

HOUSE OF LORDS
HOUSE OF COMMONS
ORAL EVIDENCE
TAKEN BEFORE THE

JOINT COMMITTEE ON THE DRAFT PROTECTION OF CHARITIES BILL

WEDNESDAY 10 DECEMBER 2014

DETECTIVE SUPERINTENDENT PETE O'DOHERTY, DONALD TOON and
DETECTIVE CHIEF SUPERINTENDENT TERRI NICHOLSON

ANDREW EDWARDS and DAVID KIRK

Evidence heard in Public

Questions 294 - 400

Oral Evidence

Taken before the Joint Committee

on Wednesday 10 December 2014

Members present:

Lord Hope of Craighead (Chairman)
 Lord Hodgson of Astley Abbotts
 Baroness Warwick of Undercliffe
 Lord Watson of Invergowrie
 Viscount Younger of Leckie
 Mr Nick Hurd
 Mr Bernard Jenkin
 Mark Menzies

Examination of Witnesses

Witnesses: **Detective Superintendent Pete O'Doherty**, Head of National Fraud Intelligence Bureau, City of London Police, **Donald Toon**, Director, Economic Crime Command, National Crime Agency, and **Detective Chief Superintendent Terri Nicholson**, Metropolitan Police, examined.

Q294 Chairman: Good afternoon to all of you. You are extremely welcome, and we are very grateful to you for coming to give us the benefit of your assistance. I would mention two things to begin with. First of all, these proceedings are being webcast. Secondly, a transcript is being taken of all the evidence and will be circulated in due course. I encourage you to check it through carefully to see that what has been put into the transcript is indeed what you recall saying in your evidence.

I begin with a fairly general question which I will put to you as a panel, but perhaps run across from your side, Mr O'Doherty, to Mr Toon because you represent different agencies. It is a general question based on something the Charity Commission themselves told us. Their evidence is that in the main they deal with what they describe as "honest mistakes" and "poor management" of charities rather than "deliberate abuse". The question I have to put to each of you for comment is whether you would agree with that analysis and what your estimate would be of the scale of the threat posed by abuse under various headings.

Detective Superintendent O'Doherty: I can certainly start off, Lord Chairman. Although I run the National Fraud Intelligence Bureau, we work side by side with Action Fraud, which is a UK reporting hub for fraud in the UK. Being a crime management hub we naturally see more of the serious offences reported to our system, but I can report that from 1 April to 30 November we have already seen 950 charity offences reported to Action Fraud and the NFIB, which is up from 565 in the last financial year. Average losses for a charity range between £5,000 and £2.5 million. In actual fact, a number of offences are reported that link to persistent mismanagement of a charity, which in many cases are not necessarily criminal but with better and earlier intervention and prevention would not come our way for investigation.

The impact of that is that we disseminate crimes around the UK, locally, regionally and nationally, for investigation. Less than 15% of those cases are investigated by UK policing. Part of the reason is that it is felt that some of those cases are not serious abuse but, in actual fact, are issues around mismanagement. I just wonder if perhaps earlier prevention—as will be given to the Commission by the new proposed Bill—will facilitate the prevention of those cases, away from the police service so that they are not overwhelmed by the cases they are getting at the moment.

Q295 Chairman: I have one follow-up question on that. You used the word “reporting”. By whom are these cases reported to you?

Detective Superintendent O’Doherty: We have three types of victims in these cases. We have members of normal society, whereby we have fraudsters who purport to be charities; we have charities themselves who report as victims; and we have the Commission who report on behalf of charities as victims.

Detective Chief Superintendent Nicholson: I represent the counter-terrorism network, not exclusively in London, although I happen to be based in London. My views are for the whole network. I know that the Charity Commission has said that it deals with many cases which are honest mistakes. Of course, in the counter-terrorism world we see the other end of the scale, if you like, the cases where there are deliberate abuses of positions of trust, whether it be as trustees or indeed just as members of the charity operating group, for want of a better expression. The Charity Commission deals with negligence and serious and deliberate abuse, but it works extremely closely with the counter-terrorism network from the outset. It is really important to get that message across. The relationship between the Commission and counter-terrorism policing is excellent. In my 27 years’ experience of policing, largely in financial investigation, the level of co-operation is unprecedented. We identify cases both ways. The Charity Commission will identify cases early.

It is difficult to put a scale on this. I say that for a couple of reasons. The Syria factor is an unknown for us at the moment. We are beginning to see cases where Syria is quite clearly at the heart of the effort, but, as you can imagine, it is very much an emerging picture and we have much further to go before we understand the totality of the abuse that relates to that sector.

Q296 Chairman: I understand the difficulty of putting it in a scale of comparison with all the cases that the Charity Commission deal with, but can you give us any figures which would enable us to form a view?

Detective Chief Superintendent Nicholson: Yes. I will take from 2013 onwards. Currently, the counter-terrorism network as a whole—that takes in all the counter-terrorism hubs throughout the UK—is investigating roughly 40 cases. They are across a full range of issues, whether they are alleged to be charities complicit in what is going on or charities completely unaware of what is going on but with persons of interest to us abusing their position. They are broadly in those two categories.

Donald Toon: From our perspective, the National Crime Agency focus is fundamentally on serious and organised crime, including major fraud. There is very little I can sensibly add to what my colleagues have said. I certainly reiterate the point that it is hard to be certain about scale in this. The only additional point perhaps worth making is that, if you look at suspicious activity reporting in relation to concerns about financial transactions, we receive 350,000 suspicious activity reports a year; of those, in the last year 32 were linked to

¹Mr Toon subsequently clarified that the 32 suspicious activity reports to which he referred were received from the charity sector itself; and that the overall number of reports which were linked to charities would be higher.

charities or were from the charity sector.¹ That would indicate that the level directly linked to charities is likely to be low.

Q297 Chairman: Are you able to express a view as to how effective the Charity Commission's policing of the operation of charities is generally?

Donald Toon: I do not think we are best placed to give that view. We have a good working relationship with the Charity Commission. Our interest is absolutely around crime. Their focus on co-operation with law enforcement generally and around crime is very good and very positive. I would not feel qualified to comment on their policing in the wider sphere of issues like mistakes or poor management.

Q298 Chairman: Ms Nicholson, I do not know whether you are. You seem the obvious person.

Detective Chief Superintendent Nicholson: Yes; I am probably fairly well placed to comment. The Charity Commission have their part to play in this equation but it is not exclusively their territory, as you can imagine. They are the regulators and we certainly, in policing, have a large responsibility to bring those cases to fruition, whether through a prosecution or some sort of disruptive activity. We should not forget that in many cases it is difficult to prove the terrorist element because of the end destination for the funds. Frequently we see convictions, for example, for fraud and other matters. I think that the Charity Commission are very effective in sharing information with us, to enable us to do our job effectively.

Q299 Baroness Warwick of Undercliffe: Do you think that the Charity Commission has the appropriate level of training and understanding to be able to address potential criminal or terrorist activities linked to charities? How far should the Commission, which is after all a civil regulator, be involved in tackling criminal activity linked to charities?

Detective Chief Superintendent Nicholson: Quite obviously, the Commission is not a prosecuting authority and does not conduct criminal investigations. However, where there are concerns about suspected fraud or criminal abuse connected to the charity, the Commission will always liaise and closely work with us towards conclusions, whether it is terrorist or criminal-related. We have specific units within policing who are, for want of a better word, experts at dealing with those cases. The Commission has a big part to play in this—a very key role in ensuring that the sector are as well equipped as they ought to be to deal with cases where they may not be complicit in the activity and may spot early warning signs. We are working very closely with the Commission.

The Commission is probably the only agency that is genuinely concerned about the outcomes in terms of funds diversion, to ensure that public confidence is maintained in giving to a charity in the first place. Certainly since the 7/7 events in London in July 2005, where two of the perpetrators were linked directly to then registered charities, the Commission has worked very collaboratively with us. We are doing some joint training on a regular basis with the Commission. It is not just the Commission where the training needs to be directed; it is other Government Departments. For example, DFID are key partners in this as well. We are working more collectively with other Government Departments as well as the Commission. As we see changes and trends, we are working very quickly to get the message out there as quickly as possible to those that need to know. That includes the charities themselves.

Q300 Baroness Warwick of Undercliffe: I do not know if anybody else wants to add to that. It seemed to me that you were saying that collaboration is effective and that the training that might be necessary is actually being undertaken.

Detective Chief Superintendent Nicholson: And there is more to do.

Donald Toon: That is absolutely right. There is always more to do, but the Commission is absolutely committed to playing a collaborative role. An organisation like the Commission has a real role to play in relation to the elimination of fraud, for example, because investigation and prosecution are never going to be the total answer to a problem in that space. The role of the Commission in terms of regulating, monitoring and taking enforcement action more broadly where charities are affected is absolutely critical to an overall response.

Detective Superintendent O'Doherty: In Action Fraud, in about two years the frauds we had in went up from 40% being cyber-enabled to about 70%. That means that as a result of globalisation and IT evolution, the concept of just arresting people is not the option any more. It is the disruption of online bank accounts, early intervention, restorative justice and early reach-out, and I think the sector, and the Charity Commission, are very proactive in looking at alternative justice outcomes. I know they are going to receive an £8 million-plus investment to build that capability going forward. We are very excited about what that is going to bring. The intelligence they provide to NFIB and Action Fraud is always at a very high level. They do everything they can to show the links between charity fraud and other fraud like money laundering and other offences we see. From my own experience, I know that the people who commit fraud against the charity sector are certainly involved in other forms of fraud as well, be it mortgage fraud, loan lender scams or what have you.

Q301 Mr Jenkin: Moving on to the provisions on terrorism in the draft Bill, how will these new provisions help the Government achieve their PREVENT policy?

Detective Chief Superintendent Nicholson: I feel like I am slightly hogging the limelight, but I will start.

Mr Jenkin: If you deserve it, you should have it.

Detective Chief Superintendent Nicholson: First, quite clearly the policing responses are across all four “Ps”. It is not just prevent. The Charity Commission is also across prevent and pursue, and sometimes those lines can be quite blurred. The powers are going to help tremendously. If we take disqualification, for example, which is one of the powers, it will make it automatic that a convicted terrorist or someone who is subject to terrorist sanctions cannot act as a trustee. It seems utterly illogical that someone with those sorts of convictions could be a trustee looking after public money. There is power to give official warnings for breaches and actions as a more proportionate response where more serious action is not justified. There is a provision on closing loopholes. We are always fans of closing any loopholes that allow trustees, for example, to resign whilst the Charity Commission are looking to remove and disqualify—people looking to resign in advance of the sanction.

On extending the period that the Commission can suspend an individual from 12 months to 24 months, perhaps I might highlight a very recent conviction which you will probably have seen. It was a case involving Afghan Poverty Relief. We came very close to the expiry of the period for the trustees’ suspension as we had to wait for the criminal trial to take its course, so extending it would be tremendously beneficial. There is also allowing the Charity Commission to remove someone who is disqualified rather than relying on the police investigation, which might take considerably longer, particularly if the end destination for the funds is not in the UK. We feel that all those things would be tremendously beneficial as part of the legislation to support the terrorist funding element.

Q302 Mr Jenkin: Is everybody happy with that? The Charity Commission has initiated a new issue code called “extremism and radicalisation”. How do you imagine that the

Charity Commission decides how to apply such a code to a charity? Where do they get their information and how do we know that they are acting fairly?

Detective Chief Superintendent Nicholson: It is important that, where there are concerns about charities being abused for radicalisation and extremism purposes, the Charity Commission has the power as a regulator to deal with them. That goes without saying. The powers that I have just mentioned enable the Commission to deal with suspected abuse by the charities. It is important that the Commission has disqualification powers. The two powers that did not make it into the draft Bill but were in the consultation would, first, enable stopping people who have been removed coming back as a CEO or treasurer and, secondly, prevent acts of misconduct in a charity from taking place.

The consultation document gave an example of a charity that had put up pictures in support of a proscribed organisation. The Charity Commission advised them to remove the pictures, but they were pretty much back up as soon as the warning had been given. They were toothless and powerless to enforce, if you like. I think they need the power to direct the charity not to take such actions, which would be in support of the broader counter-extremism effort.

Q303 Mr Jenkin: I do not think that has quite answered my question. The Charity Commission must have a reason to code a charity under the heading “extremism and radicalisation”. How should we be comforted that that would be your view, for example, about that particular charity? Where do they get the information to make such a judgment?

Detective Chief Superintendent Nicholson: Under the Charities Act we regularly share intelligence—at the time. We do not hold on to intelligence; it is shared at the time. They are largely reliant upon intelligence provided by these organisations you have in front of you.

Q304 Mr Jenkin: If we required them to give a reason for attaching such a coding, could that be detrimental to intelligence gathering?

Detective Chief Superintendent Nicholson: Yes, it most certainly could be. At crucial stages of the investigation these are always tricky issues to navigate. The role of the regulator versus the investigator is always a tricky road, but that collaboration and conversation can frequently lead to us being able to give sufficient information to support that premise.

Q305 Mr Jenkin: What would happen if somebody challenged this and said, “You have no right to code our charity ‘extremism and radicalisation’”? Supposing it went to a tribunal of some kind, what would happen then? Wouldn’t you have to give a reason?

Detective Chief Superintendent Nicholson: It is difficult to second-guess. There might be an exit strategy as part of the original conversation. In fact, it is likely there would be—about what would happen if there was a challenge to it. Equally, there is an appeals process that could be used, I think effectively, to appeal against that decision.

Q306 Mr Jenkin: But you would be very concerned if we required the Charity Commission to give a reason for such a coding.

Detective Chief Superintendent Nicholson: Yes, we would be, without consultation with us or other partners.

Q307 Mr Jenkin: Is there some compromise that could be used or is it just understood that they do it on advice? Is that what we should understand? If they code a charity “extremism and terrorism”, we should understand that they have done it on advice from one of the security services or the police.

Detective Chief Superintendent Nicholson: And they may have independent intelligence or evidence of their own, by virtue of their regulatory responsibilities, which might support the action anyway. It is not exclusive; it is a collaboration effort between both. They might hold their own information without us.

Q308 Mr Jenkin: How do you suggest we address the concern that has been expressed to us that this coding is being attached in an apparently arbitrary way? It might accidentally be attached, or attached for a reason that has been given to them but is completely invalid. How are we going to deal with this?

Detective Chief Superintendent Nicholson: There is a formalised appeals process to allow those concerns to be aired. I think that would be a step in the right direction.

Q309 Mr Jenkin: Are those public appeals? Would they take place in public or in camera?

Chairman: Have you any experience of that?

Detective Chief Superintendent Nicholson: I have not, no. I have not been challenged in this area. I could not really comment. I could come back to you with some written considerations on the public or private matter.

Q310 Mr Jenkin: Obviously you will have advice from your own service.

Detective Chief Superintendent Nicholson: Yes.

Mr Jenkin: We will press the Charity Commission on this. Thank you very much.

Q311 Lord Watson of Invergowrie: This is really a development of the point that Bernard Jenkin raised. I find it somewhat Kafkaesque that somebody can be accused of something without being told what they are being accused of, and then invited or at least allowed to appeal. I am pretty certain that would not take place in public. If they appealed, on what basis would they appeal? How would they argue against a case that has not been put to them?

Detective Chief Superintendent Nicholson: It is difficult without a specific case to work our way through what those appeal points might be.

Q312 Lord Watson of Invergowrie: I was talking in general. What you were saying was that an individual organisation would not be told why they had been added to a certain list. How could they then appeal against being included if they did not know the reason why they had been included?

Detective Chief Superintendent Nicholson: I would say that that is a matter for the Charity Commission to address, as opposed to the police. We provide the evidence and intelligence...

Q313 Lord Watson of Invergowrie: Taking that one step further, we understand that the Charity Commission has designated 55 charities with the term "extremism and radicalisation" and that they are monitored without those organisations, in most cases, knowing that they are being monitored. In general, again, can I ask the question that has been raised at previous hearings? Do you believe that it is more likely to be beneficial that an organisation does not know that it is under suspicion, as it were, than that it is? I ask that question because, if the aim is to stop the organisation doing whatever it is you and the Charity Commission don't want them to do, would it not be better to say, "We are keeping an eye on you because of these activities," in the hope that they would stop the activities and perhaps concentrate on what the charity was initially there for in the first place?

Detective Chief Superintendent Nicholson: Not necessarily. I may look as though I am sitting on the fence here, but it is important to understand that in many terrorist investigations, terrorist funding is but one element of the equation. There might be many more investigative strands running concurrently to the financial investigation. As a matter of principle, we would far prefer that those disclosures were not made public because to do so might harm the wider investigation. I hope that answers your question.

Q314 Lord Hodgson of Astley Abbotts: I think you are telling us that, historically, terrorism and charities have been not too closely linked, but it has started to emerge in recent years. It is now growing, and you are concerned about the Syrian aspect, which is still emerging. It would be helpful if you could explain a bit more about one or two cases, obviously without giving details, so that we can understand how it actually works; and also whether you, with the Charity Commission, have begun to look systematically at charities. Some regulators have a traffic-light system. There are patterns in these things—I imagine you have patterns in your work too—whereby overseas trustees or non-domiciled trustees might be a flag. Are you working on those sorts of ways of being able to bring forward a systematic approach, rather than waiting for somebody to tip up and say, “I don’t much like what is going on in XYZ charity”?

Detective Chief Superintendent Nicholson: It happens across the full spectrum of those activities. There are numerous ways that activities are flagged to us. We identify some ourselves. The Charity Commission identify some themselves, and partner agencies also support us in our endeavours, particularly with the overseas elements. We have our own counter-terrorism liaison network abroad, as do the NCA with the liaison officer network, who are able to support us in that. The flow of information is from many different sources.

Q315 Lord Hodgson of Astley Abbotts: But you are not doing anything systematic with the Charity Commission saying, “We see half a dozen issues that tend to indicate, though we are not certain of it, problems which you might be able to use as a sort of sieve.”

Detective Chief Superintendent Nicholson: The Charity Commission certainly have indicators that they use. We have some. Some of them cross over and some of them are exclusive, but that is what the collaboration is about. It is about sharing intelligence at the earliest possible opportunity, regardless of who gathered the intelligence in the first place. That is the sieve, if you like.

Q316 Chairman: Do the others have anything to contribute to this discussion?

Donald Toon: From our perspective we have only a very narrow role in relation to any issue surrounding terrorism. That role is in relation to the operation of the UK Financial Intelligence Unit and the handling of suspicious activity reports that may suggest, or may have a link to, activity under the Terrorism Act, or activity under the Proceeds of Crime Act which might be linked to terrorism. That is where the NCA’s remit in that space stops. Anything in that space we pass directly on to the CT network and to the terrorist financing intelligence there.

Detective Chief Superintendent Nicholson: We have staff embedded in that unit within the NCA.

Q317 Viscount Younger of Leckie: May I direct this question to you first, Mr Toon? The Committee has heard evidence that terrorism legislation has a particular impact on overseas aid charities working in war zones and other difficult environments. Is this view borne out by your particular experience? How should charities approach delivering vital

humanitarian assistance in areas where proscribed terrorist groups have some control or influence?

Donald Toon: As I said, from our perspective we have a very, very limited remit in relation to terrorism. I do not feel that that is something we can appropriately comment on.

Detective Chief Superintendent Nicholson: The potential for humanitarian aid efforts to be abused is considerable, particularly abroad. The Syria crisis, for example, is just one element where we have had an unprecedented response from the public in terms of the giving of charity. Many charities carry out absolutely essential work to deliver that assistance. It is really difficult to operate in some of these environments, and we absolutely recognise the challenges that overseas operation presents to the charities themselves and to Government Departments who have a part to play as well. The risks can be very high and charities often face very significant challenges in delivering aid and assistance safely in those places. We are extremely aware of the challenges. That said, there are responsibilities on the part of the charities and/or Government Departments to report and engage with us where they suspect diversion of funds, for example, into terrorist organisations abroad.

Detective Superintendent O'Doherty: I have nothing to add on that question.

Q318 Mr Jenkin: Obviously the legal counter-terrorism environment gets more and more complicated. The Charity Commission issues a certain amount of guidance on terrorism legislation. How good is it?

Detective Chief Superintendent Nicholson: The Charity Commission has produced guidance in response to requests from the sector. We think that the Charity Commission is best placed to deliver what frequently needs to be bespoke advice in a particular charitable sector. I know that they work closely with us on the guidance that they produce; also with OSCT, the Treasury and other agencies, as well as the charity sector umbrella bodies. If it was left to other agencies to do that for them, I would be slightly concerned that there were gaps, and it would not necessarily be tailored specifically to help the trustees of those charities. We think that the Charity Commission is already very proactive in giving advice in this area. It has also supported policing efforts in recent months. In the national CT awareness campaign, which was only a matter of weeks ago, there was a day devoted to terrorist financing where charities played a big part in that equation. In the Syria campaign in April of this year, they also played an enormous part. They proactively take opportunities to get that message out there by advice.

Q319 Mr Jenkin: You do not think you should be offering your own guidance to charities.

Detective Chief Superintendent Nicholson: No. I am certainly not going to speak for the NCA, but the NCA will do alerts as well as this. It is approached from both angles, if you like. The police have a part to play, but specific advice to trustees should come from the Charity Commission.

Donald Toon: That is absolutely right. The issue is the distinction between the terrorism position and the wider position on suspicious financial activity. In that overall wider space there is absolutely an issue for the NCA, in co-operation with the regulated sectors, to ensure that there are effective and clear alerts, as well targeted as possible, going out to anyone who may be in a position to identify or report on suspicious financial activity. At the moment we are working very closely with the British Bankers' Association on ensuring that the right material goes out to the full range of banks in the UK on specific areas of problem criminality. We have just put out an alert in relation to modern slavery around indicators for banks on financial activity in that space. The terrorism space is not one that we would

generally go into as an agency, specifically. We are not best placed; we do not have the remit in that space.

Detective Superintendent O'Doherty: Generically, debriefing is very important. Certainly for large scale fraud investigations, and it could apply for terrorist cases, we debrief investigations both from an intelligence perspective and an actual delivery perspective. What the police service is beginning to do, and should certainly do more proactively, is share that debriefing back to the Commission, so that going forward they learn how they can enhance and facilitate the policing response to the packages or cases that they are developing. That is the first point.

The second point is that within my own department we have a debrief in cell. We go round the country, we find prisoners in custody and we go and speak to them; we call it downloading the criminal mind. We package it as tactical intelligence and we share it across sectors. I am told by partners that it is the best product they have ever seen from us. That is because it tells them on the ground how the offenders are doing it. That is fed back to the victim, in this case an industry or a sub-sector, and we help them target harder themselves to improve processes. That business model could certainly apply for terrorist activities and cases.

To answer the question, there is a massive need for collaboration and a return in that relationship from policing. The reason why we are here today to discuss a new Bill is to protect public confidence in charities, so it would send a very positive message if the public knew that the police were being proactive in engaging with the Commission and the Government. The police, quite honestly, have a reputation from old of working in a silo. It is important to break that down and work more proactively. There are different tools and techniques available to do that, as aforementioned.

Q320 Mr Jenkin: Do you actually mark the Charity Commission's work in terms of the guidance they are producing, in order to make sure that their guidance is up to date and reflects the relevant intelligence? How do you do that?

Detective Chief Superintendent Nicholson: I am not sure I would go as far as using the word "mark". I would certainly say that we absolutely engage on that advice and are frequently part of the creation of it. For example, going back to your point about the difficulty of dealing with sensitive issues and it frustrating the investigation, frequently we want messaging to go out relating to a current investigation, and it will be channelled through the Charity Commission and out to the public. We are not at all precious about how the message gets out there. We also debrief terrorists about terrorist funding methods. That information is also shared. It might not be badged as coming from a terrorist investigation, for obvious reasons, but the message will go out through colleagues at the NCA, the City of London or through the wider policing community.

Q321 Chairman: Could you be a bit more specific about the kinds of abuse you are contemplating, in the terrorist context, to give a little more context to your evidence? We really need more detail if we are going to go back to the Charity Commission and challenge them on lack of guidance and other defects there may be in the way they are handling it. Can you give more examples of the kinds of abuse?

Detective Chief Superintendent Nicholson: I go back to the recent conviction. That was a case of diversion of funds. We see many different methods. One of them would be diversion of funds, for example, by trustees. That was straightforward theft of charitable funds. That is one example. We have seen another case, which is a very current case as well, of charity collection tins. A licence is issued for a collection on a particular day, which then continues for the whole week. It is authorised for one day and then there is a continuance, and

what happens on days two to five does not go into the charity's coffers at all. There are various ways of exploiting the charities. Those are just two of them.

Q322 Chairman: This may be a question for Mr Toon. We have had some evidence about the effect of de-banking—closing off bank accounts—and the problem about tracing what is going on if that happens. Is this something that comes to your attention? Can you explain a bit more how it would affect your agency?

Donald Toon: Specifically the issue around de-banking and de-risking?

Q323 Chairman: Yes. Closing down access to bank accounts is really the point I am talking about.

Donald Toon: Yes, absolutely. That is an issue that comes to our attention. It is something we are working on with colleagues both across the police and Government and in the financial sector. One of the core issues is that broadly the banking sector is absolutely clearly, and quite rightly, under tight regulation and control. They face significant problems if they are found to have given banking facilities to something that proves to be problematic, whether in relation to money laundering or terrorist financing. They are therefore absolutely making commercial decisions. The risk for them outweighs the potential commercial advantage of providing a banking service.

One of the best charity examples of this was around the banking services for money service bureaux, because there has been quite a significant de-banking in that space. What we are trying to do is ensure that any decision on de-banking is made on the basis of a better understanding of the specific risk. The banks would say to us at the moment, “You do not give us enough of a steer about where the risk lies, so is this about anyone transmitting money to Somalia”—which was a problem some months ago—“or is this about specific companies and specific types of transaction?” We are working to improve that understanding process at the moment to make sure that those decisions are better targeted.

Equally, it is worth noting that de-risking is not necessarily a bad thing. It removes problem operators, certainly from the financial system, but it does not necessarily cause an ongoing problem. The money service bureaux are again an example. We now have a situation with large scale de-banking where some banks are starting to move back into that market. They are providing banking facilities but they are doing so on a very clear “know your customer”—a very detailed assessment of the risks and the transactions that those MSBs are doing. That is effectively removing risk from the system.

Q324 Chairman: Can we take it that there is a process of dialogue between you and the banks?

Donald Toon: There is absolutely a process of ongoing dialogue.

Q325 Chairman: But if it is not working and de-banking occurs, is there a risk of driving the activities underground and below scrutiny?

Donald Toon: Yes, there is that risk, and that is exactly what we are trying to deal with. It is twofold. What we do not want is to drive legitimate people into illicit financial movements. That is absolutely not the position we want to be in. Equally, it is important to be in the best possible position to get an effective intelligence picture of the problem, and you do not necessarily get that if there is wholesale de-banking in a particular sector. We are absolutely in dialogue. I chair a working group with the banks on exactly this issue, and it is all about providing more information and better targeted information to the banks, but it is ultimately a commercial decision for them.

Q326 Lord Hodgson of Astley Abbotts: To go back to the case you gave, which was about fundraising, as I understand it, of course that is nothing to do with the Charity Commission. Fundraising is self-regulatory. The Charity Commission have no powers as regards fundraising. The Government have chosen not to implement the powers of the Act to give the Charity Commission powers to regulate it. Do you talk to the Fundraising Standards Board, who are actually responsible for the issue of fundraising?

Secondly, I get the feeling that here is the poor old Charity Commission up in front, in lights, with you guys behind with a bit of string pulling and marking the work to make sure. Would it be better if we said, “Look, if you want to do work as a charity in an area where terrorists are prevalent, like Syria, the Charity Commission as the sole regulator cannot handle this, so you guys should do it”?

Detective Chief Superintendent Nicholson: My question back would be, “Are we best placed to do that as enforcers?” I would say not. I think the Charity Commission are best placed to deal with it, provided of course that they are sighted on the totality of the intelligence picture surrounding them so that they can do their job properly. I agree with you that if they are not provided with the necessary information they cannot discharge their responsibilities properly as a regulator.

Q327 Lord Hodgson of Astley Abbotts: But you provide the information, don’t you?

Detective Chief Superintendent Nicholson: We provide some of the information, but I did say earlier that in fact some of the identification of these cases comes from the Charity Commission themselves. It does not all come from policing.

Q328 Lord Hodgson of Astley Abbotts: I was not saying that they do not have any role in it. Clearly they have, as the regulator of the charity. In respect of the particular area of their activity that we are struggling with, how do we find a way to let reasonable work go forward and have a situation where unreasonable work is stopped? The Charity Commission is ill-equipped to do that compared with you. You have all these resources, knowledge and patterns of behaviour, which they cannot possibly have sitting in Taunton.

Detective Chief Superintendent Nicholson: Which is why it should be a collaborative effort. I do not think one single agency could do it, certainly where there is an overseas dimension.

Q329 Mr Jenkin: There is a real accountability question here. We are going to come to another example later on this afternoon where the Charity Commission has been held responsible for enforcing the law. It is not really there to enforce the law in respect of anything except charities. Yet it obviously has a role in counter-terrorism. If it finishes up allowing a terrorist organisation to have charitable status, whose fault is that? If they wilfully did it knowing that it was a terrorist organisation, obviously it would be their fault. But if they do not know, whose fault is that? It is far more likely to be an intelligence failure or a policing failure than a failure of the Charity Commission. The responsibility really rests with the intelligence agencies and the police and law enforcement agencies, not with the Charity Commission. I think that is the point that my colleague is making. Do you agree with that?

Detective Chief Superintendent Nicholson: I genuinely think it is a collective responsibility. If you take the overseas dimension to the conversation, yes, we have representatives overseas but it is not an area that we are policing. They are policed by whichever jurisdiction they are operating in, and sometimes that is outwith our control in the UK.

Q330 Mr Jenkin: But the whole strategy is run from the Home Office, for example.
Detective Chief Superintendent Nicholson: Yes.

Q331 Mr Jenkin: They are but one little agent in the counter-terrorism strategy. They cannot be held accountable for failing to spot something. They are a civilian organisation that is really meant to be supporting and helping charities, and helping people be charitable. This is an add-on which they have to do because of the information they collect, but basically they are collecting that information from people like you who tell them what to do.

Detective Chief Superintendent Nicholson: I am not sure it is as dictatorial as that, but I get your point entirely. Frequently it is not clear-cut—whose responsibility is what—but what we can positively say, and it comes back to the training point—

Q332 Mr Jenkin: Your anti-terrorism budget has been increased. True, their anti-terrorism budget has been increased but the rest of their budget has been cut.

Detective Chief Superintendent Nicholson: I cannot comment on the Charity Commission's budget.

Q333 Mr Jenkin: They have very limited capability.

Detective Chief Superintendent Nicholson: I would agree with you.

Chairman: Perhaps we could move on, because we have quite a lot of ground still to cover.

Q334 Viscount Younger of Leckie: Are we getting to the nub of it? To what extent do you think there is a process issue, a sort of vagueness? If one takes money laundering, which is one of the most serious issues, to what extent is the Charity Commission capable of nailing down money laundering issues? I do not know the extent of the issue. It takes account of money coming in and money going out of the country—money being diverted. I am looking at process in particular.

Donald Toon: If you take the money laundering space, the Charity Commission is one actor. They may be in a position to identify a level of suspicion and then to report that to the UK Financial Intelligence Unit. In the money laundering space that is really what we are asking them to do. I am being very specific to money laundering. We are not asking them to deal with the problem of money laundering through charities. We are asking them to do precisely what their responsibility is in terms of the effective and trustable governance of charities and if, in doing so, they identify a concern or a suspicion, to report it. There is a much broader set of organisations with a responsibility to take forward an issue around money laundering, to identify the scale, the type of problem, whether it is a real issue or not and then respond to it.

Q335 Mr Hurd: May I turn the conversation to financial crime and the opportunity to take more robust action against tax evasion or other fraudulent activity? In terms of the new powers being proposed, would you designate them as must haves or nice to haves? Could you make this live a bit for us by giving us some examples of how they might have made a difference in any cases or activity that you have been aware of in the past?

Detective Superintendent O'Doherty: My answer to your first question is absolutely must haves. What is difficult in this space is that if you take sexual offences or violent crimes there seem to be no grey lines. A lot of people who work as trustees, particularly for charities, do it voluntarily and they have full-time jobs. In many cases in the police, our level is always "reasonable grounds to suspect" before we investigate, and we look for dishonesty. In a lot of

the cases we get in Action Fraud, people are persistently managing a charity poorly and it has been perceived that there is a potential crime. That is one issue.

A second issue is that you have more serious stuff reported which is lower in volume but higher in impact. To come back to your question, I think it is absolutely a must for a number of reasons. Perhaps I could give you a case study from my own department. It was in the annual fraud indicator 2013, which reported a £147 million loss to the charity sector. The case study is just a real flavour of the average case we get in our system. An individual with a fake ID was employed in a position of power in a charity, working in the accounts section as financial director. He stole £34,796 over six months. He used the charity debit card to top up his personal credit card and then used that for money laundering to buy personal gym membership, other online memberships and drugs.

Perhaps you could keep that case study in the back of your minds as we go through what could have happened differently in that case and similar cases. Going through the extra powers the Commission will get, the first one for me is around the automatic disqualification tool. Had that person been a trustee, for example, and convicted of a money laundering offence before, that crime would not have happened. The person would have been excluded from being part of the charity as a trustee, although the person in that case was not a trustee, but it was a like offence.

The second issue is the extra power around suspension. The case you have just heard sounds like a fairly low level of what police could experience, but the investigation of that case could take quite a long time, especially if he was using a fake ID. You have to find the drugs and where the money is being laundered. In that case the investigation could take 12 to 24 months. To hold a suspension for one year to a maximum of two years until the criminal trial is completed gives an extra power there.

As I said before, we are giving many investigations to police forces around the country to investigate. Where there is a blurred line between serious abuse in a charity and mismanagement, it puts forces off. In actual fact, had the Commission been able to give a warning to that person in the first instance, or had the power to do so at an earlier interaction or intervention, it would have prevented the reporting and handling of cases where those lines are blurred. That is an extra power for me as well.

The current sanctions, which are based predominantly on criminal law, are quite limited in value. The ability to have more power over directions and disqualifications and the ability to intervene earlier provides a much better response to prevention and disruption before cases come to us and we are then overwhelmed with high volumes. It is then very hard to filter out which cases are higher volume/low impact and which are lower volume/high impact. That is the reason why I support that provision.

Q336 Mr Hurd: Do you have anything to add?

Donald Toon: I absolutely echo the point that we think these are must haves. They significantly increase the teeth that the Charity Commission have to be effective in their role. Certainly, the issue of dealing with someone who steps down whilst under investigation and never getting to the point of disqualification is a fundamental flaw. That absolutely needs to be dealt with. Other than that, there is nothing that I would add to Pete's position.

There is an interesting question around the offences, where we are talking about automatic and discretionary powers of disqualification, and which offences should be taken into account, but only to the extent that we support the offences in the list. There is also potentially whether we should be looking to add things like the offences under the 2007 Money Laundering Regulations; in those circumstances you are dealing with people who, if convicted, will have presided over a situation of failing to put in place and operate effective

systems and controls. That would surely go directly to their position acting as a trustee in a charity.

If we went to the discretionary space, it could be people who failed the fit and proper test—for example, the fit and proper test in relation to running a money service bureau. That surely is a factor that could be effectively taken into account in a discretionary decision on disqualification. Other than that, we think that the powers in the Bill and the list of offences are absolutely right.

Detective Chief Superintendent Nicholson: Schedule 2 of the Proceeds of Crime Act lists a number of offences. It is our very clear view that anyone who has unspent convictions in any of those criminal lifestyle offences should be automatically disqualified from holding the position of charity trustee unless there is a waiver from disqualification. The POCA offences apply too.

Detective Superintendent O'Doherty: I have one point. We have seen cases whereby someone, as a trustee, has been looked at by the Commission for being a fraudster, but of course they have resigned before that happened and then reappeared four or five times. We have seen cases in our system where, as soon as we saw them in case number one, that could have been eliminated.

My second point is that I am proud to be British for a number of reasons, but I am proud to be British because our judicial system has always been underpinned by proportionality. We have a function in NFIB. We take down websites every day in my department, but we don't just take down websites. We write letters to offenders and give them a chance to legitimise their business. This is no different. As a uniformed copper on the street I couldn't just nick someone for a section 5 public order offence. I had to give a verbal warning first. I had to try and help them see the error of their ways. There is no real difference. In actual fact, at the moment, the response from policing and the Commission is not proportionate for a clear reason; we do not have the tools and techniques available. This framework provides a far more progressive and proportionate approach to interact with people at an early stage, to prevent and disrupt crime, and then engage with law enforcement for the more serious abuse offences. It provides a prioritised model, and I think that is intrinsic to maintaining and increasing public confidence.

Q337 Mark Menzies: We have started to touch on a number of the issues that I was going to cover in my question. The draft Bill adds to the criteria for automatic disqualification from being a charity trustee. In your view, is the list of offences proportionate and appropriate? Should any offences be added or removed from the list?

Detective Chief Superintendent Nicholson: I mentioned the POCA list of schedule 2 offences. We think it is an absolute given that they should be part and parcel of it, in addition.

Donald Toon: As I said, the only other ones we would add would be the offences under the Money Laundering Regulations.

Detective Superintendent O'Doherty: I would support that. There has also been a debate around sexual offences. I know it does not necessarily mean that if you work for a charity around child care you are immediately exposed to children, but at the same time if you look at the exception charities, which are specifically around interaction with children such as Beavers, Scouts and Girl Guides, one would have to look at the level and likelihood of interaction of a trustee, for example, with those children. Again, the question would be very difficult to apply because it would be on a case-by-case basis. That would be my only other thought—unspent convictions for child sexual crimes. But there is very good regulation in place, especially through the police, for how that is managed. Going back to Mr Jenkin's point about collaboration between the police and the Commission, if that improves, we should be engaged in all these different factors and topics anyway.

Q338 Chairman: Can you help us on a point about cautions? As you know, in clause 9 one of the factors that can be taken into account for disqualification is the existence of a caution. What happens about keeping records of cautions on police files? Do they remain there for ever, or is there some screening mechanism for taking them out after a period of time or if proceedings are not taken?

Detective Superintendent O'Doherty: I believe it is five years. Once you receive a caution it is expunged from your record after five years, as opposed to a court prosecution, which is on your record for life.

Q339 Chairman: There could be a period of five years when, if no action is taken following the caution, it is on the record, and if people ask for a search of police records it will throw up the caution. Is that right?

Detective Superintendent O'Doherty: Yes.

Q340 Chairman: Do the other two have any comment on this? It is a matter of police practice really, isn't it?

Donald Toon: I have nothing to add.

Detective Chief Superintendent Nicholson: No.

Q341 Lord Watson of Invergowrie: Some of the points I was going to make have been covered. I wanted to focus on clause 8 in terms of the list of offences. Ms Nicholson, you reinforced the statement you made in your written evidence about the POCA list of activities, which are much broader than terrorism. My first question is to all three of you. Next week the Government are going to produce their national anti-corruption action plan, part of which is to ensure that your three organisations work ever closer. In the way clause 8 is drafted at the moment, does it feel to each of you individually—perhaps collectively after next week—that it could be added to with any other lists of offences?

Detective Superintendent O'Doherty: Bribery is on the list for the new range of offences. I apologise, but I did not quite understand the question.

Q342 Lord Watson of Invergowrie: The Proceeds of Crime Act that Ms Nicholson listed in her statement contains things like drug trafficking, money laundering, directing terrorism, people trafficking and so on, right down to pimps and brothels and blackmail. Perhaps the second last one is not particularly appropriate, although it may be in some circumstances. I wondered what other additions might usefully be made to the categories listed under clause 8 as it stands.

Donald Toon: From my perspective, in relation to the Proceeds of Crime Act schedule 2 offences, we absolutely see the position there. The money laundering points, the regulation offences and the fit and proper test for the discretionary point are fine. Around the corruption space, the key issue is ensuring that the offences under the Bribery Act 2010 are covered, and they are in the current list. In that space, we have a very strong list of offences which essentially meet that test of dishonesty.

Q343 Lord Watson of Invergowrie: Automatic disqualification?

Donald Toon: Subject to the POCA schedule 2 and the Money Laundering Regulations 2007 offences, I think the automatic list is absolutely fine. That does not mean that the situation would not change in the future, but in terms of the position as I understand it, as I see it today, that seems a solid and effective proposal.

Q344 Lord Watson of Invergowrie: You would wish the Bill to be strengthened.

Donald Toon: Slightly, yes.

Detective Chief Superintendent Nicholson: Yes. I think there is a public expectation that people who have convictions in any of these areas could automatically be disqualified.

Q345 Lord Watson of Invergowrie: In your evidence, Ms Nicholson, you enthusiastically back the idea that the broad definitions contained should be supported.

Detective Chief Superintendent Nicholson: Yes.

Q346 Lord Watson of Invergowrie: Would either Mr Toon or Mr O'Doherty like to comment on that and whether or not, if those broad conditions are retained, that should also lead to automatic disqualification?

Detective Chief Superintendent Nicholson: Can I highlight one point while they are thinking? I mentioned loopholes right at the beginning. Certainly we feel that the broader definition will prevent exploitation of any loopholes. Let's face it, criminals and terrorists are quite resourceful individuals and they will probably spot loopholes, frequently before we do. Anything that closes those loopholes must be a good thing.

Detective Superintendent O'Doherty: I agree with the broader definitions. At the same time, they should not be so broad that we miss out what we are looking for. For example, if we look at computer misuse offences—people who access mobile phones or desktop computers illegitimately to launder money—of course now it is not so simple; you cannot just go on to your online bank account with a fake credit card and launder money. They are using Bitcoin and cashless currencies. That is really difficult. You have your predicate offence, with the money laundering offence being computer misuse offences. You could look at computer misuse offences, but ultimately what you are looking for is money laundering. My point is that it is not very clear. We want to keep it broad, but at the same time know what we are looking for. As Donald said, for me, the schedule 2 offences absolutely hit the nail on the head.

Detective Chief Superintendent Nicholson: It would also allow the Commission themselves to make an assessment of the fit and proper test of the individual, the trustee, to hold that position because there is a broad range of factors that might warrant disqualification. It is not just one or the other. There might be a whole collection of different issues.

Q347 Chairman: Could I finally ask you for comments on two proposals which do not feature in the Bill as drafted? One was proposal 13, which would have allowed the Commission to restrict or prevent certain actions from being taken—for example, speaking at events and so on. We can take that first of all. Do you think that power would be useful? I think perhaps it is for you, Ms Nicholson, to comment on that. Do you think it would be a helpful part of their armoury?

Detective Chief Superintendent Nicholson: Yes, we certainly do. We think that inclusion in the Bill would be particularly important in the terrorist context. It is probably slightly simplistic to see charity abuse as simply about transactions and misuse of money. The influence that some of these trustees have in different forums, whether as speakers or otherwise, is significant too. It is not just about money and transactional activity. Are we going to come on to safeguards?

Q348 Chairman: Yes. It has been pointed out to us that this power, if there, could be abused, and there does not seem to be any check on it.

Detective Chief Superintendent Nicholson: Yes. We have been consulted on the possible safeguards, as you know. I mentioned the right of appeal for those affected by the

provisions. There must be a right of appeal. It should also be incumbent on the Commission to regularly review decisions, in much the same way as policing does in a disclosure context. There can be changes of circumstances which must be taken into account and which might be visible to the Charity Commission in the ordinary course of its business. It is twofold.

Q349 Chairman: The other one is possibly for you, Mr Toon. Proposal 14 would enable the Commission to direct a bank to notify the Commission of certain movements on a bank account. I do not know how that fits in with what you were telling us earlier about the process of dialogue that goes on anyway. Do you think it would be helpful if it had this additional power?

Donald Toon: I find it difficult to see the value of that power given the Commission's specific remit. I wonder if, at that point, you would be close to placing the Commission in a financial investigative role, which is not something that they are trained to do. It does not sit comfortably within their remit. It is a position that from a law enforcement perspective would absolutely sit around the financial intelligence and financial investigation space.

There are other things that could be done. There is a referral potentially to law enforcement. There is a role for law enforcement in that space, if there is a concern or a suspicion, to get to that point. Equally, I can see a different route to support the Commission in that space. If the Charity Commission were to move into a space where they could be listed as an organisation with a financial investigation role, there is a standard structure for access to financial investigation powers under regulation and accreditation of the Proceeds of Crime centre. There is a standard process then for accessing account monitoring orders. I am not sure that I really see a situation where that proposal would directly address a current live need.

Detective Chief Superintendent Nicholson: I have a slightly alternative perspective on that. The funds that charities have in their coffers are public funds. It is public money. I understand the concerns about accessing individuals' bank accounts, but charities are looking after public money. In my view the regulator should have visibility and be able to access that, and be notified by the banks when there are suspicious activities. In their regulatory function, I think they ought to be able to see that. I would support the proposal on that basis.

Q350 Chairman: Again, we come back to the question of safeguards.

Detective Chief Superintendent Nicholson: Absolutely. Safeguards are always a challenge. We would have to come up with some sort of oversight mechanism, in the same way as going to a judge for the orders and so on. I am sure that that is something we could come back to you on.

Donald Toon: I emphasise the fact that I am looking at this very much from a money laundering and financial crime perspective rather than anything linked to terrorism.

Chairman: Thank you all very much indeed. You have been extremely helpful. We wish you a good afternoon, and thank you for your evidence.

Examination of Witnesses

Witnesses: **Andrew Edwards**, Deputy Director and Head of Charities, HM Revenue and Customs, and **David Kirk**, Chairman, Fraud Advisory Panel, examined.

Q351 Chairman: Good afternoon to you both. Before we begin to ask you some questions I need to point out two things to you. First of all, the proceedings are being webcast. Secondly, there will be a transcript prepared of your evidence, which in due course will be

circulated. I invite you to study the transcript and let us know if there are any inaccuracies so that they can be corrected.

Can I put a general question to both of you? It addresses the issue of the Commission's evidence. To a large extent they are dealing with what they describe as simply "honest mistakes" or "poor management" rather than deliberate abuse. From your perspective, does that fit in with your understanding of the position? If there is an element of abuse which you detect, can you give us some idea of its scale? I will start with you, Mr Edwards, and come to Mr Kirk after that.

Andrew Edwards: We would definitely agree with that in terms of the number of charities we look at. In the majority of charities that we see it is down to error and mistake. Obviously in terms of monetary value, when you get into tax avoidance, tax evasion and tax fraud, the amounts can be quite large. The amounts of tax involved might be more, but in terms of the number of charities we look at, help and assist in various ways, it is normally down to an error, a mistake or a misunderstanding.

Q352 Chairman: Can you give any guidance about the number of charities that you would see in a calendar year that would cross the border from simply mismanagement into abuse?

Andrew Edwards: In a typical year we would undertake approximately 4,000 to 5,000 inquiries, which would encompass everything from correcting simple errors right through to a criminal investigation. Of those 4,000, the serious tax avoidance, evasion and frauds would probably be in the low 10s.

David Kirk: The Fraud Advisory Panel, of course, does not have anybody reporting offences to it, unlike your previous three witnesses and Mr Edwards, so it is difficult to answer that question with any certainty, but from my previous experience in other walks of life I would say that what you said is absolutely right. There will be many more minor infractions, such as failures to put in returns and minor accounting problems, than deliberate fraud. Obviously the Fraud Advisory Panel is particularly concerned about the element of deliberate fraud, the capacity for fraudsters to get into charities and commit those frauds, and ways of preventing that from happening.

Q353 Chairman: But the monetary value might be quite high. I suppose it all depends on the individual case, but do I gather from an earlier remark of Mr Edwards that you could have a very large amount of tax at risk because of what is going on in one individual case?

Andrew Edwards: Yes. Obviously, as you are aware, I cannot comment on individual cases but there have been individual cases reported in the press where £40 million or £50 million was at risk. You can have individual cases with a lot of money involved. When people make errors and mistakes, they do not tend to be of that magnitude, for obvious reasons, normally we are talking about tens of thousands. There can definitely be large amounts of money involved in the handful of cases that I mentioned.

Q354 Baroness Warwick of Undercliffe: This is really a question for Mr Edwards again. In which ways do you currently work with the Charity Commission to share data on possible aggressive tax avoidance activities in the charity sector? Could that level of data sharing be increased?

Andrew Edwards: First of all, just to be clear, we do not talk about aggressive tax avoidance; we just talk about tax avoidance and tax planning. As far as we are concerned—

Q355 Baroness Warwick of Undercliffe: It is all aggressive.

Andrew Edwards: Tax avoidance is using tax rules in a way Parliament never intended. Tax planning is using rules in the way that Parliament did intend. We do not categorise it as “aggressive” when I talk about tax avoidance, just to put it into context, that is what I mean.

We have excellent working relationships with the Charity Commission and we share a lot of data and details with them. Equally, they share a lot with us. They have access to our specialists for advice, and they give us advice on cases as well. The amount of data we share has increased, largely due to the fact that following some legal advice we have taken a different view on how much and how often we can share things. There has been a significant increase in the amount of data sharing. To be fair, you can always do more, but within the confines of the staff and the resources we have there has been a significant increase. We think we are working together particularly well at the moment.

Q356 Baroness Warwick of Undercliffe: That was the NAO report, wasn’t it? What was the situation before you took the legal advice? Did you share nothing with the Charity Commission?

Andrew Edwards: No. In 2010, we introduced a new definition of a charity for tax purposes. That included a fit and proper person test which applied to the individuals running the charity. Before that we only really ever shared with the Charity Commission details of charities. Following the introduction of that test, we were not 100% clear if we could now start to share details of individuals running charities about whom we had concerns. We took advice from our lawyers and they confirmed that we could. As a result we now share details about individuals we may not consider to be fit and proper. That was the big change. Before that, we still shared information but it tended just to be about individual charities.

Q357 Baroness Warwick of Undercliffe: Can you tell me if there are any consequences of that? What has developed as a result of that substantial increase in collaboration or sharing of data?

Andrew Edwards: I would like to think that we have helped each other out. We have certainly been prosecuting more cases in recent years than we did in the past, and the Charity Commission have been helping us with that. In fact, we have a couple of cases coming up where they are actually appearing as witnesses. In 2010 we changed the way we were approaching the area because we became aware that there was a lot more fraudulent activity, particularly in respect of gift aid, than we had previously been aware of. Part of the reason for bringing in the change of the law in 2010 was to enable us to deal with that more effectively. From 2010 onwards we have been dealing with more fraud, and the Charity Commission have been helping us and assisting with that.

Q358 Lord Hodgson of Astley Abbotts: Are you genuinely saying that it is now an equal flow of information both ways? When I did my report it was perfectly clear that it was flowing one way but not the other, because every time the Charity Commission asked something they were told that data protection prevented you from giving information.

Andrew Edwards: Yes. Since we got that advice we are certainly able to provide more. Whether the amounts involved are exactly equal to each other, I could not say, but there is an awful lot more that we are able to share with them now than we did before. That was largely as a result of the change in 2010-11. You are right; when you did your report it was different.

Q359 Mr Jenkin: HMRC is the agency primarily responsible for policing our tax system.

Andrew Edwards: Yes.

Q360 Mr Jenkin: Presumably you have powers to obtain information about companies or individuals who you think are abusing the tax system.

Andrew Edwards: Yes.

Q361 Mr Jenkin: You are primarily accountable for anybody that is abusing the tax system.

Andrew Edwards: Yes.

Q362 Mr Jenkin: Without trespassing on any of your particular cases—obviously the Cup Trust has been a very high-profile case—what lessons do you think you have learned about how to police the tax system as a result of the Cup Trust case?

Andrew Edwards: I cannot speak specifically about the Cup Trust case.

Q363 Mr Jenkin: I understand that, but I am asking what lessons you might have learned from cases such as that.

Andrew Edwards: There were a number of cases involving tax avoidance that you might think looked very similar to the case you mentioned. In the past, there was a general feeling that charity tax reliefs were held in high esteem by the public, and perhaps this was an area where fraudsters would not necessarily tread. It has become very clear in recent years that tax fraudsters and tax avoidance specialists do not really care what the relief is. If they see an opportunity to sell an avoidance scheme, that is what they will do. There has been a lot more activity using charity tax reliefs than there was in the past. In terms of learning, we have learned that the tax avoidance industry is not afraid to use any tax relief if it thinks it can make an avoidance scheme out of it. There are lessons to be learned from particular cases in terms of working closer together and sharing information quicker and better. I would like to think that as a result we are doing that now.

Q364 Mr Jenkin: It became very clear to the Public Administration Select Committee, which I chair, in relation to this particular case, that the Charity Commission does not begin to have the resources available to you in order to police the taxation system; and that if you are okay with their taxation status that would seem to be an indication that they should be okay with the charitable status. Somehow it got the other way round and they got it in the neck for failing to police the tax system effectively. How did that happen?

Andrew Edwards: They did not get it in the neck from us. We are happy with the way that we work with them. I cannot comment on why others may have blamed them for particular cases. There were particularly difficult cases, and on those particularly difficult cases we worked well together, and, as far as we are concerned, we have achieved the right result. I cannot really comment further.

Q365 Mr Jenkin: Is there information that does not come from the Charity Commission that would be helpful for you to have, but you don't have?

Andrew Edwards: In respect of charities?

Q366 Mr Jenkin: On policing charities.

Andrew Edwards: We do not just get information from the Charity Commission.

Q367 Mr Jenkin: I know, but is there any information that you feel should be flowing from the Charity Commission about charities that you do not already have?

Andrew Edwards: As I said earlier, I think you can always do more. There can always be more flow, but certainly in terms of the way we work—

Q368 Mr Jenkin: Are there any legal impediments now between you and the Charity Commission for sharing that kind of information?

Andrew Edwards: No.

Q369 Mr Jenkin: Unfortunately you had the wrong legal advice before. You have now got the right legal advice, so we should see HMRC policing charities a bit more effectively than before.

Andrew Edwards: I do not think the two things are necessarily connected. We got the additional legal advice in respect of the fit and proper person test. With some of the tax avoidance schemes that we see, the fit and proper person test is not in point. It is more about whether there is a gift or whether the relief is being used in the way it was designed for. The two are not necessarily connected.

Q370 Mr Jenkin: But that is your job, isn't it, to find out if somebody is using a tax relief, and abusing the tax relief?

Andrew Edwards: Yes.

Q371 Mr Jenkin: If there is more information you want from the Charity Commission, you can ask for it.

Andrew Edwards: Yes.

Q372 Mr Jenkin: It is not fair to ask the Charity Commission to do your job for you, is it?

Andrew Edwards: I don't think we ever have.

Mr Jenkin: Good.

Q373 Chairman: Mr Kirk, I wonder whether you can contribute to this dialogue from your point of view. Do you have a view?

David Kirk: I do not think that the Fraud Advisory Panel would have anything to say about the arrangements between the various law enforcement agencies and the Charity Commission. All I would say is that there have recently been, to my knowledge, a number of moves to ensure that intelligence, information—call it what you will—gets shared. The NCA is at the front of that. You have intelligence hubs which make sure that the right information goes to the right places and gets acted upon. That is all I can say about it.

Q374 Chairman: You will understand that we have before us a draft Bill, and we have the opportunity to recommend further powers to be given to the Commission to improve the system. Is there anything that either of you would contribute by way of guidance as to what additional powers they would need to have in relation to the process of dialogue, to assist it, or is there enough there for you to have the information you need?

Andrew Edwards: From our perspective, we think the additional powers are good and they will fill in the gaps that we are aware of. There are some good linkages between, for example, our fit and proper person test and what the Charity Commission could and could not do in the future. There are some good tests around reputation and bringing the charity sector into disrepute. If you go back to some of the tax avoidance cases that have been mentioned before, they definitely brought the sector potentially into disrepute. We think that having

more power to act in those cases is very good. We do not see any holes in what is there, certainly from our perspective.

Q375 Viscount Younger of Leckie: I want to tackle the same theme from a slightly different angle. The Committee has heard evidence that in the past the Charity Commission has not made full use of its powers and that it has been rather more passive and reactive rather than proactive in tackling abuse in charities. To what extent do you think that is true? If it is the case, does the Charity Commission need new powers, or should it just make better use of its existing powers?

Andrew Edwards: I definitely think they need the new powers. The two I just mentioned were a prime example of where there had been a gap before. Others include the ability to close down a charity in certain circumstances. There are definitely gaps that have prevented them, in our view, from doing things in the past that we would have liked to see them do. In terms of the powers that they had at their disposal, we were happy with the way they applied them in the past. We think the new powers that, hopefully, they will be given will help to fill in those gaps in the future.

David Kirk: The Fraud Advisory Panel would agree with that. The problem with having more powers is that, inevitably, you are going to need more resource to exercise those powers, if you are going to be proactive and go out there. I have recently come from the financial regulator, and the financial regulator has changed its habits in the sense of going out and looking for trouble more than it used to. That is much more difficult. It is much more time-consuming and resource-intensive. If you are going to have more powers and if you are going to be proactive, you really have to expect to have a lot more resource.

Q376 Viscount Younger of Leckie: That is fine, but one needs to look at the actual powers that are needed first and then tackle the resources. Would you not agree?

David Kirk: Yes. Our view was that the new powers looked reasonable and sensible.

Q377 Lord Hodgson of Astley Abbotts: I want to continue the theme of collaboration. I was astonished to learn when I did my report that it was possible for you guys to give gift aid to a body that had not been registered with the Charity Commission. There were cases—not many, but some—where people could go straight through your hoops and not bother with the Charity Commission. Is that still possible? Are we going to develop the long awaited joint legislation process, because for you to have a fit and proper test and the Charity Commission to have another test seems to be asking for things to fall down between the cracks? If you say to me, as you have said now with legal advice, that you collaborate more closely, there is really no reason for the whole thing not to be pulled together into one admission process.

Andrew Edwards: It is still possible to register with us without having to register with the Charity Commission, for the simple reason that if your turnover is below £5,000 you are not required to register with the Charity Commission. The vast majority of new charities, when they start up, have an income below £5,000 a year, so they do not have to register with the Charity Commission. Although they can choose to, they do not have to. The majority of the new charities we see probably have not already been registered with the Charity Commission, because they are small.

In terms of your second question, there is a joint process on the way, by April 2016, which will basically be in the form of an online portal; charities will be able to put all their details in and then it will go to both the Charity Commission and us. For information, it will also be made available to the regulators in Scotland and Northern Ireland, so it will work there as well. That new system will both help weed out inappropriate charities and help us to

work together better. In cases where charities are registering with both of us at the same time, we will know about it at the same time and we will get the same information at the same time. We will be able to pass information backwards and forwards before we make a final decision.

Q378 Lord Hodgson of Astley Abbotts: It is very good news that we are having a joint process, with a date for the launch, but would you not think, taking you back to your first point, that, if you are benefiting from a tax break provided by the Great British public, you should automatically have to register with the Charity Commission?

Andrew Edwards: The law does not require you to at the moment. If you are asking does HMRC think the law should change so that you did—

Q379 Lord Hodgson of Astley Abbotts: I am just asking you for your view. If a tax break is available, isn't the taxpayer entitled to say, "We want to see your accounts on the Charity Commission website," as a minimum?

Andrew Edwards: Our view would be that it would certainly be helpful, but there are limitations. The Charity Commission have that limit to help them manage the number of cases that they have to register. You would have to ask them why they do not think that the £5,000 should be removed or lowered. In situations where cases have been approved by them, it makes it much simpler and quicker for us, because we do not have to check the "Are they a charity in charity law?" point, which we have to check in the cases they have not seen. Certainly for HMRC's purposes it would make life simpler.

Q380 Mr Jenkin: I think in the end we got a yes—that it would be a good idea. Having got this fit and proper person test, which you now set great store by, it seems odd that you are handing out tax relief to organisations that have not passed the fit and proper person test that the Charity Commission has to apply.

Andrew Edwards: But they have to pass our fit and proper person test. If we had concerns about an individual behind one of those small charities, we would talk to the Charity Commission and to other agencies about those concerns before we gave approval. We do not look at those small cases in isolation. The Charity Commission give us help on what is and is not a charity to apply to those cases. Certainly we would share details with them about our concerns. Although small charities do not have to register with the Charity Commission, the Charity Commission is still responsible for their regulation. There is still a duty that we are able to talk to them about.

Q381 Mr Jenkin: But wouldn't it be a better idea if HMRC cleared people for gift aid before they applied to the Charity Commission? Otherwise people are going through the Charity Commission to get the tax relief, which you might decide they are not fit for.

Andrew Edwards: The way the law works at the moment, in cases where they have to register with the Charity Commission, is that they have to do that first. What the joint registration process will allow is for both those things to happen at the same time.

Q382 Mr Jenkin: How many people does HMRC employ?

Andrew Edwards: The whole organisation?

Mr Jenkin: Yes.

Andrew Edwards: About 60,000².

Q383 Mr Jenkin: How many people does the Charity Commission employ?

² Mr Edwards subsequently confirmed that the true figure was around 70,000.

Andrew Edwards: I think about 300.

Q384 Chairman: Does the Charity Commission have to apply the fit and proper person test? Is that not a matter for you?

Andrew Edwards: That is our test, yes.

Chairman: I thought that must be the position.

Q385 Mr Hurd: My question is for Mr Kirk, and it is around clause 8 of the draft Bill and the criteria for automatic disqualification from being a charity trustee. In your view, is the list proportionate and appropriate? Would you like to see any additions? How would you answer some concerns that have been raised that they could have a disproportionate impact on charities that deal with the rehabilitation of offenders?

David Kirk: I had the advantage of listening to what was said in the last session. I would agree with the points made about the list of offences that should be relied on, in particular the money laundering point—I think it is money laundering regulation 45. I think that makes eminent good sense.

Where you get into drugs offences or sexual offences, on the one hand you have a reputational issue to deal with. What happens to the reputation of your charity if it becomes clear that someone in a senior management position as a trustee of the charity is convicted of that kind of offence? That is one problem. You might also have the child issues which were mentioned earlier. In general, the offences, which are mainly dishonesty type offences, are the right way to go. In relation to the question about rehabilitation of offenders, you run into the same kind of issues as you encounter in all walks of life when rehabilitation of offenders becomes relevant. Do you want to employ someone who has an offence in the background which is spent? Do you have to take that into account? In the particular world of charities—let us say you are a charity dealing with ex-offenders—it might well be a benefit to have input from people who are ex-offenders. Personally, I think you have to have a degree of discretion in this area, but, as soon as you have a degree of discretion, of course you have argument, whereas if you have prescriptive rules you have a clear path to go down. It is not an easy point, but I think, it being the charities sector, perhaps one ought to be a little bit more forgiving and have a bit more discretion about the nature of the offences that prescriptively prevent you from becoming a charity trustee.

Q386 Lord Watson of Invergowrie: I would like to ask both gentlemen the same question. I will direct it first to you, Mr Kirk. Proposal 14 of the consultation has not been put into the Bill in terms of the Charity Commission being able to require banks to report certain activity. I know from your response that it was something that the Fraud Advisory Panel wanted to see included. Could you say why that is, and would you still wish it to be the case?

David Kirk: I have had further discussions about that with colleagues, and I think we would not maintain that point very strongly. I have listened to argument about it. Part of the problem is that, if you have those sorts of intrusive powers, you are moving into a different level of policing. I was impressed by what was said by the previous witnesses about that. If you have got to a stage where you really want to intrude on the activities of a charity to the extent that you want to check up on the movements in their accounts, you are pretty much at the stage where you would want to be reporting it to the police or other appropriate authorities, who could then take action themselves. I do not think it is essential for the Charity Commission to have those powers, if I can put it like that.

Q387 Lord Watson of Invergowrie: Not essential, but would it be helpful?

David Kirk: In some circumstances it may be helpful, but I am not sure that it is necessary to include it in the Bill.

Q388 Lord Watson of Invergowrie: Just for clarification, you mentioned that you had heard the previous witnesses and put some store by what they said.

David Kirk: Yes.

Q389 Lord Watson of Invergowrie: Did that bring you to the position that you have just outlined, or has the Fraud Advisory Panel reconsidered its position since its submission?

David Kirk: I had further discussions with a couple of members of the Fraud Advisory Panel who have experience of this particular issue. That is where it has come from, not from the evidence of the previous witnesses, but when I heard that evidence I was inclined to agree with it.

Q390 Lord Watson of Invergowrie: Mr Edwards, would HMRC be in favour of proposal 14 being adopted?

Andrew Edwards: I agree with what Mr Kirk says. I do not have anything to add.

Q391 Mark Menzies: Again, this question is largely for the Fraud Advisory Panel, Mr Kirk. In your response to the Cabinet Office consultation on the draft Bill you largely supported proposal 5, which would have enabled the Charity Commission to prevent trustees from acting in another position of power in a charity. Do you maintain that this provision should be in the draft Bill? What position of power would you consider senior enough to fall within its scope?

David Kirk: We do maintain that. It is always difficult to define a senior position of power, but senior management is the term used in other spheres. What you want to avoid is someone effectively being a shadow director; not being a director or a trustee of the business but actually being the guiding hand behind it and pushing all its activities. That is what you want to avoid and you certainly should be able to prevent that person from being in that position if they are not appropriate.

Q392 Mark Menzies: What sort of safeguards may be necessary in cases where someone is effectively removed from their job?

David Kirk: Can I seek clarification? Is that safeguards for the person rather than the charity?

Q393 Mark Menzies: If someone has in effect lost their job or been removed from their post, what safeguards might be put in place to make sure that it was done in a fair and appropriate way?

David Kirk: There should be a right of appeal—in effect, a fit and proper hearing—to determine whether, first of all, that person is occupying a position in which they are exercising significant power within the charity. There are plenty of trustees who are not, effectively, exercising all that much power; they are there to advise and give their views. There should be a safeguard in having some kind of appeal process.

Q394 Mark Menzies: Are there any specific safeguards that you have in mind? You have mentioned the right of appeal and so on, but is there anything beyond that?

David Kirk: I don't have anything in mind, no.

Q395 Lord Hodgson of Astley Abbotts: If there is going to be a safeguard, how would you envisage it being built into the system and giving a reasonably quick response? In the sense that somebody is accused of fraud and the charity's assets are at risk, but he obviously denies it and goes to appeal, how would you see that happening in a way that did not leave him with his fingers in the pie, if I may use the vernacular?

David Kirk: I do not think it is different from any other employment situation. You would suspend that person pending the outcome of any inquiries that were being made and then take the appropriate action at the end of the day.

Q396 Chairman: Finally, I would like to come back, Mr Edwards, to the fit and proper person expression. As you know, in clause 9 one of the conditions that enables the Charity Commission to make a disqualification order is that a person has been found by HMRC not to be a fit and proper person for the purposes of being a manager of a body or trust. The question falls into two parts. First of all, can you give us some idea of the numbers of people over a year that you have to apply that test to, and find that they fail to satisfy the test?

Andrew Edwards: I can give you some numbers, but there has to be some caution around them. The numbers are not 100% accurate because of the way we record the figures. When the NAO looked at this in 2013, they reported that we had used the test 200 times since 2010. Since then it has been used in about 20 more cases. As I say, I would ask you to be a bit cautious about those figures, because for our purposes we don't record exactly how many individuals we have applied it to. We record how many charities we have applied it to, so we do not necessarily know how many individuals were associated with that charity.

Certainly, from what we have seen since it was introduced in 2010, the number of times we have needed to use it has diminished considerably. We think that is good, because part of the purpose of the test was to discourage the wrong sorts of people from seeking to set up charities and coming to us to try to claim tax reliefs. We consider the fact that the number we are identifying is going down is a success. Also, because the new online system we have introduced is able to carry out many more automated checks, we are able to have much wider coverage of the charities that we check up on, so we have much more confidence that we are identifying the ones where there is a problem.

Q397 Chairman: There are two possible categories. One is charities already registered and the other is people or bodies seeking to be registered.

Andrew Edwards: Yes.

Q398 Chairman: Do you have examples of both in the group that you mentioned?

Andrew Edwards: Yes. Obviously, in 2010, when the new test came into being, there were already a large number of charities on our database. We are systematically reviewing all of those and a significant number have been removed from the database. Sometimes when we contact them we do not hear anything back from them. That could either be because they are fraudsters or because everyone has gone away. That is part of the reason why I cannot give you an accurate answer. Sometimes you do not know. Typically, where they are fraudsters, as soon as you contact them, they disappear. Equally, if everyone has moved house or is no longer associated with the charity, they might not respond either. Sometimes it is difficult to tell, but certainly we are reviewing all the charities on our database and we have removed a considerable number over the years. In terms of new ones, we think the new test and the new computer system is a much better barrier.

Q399 Chairman: There is an adjudication process. How much use is made of that?

Andrew Edwards: I can be absolutely clear on that: none. We have never had a single person object to being refused reliefs. That is since 2010 when it was introduced.

Q400 Chairman: Those who disappear, of course, won't be seeking them.

Andrew Edwards: No, but the ones who have not disappeared have never taken up the offer.

Chairman: We will close the evidence by thanking you both very much for your attendance this afternoon. We are most grateful.