PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

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

Third Sitting

Tuesday 5 January 2016

(Afternoon)

CONTENTS

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

PBC (Bill 069) 2015 - 2016

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not later than

Saturday 9 January 2016

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Fabian Hamilton, † Mrs Anne Main

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

Marek Kubala, Ben Williams, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 5 January 2016

(Afternoon)

[Mrs Anne Main *in the Chair*]

Charities (Protection and Social Investment) Bill [*Lords*]

Clause 9

Conduct of charities: disposal of assets

4.30 pm

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

The Minister for Civil Society (Mr Rob Wilson): I wish you, Mrs Main, and all members of the Committee a happy and prosperous new year. I hope hon. Members did well from Father Christmas during the recess and that everyone has returned in good spirits.

After the conciliatory nature of the previous Committee sittings, it is a little sad to begin the new year on a slightly more divisive note. Clause 9 was an Opposition amendment inserted into the Bill in the other place. It was an undisguised attempt to undermine or even block the Government's manifesto commitment to extend the right to buy to tenants of housing associations. At the very least it was to be a marker of concerns in the other place about that manifesto commitment. For several reasons, the Government believe that the clause is neither necessary nor desirable. It is now time to remove the provision from the Bill. It is important to note that the Charity Law Association agrees that the clause should be taken out.

Let me explain why the provision is not necessary. The clause was designed to attack and to frustrate the Government's manifesto commitment to extend the right to buy to tenants of housing associations, most of which are charities. It was introduced into the Bill in the other place when there was concern about charitable housing associations being forced to implement the right to buy. Since then, however, we have reached a voluntary agreement with housing associations that renders the clause unnecessary, because there is no question of them being forced to dispose of their assets.

The Government believe that anyone who works hard and wants to get on the property ladder should have the chance to do so. The right to buy has already helped 2 million families to realise their dream of owning a home, but until now the discounts available under the right to buy have only been available to tenants in local authority properties and some former council properties. Extending the discounts to housing association tenants in England will end that unfairness and means that up to 1.3 million more families get a realistic chance to own their own home. At the same time, replacement of the housing stock will be ensured.

The National Housing Federation has worked with its housing association members to secure a voluntary deal that will give housing association tenants the opportunity to buy their home with an equivalent discount to the right to buy. The Government accepted the voluntary deal proposed by the housing associations, which will deliver the manifesto commitment to extend the benefits of the right to buy to 1.3 million tenants. Homes sold to tenants under the deal will be replaced one for one using the proceeds from the sale of the property. That will provide a significant increase to the overall supply of new housing.

So far, 93% of the total housing association stock is covered by those associations that have said yes to the deal. We want as many associations as possible to sign up to it, so that their tenants may access the same home ownership opportunities as other tenants, and the opportunity remains for more housing associations to do so. The deal includes examples of types of property that housing associations may decide that they do not want to sell to a tenant—for example, particular properties in supported housing, historic charity legacy stock or rural housing. In such circumstances, the tenant will be offered an alternative housing association property.

Housing associations are voluntary organisations and we strongly believe that they should continue to be independent of the Government. That belief is reflected in our decision to extend the right to buy to housing association tenants by accepting the voluntary offer from the sector, rather than implementing the policy through legislation. We have, however, included provisions in the Housing and Planning Bill to make the voluntary deal work, including financial powers to pay the housing associations for the cost of the discount and powers for the regulator to monitor and report on the terms of the deal.

Ahead of full implementation, a six-month pilot scheme is taking place with five housing associations, which will enable the new system and the voluntary deal to be road-tested properly in advance of full implementation. Tenants of those housing associations can already register their interest. This voluntary deal was achieved by working together with the housing association sector, resulting in a better outcome for landlords and tenants while delivering the Government's manifesto commitment.

Of particular importance for the Committee today is that, under the voluntary deal agreed with housing associations, charities could not be compelled to dispose of their assets in a way that is incompatible with their charitable purposes. Under the deal, charities' independence is preserved, and they continue to have their freedom to dispose of their assets in the way that they see fit and that is compatible with their charitable purpose. I would strongly argue, therefore, that the historic voluntary deal between housing associations and the Government renders clause 9 unnecessary.

I now turn to why clause 9 could have damaging unintended consequences for charities. When the clause was inserted into the Bill, it was argued that it effectively just stated the existing legal position. I disagree—it does not. Clause 9 is not a simple restatement of the existing law on the use and disposal of charitable assets.

As we have already said, charity law is a mixture of statute law and case law. Many of the rules that apply to charities' investment in, and disposal of, assets derive

from case law rather than statute law. Attempting to create a simple statutory provision for a large area of case law is fraught with danger. The problem is that a simple statutory provision will invariably fail to cover the many different circumstances and complexities that case law can provide for. It would be exceptionally difficult to find a satisfactory expression to properly cover the explanation and nuanced analysis that is often afforded in judgments in case law. As a result, there is a real danger that the clause will give rise to damaging unintended consequences, which I am sure all hon. Members would wish to avoid.

Charity Commission guidance on the disposal of land makes it clear that any disposal must be

"in the interests of the charity"

rather than "consistent with charitable purposes". Those concepts have different legal meanings, with the latter being much wider in its potential application.

Clause 9 casts doubt on the power of the courts to direct charities to dispose of property—for example, under compulsory purchase legislation. It could also prove problematic to the Charity Commission in the exercise of its powers—for example, its powers to direct charities to take specified action, or to direct the use of property, in the course of a statutory inquiry. The commission can currently routinely use those powers under the appropriate safeguards, but the clause may mean that it would be unable to do so, and its compliance work may be frustrated. I am sure that that is not something the clause was intended to do when it was added to the Bill in the other place.

There will be some circumstances where what is in the charity's long-term interests does not align with the application or use of assets for a particular charitable purpose—for example, where a charity must pay a contractual debt that puts its solvency at risk or where the charity's purposes can no longer be met.

Furthermore, the clause covers all charity assets, which includes property other than land, such as investments. That raises the separate issue of the duties that apply in that context. For example, the clause could mean that trustees would be able to make an investment only where that investment was consistent with the purposes of the charity. Although that is sometimes the case, trustees can, and often do, make investments solely for the purpose of obtaining the maximum financial return consistent with commercial prudence. In that scenario, the charity's purposes are furthered by the way in which the income from the investment is subsequently applied. Clause 9 as it stands could hamper trustees' discretion to make such investments.

The clause also gives the Charity Commission a new and wide-ranging role in policing the use and disposal of charity assets that is inconsistent with our aim of helping the commission to focus on its core regulatory responsibilities. Requiring the commission to ensure that charities are not required to use or dispose of assets would be more than just an unwelcome distraction for the regulator at a time of very limited resources.

There is also the preserved right to buy in relation to housing associations, which 630,000 tenants already enjoy, and the right to acquire, which 800,000 tenants currently have. Those rights, when exercised, would compel the charity to sell its assets. Those pre-existing rights, which are set out in legislation, could be undermined by clause 9.

I hope I have been able to make a compelling case to the Committee for why we should remove the clause. As my right hon. Friend the Minister for the Cabinet Office and Paymaster General said on Second Reading, it is regrettable that a Bill with widespread support was used

"in a narrow attempt by the other place to undermine the Government's manifesto commitment to extend the right to buy".—[*Official Report*, 3 December 2015; Vol. 603, c. 561.]

For that reason, and because of the damaging unintended consequences clause 9 would have for charities, we cannot allow it to stand, and oppose its inclusion in the Bill.

Anna Turley (Redcar) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mrs Main. I would like to echo felicitations for a happy new year for everyone on the Committee. I would also like to thank everybody across the community and voluntary sector who spent time over Christmas and the new year, as we know they will have done, in their communities undertaking many hours of community and voluntary service, helping those who are most vulnerable and in need at what for most of us should be a happy time.

I appreciate the Minister's words on clause 9, to which I listened with interest, particularly about the amendments to the Housing and Planning Bill. We believe the clause is extremely important and we will try to maintain it in the Bill.

I pay tribute to our noble Friends in the other place who added the clause to the Bill, where we believe it should remain. It simply and effectively states the existing legal position and supports trustees in their existing duties by ensuring that they are able to adhere to their charitable aims and objectives, and it protects them from being compelled to undertake an action that is at odds with their charitable purposes.

The clause is particularly relevant to housing, as the Minister mentioned, and aims to protect charities and housing associations when the Government later mandates them to sell their charitable property under the right-to-buy proposals. I will come back to his point about it being a voluntary proposal.

The debate in the other place saw Tories, Lib Dems and Cross Benchers line up to condemn the Government's proposal. I am surprised they are persisting in trying to remove the clause. As the Minister knows, the Opposition are not against the right to buy. Indeed, we want those who desire to be homeowners to achieve that. While the number of homeowners has fallen under this Government by more than 200,000, under Labour from 1997 to 2010, the number of homeowners rose by more than 1 million. We support people's aspiration to own their own home.

However, the problem is compulsion. We want to limit the power of the Government to direct a charity against its independent will, and contrary to its charitable purposes, to dispose of its assets according to the Government's latest whim. That is an infringement of the independence of charity, community and voluntary sector organisations. For many housing associations, it will go against the grain of their aims and objectives.

The Minister mentioned the voluntary agreement, but it was not unanimous and many housing associations do not sign up to that principle. He also said that the amendments in the Housing and Planning Bill will

[Anna Turley]

protect charities' right to dispose of assets as they wish. That may be the case for that individual policy in the Housing and Planning Bill, but the clause goes wider—it is about all assets, not just about housing and planning. We believe clause 9 is still required.

What after housing might be next on the Government's list in requiring charities to purge themselves of their assets? The principle is broader than simply housing, although housing is the focus. Housing associations, most of which are charities, provide 2.5 million homes for 5 million people on affordable rents. They are rented privately and many enable vulnerable people, or those with disabilities or care needs, to live independently. Other properties are for shared ownership to help those on lower incomes buy their homes.

Housing associations build 45,000 homes a year and would ideally like to build 120,000, matching what private developers are able to do. That aim could be undermined if they are forced to sell off their stock.

At the same time as the Committee is sitting, the House will debate the Housing and Planning Bill on Report and Third Reading. We believe that the Bill will lead to a huge loss of affordable housing. The Office for Budget Responsibility confirmed in its November economic and fiscal outlook that Government policies since the election could lead to 34,000 fewer housing association homes being built over the next five years.

We believe that, at every opportunity, the Housing and Planning Bill restricts the ability and obligation of the public and private sectors to provide genuinely affordable homes, and that it will intensify the spiral of ever-higher housing costs. The right-to-buy proposals will contribute to that, which is why we seek to protect charities from being obliged or compelled to be part of that.

The Opposition have always said that the extension of the right to buy to housing associations through the Bill is unworkable and wrong. It will lead to a severe and irreversible loss of affordable homes at a time when they have never been more needed, because there is no genuine plan for a one-to-one, like-for-like replacement.

Moreover, the right-to-buy proposals are expected to cost a staggering £5 billion or even more. We know that civil servants have warned Ministers about the costs and the difficulties of replacing the homes sold, leading to a shortage of affordable homes. Shelter predicts that the right-to-buy proposals could lead to the loss of 180,000 affordable homes over the next five years, when we already have a well known crisis in our housing supply.

4.45 pm

We know that, under the right to buy historically, only one in 10 homes sold have been replaced. The policy is a huge contributory factor to the housing crisis we find ourselves in now. There are currently 2 million people on waiting lists due to the dearth of homes at affordable rents for low earners. Removing the clause, which protects housing associations from being compelled to sell off homes, would reduce the supply of affordable homes further. Moreover, right to buy for housing associations is to be funded through the forced sale of council properties, which would further reduce the number of affordable homes. Expecting the sale of a council home to both fund its replacement and reimburse the housing association for the asset that it has been forced to sell sounds to me like poor accounting.

Furthermore, any diminution of housing stock can harm housing associations' borrowing powers. As the National Housing Federation has said,

> "With a nation in the throes of a housing crisis, it is key that housing associations are in full control of the assets against which they borrow to build homes".

We know that housing associations often lever in private finance on the basis of assets they own in order to meet their wider charitable objectives and to manage their assets effectively. Right to buy will force housing associations to sell properties, will give them less control over these decisions and, importantly in terms of the Bill, will make it more difficult for them to meet their charitable purpose.

Crucially, there is widespread concern that such interference sets a dangerous precedent for Government intervention in independent charities. Right to buy could make it harder for housing associations to deliver their charitable objective, which is, of course, to provide housing for those in greatest need. We cannot support giving the Government a role that should be the preserve of the housing associations' own charitable trustees.

The National Housing Federation and other sector representatives such as the National Council for Voluntary Organisations and the Association of Chief Executives of Voluntary Organisations worry that the compulsory sale of charity assets through right to buy sets a worrying precedent of Government interference in the running of independent charities. That is why the amendments in the Housing and Planning Bill are simply not enough. Removal of the clause would also contradict the existing rule that charities cannot dispose of assets other than in pursuit of their charitable objectives—in other words, they must use such assets for charitable rather than political or private benefit. The sector hence supports the preservation of the clause.

The unintended consequences of removing the clause and of the right-to-buy proposals could undermine charity law that goes back centuries, and would mean seizing assets of independent charities and even the bequests of individuals or philanthropists—for example, the Peabody Trust built and bequeathed housing to ameliorate the conditions of the poor and needy.

The National Housing Federation calculates that taxpayers' money would be better targeted at ending the housing crisis. On its assumption, about 220,000 eligible tenants will be able to afford to take up the right to buy. The discount will be £11.6 billion for those people. That amount could provide 660,000 homes for shared ownership, giving three times as many people a foot on the ladder.

Housing associations already help people to buy their own homes, with some 250,000 now in shared ownership homes. As the Minister will know, trustees can sell their property only in a way that is compatible with their trust deed, in compliance with sections 117 to 121 of the Charities Act 2011 and with the standard of care set out in the Trustee Act 2000. Removal of the clause would leave a legal conundrum as to whether trustees would be expected to act contrary to any such requirement. Some charities' governing documents might expressly prohibit trustees from selling. An order or scheme would probably be required to give them the power to sell.

Where a trustee holds designated land that is required by the terms of the gift to be used to carry out the charity's purpose, and where such land cannot be replaced by other relevant property or land, will the charity be excused the demands of the right-to-buy provisions in the Housing and Planning Bill exemption? That might be the case where a charity holds a house once owned by a particular local figure or is associated with a former convent or almshouse. Such charities might need a scheme to change their objects, should they be compelled to relinquish the land because they can no longer carry out the purpose for which it is held. It is clear that trustees can sell the property only where it would be in the charity's best interests.

Many charities consider that they play a broader role in a local place and its community, working in partnership with the local council and other bodies to design and manage public spaces. The removal of clause 9 will lead to further fragmentation of our local communities. For example, the Local Government Association has said that councils should be free to manage their housing assets and invest in new and existing homes to meet the needs of tenants and local conditions. The LGA has said that Government proposals should take into account the wider impact of housing reforms on councils' responsibilities to meet housing needs. The same should apply to charities and housing associations and their independence.

The Minister spoke about more burdens on the Charity Commission. The Bill not only tries to streamline the focus of the Charity Commission but tries to make clear its role and scope. We had many discussions in our previous sessions about making sure that we are not burdensome on the Charity Commission. For me, however, defending the integrity of the sector is crucial. The Minister and the Government have been comfortable with the burden the Bill has put on the Charity Commission so far, including many new provisions on a range of subjects from terrorism to serious judgments about warnings and what kinds of duty and responsibilities people place. This new responsibility is not particularly burdensome but is in keeping with the Commission's role in defending the independence of the charitable sector.

In conclusion, Labour supports helping families to own their own home. Too often, however, history has shown that right-to-buy homes are resold, especially as the subsidy often offers former tenants a big bonus to be realised. Many homes are rapidly rented out by private landlords at the full market rent, serving to drive up market prices and increase poverty through housing costs, as well as reducing the housing stock available for affordable rent.

That outcome would be in total contradiction to the aims and objectives of many charity and housing associations. We are concerned that the Government want to interfere with the duties of charity trustees to put their beneficiaries first and comply with the trust deed. Housing associations can already partake in the right-to-buy option for their tenants, where that accords with their charitable objectives. The problem arises where it conflicts with them, and trustees' duties risk being overridden by the Government, which is not acceptable. Clause 9 seeks to prevent their being compelled to do something that is not in the charity's best interests. I will therefore seek to divide the Committee, and urge my hon. Friends to support clause 9 stand part.

Wes Streeting (Ilford North) (Lab): Happy new year to all members of the Committee. I support my hon. Friend the Member for Redcar in defending the inclusion of clause 9 in the Bill. In the Minister's response to the inclusion of the clause and the debate in the House of Lords, he cited extensively the changes made to the Government's approach to the disposal of housing association stock. That context is particularly important. Given the fact that the Government attempted an appalling land grab on housing association stock, to the extent of threatening housing association providers that did not comply with the objectives of public policy with taking their assets by force of statute, it is unsurprising that the Lords chose to include the clause, so that the assets of those housing associations could be protected. The Government's approach may have changed—many housing associations have chosen to back down from confrontation with them—but the way in which housing associations were effectively press-ganged by the Government is totally unacceptable and not the way to do partnership.

I wonder whether as many housing associations would have rolled over if we were closer to the end of the Parliament than to the beginning, although I appreciate that many housing association trustees were placed in an invidious position. I might have wished them to take a stronger stance, but given the pressure they were put under by the Government perhaps it is unsurprising that they rolled over.

When I read the Lords' debate on the clause, I was struck by the contribution from Lord Beecham, who said that although the clause appeared because of Government policy on housing associations, it could have wider application. For example, he cited charities running medical services and the National Trust. However, given that many parts of the voluntary sector are effectively involved either directly or indirectly in providing public services or picking up the slack when public services have been cut, it is not beyond the Government's wit or imagination to find other areas where they might like to steamroller around and seize charitable assets.

At the heart of clause 9 there is an important principle that dates back to Elizabethan times: many people who give to charities make those gifts or bequests for specific charitable purposes. It should not be possible for the Government—not only this Government, but any Government—to direct charities to use those assets for different purposes, however well intended, desirable or, indeed, undesirable the Government's objectives may be.

The clause is important because it provides protection not just in relation to housing associations—the Minister makes the case that that may be unnecessary given the change of approach—but more generally, so that if a Government, whatever their political leaning, want to use charitable assets for purposes for which they were not gifted or bequeathed, they will have to accept that those assets are protected. If not, they will have to amend legislation or provide a specific exemption, which would generate a very worthy debate in this House or in the Lords. For those reasons—and, as I have said, given the appalling way in which the Government conducted themselves immediately after the election—I strongly support the inclusion of clause 9 and support my hon. Friend the Member for Redcar in voting to keep it.

Mr Wilson: I will respond to a few of the points made by Opposition Members. On the issue that not all housing associations have signed up for the deal, as I

[Mr Rob Wilson]

said earlier, 93% of the total housing association stock is covered by those housing associations that have said yes to getting involved in this deal, which is voluntary. The message from the Opposition seems to be that the deal is not voluntary, but compulsory. It is quite the opposite; 93% of the housing stock in England has signed up for this deal.

Peter Kyle (Hove) (Lab): The Minister cites the example of 93% of housing stock being covered by housing associations. Will he give the percentage of housing associations that are signing up to the Government's plans?

Mr Wilson: I think it is somewhere in the region of 75% of housing associations, which is a substantial majority. We want as many housing associations as possible to sign up, and we want as many tenants as possible, throughout the country, to have the opportunity of homeownership.

Peter Kyle: So do we.

Mr Wilson: I am glad to hear the hon. Gentleman say that he wants more homeowners in the country. One way to do that is to enable people to buy their own home in this way—1.3 million extra tenants will be able to have the advantage and security of owning their own home, which is a laudable ambition for any Government.

As for whether the right place to discuss the detail is here or on the Floor of the House, the Housing and Planning Bill is back before the House tonight and we are discussing a lot of things that relate more to housing matters and that Bill than to charitable matters. The right place to raise some of these issues would be later tonight on the Floor of the House.

On the Charity Commission's powers, and in response to the point made by the hon. Member for Redcar, the Charity Commission did not ask for the responsibilities that have been inserted by this clause in the other place, but it did ask for many of the other responsibilities and powers that we are passing to it in the Bill.

The finances that will be released to housing associations through the sale of properties is substantial, as the hon. Member for Ilford North said. As it is a like-for-like replacement, the amount of affordable housing stock should increase substantially. We are undertaking a pilot with five housing associations. It is under way and should enable us to hone and inform the detail of the final scheme that we put in place.

I hope that that answers the main questions raised by Opposition Members. It is important to note that the Government have begun the process with the announcement yesterday of 13,000 new affordable houses, which we will build on Government land and contract directly rather than going through local authorities or housing associations. That is a big step forward to try to break the logjam that we have seen in affordable housing in the past couple of decades. By the end of the Parliament, we hope that we will have been able to deliver 200,000 new starter homes that are affordable homes for first-time buyers under the age of 40, which will give people with the ambition of owning their own home a first step on the housing ladder. That is a laudable aim for any Government to have.

5 pm

Anna Turley: I would like to respond to the Minister's last point. I was going to make an intervention, but I am afraid I missed him. I appreciate his ambitions, but the Government's record on house building does not fill us with confidence. The number of under-35s who own a home has fallen by 20%.

The Chair: Order. I have allowed a bit of latitude, but we are straying off somewhat by going on to house-building numbers.

Anna Turley: It is an important point in terms of ambition versus reality, but I appreciate your point, Mrs Main, and I will stick to the clause. I was interested to hear that about three quarters of housing associations have signed up, because the housing association in my area has not signed up and has strong views against it. I am also not convinced that the Minister has a plan for like-for-like replacement. The Government's record on that is not strong.

Peter Kyle: Will my hon. Friend give way?

The Chair: Before I call the hon. Gentleman, may I say that this is the Charities Bill and I hope that we will not go too far discussing housing numbers and so on?

Peter Kyle: I am grateful, Mrs Main, and I hope that I will not stretch the latitude you have given us. My hon. Friend is correct in expressing concerns from the charitable sector about like-for-like replacement, because that is about the sequestration of charitable assets for private use. Does she share my concern that in Brighton and Hove, which I represent, and other such cities, like-for-like replacements will almost certainly be built in areas very different from those in which the original properties are sold because of the constraints on the land in that area, so charitable assets that were deemed to be in one place will end up in other locations?

Anna Turley: My hon. Friend makes an extremely important point. The issue is the charitable ambitions of housing associations in supporting those who are most vulnerable and in need. The danger is that we are moving away from that.

Jo Churchill (Bury St Edmunds) (Con): The hon. Lady makes a valid point. In the realms of a charity selling a high-price asset, it could in a broad sense outreach its charitable work. However, the clause does not allow them flexibility; it ties their hands and means that they are completely unable to disburse their assets as they wish.

Anna Turley: I disagree with the hon. Lady, because charities currently have the flexibility to do as they wish with their assets as long as that is in line with their charitable status. The removal of the clause is about trying to push charities towards selling off assets—selling

off the family silver—but, whatever their charitable status may be, whether tackling poverty and inequality or sheltering the homeless, it is for them to decide how they use those assets.

I will not detain the Committee other than to comment on a point made by my hon. Friend the Member for Ilford North about Lord Beecham's speech in the other place. That point is important and goes much wider than housing. Assets are a broad definition, so there is danger in not specifying in the Bill the fact that charities have an independent ability to dispose of their assets in a way they believe to be consistent with their charitable purposes. The clause is about giving broad protection to charities in the light of potential Government pressure to encourage, cajole or influence how they dispose of their assets. That is extremely important.

Finally, on the Charity Commission, I totally understand that it did not ask specifically for the clause, but the Bill was not drafted for the Charity Commission or by it. It was drafted in the best interests of the charitable sector to support its independence and to provide it with a secure regulatory framework in the future. There will be areas where the Charity Commission agrees with us and others where it does not, but we do not believe that the clause is burdensome for it. It is part of its role in defending the integrity of the charitable status.

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

The Committee divided: Ayes 6, Noes 10.

Division No. 1]

AYES

Haigh, Louise	Stevens, Jo
Kyle, Peter	Streeting, Wes
McGinn, Conor	Turley, Anna

NOES

Churchill, Jo	Morton, Wendy
Jenrick, Robert	Newton, Sarah
Johnson, Gareth	Throup, Maggie
Lefroy, Jeremy	Tugendhat, Tom
Mak, Mr Alan	Wilson, Mr Rob

Question accordingly negatived.

Clause 9 disagreed to.

Clause 10

AUTOMATIC DISQUALIFICATION FROM BEING A TRUSTEE

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

Mr Wilson: After that excitement, we can get on with the proceedings of the Committee.

Under the current law, there are several criteria that disqualify a person from being a charity trustee. The automatic disqualification provisions date back to the Charities Act 1993 and represent an important way of protecting charities from those who might seek to abuse their position of trust, whether for personal financial gain or to access vulnerable people for abuse. The existing criteria for disqualification include any unspent conviction for an offence involving deception or dishonesty; where the person is an undischarged bankrupt or disqualified company director; and where the Charity Commission or court has removed the person from serving as a trustee.

Clause 10 does two things. First, it adds new criteria for a person to be automatically disqualified from being a charity trustee. Secondly, it extends disqualification beyond trusteeship to cover the chief executive and chief finance officer positions in a charity. The existing criteria for automatic disqualification remain unchanged.

In practice, the Charity Commission's experience has been that the existing criteria are useful but too narrow, and that they do not cover several areas that ought to merit automatic disqualification, including convictions for serious terrorist offences, money laundering or bribery. Many people would be surprised that those offences do not already result in automatic disqualification, although in some cases there may be an overlap with existing disqualification if the offence involves dishonesty or deception.

I would like to say something about terrorist and extremist abuse of charities. The Charity Commission recognises that that type of abuse may not be relevant to most charities, but it is an increasing area of commission casework and an area of great concern. The commission has an important role in helping charities to prevent that type of abuse from occurring in the first place and in ensuring that abuse is reported and stopped and that charities are better protected in the future. It has detailed guidance for charities on how they can protect themselves from that type of abuse.

The Charity Commission also works closely with the police and other agencies where concerns are raised. In 2014-15, the commission made 506 disclosures of information to the police and other agencies as a result of concerns about charities involving terrorism or extremism—up from 234 disclosures in the previous year. It undertook 80 visits or monitoring cases to charities at risk of terrorist or extremist abuse. It also received 11 serious incident reports and undertook 32 pre-investigation assessment cases and 20 formal investigations. The new automatic disqualification provisions in the clause, along with case-by-case disqualification, which we will discuss shortly, will help to protect charities from terrorist or extremist abuse.

The extension of automatic disqualification in the clause covers other areas, such as money laundering, where added protections are needed. Let me give the Committee an example. A police investigation resulted in a number of convictions for fraud and money laundering offences, which related to funds applied by a charity in relation to contracts to house and support asylum seekers. Those convicted of fraud were disqualified from acting as trustees, because fraud is a crime involving deception or dishonesty. However, those convicted of money laundering were not disqualified, because the offence of money laundering does not fall within the existing criteria. The latter persons are no longer charity trustees, but as the law stands there is no bar on their becoming trustees again.

The new criteria for automatic disqualification proposed in clause 10 also include cases where a person has been found guilty of contempt of court in civil proceedings where a false statement or disclosure is made; cases where a person has been found guilty in the High Court of disobedience to a commission order or direction; and designation under terrorist asset-freezing legislation.

[Mr Rob Wilson]

The existing disqualification provisions do not prevent individuals from being appointed to non-trustee positions of significant authority in charities. It is counterintuitive that someone can be disqualified from acting as a trustee of a charity, only to continue their abuse by taking up the post of chief executive, in which they could exploit that influence. The commission has seen that happen in some cases, with disqualified trustees taking up other senior positions in other charities and subsequently committing abuse. The clause would deal with that by preventing disqualified individuals from acting in top management positions, thereby reducing the risk of abuse. The top management positions covered by the extension of disqualification are the most senior executives—usually the chief executive officer, along with the finance director or chief finance officer, if there is one.

The clause also provides a power for the Minister for the Cabinet Office to make regulations to amend the list of criteria. The Minister is required to consult if the regulations add a new offence, and such regulations will be subject to the affirmative parliamentary procedure, requiring debate and approval before they can be made. We included the requirement to consult in response to a recommendation from the Joint Committee on the Draft Protection of Charities Bill, following pre-legislative scrutiny.

Finally, and perhaps most importantly, the existing regime of waiver under section 181 of the Charities Act 2011 will also apply to any persons disqualified under the new criteria, enabling such persons to apply to the Charity Commission for their disqualification to be waived in relation to a particular charity.

Wes Streeting: Will the Minister tell us how many waivers the Charity Commission has granted in the past 10 or 20 years?

Mr Wilson: Six waivers were granted between 2008 and 2014. Every application for a waiver in that period—six out of six—was granted.

The waiver provisions are important as they enable disqualified individuals who can show that they have turned over a new leaf to take up positions of responsibility in the charity sector. Of course, there is nothing to prevent disqualified individuals from volunteering or working for the charity in other roles, subject to disclosure and barring service checks where necessary.

As I said on Second Reading, waiver applications will be considered on a case-by-case basis. The Charity Commission will take into account the nature and seriousness of the conduct that resulted in the conviction and consequential disqualification. The commission has said that it will also take into account the type of charity concerned. In particular, it already accepts that charities working to rehabilitate offenders will often be able to make a compelling case for a waiver. The experience of someone with an unspent conviction might well be vital to the trustee body's understanding of its aims and how best to pursue them. The commission will also take into account evidence that the person no longer represented any particular risk to charity. For example, if someone had a lifetime disqualification from an unspent conviction—say, 30 years ago—they might be able to show clearly that they had long since changed their life around. An application for a waiver would usually require the support of the charity's trustees. A decision of the Charity Commission not to grant a waiver could be appealed to the charity tribunal, which would consider the matter afresh.

It is right that the Charity Commission looks beyond the benefits for the individual and considers the risk and benefits involved not only for any charity directly concerned, but for charities generally. The proposed disqualification powers will protect charities from individuals who present a known risk, while providing for the rehabilitation of offenders and a way back into charity trusteeship on a case-by-case basis. That strikes me as a fair and proportionate system.

As I have just told the hon. Member for Ilford North, in the past four years there have been six applications to the Charity Commission for a waiver from disqualification where the disqualification resulted from an unspent criminal conviction. All those applications were granted. I know that charities involved in rehabilitation have expressed some concern about the provisions, and I am keen to discuss with them how we can support charities involving ex-offenders through the waiver process while protecting the charity sector from known risks.

5.15 pm

The commission has set up a working group to review its current staff guidance and the process of issuing waivers, as well as how information about waivers is communicated to those disqualified, so as to make it as clear and simple as possible. That has already involved rehabilitation charities, such as Unlock, and will continue to do so. The working group will also review the commission's published information on this subject to ensure that it is consistent with its conclusions.

The Charity Commission's starting position is that the principles underpinning the legislation mean that disqualification should continue until it expires, unless a compelling case can be made for a waiver. As I have said, the commission will also take into account the type of charity concerned, such as those involved in rehabilitation, and evidence that the person no longer represents a risk to charity—for example, demonstrating a good track record from volunteering in other roles. We do not think a significant number of people will be affected by these changes, but some people who are currently trustees or senior managers may be caught by the extension of the disqualification provisions.

We will make sure that sufficient notice is given to charities—at least six to 12 months—before the provisions are brought into force. This will enable any individuals who may be affected to consider their options and either to apply for a waiver or to resign their position. There will also be a review of legislation, which must start within three years, to assess the impact of these provisions.

All in all, I think the clause as it stands has the balance about right and I commend it to the Committee.

Anna Turley: We agree with the Minister on clause 10 and will not suggest amendments to it. It sets out important new powers to disqualify individuals from being a charity trustee. However, there are still some

concerns in the sector and among individuals, and we think it is important to explore them at this stage of the Bill's journey.

First, it is important to reiterate that many charity trustees and senior management staff give many hours of time with passion, commitment and dedication, and do a sterling job, often working in difficult circumstances with some of the most vulnerable people. We want to encourage more people to get involved in the charitable sector as trustees and employees, and we want to ensure that there are no barriers for those who seek to do so.

We also do not want to exclude those who have had difficult experiences in their lives or have received charitable care in times of need and have so much of their own experience to offer. We recognise that service users and former service users can offer the sort of advice, insight and support that others cannot and that their involvement in charities and the voluntary sector is invaluable.

Moreover, charities can often succeed in areas of public service where the traditional sector cannot, such as in building relationships with those who have for too long had a failed relationship with the state, and can often build relationships with peers who have experienced similar situations. This is important and should be encouraged. However, I do not believe the clause will prevent the positive role that, for example, ex-offenders can play in the charitable sector, although it is important that this is kept under review and that the Charity Commission continues to take a positive approach to applications for waivers. I was encouraged by the statistics set out by the Minister.

This clause extends the criteria for automatic disqualification from acting as a charity trustee and adds a range of unspent criminal offences—I emphasise "unspent" because this is important—to those that lead to automatic disqualification, including money laundering, bribery and terrorism-related offences. There will be a ministerial power to add or remove an offence from the list subject to the affirmative resolution procedure, and we welcome that positive approach to parliamentary debate.

As a result of an amendment agreed on Report in the other place, which we fully support, being on the sex offenders register would also trigger automatic disqualification. We support that amendment because a person on that register is considered to require monitoring to manage the risk of sexual harm to the public. It is therefore appropriate that they are deemed not fit to be in that position of trust, controlling funds and activities carried out for the public benefit, and that they should be disqualified from being a charity trustee or being in a senior management role within a charity unless and until they are no longer subject to notification requirements or are granted a waiver from disqualification by the Charity Commission. For example, the commission might consider it appropriate to grant a waiver to enable someone to take up a position in a charity that works with ex-offenders, particularly sexual ex-offenders.

In 2015, we spent a lot of time discussing the crisis in the charitable sector due to damaging loss of public trust and confidence. If someone on the sex offenders register were able to serve as a trustee or in a senior management role, that could further undermine public trust and respect in the public domain. More importantly, people in such roles may well have privileged access to children or vulnerable people, even if the charity does not routinely work with such groups. In other words, its trustees and employees would not necessarily be subject to disclosure and barring service checks. There have been too many historic situations where people in positions of power have abused that power and not been challenged due to their position. To me, that is more significant and potentially damaging than financial misdemeanour and it is right that we maintain this provision.

The Minister referred to concerns about charities involved in terrorism. Again, we do not propose to challenge this. We believe these are important proposals, particularly in the light of the number of references in the inquiries that the Charity Commission has undertaken, but there must be support for charities in protecting themselves in such situations. Many charities do vital work in areas of conflict overseas and are faith-related charities. It is important that their role is not diminished and that they receive due support from the Charity Commission and are not perceived negatively without due cause.

We support the clause but some issues remain to be ironed out, not least further understanding and mitigation of its impact on charities working in the criminal justice sector which help to support and promote the rehabilitation of offenders and which employ ex-offenders or—as with the excellent charity Unlock, for example—aim to have at least 50% of trustees with some experience of living with a criminal record. While these provisions pertain to unspent convictions, we have some questions that we hope the Minister will answer.

How many people employed in the charitable sector does the Minister expect to be affected by the extension of the disqualification framework to senior management positions? What assessment has been made of the impact of the new disqualification framework on former offenders employed in the charitable sector, including on their career prospects and long-term rehabilitation and resettlement? What assessment has been made of the impact of the legislation on charities that work with former offenders who are employed by community rehabilitation companies as part of the Government's transforming rehabilitation reforms? I look forward to the Minister's response.

Jo Stevens (Cardiff Central) (Lab): It is a pleasure to serve again under your chairmanship, Mrs Main. I wish all members of the Committee a happy new year.

I have a small number of points about clause 10. No amendments were tabled by the Opposition—the main substance of the clause is sensible and uncontroversial—but, as someone who worked previously as a criminal defence lawyer, I have some concerns about the process for obtaining a waiver to the automatic disqualification from being a charity trustee or holding a senior management position, and the impact on charities working in the field of rehabilitating ex-offenders.

At a time when the prison population continues to grow and the fragmentation of the probation service, post-privatisation, is seeing some private providers cutting jobs in probation by more than 40%, the rehabilitation of ex-offenders is more important than ever, and the pressure on charities working in this strand of the sector will be increasing all the time. Rehabilitation and reducing re-offending rates must remain a priority for the Government, and the work that charities such as the

[Jo Stevens]

Prison Reform Trust and Unlock do—alongside incredibly hard-working and committed probation practitioners, who are under enormous pressure—is critical to this. Those charities have expressed concern about the waiver process and the impact it will have. I share many of those concerns.

As the Secretary of State for Justice has stated, we should not judge individuals by the worst moment in their lives. Instead of seeking to narrow opportunities for ex-offenders to reintegrate and contribute to society, we should be supporting their efforts to contribute to civil society, both through paid employment in the voluntary sector and as volunteers. The Committee may know that many charities that work to rehabilitate people with criminal records employ ex-offenders, either as trustees or, as my hon. Friend the Member for Redcar has pointed out, in senior management positions, because at the heart of the voluntary sector is the principle of working with service users, rather than doing things to them. This is no less important with people in the criminal justice system than with any other group. Any unnecessary barriers to the recruitment of people with convictions as trustees or into senior positions is, perhaps understandably, seen by charities working in this sector as a direct threat to their core mission.

I was struck by what the Staffordshire and West Midlands Community Rehabilitation Company said in its written evidence:

> "Many of the people that we work with have no work history or any way of getting a reference through 'normal' employment routes but one of the areas that they can gain experience is by working with charities, particularly those that are service user led. If the Charities Bill makes it difficult or impossible for people with convictions to act as Trustees or paid employees of these organisations, and others, then it would be shutting down an opportunity for someone trying to re-establish themselves in society from getting a foot on the ladder. Working as a Trustee for example can give a person with a conviction(s) a sense of purpose, it can help them improve their confidence, increase their social circle, give them an opportunity to develop new skills, provide an opportunity to get a reference, to develop a work ethic, to feel that they are valued and can make an important contribution. All of these things are crucial to rehabilitation and desistance and if these opportunities are restricted or removed completely it makes the job of rehabilitating people more difficult."

There are 1,750 voluntary sector organisations whose main client group are people in the criminal justice system, as well as a further 4,900 organisations that support them as part of their work. The Government have acknowledged the potential for waivers to be issued in cases where an appropriate individual seeks to be a trustee of, or a senior manager in, an ex-offender charity. The Minister has helpfully provided those statistics, although it is a very small number. The Government have said that they will ask the Charity Commission to review the waiver process and to consult charities.

Will the Minister tell us when the consultation is likely to take place? Is it the working group he has just mentioned? Has its work already started? When is the commission likely to issue its new guidance and the information requirements that it will be asking applicants to provide when they apply for a waiver? I have one further question, and I would be grateful if he answered it either today or in writing. Extending the waiver process to senior management positions will, of course, place additional burdens on the Charity Commission. What additional resources will be provided to the commission to meet the extra demands brought about by the inevitable increase—we are not yet clear how great it will be—in applications for waivers?

Mr Wilson: I thank the hon. Member for Redcar for supporting this clause. It is difficult to know where to begin, but I will try to address as many of the questions raised by hon. Members as possible.

I will begin with the questions raised by the hon. Member for Cardiff Central, who seems to be arguing that extending the disqualification provisions might undermine the work of some rehabilitation charities. I disagree with that because, as I said earlier, it is right that the commission looks beyond the benefits to the individual and considers the much wider risks and benefits not only to the charity directly concerned, but to the reputation of charities across the board. The proposed disqualification powers protect charities from individuals who present a known risk, which is the important thing. These are, in the main, people who present a known risk, which is why these powers and this safety net are important.

The hon. Member for Redcar asked how many people would be affected by the extension of the automatic disqualification. The truth is that we do not know the exact number of current trustees, chief executives or chief finance officers who could be affected by the extension of automatic disqualification, but our best estimate is that the number of people affected could be in the low hundreds. Compared with the number of people working in the charitable sector, it is a fairly small proportion, but as I said earlier, we will be giving those individuals a long period of time to make adjustments either by applying for a waiver or by resigning their positions, if that is what they need to do.

On the question about non-governmental organisations and wider counter-terrorism legislation, I recognise that that is a concern for some charities operating in some of the more difficult areas of the world. We need to develop a clear understanding of NGOs' concerns and to see examples of where such issues occur. Several Departments, including the Home Office, DFID and the Treasury, have been engaging with NGOs to try to understand their concerns and to ensure that such concerns are covered in the guidance wherever possible.

5.30 pm

Important guidance is already out there for NGOs operating in areas around the world where extremism and terrorism are problems. For example, the Government published some guidance in November 2015 to help the NGOs, led by Oxfam, that were asking for it. However, we are not aware of any legitimate NGO worker who has been convicted in the UK under counter-terrorism legislation, so it is important to recognise that, although such concerns exist, nobody has yet suffered as a result.

I welcome the hon. Lady's support for automatic disqualification and the reference to the Terrorist Asset-Freezing etc. Act 2010, because the measures are highly targeted. The latest consolidated list of those designated under the UK's terrorist asset-freezing legislation, which is published on gov.uk, contains 18 individuals, but 248 individuals are designated under the Al-Qaida (Asset-Freezing) Regulations 2011, all but two of whom are

currently located outside the UK. If a matter is serious enough to designate an individual under the legislation, it is impossible to see how such a person could be considered fit to serve as a charity trustee or a senior manager.

There was some discussion about the adding of people to the sex offenders register, which was strongly supported across the House of Lords, including, as the hon. Lady will know, by her Front-Bench team. Indeed, I think they even added their names to the amendment.

To develop the answer to the question asked by the hon. Member for Ilford North, the Charity Commission has granted 90% of waiver applications over a broader period than the six years that I was discussing. In fact, I can tell him that the commission has granted more waivers in relation to other disqualification criteria, such as undischarged bankrupts. Between 2007 and 2014, 39 waivers were granted and two applications were rejected, which is more than 90%.

The hon. Member for Cardiff Central asked about working with service users. The Bill does not prevent disqualified individuals from volunteering or being employed by charities; it just prevents them from serving in the positions of trustee, CEO and CFO.

The Charity Commission has set up a working group to review its current staff guidance, the process of issuing waivers and how information about waivers is communicated to those who are disqualified. As part of that process, the group is working with rehabilitation charities such as Unlock, which the hon. Member for Redcar mentioned. The group will also review the commission's published information on the subject to ensure that it is consistent with the conclusions.

To respond to the question about what additional resources will be available for the Charity Commission, the simple answer is none. The commission asked for the provisions, which it considers will add to the protection of charities from abuse, but many of its additional powers should make it more efficient and enable it to do more with its current resources. I think that covers all Opposition Members' questions.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Clause 11

Power to disqualify from being a trustee

Anna Turley: I beg to move amendment 7, in clause 11, page 10, line 5, after "person" add "or persons".

This amendment aims to ensure that, where there has been a collective failure to act, a whole trustee board should be held accountable.

We support clause 11 in principle, but we seek to make some amendments to it. At present, the Charity Commission has no general power to disqualify a person from being a charity trustee on the basis of unsuitable conduct. It can remove a trustee only if it has instituted a statutory inquiry into the charity, it is satisfied of both misconduct and mismanagement in relation to the charity, and there is a need to protect the charity's property or secure the proper application of that property. In those circumstances, the trustee who is removed is automatically disqualified. Clause 11 will provide the Charity Commission with a new power to disqualify a person from a charity trusteeship in relation to all charities, specified charities or classes of charity.

Amendment 7 would provide that the Charity Commission could take such action in regard to more than one trustee. If the conditions applied to more than one trustee—they could not be ascribed to one individual but were part of a collective failure—the amendment would allow the Charity Commission to act, particularly under conditions D, E and F. The amendment would enable action to be taken where there had been a collective failure on the part of the board to take any reasonable step to oppose misconduct or mismanagement of which the trustees were collectively aware. In the case of a serious child protection issue, for example, if a board is collectively aware of allegations of misconduct, or of misconduct itself, there is an argument for holding the board collectively responsible rather than singling out individuals. We believe that that could be important in situations where a conspiracy of silence may have led to behaviour being tolerated for fear of challenging it. That is why we have tabled the amendment, which would broaden out the clause so that it applied collectively to trustees rather than to specific individuals.

Mr Wilson: I hope it will help the Committee if I explain the purpose of clause 11 before I respond to amendment 7. The clause gives the Charity Commission a new power to disqualify a person from being a charity trustee or senior manager on a case by case basis. Most unfit individuals will be caught by the existing automatic disqualification criteria, which will be extended by the Bill, but the commission needs a power to act in cases where individuals are not excluded by automatic disqualification. The new power in clause 11 will enable the Charity Commission to disqualify an individual whose conduct clearly makes them unfit to be a charity trustee or senior manager, where, if the commission were not to act, there would be a real risk to charities or to public trust and confidence in charities.

There is no doubt that that is a tough new power for the regulator, but we made several changes to the provision as a result of pre-legislative scrutiny. More detail about the operation of the provision has been included in the Bill, and the commission must now apply a three-limbed test under the proposed power. First, one of conditions A to F must be satisfied. Secondly, the commission must consider that the person's conduct makes them unfit to be a charity trustee. The commission has published draft guidance alongside the Bill on how it would operate that test, and it will formally consult on its guidance before the relevant provisions are commenced. Thirdly, it must consider that exercising the power is in the public interest to protect public trust and confidence in charities.

Although the power may be drawn relatively widely, its use would be targeted, and there are several safeguards. The commission has said that it expects to exercise the power on a relatively small number of occasions each year. In addition to meeting the three-limbed test, the commission will have to give notice of its intention to disqualify and give a period for representations to be made, which it must take into account before any decision is made. If a decision is made to disqualify, disqualification will take effect only after a period of 42 days has elapsed, during which the individual will be able to

[Mr Rob Wilson]

lodge an appeal with the tribunal. If the decision is appealed to the tribunal, the tribunal will determine the outcome. In making its decision it will consider the case entirely afresh, on the basis of all the evidence before it. It will not simply review the Charity Commission's original decision. As I will not tire of reminding the Committee, in all its actions in the process the Charity Commission will have to abide by section 16 of the Charities Act 2011, which requires it to act proportionately.

A real case provides an example of when the disqualification power might be used. The police investigated concerns that a trustee had falsified charity invoices to claim public funding for their own personal use. The trustee accepted two police cautions for offences involving dishonesty or deception. The criteria for automatic disqualification refer only to convictions for such offences. Cautions are not considered to be convictions, so they do not result in disqualification. In the case in question the person resigned as a trustee but was free to take up trustee roles in other charities, and the commission is currently powerless to stop that. The disqualification power would enable the Charity Commission to consider disqualification of the individual on the ground that their conduct made them unfit to be a trustee.

Another example would be if a person had no relevant unspent conviction but had undergone a serious event such as being disqualified from a professional organisation while they were a trustee of a related charity, or if they had been subject to a judgment in the employment tribunal for repeated bullying of or racism towards staff members. That might mean that the person was unfit to be a trustee. Individuals often use the charity brand to reinforce their public status at the expense of the charity's interest.

Amendment 7 would empower the Charity Commission to disqualify an entire trustee board if it was guilty of a collective failure. The commission already has the power to act and has done so, in cases of collective failure by trustees and systemic governance issues. The powers in sections 79 and 80 of the Charities Act 2011 to remove trustees do not explicitly or implicitly contain any restriction on removing trustees where that would leave one or none in place, nor does the proposed disqualification power in clause 11. There is therefore no reason why the commission would not take action against all of a charity's trustees where that would be appropriate and proportionate and in accordance with the principles of best regulatory practice.

In most cases, however—I think the hon. Member for Redcar recognised this in her comments—the commission is likely to focus on the individuals who have been most responsible for any misconduct or mismanagement. That is in line with its much mentioned duty to act proportionately, which means that it would need to consider whether it would be fair and proportionate to hold all a charity's trustees collectively and equally responsible for any misconduct or mismanagement. Often, in practice, some trustees are more directly responsible for the misconduct or mismanagement than others who may not have been directly involved, but who may have failed to identify it or act to stop it. Each case needs to be considered on its merits, but in most cases either there would be insufficient evidence or it would not be proportionate for the commission to take action against the entire trustee board on the basis of collective responsibility.

There is a secondary, practical point. Removing all a charity's trustees would leave it with none, which would effectively create another quite different problem of finding and appointing appropriate new trustees. Often that is no easy task. It can take months or even years to find people who are willing to become trustees of a charity whose name has been tarnished through serious misconduct or mismanagement. We should remember that it is estimated that at any one time half of all charities have at least one trustee vacancy on their board.

Trustees who are directly responsible for misconduct must be held to account, but if there are trustees who were not directly involved in it and who are willing and able to help to get the charity back on track, it would be right for the commission to take that into account. In circumstances where there is an impact on the charity's beneficiaries, the commission has tended to appoint an interim manager under section 76 of the Charities Act 2011, to ensure that the charity continues to operate and to get it back on track before new trustees can be appointed and take over full time. However, that can be a costly solution for the charity, as the costs of the interim manager are usually paid from the charity's own funds, so in most cases, where there are trustees who are willing and capable of putting things right and who have not been directly involved in the misconduct or mismanagement, it is right that they be supported in getting the charity back on its feet.

5.45 pm

The hon. Lady asked me about what I think she described as a conspiracy of silence among trustees. By definition, a conspiracy of silence is difficult to prove evidentially, so it could be subject to a high risk of legal challenge. In practice, the commission focuses on evidence on a case by case basis in accordance with the regulatory requirement to act proportionately.

Despite the commission's usual practice of not removing all the trustees, there was a recent case—I will not name the charity concerned—in which the commission removed all 10 trustees on the board for serious collective governance failings. It is possible to remove all trustees for a collective failure under current legislation, and it will also possible to disqualify collectively under clause 11. However, the bar for doing so fairly and proportionately is rightly high, and it is for the commission as regulator to take the proper course of action depending on the circumstances of each case. Removing or disqualifying the entire trustee board is not something that we would expect the commission to do on a regular basis, but it can be done if necessary. I hope that the hon. Lady will accept my explanation and decide not to press the amendment.

Anna Turley: I am indeed reassured by the Minister's comments, and I look forward to working with the Charity Commission to ensure that we clarify some of the issues involved. I take his point about the ability to dismiss entire boards for systemic governance failures. It is an important power for the commission to have, and I want to ensure that it goes far enough. Conditions D, E and F raise issues such as whether people knew about misconduct and whether their conduct contributed

to or facilitated the misconduct or mismanagement. Those are important contributing factors, and more than one individual could be capable of them. Whether or not a situation fits the strict criteria for systematic governance issues, we need to resolve it.

I look forward to working with the Charity Commission to clarify things and ensure that sufficient safeguards are in place for difficult and damaging situations in which several members of a board are guilty of misconduct or knew about the misconduct, so that action can be taken against them. I am reassured by the Minister's example of a board that was dismissed in its entirety; that is helpful to know. I am also reassured to know that the Charity Commission will take each case on its merits.

The Minister made the point that it is difficult to get trustees. I totally accept that, but it is not a reason to dismiss the amendment out of hand. If a whole board were dismissed due to systemic governance issues, a difficult overhaul of the entire board would still need to be undertaken, and there would be all the expenses of having an interim manager. Although those are obviously difficult parts of the process, in the case of some circumstances that we have discussed, particularly those involving child protection, we think the issue remains. We will seek to take it forward with the Charity Commission to ensure that action can be taken against more than one individual where we believe that they knew of the misconduct, or where their conduct contributed to or facilitated the misconduct or mismanagement. However, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Anna Turley: I beg to move amendment 5, in clause 11, page 10, line 31, leave out

"(either generally or in relation to the charities or classes of charity specified or described in the order)"

and insert,

", as defined by the Commission in a specific document to be published after consultation and renewed every five years".

Instead of removing this power altogether, this amendment ensures the Commission publicises its definition of "person unfit to be a charity trustee" following a consultation.

As we have discussed at length since the Committee first sat, the Bill gives a raft of new powers to the Charity Commission, on which we are placing a large burden to exercise good judgment in its decision making. I appreciate that the Minister has re-emphasised the word "proportion", which we heard a lot during the first sitting, but again, it is a subjective word. If the Charity Commission is to be provided with discretionary powers to disqualify someone who is unsuitable, any test of unfitness should be robustly and clearly defined. Safeguards should be provided to prevent such a test from being used inappropriately.

Included in the clause is condition F, which allows the Charity Commission to disqualify a trustee on the ground

"that any other past or continuing conduct by the person, whether or not in relation to a charity, is damaging or likely to be damaging to public trust and confidence in charities generally or in the charities or classes of charity specified or described in the order."

That is too broad and subjective. In effect it leaves the determination of who can be a charity trustee to the opinion of the Charity Commission's board and management, rather than any due process. It opens up the possibility that the power may be used in relation to any past or continuing conduct, whether or not in relation to a charity. It seems unlikely that there is any conduct that would meet the alternative conditions A to E that would not also meet condition F. Many in the charity sector, including the National Council for Voluntary Organisations and the Association of Chief Executives of Voluntary Organisations, have asked to have condition F removed, because in the light of the other conditions in the Bill, it seems unnecessary and open to subjective interpretation.

The Charity Commission, however, has long argued for this power and welcomes its inclusion in the Bill. It says that the power will enable it to protect charities from being run by individuals who are clearly not fit to do so. We therefore believe that rather than being removed entirely, condition F should be amended so that it is subject to more rigorous definition. The amendment would ensure that the Charity Commission publicised its definition of what constitutes conduct that

"is damaging or likely to be damaging to public trust and confidence in charities".

That could then be subject to consultation with the sector, which could help to define the kinds of scenario that could apply and play a role in exploring the word "proportion" and the decision making that we are asking the Charity Commission to undertake.

The Charity Commission has published a policy paper on how it would use the proposed disqualification power, which is a helpful guide. The commission acknowledges that this is a significant new power, and says that it is important to provide reassurance that it will use it only when there is a clear case for doing so and that it should clearly explain what it will take into account before using the power. The amendment is designed to provide that reassurance. We believe that the policy paper is a helpful draft, but it should be made a formal document, as mentioned in the Bill, published after consultation with the sector and revised every five years. For that reason, we hope the Government will accept the amendment.

Mr Wilson: I do not propose to repeat what I have said about the new disqualification power in clause 11, but I will focus on the specific details of amendment 5. I am grateful for the hon. Lady's explanation of the amendment, which would give the Charity Commission the job of publishing at least every five years guidance on how it assesses unfitness. I recognise that this is an attempt to narrow the breadth of the commission's discretion, as the hon. Lady said, but although I have some sympathy with the intention behind the amendment, I simply do not believe that it is necessary.

The Charity Commission has published details of its initial thoughts on how it would exercise the disqualification power, with positive feedback from charities and Members of the other place. It did so when the Bill was introduced in the other place. In the document, the commission recognises that this is a significant new power, provides reassurance that it will use the power only when there is a clear case for doing so, and says that it should explain clearly what it will take into account before using the power.

In the paper, the Charity Commission explains its initial thinking on how it would apply the first limb of the test—criteria A to F. It goes on to explain its initial

[Mr Rob Wilson]

thinking on how it would apply the second limb of the test—assessing a person's unfitness to serve as a charity trustee. The commission's assessment of unfitness, based on its regulatory experience, is that unfitness is likely to be a result of failure in one or more of the following broad categories: honesty and integrity, competence, and credibility. The commission goes on to set out, under each of those headings, the types of conduct that it would consider and examples of the conduct that in its view would demonstrate unfitness.

Under the heading "honesty and integrity", the commission would consider evidence of abuse of a position of trust. That could be demonstrated by exploiting a position of trust for personal gain, misleading a public body, or other forms of dishonesty, deception or cheating that could give rise to concerns about the individual's fitness to serve as a charity trustee. Dishonesty is well understood in charity law, and forms part of the 2011 Act, so this is not an entirely new or unfamiliar concept.

Under the competence heading, the commission would consider evidence that the person is incapable of or unwilling to fulfil the duties and responsibilities of a trustee. That could include, for example, failing to act

"in compliance with the governing document and rules of the charity",

failing to keep proper accounting records for the charity, or showing

"a wilful disregard for management of conflicts of interests".

Again, competence is a concept widely used by other regulators, so that is not entirely new either. By way of example, under section 61 of the Financial Services and Markets Act 2000, the Financial Conduct Authority may grant an application for someone to become an authorised person only if it is satisfied that the candidate

"is a fit and proper person to perform the function"

in question.

The Act does not prescribe matters which must be taken into account by the FCA in making the determination, but details are given in the FCA handbook.

Under the credibility heading, the commission would consider conduct that impacts on the individual's personal credibility and reputation to such an acute extent

"that it calls into question their fitness to act in the quasi-public role of trustee".

That could include, for example,

"support for and participation in discredited tax avoidance schemes",

or

"actions in fundraising that gave them high personal benefits to the detriment of the charity or in which they used high-pressure selling or other discredited methods".

Reputation is a key part of a charity's assets under charity law, and a key part of the commission's work in furtherance of its statutory objective with regards to public trust and confidence. Again, this heading is not an entirely new concept for the commission or the charity sector.

The final limb of the test is that the commission must consider whether exercising the disqualification power is

"in the public interest in order to protect public trust and confidence"

in charities. The commission's draft paper explains that under this test it would consider whether disqualification

"will protect charities from those who would not carry out the role of trustee with integrity, honesty, capability or credibility in the interests of the charity and its beneficiaries, and ultimately be trusted by the public to do so".

The commission sets out factors it would consider under this limb of the test, including

"the nature and seriousness of the conduct…the extent of the unfitness and whether it might be temporary or time-specific".

I hope that hon. Members have had an opportunity to consider the commission's draft paper, and that they take reassurance from it and from the commission's commitment to work it up into proper draft guidance, and consult publicly on that guidance before the provision is commenced. Other regulators with similar powers are also given the responsibility, without defining the exact details in statute as this amendment proposes, to work up appropriate, proportionate and detailed guidance with regards to the use of this type of power. In addition, it is important to note that the commission keeps all of its guidance under review to ensure that it remains relevant and up to date.

As I have mentioned in previous sessions, the commission recently consulted on and launched an updated version of "The essential trustee" guidance. It is also consulting on an updated version of fundraising guidance for trustees, and there are other pieces of work under review. The commission can and does ensure that its guidance is relevant and up to date, and it will do so at the appropriate time. The whole Bill will be reviewed after three years, and subsequently every five years. This power will be looked at carefully, and the guidance will no doubt be important in the effective use of the power. On that basis, I do not think that amendment 5 is necessary. I hope that the hon. Member for Redcar will accept my explanation, and decide not to press her amendment.

Jo Stevens *rose—*

The Chair: Order. The hon. Member for Cardiff Central has said that she would like to contribute. I would normally call the hon. Lady before the Minister, so I am afraid that we are a bit backward. The Minister may wish to respond, or not, if any questions are asked.

Jo Stevens: Thank you, Mrs Main. My apologies for not indicating earlier that I wanted to speak. I support the amendment, which stands in my name and those of my hon. Friends. The clause represents a significant new power for the Charity Commission with the discretion to disqualify a person from being a trustee or holding a senior management position provided that the three tests as outlined by the Minister are satisfied. Because the power is discretionary and because it has such significant consequences for the individual concerned, as well as for the charity, those connected to it and those benefiting from its services, it is essential that the tests are clear, unambiguous and properly defined.

6 pm

Because of the significance of the discretionary power, the charity sector and the public need reassurance from the Government that the commission will use it only

when there is a very clear case for doing so. In making that case clear, the definition of "unfit" is essential if we are to have confidence that the commission does not risk finding itself in the situation of misapplying its powers with the consequences that that entails.

Clause 11 is extremely broad. As with any legislation that provides powers that are insufficiently defined, there is a risk of creep to lower the circumstances held to satisfy unfitness and there is an inherent risk of inconsistent or erroneous decision making. The National Council for Voluntary Organisations concluded in its written evidence on 15 December:

"Clause 11 is insufficiently defined and lacks appropriate clarity and safeguards."

With no definition in the Bill and the commission seeking to define unfitness in the widest possible terms in its policy paper, as we have heard, the test of unfitness lacks any objective criteria by which to measure the reasonableness of the commission's decision. Our amendment significantly mitigates that risk for the commission and I commend it to the Committee.

Mr Wilson: I will be brief. I think I failed to answer one of the questions asked by the hon. Member for Redcar which has been raised again by the hon. Member for Cardiff Central. I will try to deal with the two areas.

One concern is that the disqualification power, in particular condition F, is too broad. The hon. Member for Redcar is right to say that it is a significant new power. The intention in clause 11 is not to use those powers frequently, as I said in my opening remarks. However, it is absolutely essential to have the criteria to enable the Charity Commission to address conduct that could seriously damage public trust and confidence in charities but would not be caught by conditions A to F.

The condition therefore needs to be considered in the context of the other criteria for the exercise of the disqualification power, namely the test of fitness and the fact that the disqualification is desirable in the public interest to protect public trust and confidence in charities. It is a tripartite matter: all three things have to be looked at together. The Charity Commission has published draft guidance on how it would exercise the powers. I have been through that in some detail.

On the other issue, I would say that there are excellent safeguards to make sure that the powers are not in misused in any way. There are six points to bear in mind that are all safeguards. First, an individual must meet new, tougher criteria to become a trustee in the first place. They are not automatically disqualified under clause 10 because we have broadened the automatic disqualifications, as we discussed in relation to the previous clause.

Secondly, if the Charity Commission then decides to disqualify the trustee, three new criteria have to be met. As I have said, those are conditions A to F. The individual has to be deemed unfit to be a charity trustee, as defined by Charity Commission guidance. Thirdly, the Charity Commission must be satisfied that disqualifying is in the public interest. Those are quite tough criteria, but then the commission has to give notice of its intention to disqualify and give a period for representations to be made, which it then has to take into account before any decision is made.

If the decision is made to disqualify, disqualification only takes effect after a period of time has elapsed, during which the individual can lodge an appeal to the charity tribunal. Another safeguard has therefore been slotted in. If the decision is appealed to the tribunal, the tribunal will be able to confirm or overturn the disqualification. A really important point is that in making the decision, the tribunal would consider the case afresh. It would not just go over what the Charity Commission looked at. It would look at it as a completely blank sheet of paper. I think those safeguards should reassure the hon. Lady that this is not a power that is going to be misused in any way.

Peter Kyle: School academies are often registered with the Charity Commission and are registered charitable entities and trusts in their own right, so some school governors of academies are also trustees. Both Ofsted and regional school commissioners can remove governors, so that will have implications for removing trustees. Clearly, different regulatory bodies have an impact on the governance arrangements of charities at the moment. Has the Minister had discussions with the Department for Education to see whether there is a conflict from this new set of regulations with other Government Departments, such as Education?

Mr Wilson: I have not had any direct conversations with the Department for Education, but my officials are in contact with that Department regularly across a number of these areas. I would be slightly surprised if that had not been discussed at some point, but the commission will be looking at all these things and taking them into account—*[Interruption.]* Ah, a note has appeared on my desk. Apparently, there is no conflict with other regulators' powers and practices, so I hope that reassures the hon. Gentleman.

Jeremy Lefroy (Stafford) (Con): I am very reassured by all these safeguards. If we come across cases where it seems that the tribunal is regularly in conflict with the decisions of the Charity Commission, will the Government then look at that to see whether there are problems in the interpretation by the Charity Commission or the tribunal about what constitutes good grounds for disqualification?

Mr Wilson: That certainly has not happened to date—there has not been a conflict between the decisions of the charity tribunal and the Charity Commission—and I do not expect it to happen, because the Charity Commission works on the basis of the trust placed in it by the charitable sector. If the Charity Commission is regularly getting decisions wrong, that will have an impact on its status within the sector. The Charity Commission does all that it can to avoid a downgrade in its status. I hope that reassures my hon. Friend that the Charity Commission would always act in the sector's best interests, in terms of proportionality and section 16 of the Charities Act 2011, which I have constantly mentioned, and that it would always try to get its decisions right, so that it does not come into regular conflict with the charity tribunal.

Anna Turley: I thank the Minister for a thorough and helpful explanation of the steps involved and the safeguards that will be in place. To some extent, it sounded like

[Anna Turley]

there would be a triple lock through the commission's criteria and the notice period for the tribunal, which is reassuring.

I thank my hon. Friend the Member for Cardiff Central for her helpful contribution. She made the really important point that the criteria have to be clear, unambiguous and properly defined. We look forward to continuing to work with the Charity Commission as it develops its explanation further. As I mentioned, we recognise the helpfulness of the policy paper that the Charity Commission published on how it would use the disqualification power. I was pleased to hear from the Minister that there will be further consultation with the sector and that the paper will be refined and published in full before implementation. That is reassuring, and we will continue to contribute to that. We look forward to working with the Charity Commission to ensure that it recognises the importance of the power, and we will work actively with the sector to refine it.

I also welcome the Minister's reminder that the Bill will be reviewed in three years and in five years. We will seek to ensure that the Charity Commission regularly updates its guidance as well, particularly in the light of its experience in using it over the coming months and years. Given the Minister's comments, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Anna Turley: I beg to move amendment 6, in clause 11, page 11, line 33, after "conduct" insert, "both relevant and serious".

To ensure a more narrow and relevant definition of "conduct".

This amendment builds on the previous one. Although I am reassured by many of the Minister's explanations, we want to talk through the matter further and set on record our concern about the breadth of condition F. Amendment 6 would limit the definition within that condition, which allows the Charity Commission to disqualify a trustee on the grounds

"that any other past or continuing conduct by the person, whether or not in relation to a charity, is damaging or likely to be damaging to public trust and confidence in charities".

The inclusion of the words "both relevant and serious" through this amendment is intended to put the onus on the Charity Commission to prove that it has interpreted that definition with sufficient gravity and sufficient evidence to justify the seriousness of the action, as the Minister sought to reassure me it would. We believe that the current definition is too broad and subjective, and that the amendment would help to narrow the definition and give the charity sector some reassurance.

Mr Wilson: Once again I find that I have a great deal of sympathy with the intention behind the amendment, but once again I do not think it is necessary, and I believe it could have unintended consequences.

Let me explain first why I do not think the amendment is necessary. I agree that the commission should only consider conduct that is "relevant and serious"; in fact, so does the commission itself. The commission has said that under clause 11, it would provide the individual involved with an explanation identifying the conduct in question and why it thought that conduct met condition F. If the commission took account of conduct that was not relevant to the person's ability to act as a charity trustee or senior manager, I would expect that any such disqualification order would be thrown out by the charity tribunal on appeal. As I have just discussed with my hon. Friend the Member for Stafford, the Charity Commission would not want that to happen on a regular basis.

As I have said many times, the commission would need to act in line with the duty set out in section 16(4) of the 2011 Act, under which its regulatory activities

"should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed".

As a public body, the commission would also have to consider general human rights and equality duties.

The commission's draft paper on its initial thoughts about how it would exercise its disqualification power provides some useful guidance. The commission recognises that condition F is widely drawn, but it gives examples of the types of conduct that it could take into account. For instance, if the conduct in question was by a trustee of a charity, it could consider whether it was misconduct or mismanagement, and whether it would put the charity's property or reputation at undue risk. It could also take into account misconduct in another position of trust and responsibility; convictions relevant to the charity's purposes, for example a conviction for animal cruelty by a trustee of an animal welfare charity; regulatory breaches that have been penalised by another authority, for example legal breaches on tax matters; a finding of misconduct by a professional body or regulator; or an adverse finding by a charity self-regulatory body or umbrella body.

I think the Committee will agree that those examples show the sorts of conduct that the regulator should consider. Whatever the conduct, which must be both relevant and serious, the commission would also have to meet the other two limbs of the test for disqualification: first, that the person is unfit to serve as a charity trustee; and, secondly, that making the disqualification order is in the public interest to protect public trust and confidence in charities. Under the disqualification power in clause 11, the commission would already need to consider conduct that was both relevant and serious.

Jeremy Lefroy: The Minister has already been helpful, but I would just like to get some clarification from him. Would somebody who has not yet served as a trustee of a charity be liable to be placed on the disqualification register, so that they would not be able to serve as a trustee of a charity, or does the register apply only to people who are already trustees or who have served as trustees? In other words, will the clause prevent people from becoming trustees in the future, or will it only apply to people who are either trustees now or who have been trustees in the past?

Mr Wilson: I think the answer to that question is "possibly", and I would like to take some advice before I give a fuller answer. Hopefully I can get that advice fairly quickly, while I am going through the second half of my response.

I turn to the potential unintended consequence of including the words "relevant and serious" in condition F in clause 11, namely that it would cast doubt on other

commission powers for which those words do not exist. At the moment, the exercise of other powers, such as the power to remove a charity trustee, depends on conduct that is both relevant and serious, even though those words are not included in the criteria for exercising the relevant powers.

I am very sympathetic to the aims of amendment 6, and hopefully, I can manage to answer the question that my hon. Friend the Member for Stafford asked. *[Interruption.]* Ah, yes. That is good news. The order could apply to people who are not trustees, but it would depend on the individual's conduct. My original answer was right—"possibly"—but my hon. Friend asked a sensible and important question, and I will write to him in detail about it.

Jeremy Lefroy: I am most grateful for that. I am concerned that the provision will potentially give the commission an excuse for trawling to discover all sorts of people who commit offences and allow it to say, "Let's get them disqualified as trustees, even though they have no desire to become a trustee." That would cause a great deal of unnecessary work.

Mr Wilson: I see and understand the point that my hon. Friend makes. The best way for me to deal with it, as we have a period of time before Report in which we can consider the matter further, is to write to him in detail. If people were able to conduct trawling, as he calls it, that would be a worrying scenario.

I hope the Committee will understand why I believe the amendment is not necessary and could be counterproductive. I hope that the hon. Member for Redcar will withdraw it.

Anna Turley: I thank the Minister for his response and other members of the Committee for their interesting and thought-provoking questions, which help us and set out the benefit of going through a Bill line by line in Committee. It allows us to set out some of the issues that still need clarification.

In light of the Minister's answer, and particularly the reassurance that he gave at some length on the steps that the Charity Commission will undertake to ensure that there are sufficient safeguards, we will withdraw the amendment. I am reassured to some extent, but we look forward to working with the commission in the coming months to ensure that the safeguards are sufficiently clear and agreed by the sector prior to implementation. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: Given that we have had such a wide-ranging debate on the clause, I do not intend to have a stand part debate.

Clause 11 ordered to stand part of the Bill.

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

6.18 pm

Adjourned till this day at Seven o'clock.