voice on fundraising is heard and that charities are held to account for their fundraising.

3.1.2 Close collaboration with sector bodies, the Charity Commission and other regulators and enforcement agencies within and beyond the sector, ensures there is now a robust self-regulatory scheme for fundraising. Detailed information about self-regulation is included in section 4 in response to Question 9 of the PASC Inquiry.

3.2 Minimising regulatory burden for charity fundraising

Self-regulation is an efficient scheme that strikes a fine balance between the need for robust regulation and a focus on maintaining and improving standards, without imposing overly bureaucratic, costly or restrictive statutory legislation for charities.

3.3 Public Collections

3.3.1 The provisions of the Charities Act 2006 relating to a new public collections licensing system were not brought into force because they were not seen as workable, largely under cost constraints.

3.3.2 The same issues therefore still apply regarding old legislation creating a confusing framework both for charities and public. As an area that is highly visible, subject to intense media scrutiny and having generated 5,044 complaints in 2011, this is a key issue for building public trust and confidence.

3.3.3 The FRSB is working with the IoF and others in the sector to develop practical and workable proposals to streamline the system for the future, to level the playing field for smaller charities, and to make the system simple and transparent both for charities and the public, who need to understand any system of regulation if they are to benefit fully from its protection and have confidence in this form of fundraising.

3.3.4 FRSB membership already demonstrates commitment to best practice in all areas of fundraising, a commitment to transparency and accountability, and provides an independent route to redress. Rather than establishing a duplicate system for determining national eligibility criteria for public collections, with the costs associated with such additional applications and assessments, FRSB membership could be seen as determining eligibility criteria for public collections. This would avoid duplication of effort and would be a strong incentive for non-member charities and suppliers to sign up to the scheme, committing to best practice across all their fundraising activity. With the threat of loss of a public fundraising licence going hand in hand with expulsion from the scheme, this would add weight to the existing sanctions of the self-regulatory scheme.

3.4 Solicitation Statements

3.4.1 The key purpose for solicitation statements is to ensure that when a member of the public gives to a charity, they are not misled as to the proportion of their gift that will be applied for charity. There is great complexity in the arrangements made between charities and suppliers and corporate partners, and it has proven difficult in the past to develop a formula for solicitation statements which achieves the level of transparency the public deserves.

3.4.2 The FRSB will work in collaboration with other key sector bodies to develop a workable proposal that meets the needs of the giving public, as well as being practical for the sector.
4. Response to Inquiry Question 9: How successful is the self-regulation of fundraising through the Fundraising Standards Board?

4.1 Has the FRSB met expectations?

4.1.1 The FRSB was established by the sector supported by seed-corn funding from Government and with a clear set of key performance indicators set by Government (see appendix 5.1). Five years on from launch, the FRSB has made great progress against those KPIs and it has already made significant impact:

- Public awareness of self-regulation has risen from 0 to 10% in five years;
- Trust and confidence is strengthened through the establishment of the FRSB and its robust regulatory scheme for fundraising. 71% of adults say they would trust a charity more if they knew it was a member of the FRSB and 62% would be more likely to support that charity.40
- Through its established annual complaints return and subsequent analysis the FRSB produces an annual complaints report (see “Good Honest Fundraising”), which acts as a public benchmark for complaints handling in the sector, feeding information on complaint issues into the development of best practice;
- Requiring members to comply with best practice standards and a set of core principles; the Fundraising Promise—85% of FRSB members report they have improved their practices as a result of membership and that the FRSB has had a positive impact on transparency and accountability.41
- The FRSB’s three step complaints handling process enables it to enforce compliance; it has managed a number of successful complaints adjudications and publicised rulings and decisions.
- Through initial seed funding the FRSB has created a sustainable self-regulatory model which has led other countries in the world to consider emulating it.
- Through the support of the sector the FRSB has become self funded.
- The public now has a voice at the heart of the fundraising sector, with consumer feedback being channelled back into the sector and shaping future standards for fundraising.

4.2 Building on Success—meeting challenges and moving forward to the next stage of self-regulation via the FRSB

4.2.1 Cross-sector Agreement—there is general agreement that self regulation delivered by the FRSB has been successful and is effective. The sector should be proud of what has been achieved over the past five years since it was established and it has achieved an overwhelming majority of the criteria laid down by Government when it originally agreed to support charity self regulation in 2006.

4.2.2 Moving to the next phase—We need to build on the achievements to date, and move to the next stage of development. To do so needs the support of the key stakeholders that sit on the FRSB board, including the Charity Commission, as well as a number of initiatives which have been described as Self Regulation Plus, covering greater promotion and incentives, auditing and sanctions. A number of issues need to be considered:

4.2.3 Remaining Cost Effective—The cost of delivering self regulation for the sector is approximately £450,000 per annum (see appendix 5.3—FRSB 2012 Abridged Accounts). The FRSB operates a tiered membership fee structure. With a membership of 1,500 charities, the average cost to our members is £300 per annum, but many small charity members are paying an annual fee of £30 that equates to less than 0.003% of their voluntary income. We believe that the FRSB delivers one of the most cost effective self regulatory models that exist in Britain today. While the responsibilities and demands on delivering self regulation increase, the FRSB commits to continuing to run the Self Regulation model as efficiently and effectively as possible.

4.2.4 Future Auditing Programme—The FRSB wants to add a risk-based and proportionate auditing programme to the successful self certification system that allows charities to sign up to the scheme. This is to ensure that as the scheme extends its reach and visibility, it maintains its reputation for quality and high standards. This auditing will include “mystery shopping”, reviewing members’ internal complaints procedures and processes. While active auditing has a cost attached, much of this can be met through raising levels of membership.

4.2.5 Compulsory Membership v Voluntary Membership—The FRSB is opposed to making membership compulsory. Self regulation is what it says, self regulation. It is a voluntary scheme which should be joined and supported by the sector in the self-interests of building and maintaining public trust and confidence and signing up to maintain high standards of fundraising. The FRSB believes that all fundraising charities should sign up to the FRSB and support self regulation. We would like to see this goal supported more strongly by partners and incentives, as recommended by Lord Hodgson in his review.

4.2.6 Clarity of Roles—Many organisations have been involved in the evolution of the current system of self-regulation, and this has led at times to confusion about roles.

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40 TNS Omnibus Survey, February 2012, (1,000+ adults).
41 Source: FRSB member survey (330 organisations), February 2012.
4.2.7 On 6 September 2012 an agreement was made between the FRSB, the IoF and the PFRA, that the FRSB should be the single public facing regulatory body and point of contact for the public with regard to complaints relating to any kind of fundraising. The IoF remains the standards setter and writer of rules and codes for all fundraising, against which the FRSB will adjudicate. The PFRA continues to play a specialist role focused on distribution and enforcement of face-to-face fundraising.

4.2.8 This is a highly significant step for the three bodies involved in supporting self regulation in Britain and sets the course to enable all charities who have not yet signed up to self regulation to do so and demonstrate their support to maintain and build public trust in confidence in charity giving.

4.2.9 The FRSB is committed to working with the IoF, the PFRA and other key stakeholders such as the Charity Commission, in considering the fundraising landscape of the future; to look at how our individual organisations might evolve to meet the potential changes and challenges that lie ahead and in ensuring that they are as effective, efficient and coherent as possible.

4.3 Challenge of public awareness

4.3.1 Public recognition of the FRSB has grown from 0% to 10% in the five years since its launch. This is a significant achievement in the early stages of such a scheme, with little budget and heavy reliance upon charities promoting their membership to supporters.

4.3.2 It is recognised that more needs to be done to improve public awareness levels, not only to improve the scheme’s credibility but also to help drive recruitment to the scheme. Members are required to use the Give with confidence tick logo on all fundraising literature under a “comply or explain” approach.

4.3.3 The FRSB will continue to work with its membership to deliver cost-effective awareness through the Give with confidence tick logo on fundraising materials, and is already exploring ways in which other public bodies such as the Charity Commission can help to raise public awareness of the scheme.

4.4 Challenge of poor practice in non-members

4.4.1 37% of complaints coming directly to the FRSB from members of the public are regarding non-members’ fundraising practice.

4.4.2 The FRSB does investigate these complaints and often this leads to improving standards and recruitment of the non-members into membership when they see the benefits of the scheme.

4.4.3 However, there remains limited redress if a non-member does not co-operate and the negative impact on public confidence remains.

4.4.4 As membership reach grows, this will naturally reduce the impact of this challenge and will increase the benefit of membership as the public will be more aware of the need to look for the tick to ensure they can give with confidence.

4.5 Challenge of economic environment

4.5.1 Today, charities are more than ever dependent on public donations, while they are also they are also looking for greater value from membership as they continue to manage their costs and expenses.

4.5.2 As volumes of membership increase, the FRSB will be able to deliver more active standards monitoring, while keeping costs as low as possible.

5. APPENDICES

5.1 PROGRESS AGAINST GOVERNMENT KPIS

<table>
<thead>
<tr>
<th>Government Objectives</th>
<th>FRSB Achievements to Date (Sept 2012)</th>
</tr>
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<tbody>
<tr>
<td>Maintain and build public trust confidence in charitable fundraising</td>
<td>- Over 1,450 to date</td>
</tr>
<tr>
<td>Attract high levels of voluntary participation across the sector</td>
<td>- Represent nearly 50% of voluntary income throughout the UK</td>
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<tr>
<td></td>
<td>- Circa 14,000 charitable organisations represented on the FRSB Board</td>
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<tr>
<td>Participation should reflect the diversity of the sector</td>
<td>- 70% of members have income under £1 million</td>
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<td></td>
<td>- 24% between £1—10 million</td>
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<td></td>
<td>- 6% over £10 million</td>
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<td></td>
<td>- Includes registered charities as well as other charitable organisations and suppliers to the sector</td>
</tr>
<tr>
<td>Provide a clear public promise of what is expected from members</td>
<td>- Fundraising Promise developed &amp; promoted by all FRSB members since 2007 launch</td>
</tr>
<tr>
<td></td>
<td>- <em>Give with Confidence</em> website launched early 2009 to explain FRSB membership to the public</td>
</tr>
<tr>
<td>Government Objectives</td>
<td>FRSB Achievements to Date (Sept 2012)</td>
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</tbody>
</table>
| Governing body must include consumer & sector representatives and be independent and impartial | - Became independent body in Dec 2006  
- Independent chair  
- Board consists of six lay members, the consumer body Which? and five sector representatives  
- Sector represented by IOF and PFRA, plus rolling membership of NCVO, SCVO, WCVA and NICVA (representing 14,000 charitable organisations)  
- Three stage process, with charity dealing with complaint in the first instance  
- Process clearly outlined on “Give with Confidence” website  
- Members required to communicate their complaints process clearly to public |
| The scheme must have a clear & effective complaints handling process which is easily accessible to the public | - Stage 2 of the process offers mediation while Stage 3 offers final independent adjudication by the FRSB Board  
- Annual reports have been produced & published since 2007 |
| The schemes complaints handling process must provide fair redress for the public | - Members use of the Give with Confidence tick logo on all fundraising campaigns, including websites  
- Complaints against non-members raised with them and membership encouraged  
- Awareness raised among sector via involvement in sector events, direct marketing campaigns and PR work  
- Awareness raised with the public via an initial advertising campaign. Subsequent reliance on members to promote their membership of scheme, plus ongoing press presence. |
| The scheme must be accountable through the publication of an annual report | - FRSB carry out annual public survey  
- Co-ordination with other sector bodies and other regulatory partner programmes to identify issues with fundraising practice and support greater public awareness eg telephone symposium & bogus clothes campaign |
| Promote best practice to the sector | - MOU with Charity Commission, OSCR & planned for NI Commissioner  
- Joint initiatives in place and regular liaison with ICO, ASA, Trading Standards, Police |
| The scheme should actively encourage awareness amongst non-members & the public of the scheme’s existence and good fundraising practice | - Annual complaints return, published & promoted to sector & consumer media  
- Publishing of Promise on member websites  
- Requirement to follow IOF Codes of Practice  
- The use of tick logo on all members fundraising materials |
| The scheme should promote openness, transparency & accountability in fundraising practice | - Random audit introduced in 2011 of 5% of membership to assess base line compliance with membership obligations  
- Members are given an opportunity to resolve non-compliance issues themselves at first stage  
- Secondary stage seeks facilitated outcome  
- Adjudication stage is a formal public disclosure, but still seeking improved practice where possible  
- Ultimate sanction is removal from membership |
| The scheme should identify emerging trends in fundraising practice, the public’s perception of them | - Self-regulation of charity fundraising role is to promote best practice, not regulate legal compliance  
- Public interest and representation  
- Co-operation with statutory regulator and sector standards setters, the IOF |
| The scheme should work effectively with other regulators, particularly where issues are outside its remit | - Compliance with the scheme requires members to abide by the IoF Codes, the FRSB Promise, display the tick logo & provide one formal report to FRSB per |
5.2 **Response to Lord Hodgson Charities Act Review**

This document can be viewed on the FRSB’s website using the following link:

Strong Self-Regulation: FRSB Review Submission

5.3. **FRSB Accounts 2012—Abridged**

**INCOME AND EXPENDITURE ACCOUNT FOR THE YEAR ENDED 30 JUNE 2012**

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<tr>
<th>Notes</th>
<th>2012</th>
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<tr>
<td></td>
<td>£</td>
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<tr>
<td>Income</td>
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<tr>
<td>Subscriptions</td>
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<td>Grants</td>
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<td>Administration expenses</td>
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<td>Operating surplus</td>
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<td>Interest receivable</td>
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<td>Surplus before tax</td>
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<tr>
<td>Taxation</td>
<td>(830)</td>
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<tr>
<td>Retained surplus for the year</td>
<td>5</td>
<td>59,939</td>
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*September 2012*

**Written evidence submitted by the Charity Commission (CH 39)**

The Charity Commission is the independent registrar and regulator of charities in England and Wales. This paper is submitted prior to the series of witness sessions for the Inquiry and sets out our key observations on the issues and questions to be covered.

**Key Observations**

1. **To what extent has the Charities Act 2006 achieved its intended effects of:**

   **(a) enabling charities to administer themselves more efficiently and be more effective?**

   The Act made a number of changes to processes which enable a charity to make improvements to its administration and to adapt to changing social and economic circumstances. These provisions potentially allow thousands more charities to act for themselves without involving the Commission. Because the Commission is no longer involved in these processes, it is difficult to identify the extent to which they have been used and evidence of their impact. In the time during which these permissive powers have been available we have seen no evidence that the freedom to make such changes has raised regulatory concerns. As a result of this experience we have made some further proposals for changes which give greater freedom for charities to act without the involvement of the Commission.

   Examples of these include:
   
   (i) Removing the need for the Commission’s formal permission given by Order to allow the sale of land belonging to a charity unless it is to a connected person.

   (ii) Removing or reducing the Commission’s involvement when unincorporated charities wish to change the purposes of the charity.

   (iii) Changing the rules relating to ex gratia payments (made by charities when trustees believe that they are under a moral duty to make a payment) by permitting decisions to be delegated to staff and introducing a threshold below which charities can take a decision without reference to the Commission.

   We gave details of these proposals to Lord Hodgson.

   **(b) improving the regulation of charity fundraising, and reducing regulation on the sector, especially for smaller charities?**

   As our comments at 1(a) above indicate, we believe that there is no evidence that changes in the Act intended to reduce bureaucracy when charities (and particularly smaller charities) alter their purposes or administrative powers have created problems and in the light of this they could be usefully extended.

   The current regime of self regulation of fundraising needs further time to fully develop. The Commission’s role is to provide guidance on trustee duties in relation to fundraising but not to deal with issues which are
concerned with fundraising practices except where they are related to serious governance issues and illegality. Others are better placed to comment on the effect of the Act on changes to the regulation of fundraising.

An aspect of fundraising which does concern us is the provisions in the Act which deal with public charitable collections and which have not been implemented. These proposals include a role for the Commission in licensing such collections. Lord Hodgson’s Report mentions concerns about effectiveness and affordability and says that an alternative, more streamlined solution is needed. We are neutral about the regime set out in the Act but we have highlighted the costs to us of implementation. It has been agreed with government that we would require specific additional funding if we were to take on the role of licensing collections.

It is also worth noting that for this regime only, our jurisdiction would extend beyond charity to fundraisers and collections for purposes that are not charitable in the usual sense.

(c) providing a clear definition of charity, with an emphasis on public benefit?

The Act has only partly achieved the intention of providing clarity about the definition of charity. The Act sets out descriptions of purposes within which a particular purpose must fall if it is to be capable of being charitable. The descriptions of purposes are therefore broad headings and where there is no definition in the Act or through case law the meaning of some of the descriptions is still unclear.

The Act requires the Commission to publish guidance on public benefit to which charity trustees must have regard. It also gives the Commission an objective “to promote awareness and understanding of the operation of the public benefit guidance.” Following a judgement in the Upper Tribunal the Commission has reviewed and consulted on revised statutory guidance. However, the judgement given in that case illustrates that there is still uncertainty about public benefit and considerable difficulty in defining and expressing the concepts of what public benefit means for different types of charity. Notwithstanding these difficulties we accept that it is feasible to allow the legal position on public benefit to be developed through common law as interpreted from time to time by the Tribunal and that, on balance, this is the best approach.

The consultation on revised public benefit guidance closed in late September. We have received a number of responses which we will review before finalising and publishing the guidance. The public benefit guidance has a particular status because, unlike other guidance, it is required by statute and by law all charity trustees must have regard to it.

(d) modernising the Charity Commission’s functions and powers as regulator, increasing its accountability and preserving its independence from ministers?

The Act has been helpful in setting out the objectives, functions and duties of the Commission in a modern context. The Act reflected current thinking on approaches to regulation and the suitability of a corporate structure and these have enabled us improve our governance. Our experience is that the Act clearly expressed the aspirations which Parliament wanted and that this has given us a sound base from which to develop our regulatory approach. This has been valuable to us when reviewing our strategy as a regulator particularly as resources have reduced.

During the period since implementation we have not identified a structure which would give a better mix of independence and accountability.

2. What should be the key functions of the Charity Commission?

The Act sets out the Commission’s functions as follows:

1. Determining whether institutions are or are not charities.
2. Encouraging and facilitating the better administration of charities.
3. Identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement in the administration of charities.
4. Determining whether public collections certificates should be issued, and remain in force, in respect of public charitable collections.
5. Obtaining, evaluating and disseminating information in connection with the performance of any of the Commission’s functions or meeting any of its objectives.
6. Giving information or advice, or making proposals, to any Minister of the Crown on matters relating to any of the Commission’s functions or meeting any of its objectives.

We aim to carry out our functions in an effective and efficient manner and by focusing our resources where we can achieve the most good and where it is appropriate for a regulator to act.

For the reasons given in answer to question 1(b) above we have never undertaken the function relating to public charitable collections. The other functions are relevant to our regulatory role and objectives.
The Commission considers that public trust and confidence in charities are best met by focusing our regulation on ensuring that charities meet the legal obligations of being a charity and ensuring that the sector is accountable. In addition we wish to develop a greater self reliance within the sector.

This approach reflects our agreed strategy and is in line with the public and sector aspirations for the regulator which were reflected in the consultation in our strategic review.

3. How should the Charity Commission be funded?

As a responsible public body the Commission strives for maximum impact within the resources given to it. To achieve this we have looked for ways to reduce demand through greater use of technology and to leverage greater influence through working in partnership with sector bodies. The Commission will continue to explore whether there are other routes to effective regulation which do not rely on central funding.

The source of funding is one which can influence how a regulator operates and its relationship with those it regulates. Whilst central funding is a straightforward mechanism it is right to look at other options. Charging for any function of the Commission could be introduced by regulations made by the Minister and approved by Parliament. Under the Charities Act 2011 any funds received through charges would be paid to the Consolidated Fund. Primary legislation would be needed for the funds to be paid to the Commission.

The impact of any change in the source of funding is one which could fundamentally affect the relationship between the Commission and the charitable sector. It should therefore be debated widely before any proposals are implemented.

Among the issues that would arise in considering charging are:

- Reasonable charges for specific activities such as registration or the filing of accounts could only provide a small proportion of the funding needed.
- A scale of charges where larger charities pay more could lead to their feeling a greater sense of ownership and entitlement which could affect the Commission’s approach and priorities.
- The costs of collecting funds would be high.
- All previous consultations with charities have suggested such a system would be fiercely resisted by the sector.

4. Is the current threshold for registration with the Charity Commission set at an appropriate level?

If the threshold for registration was changed such that a large number of charities were no longer required to register this could create “a hidden sector” and neither the Commission nor the public would have key information from the charity. Although those charities below the threshold would no longer be registered they would still be regulated by the Commission.

If the threshold were raised the numbers of charities currently on the register which would be free to leave are as follows:

If the threshold were raised from £5,000 to £10,000–20,924

If the threshold were raised from £5,000 to £25,000–45,571

Registration is valuable in a number of ways. The process of registration demands that charities have thought about their purposes and administration in a way which leads to clear objectives and strong governance arrangements. Charities also value the visibility which registration gives them and which indicates they are recognised as charitable. These advantages must be set against the burden to charities of the process of registration. The response to our Strategic Review indicated that people in the charity sector expect charities to be registered and that the threshold should remain at the current level. When this was discussed with focus groups of members of the public they said that a threshold of £5,000 annual income was too high.

5. How valid are concerns that there are too many charities?

We are aware that concerns are often expressed about the number of charities. This has the potential to cause confusion and to allow unnecessary duplication of effort. At the time of registration we ask the promoters of new charities to think hard about whether there are existing charities which they could support or work with rather than establish a new charity. However, it is a fundamental principle that charities are independent and voluntary. Any decisions by individuals or groups to set up a new charity are for them to make. The promotion of new charities contributes to the vibrancy and diversity of the sector and should not be frustrated by the Commission or any other centralised authority.

Where charities wish to do so we will help facilitate them take steps to work collaboratively with other charities or to merge. However, the decision to work with or to merge with another charity is for charities themselves and not for the Commission.
6. Exempt charities, such as academy schools, are regulated by principal regulators, rather than the Charity Commission. How well is this system working?

The changed approach to exempt charities is one of the most significant aspects of the 2006 Act affecting some 12,000 charities with an income which probably exceeds the £56 billion of the 162,000 registered charities.

The creation of a regulatory environment for these charities which promotes accountability and compliance with charity law is, we believe, a positive step. Together with those principal regulators which have already been appointed we are continuing to develop this approach as an effective regulatory regime. It is worth noting that the principal regulator regime does not remove responsibility or effort from the Commission. We are involved when a new principal regulator is appointed in order to support them in their new role. We establish and maintain an ongoing relationship with each principal regulator and may have matters of concern referred to us by them.

We strongly believe that exemption from registration and regulation by the Commission is an anomaly which has been created through political and historical circumstance. We do not support the creation of other classes of exempt charity which would risk diluting or fragmenting effective charity regulation.

One aspect of the current system for exempt charities which is a matter for concern is that there is no mechanism which reviews the operation of principal regulators in relation to charity law. We suggest that the need to establish a system to review the effectiveness of principal regulators and to bring them to account if they fail to act should be considered.

7. There has been an increase in the number of organisations that operate for the public good such as social enterprises and mutuals, which are not charities, and are not regulated by the Charity Commission. What impact may this have on the public perception of what a charity is, and how charities are regulated?

The high current level of public confidence in charities is based on three propositions: first, that charities do not operate for private profit and any trading activities they undertake can only be in support of their charitable purposes; secondly, that charities are not established for political purposes or subject to government control; and, thirdly, that as a result charities can focus exclusively on the needs of their beneficiaries. These three pillars are fundamental to the willingness of the public to contribute time and their money to charities. But in recent years the boundaries have begun to blur. Charities have increasingly developed links with commercial organisations through, for example, consortia, and the growing focus on social enterprise specifically mixes traditionally charitable social purposes with elements of private profit. At the other end of the spectrum, charities and government have become more intertwined through the expansion of contracts won by charities for the delivery of public services.

These developments have many exciting and desirable aspects to them in terms of the public good. However, there is a risk that charity is lost as to what really is a charity, with the envelope stretched to the point of meaninglessness. This could in the long term undermine public confidence in “charity” and the readiness of the public to donate their time and money. The strategic question therefore is whether to embrace the broadening of definitions to bring a wider grouping of organisational forms under the broad banner of charity, within a coherent and consistent regulatory framework; or whether there needs to be a clearer series of more limited definitions in order to keep the charity “brand” distinct.

8. How successful has the introduction of the Charity Tribunal and its replacement, the First-Tier Tribunal (Charity), been in making it easier to challenge decisions of the Charity Commission?

The Commission fully supports the concept of the Tribunal (Charity Tribunal/First Tier Tribunal (Charity)) as an important element of the legal architecture which ensures the integrity of charities and their regulation. The Commission itself is part of that architecture and we welcome the opportunity, provided by Tribunal cases, to clarify and develop understanding of the legal framework.

The success of the Tribunal should be judged against its declared aims. These are to provide:

— a low cost accessible forum for people to challenge the decisions of the Commission, and
— a forum for the clarification and development of charity law.

The Tribunal has been operating for a relatively short time, but some of the cases dealt with so far indicate that achieving its aims is not an easy task. In these early cases complex legal issues have been dealt with and applicants have generally used legal representatives rather than appearing in person. This has made the process an expensive one for applicants and for the Commission. We hope that as the Tribunal and the Commission gain greater experience, the process will tend to become more routine and low cost. We would welcome an approach which enabled greater accessibility for applicants. We would also endorse and support the Tribunal’s role in clarifying, developing and modernising charity law.

9. How successful is the self-regulation of fundraising through the Fundraising Standards Board?

It is too early to reach a conclusion on how successful the self-regulatory regime has been but there are signs that it is developing a better co-ordinated approach. We believe that it is appropriate to continue with the
current arrangements and that the main bodies should be encouraged to develop such that they are able to support charities to fundraise appropriately and effectively and to challenge poor practice. The Commission supports this work in principle and in practice through our relationships with the main self-regulatory bodies and by providing information about self-regulation to charities and the public.

10. Are the rules around political activity by charities reasonable and proportionate?

(a) What are the rules?

The Charity Commission has produced guidance, *Speaking Out: Guidance on Campaigning and Political Activities by Charities (CC9)* which reflects our understanding of the case law which governs this area of charitable activity. We recognise that charities are permitted within the rules to be advocates for their beneficiaries. The guidance makes an important distinction between campaigning and political activity. It defines political activity as:

> Activity by a charity which is aimed at securing or opposing, any change in the law or in the policy or decisions of central government, local authorities or other public bodies, whether in this country or abroad.

Political activity undertaken by a charity must always be in support of its charitable purposes. This means that political activity must always be carried out as a means to an end and never become an end in itself. A charity must never engage in any form of party political activity.

Campaigning by contrast refers:

> To awareness-raising and to efforts to educate or involve the public by mobilising their support on a particular issue, or to influence or change public attitudes. We also use it to refer to campaigning activity which aims to ensure that existing laws are observed.

An example of campaigning would be a health charity promoting the benefits of a balanced diet in reducing heart problems whereas an example of political activity would be the same charity lobbying for changes to health-related legislation.

The guidance that applies to these activities, which is based on a mixture of case law and charity law, makes clear that:

— To be a charity an organisation must be established for charitable purposes only, which are for the public benefit. An organisation will not be charitable if its purposes are political or include a political purpose. This means that a charity cannot exist for a political purpose, which is any purpose directed at furthering the interests of any political party, or securing or opposing a change in the law, policy or decisions either in this country or abroad.

— However, campaigning and political activity are legitimate activities for charities to undertake if the charity believes them to be an effective means of furthering their charitable purpose.

— Political activity (unlike other forms of campaigning) must not become the continuing and sole activity of the charity. Charity trustees must ensure that this activity is not, and does not become, the reason for the charity’s existence because if it did it would, in effect, have adopted a political rather than a charitable purpose.

Although the guidance has been through several revisions in recent years, the legal and regulatory framework that underpins it remains unchanged. A charity engaging in political activity must remain independent, must never engage in party political activity, and must only ever act in furtherance or support of its charitable purposes.

(b) Are the rules reasonable and proportionate?

The guidance was revised and republished in 2005 and 2008 to ensure that it was as clear and up to date as possible. The guidance was publicly consulted on during these revisions and was developed in consultation with charity lawyers, umbrella bodies, and charities themselves. In 2010 our supplementary guidance on *Charities, Elections and Referendums* was also revised and re-published. This sits alongside our main guidance and applies during an election period when there are some additional factors that charities need to consider if they are engaging in campaigning and political activity in the run up to an election.

The feedback we received on these revisions was positive and welcoming, and we have not received any requests for change to the guidance. From our perspective it is working well and whilst our evidence is anecdotal, there appears to have been an increase charities’ awareness of the guidance.

In terms of the Commission’s application of the guidance, cases concerning inappropriate political activity are relatively rare, although often high profile and resource intensive when they do occur. Generally speaking, the guidance supports a reasonable and proportionate approach to such cases.

However, there are some areas that are particularly complex in practice: for example charities that have a charitable purpose that relates to education in the fields of public policy and politics. The trustees of a charity that is a think tank may need to consider especially carefully the guidance on political activity and how it...
applies to their charity in order to be confident that they are operating within the charity law framework. In the event of a regulatory issue arising in a think tank that is a registered charity, our experience is that such a case is likely to require considerable time, consideration and resource. In such cases the legal principles expressed in the guidance are critical to our regulatory decision making process.

(c) In summary

The underlying law is a matter for Parliament. Although it is inevitable that there will be times when the way in which the guidance is interpreted needs to be questioned, we do not believe there is an issue with the guidance itself.

We are satisfied that the guidance is reasonable, proportionate and fit for purpose in the context of the existing law but we will continue to keep this area of law and practice under review.

October 2012

Written evidence submitted by National Association for Voluntary and Community Action (NAVCA)

Effectiveness of the Charities Act 2006

Efficient administration and effectiveness

NAVCA believes that the Charities Act 2006 is generally working well and has made it easier to run charities. For example it is now easier for charities to change their charitable purposes and revise governing documents. This has made it easier for charities to adapt to changing times.

However, there is one aspect of the Act that would have made administration easier. The delay in implementation of charitable incorporated organisations has perpetuated the unnecessary bureaucracy of charities wishing to become incorporated, still having to register with both Companies House and the Charity Commission. The delays in implementation have caused confusion, frustration and additional work for charities wanting to start up as a CIO or those wishing to convert. We support Lord Hodgson’s proposal that the impact of this new legal form is reviewed after implementation, as clearly his review has not been able to do this as we still await implementation.

Reducing regulation

The implementation of the part of the Charities Act that raised the registration threshold from £1,000 to £5,000 without subsequently introducing voluntary registration has meant that new charities with small income that want a charity number have been unable to register.

Many organisations under the current £5,000 threshold face problems convincing individuals and organisations that they are a charity. For example:

— Individuals, when approached for donations, ask for a charity number as proof that an organisation is a charity. Most members of the public will not be aware of the various complexities such as thresholds, excepted charities and exempted charities; people look for the charity number. Indeed, it is identifier that has been promoted publicly for clothing collections.
— When charities request funding or gifts in kind, local businesses are not always willing to recognise those that are under threshold as being a charity.
— Companies will not always give charity discounts without a number.
— Some online fundraising sites ask for a charity number and provide for no alternative.42
— Many funders only give to registered charities. That leads to some organisations under the threshold having to identify a charity willing to process the money for them, raising issues of accountability and ownership. A rise in thresholds would increase the number of charities to which this would apply, exacerbating the problem.

The reporting threshold has also caused difficulties for some charities under the threshold that wish to display their accounts on the Charity Commission’s website because they recognise the benefit of providing greater transparency. However, when a charity under the threshold uploads its accounts, it finds that they will not be displayed because there is no requirement to do so, undermining a charity’s reasonable desire to offer greater transparency.

The main issues are not the thresholds themselves, but that organisations are unable to comply with higher standards. Organisations under the registration threshold are unable to register voluntarily and those under the reporting threshold are unable to report more than required. We believe that if a charity can see advantages in doing more than required, it should not be prevented from doing so.

42 For example Charity Vouchers http://www.charityvouchers.org/charinfo.htm and Charities Trust http://www.charitiestrust.org/content/charities/add_your_charity_everyclick_/index.html
We are therefore concerned by Lord Hodgson’s recommendation that the threshold should be raised. If it is to be raised, voluntary registration must be available and registration must also be compulsory for organisations claiming tax reliefs. Any other course of action would make life harder not easier for small charities.

We believe that any future relaxation of regulation should not inadvertently make it more difficult to operate charities. Therefore, if thresholds are raised (whether for registration, providing accounts) it should be possible for an organisation to voluntarily comply with the higher standard if it so desires.

Definition of charity and public benefit

Prior to the Charities Act 2006 there were four heads of charity, as refined by the courts. The Charities Act 2006 provides a more explicit list of charitable purposes and thirteen “descriptions of charitable purposes”. Whilst not making fundamental changes to the notion of what is a charity, it did clarify what constitutes a charity.

Lord Hodgson provides a good appraisal of the arguments for and against a statutory definition of public benefit and we are inclined to agree with his recommendation that no change is made. We appreciate that the lack of a definition makes it difficult for the Commission to issue straightforward guidance but believe that the flexibility to allow the law to evolve over time is important.

It is vital that the Charity Commission is consistent and open in its interpretation of the definitions of public benefit and charitable purpose. Yet we are aware of NAVCA members with similar purposes to other NAVCA members being required to re-demonstrate their public benefit or negotiate new purposes on an individual basis. This is despite NAVCA having agreed a model memorandum and articles for its members with the Charity Commission. It should be easier to achieve generic agreement that certain types of organisation are inherently charitable, so that fewer applications are deemed to require a case by case judgement. NAVCA would welcome a transparent and predictable decision making process that reduces concerns that decisions are subjective and inconsistent.

Modernising the Charity Commission’s functions and powers

NAVCA agrees with Lord Hodgson that by establishing the Commission as a body corporate and introducing a new constitutional framework the Charities Act clarified the Commission’s objectives, functions and operation. We also agree that the current arrangements are appropriate.

The key functions of the Charity Commission

NAVCA agrees with Lord Hodgson that there is no significant need to change the functions of the Charity Commission. The debate is therefore about how it delivers its key functions; whilst primarily regulatory, the Commission has also provided advice in order to support compliance. However NAVCA recognises that the Commission faces substantial funding reductions and that business as usual is not a sustainable option and it will have to change the way that it operates. Whilst the discussion about exempt and excepted charities and the principal regulator model is important, most charities will see the Commission’s regulatory role as crucial and something that cannot be assumed by others, although there is scope for other organisations to provide advice and support on compliance. We therefore understand that the need for the Commission focus more on its core regulatory activity, and in the current circumstances, NAVCA supports this move towards greater clarity of role.

The proposed focus on regulation will inevitably impact upon the Commission’s advisory role. There are plenty of alternative advice providers, however most are facing even more substantial cuts than the Charity Commission; in such circumstances it is inconceivable that the level of advice offered by the Commission can simply be absorbed within existing resources by other organisations. We recognise that there are no easy solutions and a number of responses will be necessary:

- Some charities may now have to pay for advice that was previously provided at no cost by the Charity Commission. This may be in the form of charges levied by the Commission and other advice providers for specific advice or through membership fees and subscriptions to advice services.
- NCVO, NAVCA, and Community Matters, with the Charity Commission’s backing, have proposed a single advice gateway to the Minister for Civil Society. For a small government investment, this would offer free advice and guidance, particularly for smaller charities.
- We believe that as the Charity Commission moves to provide less direct advice to charities, it will need to work with alternative advice providers to ensure that they have the correct information and knowledge and have access to the Charity Commission for clarification of complex enquiries.
Funding of the Charity Commission

NAVCA believes that the Commission should receive Government funding. We agree with NCVO’s Charity Law Review Advisory Group that “it is not appropriate or advisable for the Commission to implement money raising strategies such as one-off charges or the introduction of penalties”.

The reductions in the Charity Commission’s budget from £29.3 million in 2010–11 to 21.3 million in 2014–15 are challenging. We strongly agree with Lord Hodgson that the Commission’s budget should be reviewed to ensure that it has the resources it needs to carry out all the functions identified in the report and is able to provide proper and effective regulation of the sector.

We however have a concern that Lord Hodgson’s recommendations, taken in conjunction, could lead to a lot more costs for small charities:

— Payment to Charity Commission for registration.
— Payment to Charity Commission for filing accounts.
— Payment to FRSB.
— Payment of membership fees to umbrella bodies (not stated but there is encouragement of umbrella bodies performing functions, and it is likely that this is expected to be funded at least in part by membership fees. An additional factor to consider is that many small umbrella bodies do not charge membership fees as the cost of administering payment outweighs the income generated. Carrying out the functions that may become expected are therefore an additional drain on smaller umbrella organisations resources).

These costs will disproportionately affect small charities. There is widespread evidence that membership fees, charges for services and conferences, even when these are graded, are a greater proportion of a small charities income than a larger charity. It is conceivable that each of the above charges could be in the region of £50, a total of £200, which for a charity with income of £10,000 2% of its income. These fees will make it more expensive to run smaller charities. With concerns about the administration costs of charities this seems to be adding to them rather than helping to reduce them.

Fines to Charities or removal of rights for late filing of accounts or returns is a punitive measure that disproportionately impacts on charities with limited capacity: as a threat, it is unlikely to lead to early positive behaviour and as a sanction it can only make matters worse.

Appropriateness of the current threshold for registration with the Charity Commission

We believe that the current threshold would be an appropriate level if voluntary registration were available. We are unconvinced that Lord Hodgson’s proposal for raising the threshold is the right approach. However, the recommendation would be more acceptable if it is implemented in conjunction with:

(a) the proposals to require all that charities claiming Gift Aid register; and
(b) voluntary registration.

It is vital that voluntary registration is in place before the threshold is raised. Our consultation with members indicated almost universal support for this position.

Registration with the Charity Commission is vital for fundraising because a significant number of trusts and foundations do not support unregistered charities. Charities with income under £25,000 account for the majority of the sector, so one consequence of increasing the threshold is that, in effect, the majority of the sector will slip under the radar and as a result lose access to a vital source of funding. In addition, many organisations want to registration as it is a public demonstration of their status.

We believe that Lord Hodgson’s recommendation to label charities under £25,000 income as small is divisive and could lead to two tiers of charity, yet his Report does not offer a clear or robust rationale to support this proposal. The Charity Commission’s limited resources do not constitute a valid reason for abandoning scrutiny of small charities, which has historically helped to improve practice, and might lead to the misconception that “less regulatory oversight equals more prone to bad practice”. We are concerned that this recommendation has been made without a thorough assessment of the implications for smaller charities and start up charities.

Some charities manage or even in some cases own significant assets on behalf of the community. Whilst the asset is of significant value the actual income can be relatively small. With regard to registration and accountability it may not be appropriate for them to be treated as a “Small Charity”.

NAVCA believes that regulation should be related to risk. The proposal to label charities seems to identify them as risky or potentially risky with no evidence and no possibility for charities to challenge that label.

Too many charities?

NAVCA believes that the notion of “too many charities” is unhelpful and over simplistic.

It also invites the following questions:

— If there are too many charities, how many charities there should be?
— Should the state determine the number of charities?
— How would you restrict the number of charities?

NAVCA does not believe that it is the state’s role to determine the number of charities nor that there is an “ideal” number of charities. We believe that it is a democratic right to be able to create a charity to address a particular need. We acknowledge that there is some duplication in the sector but do not believe that this is necessarily something to always regard as negative. It is indeed often a sign and a product of a vibrant and healthy sector. It also offers people choice of services, making donations and volunteering. In a competitive environment some charities will close and new ones will emerge. It is important to make it easy to form new organisations but also to ensure that closure can be easy when the need no longer exists.

There appear to be three main options for controlling the number of charities: restrictions on opening charities; mergers; closing charities.

We do not believe that restricting charity formation is helpful. New organisations can often be innovative, challenging current ways of thinking, providing different services; they may have similar objects to existing organisations but have a completely different, outlook and philosophy and provide a very distinctive set of activities. Restricting the formation of new organisations would stifle such creativity and innovation. Sometimes replication of an existing model can be viewed as duplication—the original organisation is focussed on a particular community or area and does not wish to expand, preferring to retain its original focus and therefore another similar organisation is set up to serve that area. We do not consider this to be duplication; rather it is replication of a successful model. We believe that rather than trying to restrict registration by introducing thresholds or refusing to register charities where similar charities exist, when a new charity is established, the founding trustees should be encouraged to demonstrate that they have considered whether setting up a brand new organisation is the best solution. NAVCA members when assisting people wanting to set up charities do encourage them to consider options: firstly whether a new organisation is the appropriate response and secondly if a charity is the right model. It is therefore important that sources of advice are retained, as they encourage individuals to consider the options before founding a new charity.

NAVCA is supportive of mergers if they are in the best interests of the charities involved, indeed merger is already a reality for many charities. We are aware of increasing numbers of mergers or collaboration within our membership and the Charity Commission mergers unit reports a 150% increase in mergers. However putting pressure on charities to merge would be counterproductive as it is likely to lead to inappropriate mergers.

The Charity Commission already has processes for removing Charities from the register if they are dormant. However this does not actually mean the organisations have necessarily ceased, simply that they are no longer being regulated. This does not therefore necessarily reduce the number of organisations, just those that are regulated as charities. Where they are struggling, closure can be one option that charities should consider. In such situations organisations need advice and it is important that sources of advice are maintained. We do however believe that closure should be made as easy as possible for charities that have good reason to wind up.

**Political activity by charities**

Whilst we believe that charities should not be party political, although we think it is appropriate for them to be an active voice in political life. NAVCA considers it entirely appropriate for an organisation to campaign as part of furthering its objects and effecting change. Campaigning need not be confrontational; it can take the form of constructive and co-operative joint working or influencing. We do not see there being a conflict between receiving public funding and campaigning. Delivering public services can often be another way of fulfilling the charity’s objects as can campaigning activity. We do not think that contracting with a charity a public body should “buy” silence or agreement with every action. However in reality where charities and public bodies are willing to contract with each other, their relationship is often at the stage where partnership and influencing are more effective tools than oppositional campaigning. The rules relating to charities and campaigning are clear and the Commission’s guidance is helpful. Our members do not raise political activity as an issue that is particularly problematic.

**Payment of trustees**

NAVCA opposes payment of trustees. Our position on the non-payment of trustees is backed by 61% of the public according to an Ipsos MORI poll carried out in July 2012. We see no strong case for changing the current situation. We believe that the voluntary nature of trusteeship is a vital part of the unique nature of charities. Whilst we acknowledge that some charities have difficulties recruiting trustees, we do not believe that payment is the main barrier in most cases. Indeed if payment was introduced, it would not be a solution for most charities as they would not be able to afford to pay trustees. It could also make recruitment even more difficult for charities with limited resources, with the possibility that it could result in two tiers of charities— those who could afford to pay their trustees and those that are not able to.
Complaints against charities

NAVCA is aware that there is sometimes an expectation amongst the public, service users or staff, volunteers or trustees of organisations that the Charity Commission has a primary role in resolving complaints about charities, even though this is not the case. Lord Hodgson’s research also demonstrates this perception.

Where criminal offences have been committed or suspected, then the appropriate bodies should be involved. As Lord Hodgson notes “the Charity Commission will currently only take action on complaints about charities if they amount to serious mismanagement or misconduct (ie there is a potential breach of charity law)” and “There is no single body to deal with less serious complaints”. In general organisations need to take responsibility for addressing and resolving their own complaints and disputes. Where the charity is delivering a taxpayer funded service, there will normally be provision within the agreements for resolving complaints about the service. Where an organisation is operating within the law and is not delivering a taxpayer funded service, we think there is limited grounds for further statutory intervention in how the organisation is run. We also agree with Lord Hodgson that we would not want an Ombudsman set up.

NAVCA members are proactive in promoting the needs for complaints procedures, organisational policies and adherence to good practice. This preventive approach encourages charities to address issues before they become complaints or the source of disputes. Where pre-emptive advice has not worked, many of our members will be involved informally in mediation or resolving issues. However they would not regard themselves as arbiters and most would not wish to be in that position as formal resolution bodies. Certain specific types of umbrella or national bodies may wish to develop more of a regulatory or dispute resolution role for their members but we would not endorse this as an appropriate response for all charities.

October 2012

Supplementary written evidence submitted by Institute of Fundraising (IoF) (CH 43)

Further to oral evidence given on the 23 October 2012 by Peter Lewis, below are some additional points that it was not possible to explore in detail in the short session that may be of interest to the Committee.

1. Complaints Process

Concern was raised at the oral evidence session about the lack of awareness of the public of the three self-regulation bodies. It may be helpful to have further clarification on the roles and processes for complaints to understand that this is not as big a problem as it might seem from the statistic alone.

— The Institute of Fundraising is sector facing and has very high awareness rates amongst charities and fundraisers. We would not expect public awareness of the Institute.

— The Public Fundraising Regulatory Association works closely with Local Authorities where it has established agreements and is working with the Local Government Association to extend awareness and agreements in more areas. We would not expect public awareness of the PFRA.

— The Fundraising Standards Board has a public facing element to their work, however the process is that complaints are made to charities first who signpost to the FRSB in their complaints process and response to complaints. For example, here is an illustration from one of our members: http://england.shelter.org.uk/about_us/contact_us/making_a_complaint

This is not so say that there may not be benefits from increasing awareness. However we strongly believe that it is more important that those who have made a complaint have their complaint handled appropriately and have a clear mechanism for escalation if they are unsatisfied with the response.

The following outlines the process for complaints about charities who are members of the Fundraising Standards Board.

Stage 1: The charity tries to resolve the complaint

The charity complaints co-ordinator must acknowledge in writing a complaint about fundraising within 14 days of the complaint and then the charity will need to tell the complainant of the outcome of their investigation within 30 days of receiving the complaint. In addition, the charity must inform the complainant that if they aren’t happy with the outcome of the investigation, they can refer the complaint to the Fundraising Standards Board within two months.

If the Fundraising Standards Board receive a complaint before the complaint has been through the charity’s internal complaints procedure they will refer the complaint back to the charity.

Stage 2: The Fundraising Standards Board tries to resolve the complaint

At this stage, the complaint has been through the charity’s internal complaints procedure and the complainant still isn’t happy and requires a further response. The complainant has contacted the Fundraising Standards Board within two months of receiving the response from the charity. Once the FRSB have received the
complaint, they will contact the member charity concerned to let them know and to get background information about the complaint. They will investigate the complaint and try to resolve it with all parties concerned within 30 days. If the complainant still isn’t happy, they can ask the FRSB Board to adjudicate (Stage 3).

Stage 3: The FRSB Board upholds or rejects a complaint

The complaint is referred to the FRSB Board for adjudication. They will review the complaint and report their conclusion within 60 days. The Board has the discretion to specify that either no further action is appropriate or to censure the charity and prescribe one or more sanctions.

All charities that are members of the scheme are required to have a complaints process in place and include details for the Fundraising Standards Board on their website. As you can see from the process above, even if a member of the public is not aware of the Fundraising Standards Board before they make their complaint, they will be made aware by the member charity when they make their complaint.

2. Attitudes to Fundraising

The Committee were interested in, and quoted from, a poll that suggested that two-thirds of the public say that some fundraising methods used by charities make them feel uncomfortable.

This is an area that we would be interested in exploring in more detail to see what is making people feel uncomfortable and whether it could be addressed by improved standards. We monitor attitudes and complaints and take corrective action where issues are identified.

However, it is unclear from the question/survey whether the issue was about the conduct of the fundraisers, the fundraising mechanism or simply that they were embarrassed at not being able to give at that time. The Committee should recognise that we all feel guilty from time to time when asked to give to a good cause but for whatever reason are not able to. Also, sometimes powerful messages, whether to raise money or not (ie some public awareness campaigns), are sometimes specifically designed to cause an emotional response, which some people may find uncomfortable, while others find them totally acceptable. Clearly, for example, if there is an advert raising money for an atheist organisation, that may make you feel uncomfortable as a Christian, just because of the cause itself, rather than the fundraising approach.

Our own evidence shows that the public understand the need for fundraisers and fundraising. A YouGov survey commissioned by the Institute of Fundraising shows a high level of understanding of the need for charities to employ professional fundraisers and invest in fundraising efforts:

- 46% of people polled would have either given less, or not given at all, if they had not been asked to donate by a charity.
- 73% of people understood the need for charities to employ fundraisers.
- When asked for the importance given to charities having paid staff to undertake activities, top reasons were (out of 10): Comply with legislation (7.8), Ensure proper publicity about their cause (7.2), Communicate with donors about how money is being spent and the impact on beneficiaries (7.1), Co-ordinate volunteers (6.7) and Bring in money (6.7).
- 66% of people who had made a financial donation in the last three months were prompted to do so [this is likely to under-represent the true proportion prompted due to social desirability factors in surveys meaning people are less likely to admit to being prompted and want to be seen as generously giving to charities without being asked].

This response does not mean we are complacent however. We appreciate that there are legitimate concerns. And our approach is two-fold. Our priority is to tackle any misconduct. We want to improve asking for support by enforcing standards and improving training about those standards.

Secondly, where there is a potential problem with a fundraising mechanism that is identified through complaints and public opinion we are responsive and swiftly address them by amending the Codes in a proportionate way. For example, in 2010 when there were complaints about overcrowding on the Three Peaks, the Institute of Fundraising amended the Outdoor Fundraising Code to prevent Three Peaks events taking place in school holidays, significantly reducing the pressures on the communities and the environment.

We appreciate that there are some particular concerns about Face to Face fundraising at the moment and are working to address these. We hosted a summit of fundraising directors in July and since then a number of working groups have been established to take actions forward and improve standards—including reviewing the code of conduct and “rules”, establishing accredited training for direct debit fundraisers, and to look at how space is allocated. At the same time the PFRA now has a system of assigning penalty points to charities and agencies where non-compliance is identified during mystery shopping, and fines are given based on these points. Early data shows this approach is working.

Finally, we should not forget, as many who have given evidence have shown, that trust in confidence overall in charities remains high.

October 2012
Written evidence submitted by Australian Charities and Not-for-profits Commission Taskforce (ACNC) (CH 46)

INTRODUCTION AND BACKGROUND

1.1 Introduction

This background briefing paper provides information on the establishment of the Australian Charities and Not-for-profits Commission (ACNC). It is provided to the House of Commons Public Administration Select Committee to assist its inquiry into the regulation of the charitable sector and the Charities Act, 2006. Commissioner Designate, Susan Pascoe AM, and Assistant Commissioner and General Counsel, Murray Baird, are scheduled to appear before the Committee on 6 November 2012, and will be able to elaborate on the information contained in this briefing during that hearing.

1.2 Background

Australia is a federation, a constitutional monarchy and a parliamentary democracy which operates under the Westminster system. It has a population of 22.6 million, with more than half from migrant backgrounds, giving it a multicultural, multi-faith composition.

There are an estimated 600,000 Not-for-profit (NFP) entities in Australia with approximately 400,000 accessing some tax concessions. NFPs contribute around 4% pa to GDP and this is growing rapidly.

The Australian Taxation Office (ATO) has until now determined the charitable status of Australia’s 56,000 charities and been the de facto regulator of most charities, in the absence of a dedicated regulator.

In addition to the current role of the ATO, charities are often regulated by federal or state governments, or other regulators. Companies limited by guarantee are currently regulated by the Australian Securities and Investments Commission (ASIC) and Incorporated Associations by regulators in the state in which they operate. Fundraising licensing is also dealt with at a state level. There is a complex regulatory framework with often a duplication of reporting and compliance obligations. This is particularly so for charities operating across state boundaries. There is currently no single national register of charities.

1.3 Government Policy

On 10 May 2011 Australia’s then Assistant Treasurer and then Minister for Human Services announced a broad suite of regulatory, funding and taxation reforms for the Not-for-profit (NFP) sector, including the creation of a regulator for charities, the Australian Charities and Not-for-profits Commission (ACNC).

The Government committed to providing $53.6 million over four years to establish a one-stop-shop for the support and regulation of the NFP sector. The ACNC will be fully government funded with no fees for registration or filing returns.

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Originally intended to begin operation on 1 July 2012, it is now expected to start operating in early December 2012. The new regulator’s remit is initially confined to determining the charitable status of entities for Commonwealth purposes. However, the Government took the decision that the ACNC legislation should be drafted to enable its remit to be broadened to also cover NFPs at some stage in the future. This policy aim is also reflected in the choice of name for the agency.

The ACNC will be a “one-stop shop” for charities enabling them to transact with multiple agencies through the one website. Similarly it will be a “one-stop shop” for community members who will be able to access comparative information on Australian charities for the first time in a single site. Registration with the ACNC is voluntary for all charities; however, they need to register with the ACNC if they wish to receive any Commonwealth benefits such as tax concessions. This is very similar to the position in New Zealand. There is no financial threshold for mandatory registration; a charity of any size can register or choose not to register.

The ACNC will also implement a “report-once use-often” reporting framework for charities; provide education, guidance and advice to the sector on their regulatory obligations; and establish a public information website and register of charities by 1 July 2013.

Red tape reduction remains a policy priority for the Government, and an expectation of the sector. In a recent speech the Assistant Treasurer, Hon David Bradbury MP, emphasized the Government’s commitment to reducing unnecessary administrative requirements for charities:

Upon its establishment, the ACNC will develop and make public a “red-tape reduction timeline and plan”. In its annual report to Parliament, it will provide details on the performance of the ACNC against this timeline. The annual report will also include reporting on the development of memoranda
of understanding and arrangements with other Australian government agencies, and how these arrangements are operating to reduce red tape. (17 October, 2012)

Alongside the introduction of the ACNC, the Government is also introducing a statutory definition of charity, taxation reforms and fundraising reforms.

1.4 Formal Inquiries

Sitting behind the establishment of the ACNC are a series of formal inquiries and decades of advocacy from the sector. These have consistently argued for the need for a national regulator and for harmonisation of regulation across all levels of government to reduce the duplication and complexity within which NFPs are mired. The key inquiries include:

— 2008 Senate Economics Committee Inquiry into Disclosure Regimes for Charities and Not-for-profit Organisation;
— 2010 Review into Australia’s Future Tax System;
— 2010 Productivity Commission Report on the Contribution of the Not-for-profit Sector; and
— 2010 Senate Economic Legislation Committee in its Inquiry into the Tax Laws Amendment (Public Benefit Test) Bill 2010.

The Commonwealth Treasury considered these formal inquiries when it consulted with the public and key stakeholders on the role and functions of a dedicated charity regulator. Based on consultation and analysis of practice in other jurisdictions, the Government released The Final Report on the Scoping Study for a National NFP Regulator (April 2011) which recommended a national body to endorse and register charities.

1.5 Australian Charities and Not-for-profits Commission Bill 2012 (Commonwealth)—Guide and Objects

The first Exposure Draft of the ACNC Bill was released on 9 December 2011. There has been intensive consultation since that time, a number of iterations of the Bill, three parliamentary inquiries, and debate in the House of Representatives. It is currently listed to be debated in the Senate in the week beginning 29 October 2012.

The ACNC Bill creates the role of Commissioner as a statutory office holder. The Guide to the Act (10–5) specifies:

This Act establishes a regulatory system for not-for-profit entities.
This Act establishes a national regulator for not-for-profit entities.
The regulator is the Commissioner of the Australian Charities and Not-for-profits Commission (the ACNC).
The Commissioner is responsible for registering entities as not-for-profit entities according to their type and subtypes.
Registration with the ACNC is a necessary precondition for access to certain Commonwealth taxation concessions. Registration under this Act may also be a prerequisite for other exemptions, benefits and concessions provided under other Australian laws.
The Commissioner of the ACNC will cooperate with other government agencies to oversee a simplified and streamlined regulatory framework for not-for-profit entities.
The Commissioner of the ACNC will provide information to help the public understand the work of the not-for-profit sector and to support the transparency and accountability of the sector.

The Objects (15–5) in the Australian Charities and Not-for-profits Commission Bill 2012 (Commonwealth) (The ACNC Bill) are:

(a) to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
(b) to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
(c) to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

The ACNC Bill also establishes an on-going Advisory Board to advise the Commissioner upon request.
1.6 ACNC Functions

The ACNC will:

- determine the legal status of charities and public benevolent institutions\(^{43}\) and Health Promotion Charities\(^{44}\);
- maintain a publicly searchable register of information on charities;
- establish a “one stop shop” for charity registration, tax concessions, and accessing Australian Government services and concessions enabling charities to undertake multiple transactions with government through the one website;
- develop a reporting framework which is proportionate to size, including an Annual Information Statement, Financial Reporting for medium and large charities\(^{45}\);
- create a “report-once, use-often” mechanism whereby information provided to the ACNC is then mandated for use by other Commonwealth agencies in, for example their grant acquittals and in the “Charity Passport”\(^{46}\);
- provide information, advice services and education to enable charities to understand their regulatory obligations;
- monitor regulatory compliance and investigate regulatory breaches within the breadth and limitations of its enforcement powers; and
- measure the reduction in the regulatory burden and report on it annually to Parliament.

1.7 Constitutional basis of ACNC Act

The Australian Constitution sets out the Australian federal arrangements for the legislative powers of the Commonwealth and the States of Australia. These constitutional arrangements may help to explain why there has been slow progress towards a national regulator of charities and the difficulties in addressing regulatory duplication in this area.

The Commonwealth Government has the legislative powers set (amongst a few other provisions) predominantly in section 51 of the Constitution referred to as enumerated powers. Powers not included in section 51 are considered residual powers and rest with the States.

Power to legislate in respect of NFP entities (including charities) is not an enumerated power. As a result, different Commonwealth legislative powers support the ACNC legislation. This includes powers to legislate in respect of taxation, communications, corporations, external affairs and territories.

Because of the need to rely significantly on the taxation power, there is a strong emphasis in the ACNC legislation on the determination of charity status as a “gateway” to taxation concessions.

Powers over public charitable collections remain with the States and are the subject of State legislation. However there is potential to align State and Commonwealth requirements and there is currently a Not-for-profit Reform Working Group of the Council of Australian Governments (COAG), which is discussing, amongst other things, options for the harmonisation of fundraising across Commonwealth and State agencies. Exercising its function to “cut red tape”, the ACNC may, in time, play a role in fundraising regulation.

1.8 Reviews and Appeals

An entity may challenge a decision of the ACNC if it is dissatisfied with the ACNC Commissioner’s decision. First there is provision for an internal review by the ACNC—typically by a more senior officer considering the initial information and any new information.

The external review and appeal process mirrors that already in place for review of Australian Taxation Office decisions. In most circumstances an entity may make application to the Australian Administrative Appeals Tribunal (AAT) or to the Federal Court of Australia or the Supreme Court of the State or Territory. The AAT (as a merit review tribunal) is usually a jurisdiction in which each party bears its own costs. In the Superior Courts costs usually follow the event.

Both external review bodies are separate and independent of the ACNC.

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\(^{43}\) A Public Benevolent Institution is a type of charity which provides direct relief of poverty, illness or suffering. It attracts more generous tax concessions than other types of charity.

\(^{44}\) A Health Promotion Charity is a type of charity whose principal activity is to promote the prevention or the control of diseases in human beings. It attracts more generous tax concessions than other types of charity.

\(^{45}\) Small charities are defined as those with revenue under $250,000 per year. For these there will be no mandatory financial reports; they will simply file the Annual Information Statement. Medium sized charities are those with an income between $250,000 and $1 million revenue per year; they will need to file their financial statement although their accounts can be reviewed and do not need to be fully audited. Large charities (with an income over $1 million per year) will have to submit audited accounts.

\(^{46}\) The “Charity Passport” will contain information from registered charities collected by the ACNC and on-forwarded to authorised Government agencies to fulfil their reporting requirements.
Observations

1.9 Comparison of ACNC Bill with Charities Act 2011

There are considerable similarities between the ACNC Bill and the Charities Act 2011. The similarities and differences are summarised in a table in section 8 below. The ACNC Bill was born of decades of lobbying from the sector and from intense scrutiny during development of the Bill.

With its history dating legislatively to 1601, and operationally from 1853, the Charity Commission of England and Wales (the CCEW) can boast a legacy unparalleled in Common Law countries. More recently established charity regulators (including Australia) have had the benefit of drawing on this expertise, whilst also taking advantage of recent case law and developments in information and communications technologies.

1.10 Australian Challenges

Federations such as Australia have the challenges of achieving consistency and maintaining reasonable regulatory and reporting requirements across jurisdictions. There are some 187 pieces of legislation with which charities might have to comply including general areas such as privacy and specific areas such as fundraising. A key policy driver underpinning the establishment of the ACNC is creating a regulator with capacity to reduce red tape.

The sheer size of Australia and the spread of charities into remote locations means communication and support is challenging. Like the CCEW, the ACNC will adopt a “self-reliance” approach and will primarily use online means to provide materials. This will be supplemented by social media and limited face-to-face interaction.

1.11 Lord Hodgson’s Principles

The Principles enunciated in Lord Hodgson’s 2012 Review of the Charities Act 2006 resonate with implicit and explicit principles underpinning The ACNC Bill:

- Judgement not process;
- Charitable status is a privilege not a right.
- Independence of the Sector and the Regulator.
- Regulation needs to be proportionate, transparent and comprehensible.
- The regulatory structure needs to be focussed, practical and affordable.
- The regulatory structure needs to be flexible.
- The volunteering principle is at the heart of the charity sector. (Hodgson p21–25).

The Government released a consultation paper on a statutory definition of charity in 2011 which drew on Australia’s 2001 inquiry and recent case law. An exposure draft of this legislation is expected in early 2013 with a view to implementation by mid 2013.

1.12 Objects

The objects in The ACNC Bill (see 1.3 above) reflect both the Government’s broad policy intent and the aspirations of the sector. An initial single object to maintain, protect and enhance public trust and confidence was supplemented by a second object on the sustainability and independence of the sector and then by a third object explicitly committing the new regulator to reducing unnecessary administration (red tape reduction). The objects make it clear that ACNC is expected to operate with a breadth of regulatory practice, not a narrow interpretation of its Act.

The five objects of the CCEW in the Charities Act 2006 relate to public confidence, public benefit, compliance, charitable resources and accountability. These objects, its reduced budgets and the thrust of recommendations in Lord Hodgson’s 2012 Inquiry point to a more confined regulatory approach for the CCEW.

The issue of public benefit will be considered in separate legislation concerning the definition of charity. This legislation is likely to set out the principles underpinning the common law meaning of charity.

The Government released a discussion paper on a statutory definition of charity in 2011 which drew on the 2001 inquiry (see 1.2) and recent case law. An exposure draft of this legislation is expected in early 2013 with a view to implementation by mid year. The Australian Government is working with the States and Territories through a Not-for-profit Reform Working Group of COAG to achieve a nationally harmonised definition of charity. This would form the foundation for simplified regulatory and reporting arrangements.

1.13 Legal Status

The ACNC will be a statutory office with its independence underpinned by having its own appropriation and providing an annual report to Parliament. For reasons of efficiency, it will take many of its back office services from the ATO with service agreements set out in Memoranda of Understanding (MOUs). The Commissioner will be the statutory office holder supported in the conduct of the ACNC by two Assistant
Commissioners and by the staff of the ACNC. She has negotiated full staffing and financial delegations from the Tax Commissioner.

The ACNC Advisory Board is to be comprised of eminent persons with knowledge of the sector and technical expertise. The Commissioner may take note of their advice.

1.14 Regulator or Friend

Borrowing from the query in Lord Hodgson’s review, the ACNC will unambiguously be the regulator of the sector. Achieving an understanding that this is its role has taken considerable communication. We see it as the role of peak and professional bodies to advocate for the sector. However, we have been engaging actively with the public and the sector in developing key approaches such as requirements for the Annual Information Statement, and the ACNC’s proposed regulatory approach. We intend to maintain formal consultative mechanisms once the ACNC is established. Arguably the best way for the ACNC to be a friend for the sector is to achieve the objects in its Act, and to provide a responsive service to community and sector members.

1.15 Regulatory Approach

The ACNC Bill provides the new regulator with a broad range of graduated enforcement powers. These include the issuing of warnings and directions, the making of enforceable undertakings, and the power to suspend or remove directors.

These enforcement powers can be used in relation to breaches or likely future breaches of the Act or governance standards (set out in Regulations), and only in relation to “federally regulated entities” (a concept that is tied to the Commonwealth’s constitutional powers in relation to corporations). The ACNC Bill also requires the Commissioner to consider certain factors before making enforcement decisions.

As well, the ACNC can impose administrative (financial) penalties for failing to provide information on time, and always has the ultimate power of deciding to revoke registration (at which point a charity loses entitlement to tax concessions).

The breadth of the enforcement powers in The ACNC Bill has caused some concern amongst those who have focussed on the more coercive and invasive powers and assumed frequent regulatory intervention. The ACNC Taskforce has drafted a preliminary regulatory approach for consultation with the sector and community once it is formally established. This proposes a regulatory pyramid (see section 7 below) which begins from the foundation of information, education and advice, and moves upward when charities are not meeting their obligations to assisted compliance, proactive compliance, and then to the use of formal enforcement powers.

The ACNC will begin from the presumption of honesty, take a graduated and proportionate approach, and provide opportunities for self-correction. The approach envisages a light-touch, risk-based stance, resorting to enforcement powers only when required.

1.14 The Advisory Board

The ACNC Bill establishes an Advisory Board to provide advice and make recommendations to the ACNC Commissioner at the Commissioner’s request. The Advisory Board will have two to eight general members. Members must have expertise relating to charities and NFP entities, or experience and appropriate qualifications in law, taxation or accounting. The Advisory Board may also have a number of ex officio members as determined by the Minister.

The Advisory Board is a body that can provide sector-specific advice to the ACNC Commissioner to assist in his or her decision-making role. It is not a governing body and has no operational oversight of the ACNC. Australian regulators are normally structured in this way so that mechanisms to ensure accountability are in place.

1.15 Relationships with other Regulators and Agencies

The ACNC will need good relationships with other regulators and government agencies if it is to effectively carry out its regulatory and intelligence functions. The complicating element in a federation is the existing regulatory arrangements at the state and territory level. One of the policy intents in the establishment of the ACNC is a national regulatory body which will reduce the complexity and duplication for charities which operate across jurisdictions.

In addition there are other regulators such as ASIC which regulates most companies and the Office of the Registrar of Indigenous Corporations (ORIC) which regulates Indigenous corporations. From the establishment of the ACNC, ASIC will continue to establish and wind up companies, but all other regulatory and reporting functions will be handled by the ACNC to avoid duplication. ORIC will retain its regulation of Indigenous corporations and share data with the ACNC, so as to avoid a level of dual reporting. To enable a smooth transition, the government has announced a three year transition period where the Commissioner may accept reports from other regulatory bodies.
The ACNC Taskforce has established relationships with these bodies to ensure core functions such as data transfer and alignment of reporting requirements are rationalised. These relationships with be captured in MOUs. Similarly relationships with key intelligence agencies have been established and will be codified into MOUs.

Seamless processes have been built into the ACNC design so a new charity will complete a single application for registration with the ACNC and for tax concessions with the ATO. Applicants for charitable registration will provide information the ACNC needs to make its charity determination, as well as information to apply for any tax concessions. The ACNC makes its determination then passes that information to the ATO. This seamless process avoids the charity having to apply to both regulators. Similarly, regulatory and reporting alignment is possible with the States and Territories, and one State has agreed to become “early adopters” to achieve this simplification for charities in their jurisdictions. By joining government departments’ processes up the ACNC can make life simpler for charities and cut red tape.

1.18 Judicial interpretation of meaning of Charity and Statutory Definition

In the absence of a Charities Commission in Australia to assist with guidance on the meaning of Charity, Australia has seen significant levels of litigation concerning the meaning of Charity in recent years.

The Australian Taxation Office observed in its Compliance Plan 2008–09:

> Some members of the community are questioning how broad the concept of charity is and the extent to which they can engage in non-charitable activity and still be regarded as charitable. As a result we are seeing an increase in litigation and are looking to the courts for guidance on this point

The High Court of Australia has had opportunity to consider the meaning of charity in a series of decisions in the last decade. Detailed citations are set out in the reference schedule to this paper:

- Central Bayside—the extent to which government involvement prevents an entity from being a charity.
- Word Investments—the extent to which commercial activities of charities are exempt from taxation.
- AidWatch—the place of advocacy and political activity in charities.
- Bargwanna—the extent to which compliance breaches should disqualify an entity from charity status.

Bicycle Victoria is another case decided by the AAT looked at the boundaries between mere sport and charity and determined that an entity for the promotion of bicycle riding was a charity. We expect the Courts to look at this in more detail in coming years. One issue is that the clarification of the law through “test cases” is expensive for both charities and regulators.

Concluding Comment

This is a timely moment for representatives of the ACNC Taskforce to be appearing before the House of Commons Public Administration Select Committee inquiry into the regulation of the charitable sector and the Charities Act, 2006. On 18 September The Australian Charities and Not-for-profits Bill 2012 (Commonwealth) and The Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012 (Commonwealth) were passed by the Australian Parliament’s House of Representatives. Both Bills are due to be debated in the Senate in coming weeks. We wish the Committee well in its deliberations.

The ACNC legislation provides for a review to be undertaken of the first five years of its operation. The report of the review will be presented to Parliament.

Accordingly we have a keen interest in the process for post-legislation scrutiny of the Charities Act 2006.

Glossary of Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>AAT</td>
<td>Administrative Appeals Tribunal</td>
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<tr>
<td>ACNC</td>
<td>Australian Charities and Not-for-profits Commission</td>
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<td>ASIC</td>
<td>Australian Securities and Investments Commission</td>
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<td>ATO</td>
<td>Australian Taxation Office</td>
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<td>COAG</td>
<td>Council of Australian Governments</td>
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<td>ORIC</td>
<td>Office of the Registrar of Indigenous Corporations</td>
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## Comparison of Key Features

<table>
<thead>
<tr>
<th>Features</th>
<th>Australia</th>
<th>ACNC Act 2012 ref England &amp; Wales</th>
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</thead>
<tbody>
<tr>
<td><strong>Structure</strong></td>
<td>Independent statutory office with ATO staff under Ch 5 direction of Commissioner</td>
<td>Independent non-ministerial body</td>
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<tr>
<td><strong>Objects</strong></td>
<td>Maintain, protect and enhance public trust &amp; confidence</td>
<td>Increase public trust &amp; confidence</td>
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<td></td>
<td>Support/sustain robust, independent sector</td>
<td>Promote compliance with legal obligations</td>
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<td></td>
<td>Promote reduction of red tape</td>
<td>Promote awareness of public benefit requirement</td>
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<tr>
<td><strong>Scope</strong></td>
<td>Charities</td>
<td>Charities</td>
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<td>Regulated community</td>
<td>Voluntary but must be registered if want Cth tax concessions</td>
<td>Compulsory</td>
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<td>No general exemptions but some obligations reduced for “basic religious charities”</td>
<td>Exempt, excepted and prescribed charities exempted, also charities for “basic religious charities” with gross income under £5,000, but can choose to register</td>
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<td></td>
<td>Not-for-profits projected in future</td>
<td>No extension to not-for-profits</td>
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<tr>
<td><strong>Charitable status</strong></td>
<td>Separate legislation due for 1 July 2013</td>
<td>Included in Act</td>
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<tr>
<td>Definition of charity</td>
<td>Rejected but improvements foreshadowed to some existing structures that are predominantly used by charities</td>
<td>Charitable Incorporated Organisations</td>
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<td>Distinctive structure</td>
<td></td>
<td>Pt 11</td>
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<tr>
<td><strong>Functions</strong></td>
<td>Determines charitable status as well as charitable subtypes (eg. PBI)</td>
<td>2. Determines charitable status</td>
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<td>Determining charitable status</td>
<td>Function of assisting compliance with general guidance and education</td>
<td>Power to give specific advice or opinion on administration</td>
</tr>
<tr>
<td>Advice and guidance</td>
<td>Registration of charities and other smaller subcategories with differential tax status</td>
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<tr>
<td>Registration</td>
<td>Register to include specified details including basic contact and registration details, board member details, governing rules, annual information statements and financial reports, enforcement actions</td>
<td>Annual reports and accounts to be published</td>
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<td>Publication of information</td>
<td></td>
<td>Ss 170–172</td>
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<tr>
<td>Function</td>
<td>Regulation of conduct of charities &amp; board members</td>
<td>Regulation of conduct of board members in relation to notification of</td>
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<td>Annual Information Statement required of all</td>
<td>Ch 3</td>
<td>Ss 15, 35</td>
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<td>Financial reports to be prepared by all other</td>
<td>Div 60</td>
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<td>Financial reports to be examined by medium</td>
<td>reviewed financial reports required of medium</td>
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<td>charities and audited financial reports of</td>
<td>charities and audited financial reports of large</td>
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<td>Remains with other regulators subject to</td>
<td>Promotes better administration</td>
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<td>Function of assisting public understand work</td>
<td>Function of assisting public understand work of NFP</td>
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<td>of NFP</td>
<td>S 110–10(2)</td>
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<td>Not expressed in statute</td>
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<td>Power to compel information, enter premises</td>
<td>Power to compel information, enter premises by Pt 4-1</td>
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<td>Power to compel information, enter premises</td>
<td>consent or warrant</td>
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<td>Information-sharing with other government</td>
<td>Pt 7–1, S 150–40</td>
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<td>other agencies</td>
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<td>Administrative penalties for failure to lodge</td>
<td>Administrative penalties for failure to lodge Pt 7-3</td>
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<td>documents on time and false or misleading</td>
<td>documents on time and false or misleading statements</td>
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<td>For failure to meet governance standards or breaches</td>
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<td>of Act, graduated powers including warnings,</td>
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<td>directions, enforceable undertakings,</td>
<td>directions, enforceable undertakings, injunctions,</td>
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<td>injunctions, suspension and removal</td>
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<td>Revocation because of non-entitlement to registration,</td>
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<td>registration</td>
<td>S 35–10</td>
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<td>provision of false or misleading information,</td>
<td>provision of false or misleading information, breaches</td>
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<td>breaches of Act or governance standards, in</td>
<td>of Act or governance standards, in bankruptcy/</td>
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<td>Financial reports to be prepared by all other</td>
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<td>than exempt charities, Pt 8</td>
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<td>Providing government or ministerial advice</td>
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<td>Wide range of other powers, including in</td>
<td>Wide range of other powers, including in relation</td>
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<td>relation to change of names, Ss 42–45, Pt 6,</td>
<td>to change of names, Ss 42–45, Pt 6, cy-pres and</td>
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<td>charity property and dormant bank accounts,</td>
<td>schemes, common investment schemes or deposit</td>
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<td>involvement in legal proceedings, charity</td>
<td>funds, ss 96–115, Pt 7, charity property and</td>
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<td>mergers</td>
<td>dormant bank accounts, involvement in legal</td>
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<td>Power to direct action be taken after</td>
<td>Power to direct action be taken after inquiry, to</td>
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<td>inquiry, to require action to be taken</td>
<td>require action to be taken upon request</td>
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<td>taken subject to contempt order, direct</td>
<td>taken subject to contempt order, direct application</td>
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<td>application of property, suspend or remove</td>
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<td>trustees and officers</td>
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<td>Removal if not a charity or no longer operating or</td>
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<td>operating or if voluntarily</td>
<td>voluntarily registered and requests deregistration</td>
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Note: automatic disqualification of directors on certain grounds with Ss 178, 181, power to waive; power to relieve trustees & auditors from liability 191–192.
<table>
<thead>
<tr>
<th>Limits on use</th>
<th>Graduated powers (but not revocation) limited to Pt 4–2 “federally regulated entities” for constitutional reasons and also probable breach of Act or governance standards</th>
<th>No generalised limits</th>
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<tbody>
<tr>
<td>Review &amp; appeals</td>
<td>Most decisions subject to internal merits review and Pt 7–2 then reviewable on the merits to Administrative Appeals Tribunal or Federal Court, and subject to judicial review</td>
<td>Appeals against specified decisions, judicial reviews against specified Pt 17 decisions, references by the Commission or Attorney-General to specialist division of First-Tier Tribunal or Upper Tribunal</td>
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</table>

*October 2012*
Additional written evidence submitted by the Charity Commission (CH 48)

LETTER FROM SAM YOUNGER CBE, CHIEF EXECUTIVE, CHARITY COMMISSION

When we spoke earlier this week, you requested that I write to you to set out our concerns about the evidence given to the Public Administration Select Committee by the Exclusive Brethren.

Our concern is about the following extract from the transcript:

Garth Christie: Could I just read you out what was included in the refusal letter we got from Kenneth Dibble from the Charity Commission. This was the letter when our charitable status test case was refused. He says, “This decision makes it clear that there was no presumption that religion generally, or at any more specific level, is for public benefit, even in the case of Christianity or the Church of England. The case law on religion is rather ambiguous. Our view is that the definition is rather dated. It is our job to define it”. We would feel that was a job for Parliament rather than for the Charity Commission.

Firstly, while the first sentence quoted from Kenneth Dibble’s letter is accurate, the witness presents it as a statement of the Commission’s decision. This is seriously misleading. It is clear from the context of the letter that the decision referred to is not that of the Commission, but that of the Upper Tribunal which must guide the Commission. The relevant section from Kenneth Dibble’s letter reads:

“We think it is clear from the Upper Tribunal Tax and Chancery Chamber decision UKUT 421 (TCC) that in so far as there was a presumption of public benefit, which was removed by section 3(2) of the 2006 Act (now section 4(2) of the Charities Act 2011), this related to the benefit aspect ie the extent to which a purpose has to be beneficial. This decision makes it clear that there is no presumption that religion generally or at any more specific level is for the public benefit, even in the case of Christianity or the Church of England (paragraph 85). The suggestion that some purposes to include the advancement of religion had a quality of being beneficial to the public which was sufficient to make it charitable was not agreed. It confirms that evidence must be brought in every case about the public benefit which a particular purpose achieves in the context of the particular institution unless that is considered to be so clear and obvious that no evidence needs to be adduced.”

The second, third and fourth sentences read out as a direct quotation from Kenneth Dibble’s letter bear no relation to anything in that letter. I am sure you would agree that such a misrepresentation is a serious matter.

I enclose a copy of the letter for ease of reference.

http://www.parliament.uk/documents/commons-committees/public-administration/
LetterfromKennethDibble.pdf

November 2012

Supplementary written evidence submitted by Lord Hodgson of Astley Abbots (CH 50)

Thank you for your kind letter following my appearance before your Committee. I hope it was helpful.

You asked for my “top tips” on Charity Law Reform and I listed three. I thought it might be helpful if I followed them up.

1. DUTIES OF TRUSTEES

The problem with this is that there is a lack of clarity in law about the nature of charity trustee investment duties which can act as a significant barrier to innovative and creative investment approaches on the part of the charity trustees. The common default assumption is that charities must invest for maximum risk adjusted returns. This must be appropriate for pension fund and private trustees but it is not necessarily appropriate for charity trustees unless they have permanent endowment. Charities exist for public benefit and not to benefit a defined beneficiary class. Charities do not generally have long term future liabilities which need to be met out of investment assets. Consequently, with the exception of charities with permanent endowment, charities do not have to invest assets for maximum return and can even give away all their assets for no consideration provided this is done in advancement of their charitable objects. This is of course in complete contrast to the position of private trusts or pension fund trustees.

A statutory clarification of charity trustee investment duties should clarify that:

— The investment powers of a charity are subordinate to its charitable objects.
— Due to the primary importance of the charitable objects and the public benefit nature of charities, the investment duties of charity trustees are different to the investment duties of the trustees of private trusts and pension funds which exist for private benefit.
— Charity trustees should consider what exercise of the investment power is likely, in the opinion of the trustees best to advance the objects of the charity whether directly or indirectly through the generation of returns (whether financial or non-financial) which support the charitable objects; and
— Only charity trustees have the authority and discretion to determine which exercise of an investment power is most likely in the circumstances to best advance the objects.

2. Thresholds

As I explained to your Committee I sought in the Review to be deregulatory, to empower trustees and give charities greater ability to grow. The present situation is unsatisfactory for several reasons—inter alia (a) small charities (below £5,000) cannot register so cannot get a charity number and so have restricted growth prospects and (b) a good number of smaller charities don’t want/need to register; for example they may be grant giving charities.

So my package of proposals—and as I said it must be a package—is as follows.

(a) raise the threshold at which charities have to register to £25,000. (The last Labour Government’s 2002 review, Private Action Public Benefit, suggested £10,000 so why the 2006 Act adopted £5,000 I have no idea).

(b) The only exception to this would be if the charity was seeking Gift Aid in which case registration would be required at any size because the taxpayer who is indirectly assisting the charity should be able to go on line and see the results of his assistance.

(c) Allow any charity of any size to register provided it is done on line.

(d) Require charities below £25,000 to have the prefix “small” before their charity number. Not as a value judgment but as a statement of fact to inform the public.

(e) Require unregistered charities to say so on their letterhead, cheques etc. Again NOT as a value judgment public is aware that there will be no information available on the Charity Commission website.

The result—more small charities empowered, more charities free not to register and, most importantly, the public have signposts as to “small” and “unregistered”.

All to be done as a package over a period of years to ease the administrative burden on the Charity Commission.

3. Creating a Class of “Social Investor”

If we want the social investment market to grow there are many professional groups which have the power to help or hinder; inter alia financial advisers, bankers, accountants, lawyers, auditors, investment managers and, last but not least the FSA/FCA. Each of these groups will have its individual concerns—the intellectual heavy lifting required to devise rules and procedures for the new activity, the inevitable risks in anything new etc.—so why not sit tight until it is clear that the social investment market will take off. In part this reluctance to move is one of the blocks stopping it taking off!!

Two examples will make the difficulties clear. First a charity wanted to make an investment of £50–75,000 in a charity working in Nepal—but the due diligence required by their financial adviser would have cost £25–30,000 that the charity decided it was better to give the money. Second a payment by results project in which a charity proposed to invest £500,000 was told by their auditors that the investment would have to be written down to zero immediately until the project proved itself.

To break this log jam I am trying to persuade the Government to include social investment on the face of the Financial Services Bill currently going through Parliament. I have tabled amendments to this effect—I will not bore you with the technical details but am happy to explain them to your team at any time.

If accepted this would force the FSA/FCA to think about a regulatory structure and would show the other groups that social investment was likely to develop and so make it worthwhile putting in the required development spadework.

It is worth remembering that all these concerns, worries and questions arose thirty years ago as the private equity movement got under way. We overcame the doubters then to the great benefit of the UK and in doing so make the UK a world leader in private equity. We can do the same with social investment!

Those then are my favoured three changes—let me know if you need any more information.

November 2012
Supplementary written evidence submitted by The Plymouth Brethren Christian Church (CH 51)

Thank you for sending the uncorrected transcript from the witness session of 30 October.

As mentioned at the hearing on 30 October, the Plymouth Brethren Christian Church have some recommendations which they would ask the Committee to consider. These are attached with this letter.

I also attach with this letter a version of the transcript amended using track changes to show the corrections we believe should be made in relation to the witness evidence given by Garth Christie, Bruce Hazell and myself.

In most cases, the changes represent points which appear to have been misheard or where the sense of what was said has not come across in the transcript (eg due to punctuation). In some cases, we have suggested a change to clarify what was said (but not to change the meaning of what was said). We trust that this will be uncontroversial, but do please let me know should you wish to discuss any point.

We also have the following comments which you may wish to address in the transcript:

1. Response to Q256: We have amended the response to Mr Elphicke’s question to clarify that the quotations given were from two sources, not one. The second quotation is from evidence given by Mr Kenneth Dibble to the Public Administration Select Committee on 12 July 2007 (at http://www.publications.parliament.uk/pa/cm200607/cmselect/cmpubadm/904/7071204.htm).

The second quotation is extracted from a longer response given by Mr Dibble. We have marked up in the transcript where text has been omitted from that longer response, but understand that you may wish to include the full response (eg as a note to the transcript). For your reference, the exchange from the evidence on 12 July 2007 is as follows:

"Q43 Mr Prentice: Can I ask about religious charities: do you have a definition of what a religion is? What is religion? I do not want to get metaphysical. This is important stuff, is it not?

Mr Dibble: One hesitates to get involved here! Clearly, Parliament has recognised the advancement of religion as a charitable purpose, as it has been for the last few hundred years. The definition of what is a religion is set out in case law, clarified a little by the legislation, which provides that religions which believe in no god or polytheistic religions which believe in many gods may be acceptable as charities, a position which the Commission has accepted for a number of years. There are a number of Hindu and Jain charities on the register; so there is no real change there. A definition of charity as interpreted from the case law, which the Commission in its decision on Scientology pointed up, was rather ambiguous and dated and did not really relate very effectively to the multicultural, multi-religious society which we are in today, where many religions are regarded as perfectly acceptable. It involves a belief in a supreme being, worship of that being and promotion of the religion. Our view is that that definition is rather dated and that there are issues about the language being used, which do not automatically apply to some quite major religions. We will be looking at this definition, which is actually set out in common law from the cases, and going to consultation on this later on in the year, because we feel it is inadequate, as I suspect you feel as well. Quite clearly, religion is accepted as a charitable purpose; it is our job to define it adequately and to define the public benefit required to go with it."

2. Response to Q257: Mr Christie quoted Mr Ed Miliband MP (picking up a point that the message from the Government at the time of the Charities Bill was that charities created to advance established religions had nothing to fear—made at paragraph 13 of the evidence submitted on behalf of the Plymouth Brethren Christian Church). The reference for that quote is House of Commons, Hansard, 25 October 2006, Col 1608.

3. Response to Q275: Mr Hazell made reference to “the Holmes case in 1981”. Should you wish to include a reference for that case, it is Holmes v Attorney General, The Times, 12 February 1981. (The case is referred to at paragraph 7 of the evidence submitted on behalf of the Plymouth Brethren Christian Church).

4. At Q285, the uncorrected transcript provides that the Chair suggested that the Plymouth Brethren Christian Church had not had a fair hearing on 30 October. We believe that the Chair was saying "Maybe nobody can possibly say you have not had a fair hearing today, ...". No doubt Mr Jenkin will have pointed this out, but we thought it appropriate for us also to do so.

Please let me know if you have any queries, whether in relation to the transcript or the recommendations.

The Plymouth Brethren Christian Church—Recommendations following oral evidence given on 30 October 2012

We should like to thank the Committee for inviting us to give oral evidence on 30 October.

During the evidence session, we referred to some practical recommendations we would like the Committee to consider, based upon the experience of the Church leading to the current appeal before the First-Tier Tribunal (Charities). We set out our recommendations below, together with some commentary explaining the basis for the recommendations.
BACKGROUND

We submitted our initial written evidence to the Committee because of the distressing consequences for our Church of the Charities Act 2006 and its implementation by the Commission.

We are a long-established Church, whose charitable status has been upheld in the High Court as recently as 1981. We believe there should be no question as to the public benefit that our Church brings—in the last three months we have donated, across our 200-plus trusts (300 or so halls), around £340,000 and our members have donated over 30,000 hours of their time voluntarily in their local communities.

Just a few months ago the Charity Commission made a decision that the trusts that hold our gospel halls are no longer charities. We believe this decision, which we are challenging in the Tribunal, has arisen from both a lack of clarity in the 2006 Act and the statutory obligation placed on the Charity Commission to produce guidance on public benefit.

The latter, admittedly difficult, task has led to the Commission, in our view, re-interpreting established case law around the status of religious charities.

We do not think that it was the intention of the Act to oust from charitable status long-established Christian charities. Nor do we believe that that was the intention of Parliament at the time; in our oral evidence we cited a number of references from the passage of the Charities Bill through Parliament.

This is more than just a point of principle—as noted before the Committee, substantial charity funds are now having to be spent on an appeal to the Tribunal and there are potentially serious tax and other implications for all our gospel halls.

This is money that could otherwise be spent in support of our work, including community volunteering, producing free literature and making charitable donations.

The costs involved are not only those spent in the appeal to the Tribunal. We have been in discussion with the Charity Commission for 7 years about the Preston Down Trust, the gospel hall trust that is being used as a test case. The application process as it has been run in our case has involved a significant cost, which could of itself be too much for some organisations to bear.

Based on our experience, what we consider is urgently required is:

— clarity in the law,
— expediency in the Charity Commission; and
— greater checks and balances in the current process.

Our recommendations are targeted towards these ends.

RECOMMENDATIONS

1 Section 4(2) Charities Act 2011 (s3(2) of the 2006 Act) and s17(1) Charities Act 2011 (s4(1) of the 2006 Act) should be repealed. In the meantime, s4(2), s17(1) and the Commission’s public benefit guidance should be suspended (if possible) pending a review by the Law Commission of the meaning of charity and the obligation on the Charity Commission to produce public benefit guidance.

2 We would like to see more checks and balances in the current process for making important legal decisions on charitable status. For example:
   (a) We would like to see an upper limit (say 6 months) recommended for the Commission to make decisions on registration.
   (b) We would welcome a recommendation that the Charity Commission should not make a legal decision of such import without consulting with other relevant regulators, such as OSCR and HMRC.
   (c) In addition, a procedure where the Commission can refer such legally ambiguous cases to the Attorney General for a clarification opinion before making a determination and before a charity has no option but to go to the Tribunal.

3 Any process for clarification of the law of charity should not be at the individual charity’s expense. There should be some alternatives which may be pursued before an appeal to the Tribunal is necessary. For example:
   (d) a role for the Attorney General, as in recommendation 2(c); or
   (e) the question of a suitors’ fund could be revisited.

COMMENTARY ON RECOMMENDATIONS

Recommendation 1: Section 4(2) Charities Act 2011 (s3(2) of the 2006 Act) and s17(1) Charities Act 2011 (s4(1) of the 2006 Act) should be repealed. In the meantime, s4(2), s17(1) and the Commission’s public benefit guidance should be suspended (if possible) pending a review by the Law Commission of the meaning of charity and the obligation on the Charity Commission to produce public benefit guidance.
We believe the problems now facing the Plymouth Brethren Christian Church stem from a lack of clarity arising from the Act, combined with the statutory obligation placed on the Charity Commission to produce public benefit guidance.

There was very little explanation (for example by way of explanatory notes to the Act) of Parliament’s intention in enacting what is now s4(2) Charities Act 2011:
- Did Parliament intend to change the law and, if so, how?
- Did Parliament intend that organisations such as the Plymouth Brethren Christian Church gospel halls should no longer have charitable status?

The Act charged the Charity Commission with producing public benefit guidance. However, there was similarly little explanation (by way of explanatory notes to the Act or otherwise) as to what the public benefit guidance should contain.

The Commission appears to have interpreted its obligation to produce guidance as meaning that it must produce all-encompassing guidance.

A difficulty with such an approach is that, due to the piecemeal nature by which the (relatively limited) case law has developed over 400 years, there are areas upon which there has been no legal decision.

To produce all-encompassing guidance, therefore, requires an extrapolation from existing cases to fill in the gaps in the law; such extrapolation may or may not be correct in law, but can only be tested through recourse to the Tribunal.

Such all-encompassing guidance also risks encroaching on territory which is the domain of the charity trustees—it is the responsibility of individual charity trustees to determine how best to promote the purposes of their charity within the particular circumstances of that charity.

A further difficulty of the all-encompassing approach is that it makes the Commission’s guidance long and, potentially, confusing for charity trustees (and the public).

If the Commission was not required by statutory duty to produce the guidance, we question whether it would feel under the same obligation to produce public benefit guidance in the form it has chosen.

If Parliament considers that public benefit guidance would be useful, we would recommend that guidelines on the content of such guidance should be provided.

We would recommend that any public benefit guidance be stripped down to the bare legal principles which have been established in case law (and accepting that there are areas of doubt which arise from such case law). This would leave room for discussion of wider areas of doubt in a non-binding way, perhaps with the Attorney General giving a view and/or acting as arbiter on questions of law for determination.

We recommend the suspension and repeal of s4(2) Charities Act 2011 because we believe that its intended effect is unclear and that lack of clarity has led to two cases before the Tribunal (relating to independent schools and benevolent funds) and is now at the root of a third Tribunal case, the Preston Down Trust appeal. This third case relates to charities for the advancement of religion.

- All three Tribunal cases have in common that they relate to heads of charity which, prior to the 2006 Act, were said to benefit from a “presumption” of public benefit (supposedly “removed” by s4(2)).
- s4(3) Charities Act 2011 preserves the case law meaning of public benefit, but subject to the “removal” of the presumption.

This means that case law which was thought previously to be clear is now being questioned. For example, 1981 High Court authority, which established that Plymouth Brethren Christian Church gospel halls are charitable, has been called into doubt.

We believe that the question of the meaning of charity law, and whether a statutory duty should be imposed on the Charity Commission to produce public benefit guidance, should be referred to the Law Commission, so that a full review of all the implications of any recommended change can be considered.

We would not, however, support an attempt to include a definition of public benefit in statute—we consider this would be difficult and would inevitably be too restrictive and inflexible.

**Recommendation 2:** We would like to see more checks and balances in the current process for making important legal decisions on charitable status. For example:

(a) We would like to see an upper limit (say 6 months) recommended for the Commission to make decisions on registration.

47 *Holmes v Attorney General*, The Times, 12 February 1981
(b) We would welcome a recommendation that the Charity Commission should not make a legal decision of such import without consulting with other relevant regulators, such as OSCR and HMRC.

(c) In addition, a procedure where the Commission can refer such legally ambiguous cases to the Attorney General for a clarification opinion before making a determination and before a charity has no option but to go to the Tribunal.

— Our experience in seeking registration of the Preston Down Trust was that we were in discussions with the Charity Commission for seven years. We consider this was too long and cost too much in terms of time and resources.

— We would, therefore, like to see an upper limit (say six months) recommended for the Commission to make decisions on registration.

— It appears to be the case that the Commission did not consult with the Scottish charity regulator until late in the day in relation to the gospel hall trusts it was told had recently been registered in Scotland; nor does it appear to have consulted with HMRC, notwithstanding the serious fiscal consequences of its decision (and the human rights issues that this raises).

— We suggest that it is reasonable to expect that all regulators whose functions might be impacted by a decision of this kind should consult with each other, where relevant, when making important legal decisions, especially those which may have wider ramifications.

— The Preston Down Trust received the Charity Commission’s decision to refuse registration out of the blue. Before then, its understanding was that the Commission was minded to proceed by way of a Reference to the Tribunal to seek clarification of the law. In its decision, the Commission informed the Preston Down Trust that no further internal review within the Commission was possible—only avenue of appeal lay with the Tribunal.

— We consider it should not have been necessary for the Preston Down Trust to have to appeal to the Tribunal, at least without some form of further review of the decision and its merits.

— It may be that the Charity Commission should amend its procedures so that a legal decision of such import should be subject to review by a legal member of the Commission board who was not involved in the decision under review. This could be supplemented by Counsel’s opinion (whether obtained by the charity or the Commission), where considered necessary.

— We are not convinced that a further internal legal review at the Commission would alone suffice to prevent appeals going unnecessarily to the Tribunal.

— We recommend that some decisions could be referred to a form of arbitration involving the Attorney General (as protector of the interests of charity on behalf of the Crown).

— For example, if the Charity Commission considers that the law is unclear on a particular case before it, it could approach the Attorney General and ask if the Attorney General would offer an opinion on the point of law. The Charity Commission would also notify the applicant for registration that the matter had been referred to the Attorney General.

— The Attorney General may consider the matter was of such import as to merit his making a reference to the Tribunal. Alternatively, if the Attorney General was willing to give an opinion, the Commission would follow that opinion, and its decision on that basis would be subject to appeal to the Tribunal in the normal way.

— It may be that any opinion of the Attorney General should be circulated in draft to the applicant for registration to enable it to make representations before the opinion is finalised.

— Attorney General opinions on points of law could be published online.

— If, when a question was referred to him, the Attorney General considered the facts had not been established with sufficient clarity for a decision to be made, he could remit the matter back to the Commission to clarify those facts and consider its decision afresh.

— There may be a cost implication for the Attorney General’s office in such an approach. However:

— we consider the cost to the public purse would be considerably less than the cost of an appeal to the Tribunal; and

— in an important appeal on charitable status, the Attorney General would generally be expected to give his view on the legal position—the process above simply suggests that, if he were to do so at an earlier stage, an appeal to the Tribunal may be averted.

**Recommendation 3**: Any process for clarification of the law of charity should not be at the individual charity’s expense. For example:

(a) a role for the Attorney General, as in recommendation 2; or

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48 The Charity Commission’s internal operational guidance provides that no internal review can be made where the original decision is made by, or on delegated authority from, the Commission board.
(b) the question of a suitors’ fund could be revisited.
— Although in most cases, public benefit should be “obvious”, there were, nevertheless, areas of doubt which, prior to the Charities Act 2006, had not been clarified.
— In our view, the Act did not clarify those areas of law and has, in some respects, added further layers of doubt and confusion.
— It seems wrong to us that those areas of doubt should now be clarified time and again at the expense of individual charities.
— We believe that the Charities Act sought to introduce a cost-effective means to address such questions with the introduction of a Tribunal offering an informal process specialising in charity law.
— We consider that the Tribunal has a valuable role to play in addressing many appeals arising from decisions of the Charity Commission.
— The area which we think is more difficult for the Tribunal to address is that involving cases of weighty law, such as the Preston Down appeal.
— Inevitably such cases will involve complex legal argument. It is not clear whether the processes established for an informal Tribunal sit well with such formal legal debate.
— There needs to be a process for settling outstanding areas of doubt on questions of law as they arise. We ask that such a process not be at the expense of individual charities.
— We wonder whether there may be a role for the Attorney General here, for example by offering a legal view before matters proceed to litigation (as outlined above).
— Alternatively, we suggest looking again at a possible suitors’ fund. This was something considered in debate on the Charities Bill before Parliament.49

November 2012

Supplementary written evidence submitted by National Council for Voluntary Organisations (NCVO) (CH 53)

Following the announcement that on Tuesday 27 November the Public Administration Select Committee’s will be holding a session on political campaigning by charities as part of its post-legislative scrutiny inquiry into the implementation and operation of the Charities Act 2006, NCVO would like to submit the present additional written evidence.

Given our expertise in this area, there are some specific issues that may be discussed and on which we can provide clarification. In particular, the present submission highlights that:
— campaigning is an entirely legitimate activity central to the work of many charities;
— campaigning is a way in which charities can meet the needs of their beneficiaries;
— there is widespread public support for charities’ campaigns;
— the assertion that Government funding is being channelled into charity campaigning is not grounded in any evidence; and
— any funding charities receive from Government is invariably restricted to service delivery.

Charities’ Right to Campaign

Campaigning is an entirely legitimate activity central to the work of many charities. Government must therefore recognise and respect charities’ independence and their right to campaign.

The positive impact of charity campaigning

Charity campaigns have been essential in bringing major social issues to public attention and achieving important social changes.
— The Royal British Legion campaigned in 2007 for Government to honour its lifelong duty of care to those serving in the forces by honouring the Military Covenant. This four year campaign brought together people of all ages across the country, showing recognition of the great service provided by our veterans. Its inclusion in the Armed Forces Act 2011 has helped to ensure justice and respect to those who have fought for our country.
— In the late 1990s, the RNID launched a Digital Hearing Aid Campaign, demonstrating the positive difference to people’s quality of life that can be achieved when a charity makes use of its knowledge to improve the services and opportunities offered to its beneficiaries. Following the decision to provide digital hearing aids on the NHS, the cost price reduced dramatically from £2500 to as low as £55 per unit.

49 See, for example, the debate in Grand Committee (HL), 23 February 2005, col GC340, where an amendment was proposed to introduce a suitors’ fund for appeals to the Tribunal.
— At a smaller scale, yet equally powerful, BeatBullying campaigns to shape attitudes and behaviours around the issue of bullying. This charity has now become a household name and there are daily testaments of how its work has improved the lives of children and adults who previously had no course of action.

The importance of charity campaigning

The suggestion made by the “Sock Puppets” report that charities in receipt of government funding should not be allowed to lobby shows a complete lack of understanding of the sector and of the policy making process.

Charity campaigns are not self-serving: through their campaigning charities speak up on behalf of their beneficiaries, so this is a way in which they can meet the needs of their beneficiaries.

In addition, through their campaigning work, charities reinforce their independence because they enable people’s voices to be heard, either acting as advocates on their behalf, or supporting and encouraging them to speak up for themselves.

Therefore, far from “debasing the concept of charity”, campaigning helps charities advocate for disenfranchised people, or support and encourage them to speak up for themselves, and helps create a strong and independent sector.

Public support for charity campaigning

There is widespread public support for charities’ campaigns. According to recent research by nfpSynergy:

— 56% of the public identify “lobbying government and other organisations” as a worthwhile activity for charities;
— 67% of respondents agree that “…charities should be able to campaign to change laws and government policies relevant to their work”.

This snapshot of public opinion is a clear indication that, far from opposing charity campaigning, people consistently support it, through both engaging with charity campaigns and continuing to donate to charities that campaign.

Government funding

Instances of charities receiving money from Government to campaign are few and far between. It has been largely acknowledged that the Sock Puppets report hugely overstates the issue, and does not present any evidence to back up the assertion that Government funding is being channelled into charity campaigning.

Three quarters of all voluntary organisations do not receive any income from statutory sources. The funding charities receive from Government, either in the shape of grants or contracts, is invariably restricted to service delivery.

Even when charities receive specific amounts of money from the State in order to deliver public services, they should be able to campaign for change at the same time as delivering the best service they can within current confines.

NCVO has long maintained that campaigning and service delivery are not mutually exclusive but complementary ways of working. The combination of the two ensures that the type and quality of service an organisation offers is informed by its knowledge of user needs, while its campaigning work is strengthened and gains legitimacy because of the experience of providing services. And if a charity finds that a change to Government policy is required to better meet the needs of its beneficiaries, it is entirely legitimate.

Charitable status of Think Tanks

It is already widely acknowledged that the process of deciding whether a think tank is charitable is not always straightforward: sometimes there can be a very fine line between what “education” is, and what slips into political activity.

The Charity Commission itself has admitted that applying the principles of public benefit in such a grey area will always be difficult, and problematic cases will arise.

However, many think tanks do invaluable work under the broad term of advancing education, such as producing groundbreaking reports that have influenced policy for the better, or carrying out important research that has revealed faults in our society.

Furthermore, the Charity Commission has recently provided further guidance that has clarified the approach when registering think tanks. This is an improvement that, in our view, prevents the need to change the rules on political activity by charities derived from case law, which are widely considered to be proportionate and well-balanced.

November 2012
Supplementary written evidence submitted by National Association for Voluntary and Community Action (NA VCA) (CH 55)

Further to my oral evidence to the Committee on 23 October 2012, I am writing to elaborate on three points which arose in evidence.

1. UMBRELLA ORGANISATIONS AND ADVICE TO SMALLER CHARITIES

The Chair pointed out that the Committee had been told by the former Charity Commission Chair Dame Suzy Leather that “one-to-one support for charities” would be the “casualty of the cuts” and suggested that the umbrella bodies would have to take over this role.

The Committee Chair later said: “…if resources were not an issue, would it be appropriate to rely on or fund the umbrella bodies to provide support to smaller charities?” Sir Stuart Etherington, NCVO, answered on our behalf that it would.

Umbrella bodies are under significant funding pressure. This is combined with increased demand from their members for help and support to meet new challenges and opportunities. Simply taking over responsibility for advice that should properly be provided by the Charity Commission is not an option.

NCVO, NAVCA and Community Matters met with the Charity Commission to explore how the advice and signposting work of umbrella organisations can be best developed to meet some of the future demand for relevant and appropriate advice. This would complement the work of the Charity Commission, but not replace it. NCVO, NAVCA and Community Matters have developed a proposal, backed by the Charity Commission, for a single advice gateway.

Our vision is of a national specialist advice hub. It will draw on existing good practice which complements future developments in the provision of wider advice and support to civil society groups.

We need to test our proposal with a feasibility study and market testing exercise into different levels of advice and signposting delivered via a combination of direct local advice, telephone help and social media. We have identified the need for help beyond a single web based portal, especially for these groups;

— Those needing assurance and help to use web based information and advice services,
— Those with a complex range of issues—this may include charities with specific, multiple advice needs, and those for whom a more intensive level of advice can have wider sector benefit by sharing learning more widely.
— Those needing specialist advice beyond what websites can readily provide but less than professional advice such as a lawyer.

To illustrate the scale of increase in enquiries which could be envisaged it is worth looking at the current traffic dealt with by the Charity Commission and the main umbrella bodies.

In 2011–12 the Charity Commission website received 43 million page views from 6.3 million visits by 3.5 million unique users. Their First Contact unit, the first port of call for all incoming work, had 129,918 phone calls, 70,077 emails and 13,027 items of post.

By comparison, NCVO’s website has 490,257 unique visitors per year, its Know How Non Profit website 687,327 unique visitors per year and the NCVO-run Funding Central website 407,000 unique visitors per year.

NAVCA’s website receives 150,000 unique visitors and 500,000 page views a year. The most important point of direct contact is NAVCA’s 400 members who together support 160,000 local charities and community groups. Nationally, NAVCA deals with about 2,500 calls a year, mainly from its own members on more complicated issues. But individual charities would be expected to approach their local NAVCA members for advice. NAVCA’s role nationally is to support our local members in this work.

Community Matters has 15,000 unique visitors every month to its four websites visiting over 72,000 pages. It also has about 1,000 calls and emails a year to its advice line.

It is clear from this that the scale of increased demand would mean a sharp increase in enquiries for umbrella bodies, and resources would need to be found for this.

The Minister for Civil Society and the Charity Commission have indicated support for this proposal and encouraged us to seek funding support.

We would welcome support from the Committee for the view that, if resources can be found, it would be desirable for the umbrella bodies, working with the Charity Commission to pilot such an approach. We would then seek support from appropriate funders for such a proposal.

2. RAISING THE THRESHOLD FOR REGISTRATION

Lord Hodgson proposed raising the threshold for compulsory registration with the Charity Commission from £5,000 to £25,000 annual turnover. I quoted that 43% have annual income below £10,000. This is an
underestimate as this is the Charity Commission’s figure for currently registered charities only. The figure excludes many small charities below the £5,000 threshold for registration.

CHARITY COMMISSION: SIZE BY INCOME OF REGISTERED CHARITIES—30TH SEPTEMBER 2012

<table>
<thead>
<tr>
<th>Annual income bracket</th>
<th>No of charities</th>
<th>%</th>
<th>Annual income £bn</th>
<th>%</th>
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<td>£0 to £10,000</td>
<td>69,786</td>
<td>42.9</td>
<td>0.231</td>
<td>0.4</td>
</tr>
<tr>
<td>£10,001 to £100,000</td>
<td>52,298</td>
<td>32.2</td>
<td>1.848</td>
<td>3.2</td>
</tr>
<tr>
<td>£100,001 to £500,000</td>
<td>19,724</td>
<td>12.1</td>
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<td>7.5</td>
</tr>
<tr>
<td>£500,001 to £5,000,000</td>
<td>8,124</td>
<td>5.0</td>
<td>12.213</td>
<td>20.8</td>
</tr>
<tr>
<td>£5,000,000+</td>
<td>1,825</td>
<td>1.1</td>
<td>39.904</td>
<td>68.1</td>
</tr>
<tr>
<td><strong>SUB-TOTAL</strong></td>
<td><strong>151,757</strong></td>
<td><strong>93.3</strong></td>
<td><strong>58.578</strong></td>
<td><strong>100.0</strong></td>
</tr>
<tr>
<td>Not yet known</td>
<td>10,867</td>
<td>6.7</td>
<td>0.000</td>
<td>0.0</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>162,624</strong></td>
<td><strong>100.0</strong></td>
<td><strong>58.578</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

The NCVO Almanac is regarded as the most authoritative source of statistical data about the voluntary sector in 2012. Whilst again unable to include all the very smallest organisations in data, examination of its “population” found that: “the majority of the UK’s voluntary organisations are very small: just under 88,000 (54% of the ‘population’) have an annual income of less than £10,000, and we have categorised these as micro. Many are small: a further 51,000 (31%) have an income of less than £100,000.”

VOLUNTARY SECTOR ORGANISATIONS: INCOME INDICATORS, 2009–10

<table>
<thead>
<tr>
<th>Micro</th>
<th>Small</th>
<th>Medium</th>
<th>Large</th>
<th>Major</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of organisations</td>
<td>87,683</td>
<td>51,090</td>
<td>20,432</td>
<td>4,084</td>
<td>474</td>
</tr>
<tr>
<td>Proportion of organisations (%)</td>
<td>53.5</td>
<td>31.2</td>
<td>12.5</td>
<td>2.5</td>
<td>0.3</td>
</tr>
<tr>
<td>Total income (£ millions)</td>
<td>236.9</td>
<td>1,781.9</td>
<td>6,322.3</td>
<td>11,325.8</td>
<td>17,014.5</td>
</tr>
<tr>
<td>Proportion of income (%)</td>
<td>0.6</td>
<td>4.9</td>
<td>17.2</td>
<td>30.9</td>
<td>46.4</td>
</tr>
<tr>
<td>Mean income (£)</td>
<td>2,700</td>
<td>34,900</td>
<td>309,000</td>
<td>2,773,000</td>
<td>35,896,000</td>
</tr>
<tr>
<td>Median income (£)</td>
<td>3,039</td>
<td>26,364</td>
<td>232,662</td>
<td>1,953,690</td>
<td>20,220,025</td>
</tr>
</tbody>
</table>

Source: NCVO/Third Sector Resource Centre, Charity Commission

Raising the threshold for compulsory registration to £25,000 would therefore exclude a substantial majority of charities. In the absence of access to voluntary registrations (already promised but not enacted), this could have a debilitating effect on the ability of smaller charities to raise funds from donors, have access to Gift aid and other charitable tax relief, and obtain funding from foundations or public authorities.

3. VOLUNTARY REGISTRATION, AND SEPARATE CATEGORIES OF “SMAIL CHARITIES” AND “NON-REGISTERED” CHARITIES

We are also concerned that the proposal to create a separate category of “small charities” below the compulsory registration threshold would undermine the reputation or standing of smaller charities with the general public, foundations and other potential funders and supporters. (This is what I meant by referring in oral evidence to a “second class” category below £25,000 income).

It was suggested at one point in previous evidence that smaller charities might be more subject to maladministration than larger ones. Public trust and confidence in charities across the board remains very high, as witnessed by regular Ipsos Mori polling on behalf of the Charity Commission. Charities are consistently one of the most trusted groups, with only the police and doctors being more highly trusted. Any regulation should surely be based on risk factors, independent of size of income.

Lord Hodgson proposes that those organisations which are not required to register and choose not to register voluntarily as charities should be obliged to declare that they are “non-registered”. It is unclear how this proposal would be monitored and enforced.

CONCLUSION

I would conclude by thanking the Committee for their interest and by commenting that Lord Hodgson has done a remarkable job in his review, which is overall well balanced, thoughtful, thorough and appropriate. I hope that the issues on which our views differ do not distract from our overall appreciation of his work.

November 2012

50 http://www.charity-commission.gov.uk/About_us/About_charities/factfigures.aspx
51 http://data.ncvo-vol.org.uk/almanac/voluntary-sector/scope/how-big-is-a-typical-voluntary-organisation/
**Supplementary written evidence submitted by Garth Christie (CH 60)**

APOLOGY FOR ERROR MADE BEFORE THE PUBLIC ADMINISTRATION SELECT COMMITTEE
ON 30 OCTOBER 2012

I had the recent privilege of representing the Plymouth Brethren Christian Church before the Public Administration Select Committee in relation to the topic of “Regulation of the Charitable Sector and the Charities Act 2006”.

During the course of this Committee hearing I made an error in my statement to you. I unreservedly apologise for this.

I quoted Kenneth Dibble of the Charity Commission and repeated wording that he had used in his letter of refusal to register the Preston Down Trust as a charity and also repeated what he had said earlier in his appearance before the PASC. Whilst the quotations were correct, I repeated them in such a way that gave the impression that they were stated at the same time. This is clearly not the case.

The mistake was entirely inadvertent and a result of notes which I should have better prepared! Nevertheless I apologise fully for this error and for any confusion it may have caused.

My quotation has been corrected in the transcript of oral evidence notes.

December 2012

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**Supplementary written evidence from the Charity Commission (CH 62)**

Letter from Sam Younger CBE, Chief Executive, Charity Commission

Thank you for inviting us to appear before the committee on 4 December and for your further questions. William Shawcross has agreed for me to respond in his absence.

Before answering, it is worth repeating the definitions in our guidance of campaigning and political activity:

1. Campaigning: a charity can engage in as much education and awareness-raising activity as it likes provided it is in furtherance of its charitable purposes.

2. Political activity: a charity can engage in activity aimed at securing or opposing any change in the law or in the policy or decisions of central government, local authorities or other public bodies, whether in this country or abroad. It can do so provided that: (i) it is in support of its charitable purposes; (ii) it never engages in party political activity; and (iii) it does not become its continuing and sole activity.

These are from our guidance Speaking Out: Guidance on Campaigning and Political Activity (2008).

The answers to your questions are as follows.

**Whether we think all campaigning charities act within the letter and spirit of our guidance**

Clearly, not all charities will follow all of the Commission’s guidance all of the time and we do receive complaints. That said, the number of complaints is relatively small. In a typical year, political activities account for around 2% of the serious concerns examined by our Investigation and Enforcement function. Over the past three years, we have conducted 12 investigations where political activity was a significant theme. These included three statutory inquires (our most serious form of regulatory intervention) and nine regulatory cases. We received 16 complaints and reports of serious concerns during the 2010 General Election period.

This evidence suggests that there appear to be good levels of knowledge and understanding of our guidance amongst charities that carry out this type of activity. It is worth noting that the NCVO-led Charity Law Review Advisory Group examined campaigning and recommended that “the existing regulatory guidance on charities and political activities is endorsed as continuing to be fit for purpose”. The Minister for Civil Society in his oral evidence on 4 December also said that the rules on campaigning and political activity were clear.

**Response to Mr Snowdon’s comments**

Mr Snowdon is correct that the period of time for which charities may carry out political activity is not specified in our guidance. This is so for two good reasons. First, the circumstances in which any charity may choose to conduct such activity will naturally vary. Second, it is for not for the Commission to gainsay the judgement of individual trustees about how the general principles in our guidance will apply to their organisations. As stated above, political activity must be subsidiary and cannot become the continuing and sole purpose of a charity.

Beyond this, it is for trustees to decide how best to run their charities and advance their charitable purposes. We cannot prescribe a limit in either absolute or relative terms for the amount of time charities can devote to political activity.
Would further revision of our guidance be helpful in the light of the Atlantic Bridge and Smith Institute cases?

We believe that the Atlantic Bridge and Smith Institute cases illustrated the principles of our guidance very clearly. The activities of both organisations had crossed the line between what is and is not permissible in charity law. Despite that, it was clear that both were capable of being charities. In the event, both sets of trustees decided that they did not wish to continue operating within the charity law framework. Atlantic Bridge wound up and the Smith Institute, as you know, has since reconstituted as a non-charitable organisation.

Given this, our view is that there is no reason to revise the principles of our guidance at this particular point in time. However, see our further comments below.

Consideration of the charitable status of think tanks

We are glad to say that the work to which Dame Suzi Leather referred is at an advanced stage. We reviewed the position of charitable think tanks, most of which are registered as educational research charities. We identified those charities on the register which could be identified as think tanks and have prepared internal guidance for staff dealing both with applications for registration from new educational research organisations and regulatory issues with existing charities. We intend to follow this up next year with new tailored guidance for our website, which will set out the key principles that trustees of such organisations must bear in mind. This will also signpost them to other relevant guidance such as that on political activities and campaigning. We have also introduced a new procedure at registration stage, whereby we ensure that the commitments that new organisations make to us in the course of their application are recorded. This is then sent to the trustees to remind them of their responsibilities to ensure that the organisation does exist for exclusively charitable purposes for the public benefit.

We will publish the draft guidance for consultation next year and we also intend to hold a seminar for think tanks and other interested parties.

Lastly on this topic, we were interested to note Mr Hackett’s comments about the differences between operating as a charitable as opposed to a non-charitable think tank. We think his evidence made clear that charitable status involves certain responsibilities which (as he explained very clearly) will not necessarily suit every organisation. Many think tanks find it more convenient to operate outside the charitable framework.

December 2012

Further supplementary written evidence submitted by the Charity Commission (CH 63)

ADDITIONAL INFORMATION FOR THE PUBLIC ADMINISTRATION SELECT COMMITTEE ON CHARITIES ADVANCING RELIGION

INTRODUCTION

We recognise that the role of registering charities and making decisions about charitable status, when the advancement of religion is a charitable purpose, means that the Charity Commission sometimes has to make difficult and finely balanced decisions about the implications of religious belief, doctrine and practice. Other examples which have attracted public attention include the Church of Scientology (declined in 1999), the Gnostic Centre (declined in 2010) and the Pagan Federation (declined in 2012). It may seem strange that legislation places this very wide-ranging responsibility on a civil regulator, but these are legal decisions about the application of charity law.

In the 2006 legislation the “public benefit” requirement was not defined and the Commission was given a statutory duty to provide guidance on its meaning and application. However “Public benefit” has a specific meaning in law, as opposed to a colloquial definition of general “good things”. We have always appreciated that issues surrounding public benefit are not as clear and easy for charities to understand as we would like them to be, and it is not possible to answer all of the questions that charities may have about public benefit.

A key factor in the establishment of the Charity Tribunal was to provide a means of clarifying the law independently of the Commission without the necessity to bring cases in the High Court. The Commission’s view is that the Tribunal is a critical part of the charity law architecture since it is only the tribunal which can bring clarity to the application of the law.

In meeting our statutory obligation to produce guidance, we worked with and consulted with hundreds of charities and stakeholders. We worked closely with a whole variety of faith organisations to get their input on both our general guidance and our additional guidance for charities advancing religion through numerous events, consultations, and discussions in order to produce additional guidance for charities advancing religion.

The process and the guidance were broadly welcomed by the faith organisations and we have successfully continued registering hundreds of charities advancing religion, including many that were previously not required to register.
We recognise the level of Parliamentary interest in this issue and have responded to concerns through correspondence and meetings, and continue to recognise the concerns of the members of the Preston Down Trust. Concerns have been expressed about whether our decision has a wider impact on other faith charities. We are mindful of this, but this case is specific to the details of the Preston Down application. We have registered hundreds of Christian charities since the 2006 Act.

The Commission always aims to be consistent in its decision making, and we believe that to achieve a proper resolution to the Preston Down Trust case, it is now best considered by the Tribunal. The Tribunal will look at the decision afresh, to decide if the Preston Down Trust is a charity advancing religion for the public benefit post Charities Act 2006, taking account of any new evidence on both sides, rather than simply reviewing the Commission’s decision.

We fully take on board that there have been misunderstandings surrounding these cases, due in part to the complex nature of the issues, and how far the Commission communicates decisions of this nature. We recognise that there may be more that we could do to better communicate our decisions, and we will look at how we can improve our processes.

1. **What criteria must be met by an organisation which wishes to be registered as a charity with the charitable purpose of the advancement of religion?**

   It is important to say at the outset that in the case of the Preston Down Trust, the question is not about the validity of the Christian religion which the members follow, nor is there any suggestion of criticism of the membership and their religious practices. The legal question for the Charity Commission is whether the organisation is advancing the Christian religion for the public benefit, according to charity law. This is a wider question than simply “are they a religious organisation”.

   The Charities Act 2006, defined a charity as a “body or trust which is for a charitable purpose that provides benefit to the public”. The Act lists 13 descriptions of charitable purposes, including the advancement of religion, and any charity must have purposes falling within that list.

   All charities have to have exclusively charitable purposes, and must be advancing them for the public benefit. Both of these elements have to be demonstrated for an organisation to be charitable. In charity law, a religion is a system of belief that has certain characteristics that have been identified in case law and clarified in the Charities Act 2006 which says that the word religion includes “a religion which involves belief in more than one god, and a religion which does not involve belief in a god”.

   When considering whether or not a system of belief constitutes a religion for the purposes of charity law, the courts have identified various characteristics of religion that describe a religious belief. These are:

   - belief in a god (or gods) or goddess (or goddesses), or supreme being, or divine or transcendental being or entity or spiritual principle, which is the object or focus of the religion
   - a relationship between the believer and the supreme being or entity by showing worship of, reverence for or veneration of the supreme being or entity; and
   - a degree of cogency, cohesion, seriousness and importance; and
   - an identifiable positive, beneficial, moral or ethical framework

   Public benefit is a requirement of charities for the advancement of religion as it is for all other charitable purposes. Any presumption of public benefit which was afforded to religious purposes was removed by the Charities Act 2006. The public benefit requirement varies between different charitable purposes and is set out in case law.

   The decisions in the Upper Tribunal Case in 2011 involving the Independent Schools Council clarified the law on public benefit in particular contexts. Although they do not deal specifically with the law relating to public benefit for the advancement of religion, the Upper Tribunal did make it clear that there is no presumption that religion generally or at any more specific level is for the public benefit.\(^{53}\) The judgment says:

   “Returning to the example of religion, not only is there to be no presumption that religion generally is for the public benefit...but that there is no presumption at any more specific level and thus no presumption that Christianity or Islam are for the public benefit and no presumption that the Church of England is for the public benefit”

   The Commission is obliged to have due regard to decisions of the Tribunal.

2. **How can a religious group satisfy the public benefit requirement?**

   We recognise that, following the removal of the presumption of public benefit for the advancement of religion, there is a lack of certainty as to the law relating to the public benefit requirement for the advancement of religion, and what is necessary to establish that there is public benefit.

   We recognise that it is not possible to produce a definitive list of the different sorts of benefits that a charity advancing religion might be able to demonstrate. The benefit conferred by the religious purpose must be one

\(^{53}\) Para 84 (g) of the decisions of the Upper Tribunal Tax and Chancery Chamber UKUT 421 (TCC) and FTC/84/2011
extending to the wider community rather than to the adherents themselves. Examples include the provision of public worship, rituals or ceremonies and contributing towards a better society for example by promoting social cohesion and social capital or for providing an inspiration for other charitable work.

It is not enough that an organisation does something in the name of religion in order for it to be a charity advancing religion. It has to be shown that the aim of the organisation is to advance the religion in a way that is for the public benefit.

The wider public must benefit from a religious organisation seeking to be a charity. It cannot be established solely for the benefit of the followers or adherents of the religion, the aim must be for the benefit of the public. The public may benefit by participating in the services of the religion, or, where the religious beliefs and practices, reflected in the doctrines and codes of the particular religion, encourage its followers or adherents to conduct themselves in a positive and socially responsible way in the wider community.

In the case of Preston Down Trust, the Attorney General agreed with our view that there was uncertainty in the law and wrote to us in the following terms:

"In respect of this application the Solicitor General took the view that whilst there was a point of law that required clarification in respect of the removal of the presumption of public benefit, the question of whether the benefit test is in fact met in any case will turn on the particular practices of the religious sect concerned. He is of the view that a Reference, whilst assisting the Commission by clarifying the law in this and similar cases, will be unable to give more comprehensive guidance in this area which would be of universal application. The Solicitor General notes that the Charity Commission, if it has real doubts as to whether the test is met in this case might refuse the application for registration and have the particular facts in this case tested by way of challenge."

In the absence of relevant and applicable case law, clarity about how a religious group can satisfy the public benefit requirement can only be developed through cases in the Tribunal. From the Commission’s point of view, our interest in Tribunal cases is not in achieving a particular outcome, but achieving clarity to guide our work.

3. Did the Charity Commission take the same approach to the applications for charitable status from the Druid Network and the Preston Down Trust?

The Commission assessed both applications against the same charity law framework. The 2011 Act was in force at the time of our decision regarding Preston Down Trust, but there were no changes to the definition of charitable purposes or public benefit from the 2006 Act (the 2011 Act was a piece of consolidation legislation which made no changes or additions to existing law).

The Commission considers each registration application on its individual merits having regard to the particular circumstances of the particular institution, consistent with the current law. In so far as any comparison is possible, the facts and particular circumstances of the Druid Network are distinguishable from the Preston Down Trust.

The Commission will normally offer an internal decision review of cases following a refusal to register, and this was the case with the Druid Network. An exception to this may be where the case has been considered at senior levels within the Commission such that generally no useful purpose would be served by a review. This might arise where the Commission is satisfied that the decision is the one it wishes to stand by. Alternatively, where there is a point of legal uncertainty which the Commission itself cannot determine, or where given the circumstances of the case it is better dealt with in the Tribunal, we will say that we do not view a decision review as appropriate, as was the case with Preston Down Trust.

The Commission is very mindful of the costs associated with Tribunal hearings and we spoke about this in some detail at our oral hearing on 4 December. Our normal practice is to seek to minimise costs for charities and indeed for the public purse. It is worth noting that in the recent appeal against our decision not to register the Pagan Federation, as in other cases, we hope to agree with the appellant to conduct the case on consideration of the papers alone without the need for a hearing.

4. Please can you summarise

(a) What public benefit is provided by The Druid Network?

The Commission registered the Druid Network in 2010, having eventually been satisfied that it was established for exclusively charitable purposes for the public benefit. Consideration of this application was a long and detailed process involving many exchanges of correspondence.

As the published summary of the decision shows, the main point of contention in relation to the Druid Network’s application was whether the belief system and activities of the Druid Network constitute advancing religion under charity law. To be a religion under charity law means having certain characteristics, as set out in our guidance The Advancement of Religion for the Public Benefit. Only after careful consideration of the evidence presented and an acknowledgment that the question was finely balanced was the Commission satisfied that the purpose of the Druid Network is to advance religion as it is understood in charity law.
Having accepted this, the Commission did then consider whether the Druid Network’s purpose is for the public benefit: that is an identifiable benefit which is available to the public or a section of the public. The Commission decided there was sufficient evidence of identifiable benefits related to the aim, through activities like the provision of public rituals and ceremonies, supporting existing Druid groups and the formation of new Druid groups, providing material on the internet to promote the beliefs and practices of Druidry, supporting and participating in environmental and heritage projects, and involvement in interfaith activities.

As far as benefiting the public or a section of the public is concerned, the Commission was satisfied that the Druid Network reaches out to the wider community. There was evidence to show that membership and involvement in ceremonies is open to all and the opportunity to learn about Druidry is available to the public through the Druid Network website. The Druid Network supports the provision of public rituals and ceremonies and engages in interfaith activities and community projects. The Druid Network is not exclusive and confirmed it does not support events or organisations which are exclusive nor accept exclusive groups into membership.

(b) Why the Preston Down Trust does not meet the same requirement?

The consideration of the Preston Down Trust application hinged on different issues from those in the Druid Network application, albeit that both are applications under the description of charitable purpose of advancing religion. It is evident that the Preston Down Trust is of a religious nature. However the point of contention is whether the Trust is established for exclusively charitable purposes for the public benefit, because of the particular doctrines and practices promoted by the Preston Down Trust. Preston Down Trust promotes particular beliefs and practices, in particular the doctrine of separation which is central to their beliefs and way of life and this has the consequence of limiting their engagement with non-Brethren and the wider public. The evidence we were given showed that the doctrine of separation as preached by the Trust requires followers to limit their engagement with the wider public, and there was insufficient evidence of meaningful access to participate in public worship. The Commission concluded that the evidence of beneficial impact on the wider public was not sufficient to demonstrate public benefit. This was a finely balanced decision.

It is important to note that in charity law any alleged harm or detriment must be balanced against the benefit. However, while the Commission was aware of some criticism of the practices known as “shutting up” and “withdrawal”, and of the effect of the doctrine of separation as practiced by the Preston Down Trust on family and social life, at the time of making our decision we had no evidence of this and it was not a factor in our decision. In our decision to refuse registration we have received submissions on this point and will be putting these to the Tribunal to consider, but it is for the court to decide what weight to give these. Hearing and assessing evidence of this kind is a role much better suited to the courts as it is done under oath, than to a body like the Commission.

5. The Druid Network applied for charitable status in February 2006, and was approved in September 2010. The Preston Down Trust applied for charitable status in November 2009 and had the application refused in June 2012. Why did it take several years to process these applications?

The Committee will know that it is very unusual for registration decisions to take this long. In 2011–12 we registered more than 5,600 charities with an average time taken of 27 days. In a small number of cases where the issues are finely balanced and we need to seek further evidence or engage with the promoters to clarify elements of their application, it will take rather longer. We do our best to keep promoters informed of the progress of their application and the reasons for any delay, although we recognise sometimes this could be improved.

In the case of the Druid Network, as well as a lengthy correspondence and a number of meetings, there was a jointly agreed pause while the Druid Network was waiting for our guidance on the advancement of religion and public benefit to be published, following which we received further information to be considered in the light of our guidance. The process was further prolonged when the Druid Network asked for a review of our decision.

In the case of the Preston Down Trust, as well as a lengthy correspondence and a number of meetings there was a consultation with the Attorney General over bringing a reference to the Tribunal. As indicated above, he agreed that the public benefit requirement for religious charities was unclear. In addition, there was a pause in consideration of the application while we waited for the outcome of the Tribunal proceedings relating to the public benefit guidance brought by the Independent Schools Council alongside a reference from the Attorney General and a reference by the Attorney General on the restricted poverty trusts. We discussed the reasons for the delay with the promoters of the Trust and their legal advisers on several occasions. The outcome of both references was considered before reaching a conclusion.

December 2012
Supplementary written evidence submitted by the Institute of Economic Affairs (CH191)

I write to you with regard to Questions 399–401 posed by Committee member Lindsay Roy when IEA author Christopher Snowdon gave oral evidence to the Public Administration Select Committee on Tuesday November 27, 2012.

Mr. Roy asked what benefits does charitable status bring to the Institute of Economic Affairs, and what that means in terms of financial dividend. He asked that this be reported back to the committee in writing.

As an educational charity, we benefit in the following ways:

1. Donations from some UK individuals qualify for Gift Aid.
2. 80% Mandatory Relief on Business Rates.
3. Dividends and interest can be paid gross of tax by investment managers who hold funds specifically for charities -ie without deduction of tax at source, avoiding the need for repayment claims.
4. Exemption from payment of Capital Gains Tax (eg on realised profits from investments)
5. Against items 1–4, there is non-recoverable VAT.

Like all charities, our annual report and accounts are filed with the Charities Commission and Companies House.

January 2013

Supplementary written evidence submitted by the Cabinet Office (CH 192)

At the Public Administration Select Committee meeting on 4 December, I agreed to write to you about the extent to which the Charity Commission could take society’s and Parliament’s views into account when making decisions on issues such as public benefit, or whether it is tied to a narrow legal interpretation of the law.

I think that it is right that in making its legal decisions, the Charity Commission should base them on the existing case law, as affected by social and economic changes in society, rather than on the basis of public or political opinion.

The courts have long recognised that what is accepted as a charitable purpose and indeed the requirement of public benefit can change to reflect current social and economic circumstances -this is what has enabled (and continues to enable) new purposes to be recognised by the courts as charitable by relying on precedent and analogy. The Charity Commission, in recognising new purposes as charitable in law, must take the same approach as it believes the courts would, basing its decisions on legal precedents, and only where appropriate taking into account changed social and economic circumstances. In effect, in making a decision the Charity Commission has to try to anticipate the decision that the courts would make if the matter were before them. Of course the Commission’s legal decisions are subject to appeal to or review by the courts.

Taking into account changes in social and economic circumstances is not the same as making decisions on the basis of public or political opinion. Many people hold strong and sometimes divergent views about what should and should not be charitable, and this is something that the Charity Commission and courts could not take into account.

Ultimately it is for Parliament to set out a definition of charity that is as clear as possible, whilst retaining the flexibility to evolve in response to changing social and economic circumstances, for example recognising new purposes by analogy. I believe that the Charities Act 2006 generally succeeds in doing that. I have already explained what I think the risks would be in pursuing a statutory definition or part-definition of public benefit, so will not rehearse those arguments in this letter.

Where there has been a lack of clarity, it has arisen out of the difficulties in interpreting the case law on public benefit, particularly in relation to groups of charities that were widely considered to benefit from a presumption of public benefit prior to the Act. For two of the three groups of charities (education and poverty), the legal requirements relating to public benefit have been clarified through cases and references to the Tribunal -adding to the relevant case law.

Away from purely legal decisions, the Charity Commission has been very responsive to views of charities and the public. For example, it consulted extensively with charity trustees and their advisers as well as experts in the financial, legal and governance sectors when it revised its guidance on investment for charities to produce a document that was well received by both charities and their professional advisers.

I must also take the opportunity of this letter to correct something I said to the Committee. I said that none of the “green” accepted recommendations would need legislation. I had meant to say that most of the “green” recommendations would not need legislation. Several of the “green” recommendations would need secondary legislation and some would need primary legislation. I apologise for any confusion this may have caused. We will send details to the Committee clerk of where we think that changes to legislation would be required for those recommendations we have accepted.
I was grateful for the opportunity to give evidence to the Committee last week and I look forward to your report.

February 2013

Further supplementary written evidence submitted by the Charity Commission (CH 192)

Charity Commission funding in 2015–16

You asked us to send the Committee some information about our discussions with HM Treasury in preparation for the spending review. We have submitted our initial response today to the Treasury’s request for us to outline how we would meet a 10% reduction to our baseline in 2015–16. We have made it clear that there are no options for implementing a 10% reduction or anything approaching it without damaging our core work and impacting on public and sector confidence.

As you know, the majority of the Commission’s work involves front line engagement with charities. These are statutory responsibilities and no other body can undertake this work. We help charities to establish; we then support them to run themselves properly and sometimes have to intervene when things go wrong. In the 2006 Charities Act Parliament confirmed it wanted the Charity Commission to be a strong independent registrar and regulator of charities. This was restated both by the Cabinet Office review of public bodies in 2010 and the review of the Charities Act by Lord Hodgson in 2012, which said “The Commission needs to be adequately funded to properly regulate the sector.”

There is strong public support for the regulation of charities: 91% of the public say the role of the Charity Commission as independent regulator is essential or very important, with 96% saying charities should provide the public with information on how they spend their money. Independent public research consistently shows a direct correlation between awareness of the independent regulator and public confidence in charities.

The Commission has responded constructively to a 50% real reduction in its baseline over the last three spending reviews, reviewing our strategy to focus on our core remit and create considerable efficiencies while maintaining our performance and increasing public trust and confidence. In the 2010 spending review we accepted a tough 33% settlement, and have since lost a further £1 million in the 2013 Budget review, taking our baseline for 2014–15 to £20.5 million. This represents just 34p for every £1000 of the registered sector’s income.

However we have now reached a tipping point where further reductions will compromise our ability to do the work we are obliged to do in law and to the standard that Parliament and the public expects. We have been exploiting the options for long term efficiency savings through cutting back office costs, introducing digital solutions and active demand management; we could not find anything approaching 10% savings in our budget for 2015–16 from reducing non frontline activities.

A 10% in real terms baseline reduction—£1.7 million in cash—would require us to lose another 40 posts, or 12% of our workforce, on top of the 120 posts we have lost following the last spending review.

Given current business pressures, even a “cash flat” settlement which maintains our baseline at £20.5 million would be challenging but we consider this realistic. This would enable us to meet our core statutory obligations and continue to support the development and accountability of charities and in turn the Government’s wider policy on civil society. It would also allow us to continue investing to create further efficiencies. There are two key changes to fund: rationalising our estate, to save accommodation costs—as you know we currently operate from four offices in England and Wales, and need investment to manage staff wind downs and move to new flexible offices; and upgrading core ICT systems when the Flex shared ICT service contract ends in 2016 (Cabinet Office/ERG has ruled that departments cannot extend this) and continuing to invest in digital developments. Neither of these is affordable on a 10% reduction.

If another 10% cut were imposed we would have to consider reducing the serious investigations we undertake. We do not believe this would be acceptable to Parliament or to the public. Instead we would probably need to ring-fence our investigative work.

Savings would therefore have to come from our lower risk facilitative work, such as giving consents to charities to amend their governing documents or to sell land or property. We could not abandon this work and risk not giving proper consideration to legal consents that have significant consequences for charities, so would have to slow the speed of response—inevitably big backlogs would build. Delays will frustrate charities in their attempts to modernise and adapt, and hamper their ability to respond to opportunities. Similarly there would also be slower response times in registering charities, frustrating the ambitions of those who want to give their time and raise public funds for good causes. All of this would make charities less efficient and adaptable, and have a negative impact on the operations of charities and on public trust and confidence in the Commission and the sector.
We have made these points in our initial submission to the Treasury and will press the case with officials and with Treasury ministers. We will keep the Committee informed about their response.

April 2013