

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CHARITIES (PROTECTION AND SOCIAL INVESTMENT) BILL [*LORDS*]

Second Sitting

Tuesday 15 December 2015

(Afternoon)

CONTENTS

CLAUSES 6 to 8 agreed to.
Adjourned till Tuesday 5 January at half-past Four o'clock.
Written evidence reported to the House.

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Saturday 19 December 2015

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IN GENERAL COMMITTEES

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The Committee consisted of the following Members:*Chairs:* FABIAN HAMILTON, † MRS ANNE MAIN

- | | |
|--|---|
| † Churchill, Jo (<i>Bury St Edmunds</i>) (Con) | † Stevens, Jo (<i>Cardiff Central</i>) (Lab) |
| Haigh, Louise (<i>Sheffield, Heeley</i>) (Lab) | † Streeting, Wes (<i>Ilford North</i>) (Lab) |
| † Jenrick, Robert (<i>Newark</i>) (Con) | † Throup, Maggie (<i>Erewash</i>) (Con) |
| † Johnson, Gareth (<i>Dartford</i>) (Con) | † Tugendhat, Tom (<i>Tonbridge and Malling</i>) (Con) |
| † Kyle, Peter (<i>Hove</i>) (Lab) | † Turley, Anna (<i>Redcar</i>) (Lab/Co-op) |
| † Lefroy, Jeremy (<i>Stafford</i>) (Con) | † Wilson, Mr Rob (<i>Minister for Civil Society</i>) |
| † McGinn, Conor (<i>St Helens North</i>) (Lab) | |
| † Mak, Mr Alan (<i>Havant</i>) (Con) | Marek Kubala, Ben Williams, <i>Committee Clerks</i> |
| † Morton, Wendy (<i>Aldridge-Brownhills</i>) (Con) | |
| † Newton, Sarah (<i>Truro and Falmouth</i>) (Con) | † attended the Committee |

Public Bill Committee

Tuesday 15 December 2015

(Afternoon)

[MRS ANNE MAIN *in the Chair*]

Charities (Protection and Social Investment) Bill [Lords]

Clause 6

POWER TO DIRECT SPECIFIED ACTION NOT TO BE TAKEN

2 pm

Anna Turley (Redcar) (Lab/Co-op): I beg to move amendment 4, in clause 6, page 5, line 2, at end insert—

‘(4) An order under this section will automatically be discharged on the closure of the inquiry under section 46 which is referred to in subsection (1).’

To restrict the power to ensure that if a tribunal appeal is successful, a direction by the Commission as a result of the warning is no longer relevant.

I welcome the clause, which inserts a new provision into the Charities Act 2011 to enable the Charity Commission, after it has instituted an inquiry, to make an order directing a charity not to take or to continue certain actions that the commission considers constitute misconduct or mismanagement in the administration of the charity. The order has to specify the action that must not be made or continued, and has to set out the commission’s reason for making it. The commission will have to review any order at intervals of not more than six months and there will be a right of appeal against the order.

When the Joint Committee on the Draft Protection of Charities Bill suggested that it would be helpful if the Government chose to revisit proposal 13, it set out that the provision must be tightly drawn to clarify the circumstances in which the power can be used and the safeguards that apply, in particular the right of appeal. The previous Government accepted the Joint Committee’s recommendation and said that they would revisit proposal 13 for inclusion in the Bill—that is now clause 6. I look forward to the Minister setting out some examples of the circumstances in which the power may be used and any safeguards. I am pleased to see the right of appeal.

The new power in the clause is broadly similar to a power that the Office of the Scottish Charity Regulator has to direct that specific action is not taken. However, the OSCR’s power may take effect for a maximum of six months. There is no such limit under clause 6, although the Charities Commission must review the order at intervals of not more than six months.

The crucial issue, to which my amendment speaks, is that it is not clear whether the order may remain in place once a section 46 inquiry has been closed, so it could extend beyond the period of the inquiry. The amendment seeks to prevent that. The Charity Commission states:

“The purpose of an inquiry is to examine the issues in greater detail and investigate and establish the facts of the case so that the commission can ascertain the extent of any misconduct or mismanagement, establish the extent of the risk to the charity, its work, property, or beneficiaries, and decide what action is needed to resolve the concerns. If the allegations are not substantiated, the inquiry will say so. The ultimate aim is to stop abuse, ensure compliance and put a charity back on a secure footing. Where this is possible it may include restoring its reputation, protecting beneficiaries or assets and protecting and enhancing the reputation and public confidence in the charitable sector generally.”

That is all right and proper, and we agree with the Charity Commission’s view on the purpose of an inquiry. Once the inquiry has concluded, an order made under clause 6 should no longer be relevant and the findings of the inquiry, whether allegations are substantiated or not, should take precedence. Directions that have been given during the process of an inquiry, but which are not in keeping with the outcomes, should not be pursued.

The commission has recently clarified the fact that it has no power to require trustees to fetter the future exercise of their fiduciary powers under its general power to give advice and guidance, which appears in section 15 of the Charities Act 2011. That clarification followed judicial review proceedings in the High Court, where it was alleged that the commission had attempted to do exactly that. This is one of the concerns that we expressed earlier in the debate, and it could apply in particular to the commission’s powers to specify action that should be taken to rectify misconduct or mismanagement under clause 2.

There are situations in which the commission may direct trustees to act or not to act—clauses 6 and 7 introduce more such situations—but they are always carefully circumscribed. It is therefore extremely important that we are satisfied that the definition of such powers is carefully discussed, that their gravity is understood and that they do not continue beyond an exhaustive inquiry. That is why I moved the amendment.

The Minister for Civil Society (Mr Rob Wilson): The clause is a sensible extension of the existing powers of the Charity Commission that are available to it when it is conducting a statutory inquiry under section 46 of the Charities Act 2011. At the moment, when a statutory inquiry is under way and the commission is satisfied that there has been either misconduct or mismanagement, or that there is risk to charity property, it may direct a charity to undertake certain actions under section 84 of the Act. The purpose of the existing section 84 power is to allow the commission to direct any action to be taken that it

“considers to be expedient in the interests of the charity.”

Legal precedent confirms that “expedient” in that context means advantageous or beneficial, so the action that the commission proposes will be of advantage or benefit to the charity’s interests, which in effect means the charity’s beneficiaries. However, the advantage or benefit must be viewed only in the context of the issues raised through the inquiry and not in the belief that it would be good for the charity in general terms. Specific examples of where the commission already uses that power include ordering a charity to undertake a governance review in a defined period; review a legal agreement; provide specified documentation by a certain date; ensure that a named individual is monitored on charity premises at all times; draw up a risk management procedure in a

certain timeframe and implement that procedure; and take legal advice in connection with a matter concerning the charity and its funds.

Published figures in “Tackling abuse and mismanagement: 2013-14” show that the commission used that power to direct charities on 38 occasions. As we have discussed, the commission has been exercising its power more often and more effectively, so we may well see that figure increase in the report for 2014-15, which will be published in the coming weeks.

The power to direct a charity to do something is long held and the commission has well-established procedures and policies in its armoury. The commission also has the power under section 76(3)(f) of the Charities Act 2011 to restrict a charity from undertaking certain financial transactions. That existing power can be exercised in a number of ways, including freezing a charity’s bank account; requiring the charity’s trustees to seek commission approval before entering certain transactions; and preventing specific transactions. That was used on 15 occasions in 2013-14.

The commission does not have the power to prevent a charity from undertaking actions or activities that would amount to misconduct or mismanagement during the course of a statutory inquiry. That is a loophole and the clause is a common-sense addition that will give it that power.

Some people have expressed concern that the commission could use that power to undermine freedom of association or freedom of speech, in particular for charities with religious purposes, but it is important to point out that it would be available to the commission only to prevent activities that would constitute misconduct or mismanagement were they to go ahead or continue. Therefore, if a charity engaged in unlawful political activity such as supporting a political party and holding partisan events, the Charity Commission could act to prevent further such activity from taking place.

It is worth pointing out, as the hon. Member for Redcar did, that the commission’s equivalent in Scotland, the Office of the Scottish Charity Regulator, has a similar power. Section 28 of the Charities and Trustee Investment (Scotland) Act 2005 enables the OSCR to

“direct any charity, body or person with regard to which it is making inquiries...not to undertake”

specific activities for a period of six months. The OSCR may seek a court order for longer restrictions.

The Joint Committee supported the inclusion of such a power, provided that it was tightly drawn to clarify the circumstances in which it could be used, along with the safeguards that applied, particularly the right of appeal. The new power in the clause will enable the Charity Commission to intervene to prevent misconduct or mismanagement from taking place rather than having to watch powerlessly, then take remedial action once the damage has been done.

The bar for exercising the power will be high and there will be six specific protections. First, the power can be used only in the context of a statutory inquiry. Secondly, the commission will have to be satisfied of the need to prevent misconduct, mismanagement or risk to charity property. Thirdly, the commission must set out a statement of reasons for exercising the power and review any order regularly—at least every six months. Fourthly, the making and every review of the order will be subject

to a right of appeal to the Charity Tribunal and, like all its other protective and remedial powers, this power is subject to the Commission’s duty to act proportionately under section 16 of the Charities Act 2011.

Let me give the Committee two examples of cases in which the powers might be used. In recent years, there have been several cases of charities involved in the abuse of charitable business rates relief. In such cases, the so-called charity enters into multiple tenancy agreements with commercial property owners at reduced rents without any real evidence that the tenancies are in the best interests of the charity or are used meaningfully for charitable purposes. Once occupied by the charity, the property benefits from a reduction of at least 80% in business rates relief, which can be a substantial sum. The saving is often shared between the charity and the property owner. Local councils and honest taxpayers end up losing out. The commission has taken action in such cases, but it can do so only after the event. The new power would enable the commission to direct the charity not to enter into, renew or continue any further tenancies, in effect preventing the misconduct from continuing.

Another example in which the power could be used would arise if a charity had made significant loans to companies connected to the trustees. The trustees would seek to become insolvent and to wind up the charity, writing off the loans and resulting in significant financial benefit to the companies connected to the trustees. In that case, the commission would be able to use the new power to direct the trustees not to wind up the charity, buying time to sort things out by, for example, removing the trustees, or appointing new trustees or even an interim manager to act in the charity’s best interests, which could involve calling in the loans.

Jeremy Lefroy (Stafford) (Con): It is a pleasure to serve under your chairmanship, Mrs Main. I am interested in the Minister’s example of charity shops having 80% or more discount on their business rates. I came across an instance recently of a thriving and popular business effectively being told by the landlord to move because they wanted to put in a charity shop which was offering a higher rent than that popular business. Part of me thinks that that might be the result of a charity being able to pay a higher rent because it does not pay any rates. How would the amendment affect that?

Mr Wilson: I take the point made by my hon. Friend, but I really do not think it is a matter for the Bill. He may want to raise it with the Chancellor or the Secretary of State for Business, Innovation and Skills. I do not think it is for me to deal with it today.

Some people have argued that it should not be possible for the power to extend beyond the life of a statutory inquiry, and I think that is what the amendment of the hon. Member for Redcar seeks to prevent. However, the hon. Lady may be seeking to do something slightly different, as her explanatory statement for the amendment suggests that she wants a direction to cease following a successful tribunal appeal. I can assure her that if such a direction were appealed it would be for the tribunal to decide what would happen—for example, whether the direction would be quashed, remain in place or remitted to the charity commission to be reconsidered. If the hon. Lady is concerned that the commission could exercise the power following an official warning, let me

[Mr Rob Wilson]

remind her that it could be exercised only when a statutory inquiry had been opened, which itself could be appealed to the Charity Commission.

Let me explain why I think that it should be possible for a direction to remain in place beyond the life of a statutory inquiry, although not indefinitely. The power to direct action not to be taken is a temporary protective power for the Charity Commission. That is why it is subject to review at least every six months, so that the commission can confirm whether it considers it necessary for it to remain in force. That process would be subject every time to the commission's duty to act proportionately and to the right of appeal to the charity tribunal.

The power is not a permanent, remedial one designed to address the underlying issues, which may need to be addressed by the exercise of other commission powers, including removal of trustees. It is designed to prevent specific further misconduct or mismanagement from taking place once a statutory inquiry has been opened, but those individuals need to know that the power can remain in place for sufficient time so that they do not simply decide to wait for six months before attempting the misconduct again or allowing the mismanagement to occur again.

2.15 pm

Let me explain by way of another example. The commission opens an inquiry into a charity due to serious governance concerns and "founder's syndrome", as it is known, of the oldest trustee. It identifies a number of connected party transactions that have resulted in private benefit. The commission engages with the charity and issues an action plan that will take 12 months to complete and will regularise the charity's governance issues. The commission would want to close the inquiry after issuing the action plan, in order to ensure that the matter is dealt with proportionately and so that an inquiry report can be produced in good time. There are no further issues in the charity that would be resolved by keeping the inquiry open, but the commission will follow up in a year's time on the action plan.

Finally, before closing the inquiry, the commission would want to direct the charity's trustees under the new power not to enter into certain specified connected party transactions, which was a key issue in the inquiry. That would protect the charitable assets beyond the duration of the inquiry and might also act to protect other trustees on the board who felt unable to speak out against the founder trustee in relation to various proposed financial transactions. The order would be reviewed after six months and could be discharged once the charity put in place the necessary governance changes to ensure that any further connected party transactions that were not in the charity's best interests could not take place.

It is clear that sufficient protections and safeguards already exist for the use of the power. The amendment would lead to some statutory inquiries remaining open for longer while an order made under the clause remained in force. That would not be right or necessary, given the existing safeguards that apply to the exercise of the power.

Anna Turley: I thank the Minister for his helpful response. It was extremely important to hear his clarifications, particularly about the six protections that will be in place before the power is used, and the clear and helpful examples he gave of instances in which the power will be used.

The amendment relates not to the warnings and the tribunal dealt with in clause 1 but to whether the power will continue if it is used in the course of a formal inquiry, subject to the inquiry's final outcome. I was reassured to hear that the inquiry's outcome and the report's findings will take precedence in the action going forward. It is extremely important that if allegations made in the course of the inquiry are unfounded, they are quashed and no further action is taken. We also wanted to know whether, if the inquiry report showed structural issues and there was a remedy that affected those issues, that would overrule the temporary protective amendments. The Minister clarified that issue, for which I am grateful. I am reassured by his response, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 6 ordered to stand part of the Bill.

Clause 7

POWER TO DIRECT WINDING UP

Question proposed, That the clause stand part of the Bill.

Mr Wilson: We are progressing through the Bill at a rate of knots, so I will try not to delay the Committee too long. The Charity Commission's usual practice, as many of us will know, is to try to restore a charity to health following a statutory inquiry and to ensure that funds dedicated for specific charitable purposes are used for those purposes. The commission's current powers are based on that premise; that is as it should and, indeed, will continue to be. In practice, that may mean replacing some of the trustees, directing the charity to take certain actions or reforming its governance arrangements, but the principle is one of ensuring the continuation of the charity to deliver its charitable purposes.

There are, however, rare inquiry cases where it is more appropriate for the commission to take a different approach. In those cases, it is clear that attempting to restore the charity to health is unlikely to succeed and would not be the right strategy. A good example would be sham charities set up ostensibly for charitable purposes but really operating for private gain or some other non-charitable purpose. Such a body may never have had a genuine charitable aim in the first place and the commission is unlikely to be able to restore it to health.

In such cases, the Charity Commission can and already does act to transfer any remaining funds or assets to another legitimate charity with the same charitable purposes. It can do this under its existing inquiry powers. The commission can remove the trustees, ensuring their disqualification, provided that they do not resign before the commission can do so. What the commission cannot do under its current powers is tackle the empty shell that is left, so there is a risk that the empty shell could be reactivated at a later date to be used for further misconduct.

Wes Streeting (Ilford North) (Lab): Will the Minister give the Committee a sense of the scale of this problem? How many charities does the commission intend winding up in any given year?

Mr Wilson: I will certainly ask the Charity Commission to make sure that the hon. Gentleman has those figures; I hope that that will happen by the end of my comments, but if not, it will be straight after. *[Interruption.]* That is quite impressive—I thank my officials. I can tell the hon. Gentleman that there will be one or two such occasions a year.

The new power in clause 7, which I admit is quite a straightforward power, will enable the Charity Commission, in the context of a statutory inquiry, to act to transfer any remaining assets of the charity under inquiry to another charity with the same charitable purposes, something the commission can already do under its existing powers, and then—this is the new provision—direct that the empty shell of the charity be wound up, which it cannot currently do. This power will be rarely used by the Charity Commission. The commission estimates it will be exercised on only one or two occasions each year, as I have just said, and it is subject to a range of safeguards.

The power to direct winding up will only be available in the context of a statutory inquiry and where the commission is satisfied that there is misconduct, mismanagement or risk to charity property. The commission must be satisfied that the charity does not operate or that its charitable purposes could be more effectively promoted if it were to cease to operate and that the exercise of this power is

“expedient in the public interest.”

As I have said several times, all the Charity Commission’s powers must be exercised in line with the commission’s duty in section 16 of the Charities Act 2011, which requires the commission to have regard to the principles of best regulatory practice, including the principles by which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed. So there is a high bar for the commission to make the case for winding up following an inquiry.

The commission is required to publish details of a proposed winding-up order and to invite representations from any interested party. The commission must take into account any representations it receives before making the order to direct winding up. In most cases, the commission will be expected to allow 60 days for the making of representations before it can make the order. It can shorten that period when it considers it necessary to make the order sooner to prevent or reduce misconduct or mismanagement, or to protect the charity’s property or property that may come to the charity. An order directing the winding up of a charity can be appealed to the tribunal by its recipient and the charity’s members, so ensuring proper judicial oversight.

The clause will enable the commission to direct the charity’s trustees, officers or employees to take action to wind up that charity. The commission itself cannot wind the charity up, as that would involve the commission acting in the administration of the charity—something that it is prohibited from doing by law. The Joint Committee welcomed the proposed winding-up power, saying:

“We are persuaded that the power to direct the trustees of a charity to wind it up in certain circumstances and transfer resources elsewhere would only be used in rare circumstances and that, in such circumstances, the Charity Commission would use it sparingly, given its significance. We therefore support the inclusion of clause 6 of the draft Bill”—

as it was then—

“subject to an amendment setting out the publication scheme for a notice of intention to direct the winding up of a charity.”

We amended the draft Bill to include the requirement to publish a notice and consider representations, as recommended by the Joint Committee.

Let me give the Committee an example of where this power could be used. The commission has information suggesting that one of only two trustees was acting while disqualified. The finances were being grossly misrepresented, funds were being misappropriated and the commission had been given false or misleading information. It reported its concerns to the police, highlighting potential criminal offences. The disqualified trustee left the charity, leaving only one trustee, who was unable to explain the position. The remaining trustee was potentially vulnerable and had not been privy to the disqualified trustee’s actions. The commission found that the charity had been used for years to personally benefit the disqualified trustee, who was later convicted and imprisoned for theft. It had applied only nominal amounts for its charitable purposes. The commission decided to remove the charity from the register, as it was not operating, but the remaining trustee did not take action to wind up the charity. The commission does not have the power to force the trustee to do so and cannot do so itself. In such cases, the use of the proposed power would clarify the position, provide for the proper application of assets and ensure that the charity could not later restart operations with a risk of further abuse. Although its use will not be common, I hope the Committee will agree that this will be a useful tool in the Charity Commission’s armoury.

Wendy Morton (Aldridge-Brownhills) (Con): Will the Minister give way?

The Chair: The Minister has concluded.

Anna Turley: I am happy to take any interventions. We are indeed rattling through these clauses and are the beneficiaries of some excellent analysis of the Bill during its long progress through the other place and in pre-legislative scrutiny. A lot of action has been taken to clarify and improve the Bill. Indeed, it is clear from its drafting that this clause has benefited from much scrutiny.

Clause 7 will provide a new power for the Charity Commission to direct the trustees, or other people in the charity, to take the necessary steps to wind up the charity and transfer its resources elsewhere. The explanatory notes suggest that the power will be used in “rare cases” and state:

“The Commission’s usual practice is to attempt to restore a charity to health following a statutory inquiry”.

We all support the positive and supportive role that the Charity Commission would play. As the Minister said, the commission itself cannot wind up the charity, as that would be acting in the charity’s administration; it can only direct the trustees to do so themselves. That is absolutely right and within the boundaries of the

[Anna Turley]

commission's power. The power would be available after the commission had instituted an inquiry and was satisfied either that there was misconduct or mismanagement, or a need to protect charity property. The commission would need to be satisfied on other matters specified in the clause, including that the exercise of the power was

“expedient in the public interest.”

Again, I fear that a burden of decision making and judgment is being placed on the Charity Commission. Just as the decision on whether to publicise a warning under clause 1 will be taken by the commission, so again we find the commission having to be the arbiters of public interest. I do not doubt that it will perform that duty admirably, but we must be conscious that we are asking it to make another judgment call. That risk should be looked at in the context of an environment in which the commission is under pressure to take action on charities that are threatening public trust and confidence, and to be seen to do so. The recent High Court judicial review case mentioned earlier provides an example of how easy it is for the commission to take precipitate and potentially disproportionate action. I sincerely hope that the commission will use its customary wisdom and good judgment in making these decisions. I was reassured to hear that it is expected to use the power only one or two times a year.

2.30 pm

Clause 7 also includes provisions relating to notice and appeals. The Joint Committee said that it was persuaded that this power would be used only in rare circumstances and that

“in such circumstances, the Charity Commission would use it sparingly, given its significance”.

The Joint Committee supported the inclusion of the clause, subject to an amendment setting out the publication scheme for a notice of intention to direct the winding up of the charity, and I am pleased that that is now included. I appreciate the Government's acceptance of the recommendation by the Joint Committee, which also recommended the removal of the proposed condition that the exercise of the power would be

“likely to help increase public trust and confidence in charities”.

That condition was suggested by the Joint Committee on Human Rights, which considers it an example of broad and vague language in the drafting of the Bill. I am pleased that that provision has now been re-worded. In summary, this is an important clause, which we support. It will give the Charity Commission an important power to be able to protect and defend charities' assets and to ensure that they can be administered swiftly in times of difficulty.

Question put and agreed to.

Clause 7 accordingly ordered to stand part of the Bill.

Clause 8

POWER TO DIRECT PROPERTY TO BE APPLIED TO
ANOTHER CHARITY

Question proposed, That the clause stand part of the Bill.

Mr Wilson: Clause 8 should be fairly uncontroversial and, although I do not want to pre-empt the Committee, a fairly short one for us to consider. The clause amends an existing Charity Commission power in section 85 of the Charities Act 2011, which allows the commission to direct the application of charity funds or property when the person holding it is unwilling to apply the property for the charity's purposes and the commission considers it necessary or desirable to make the order to secure the proper application of the charity's property.

The purpose of the clause is to extend the power and enable the commission to make an effective direction in cases where the person holding the charity property may be willing but unable to apply the charitable property. The most common example of this problem is considered to be where financial institutions, such as banks, hold a charity's property but are unable to comply with a commission direction to transfer that property because to do so without the consent of authorised account signatories would result in a breach of their contract with the charity for which the bank could be held liable.

For example, a number of charities subject to a class inquiry ceased to operate but funds remained in their bank accounts. The commission's powers relating to dormant accounts could not be used until a certain time had elapsed and there was a risk that the remaining funds could be misapplied by individuals on the mandate. Before the commission could use the power as currently worded, it had to establish that a number of banks were unwilling to apply the funds without an order of the commission. The banks were willing to apply the funds but were unable because of their contractual obligations to the account signatories. Amending section 85 to include “unable” as well as “unwilling” would allow the situation to be resolved swiftly and satisfactorily and the charitable funds to be properly applied for their charitable purposes.

Wendy Morton: Will my right hon. Friend give way?

Mr Wilson: I do not mind the promotion.

Wendy Morton: I am grateful to the Minister for sharing with us some examples of what the Bill will mean in practice, as he did in our discussion of the previous clause. Does he agree that the clause includes some sensible and proportionate measures that, in the round, are all part of helping to restore the trust that charities have in the public domain?

Mr Wilson: My hon. Friend makes a very good point. The clause is partly about restoring trust. It is also about making the Charity Commission work better and more efficiently and focus its funds on the areas where it can really make a difference—day in, day out. She is absolutely right.

Other barriers may make a person unable to comply with a commission direction of this type, such as restrictions in the charity's governing document, which may prevent otherwise willing trustees or members from complying with this type of commission order because they are legally unable to do so. The Joint Committee recommended that we consider the inclusion of some form of statutory protection for a financial institution in cases where compliance with the direction from the commission in

those circumstances might constitute a breach of its contract with a charity. The clause seeks to remove any obstacles by allowing the commission's direction to overcome a contractual obligation owed to a charity.

Importantly, clause 8 continues to provide the specific, statutory protection for a financial institution—or, for that matter, any person holding the charitable property—in cases where compliance with the commission's direction in those circumstances might constitute a breach of its contract with the charity. It is always important to consider the practical application of legislation and the clause will help the Charity Commission make use of the existing power more effectively.

Anna Turley: I echo the Minister's concluding comments. As well as supporting the Charity Commission, the clause will support many charities that often struggle with individual trustees who may have been unable to take necessary action. This will enable the commission to step in and essentially fill a void where no one has had the power to tackle the issue.

Again, we welcome clause 8. It will amend the power in section 85 of the 2011 Act, which enables the commission to direct the application of charity property, where it is satisfied that a person is unwilling to apply it properly for the purposes of the charity and it is necessary or desirable to make an order to secure the proper application of that property.

The clause will amend section 85 in two ways. First, the commission will now have the power to direct the application of the property, if satisfied that the person

is unable to apply it properly, as opposed to being unwilling. I appreciate the Minister's examples of where that will be applicable. It is helpful to understand the case studies that will ensue.

Section 85 will be amended to ensure that compliance with the order will not result in a breach of contractual obligations to the charity. The explanatory notes and the Minister have provided an example of banks that act on client instruction. That is the most common example of the problem, where financial institutions hold a charity's property but are unable to comply with the commission direction to transfer that property because doing so would result in a breach of their contract with the charity. That closes an important loophole and enables the Charity Commission and charities themselves to progress with securing the property.

As the Minister showed with his examples, clause 8 will continue to provide the specific statutory protection for a financial institution, in cases where compliance with a Charity Commission direction in these circumstances might constitute a breach of its contract with a charity. We support the clause and welcome it as a useful addition to the Bill.

Question put and agreed to.

Clause 8 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.
—(Sarah Newton.)

2.37 pm

Adjourned till Tuesday 5 January at half-past Four o'clock.

Written evidence reported to the House

CHB 01 Social Enterprise UK
CHB 02 Institute of Fundraising and the Public
Fundraising Association
CHB 03 ACEVO, CFG, DSC, ACF, Bond and BWB
CHB 04 John Weth

CHB 05 Unlock, Clinks and the Prison Reform Trust

CHB 06 Directory of Social Change

CHB 07 Professor Gareth G Morgan

CHB 08 The Charity Law Association Working Party

CHB 09 Quaker Housing Trust