HOUSE OF COMMONS

Public Administration Select Committee

Oral evidence: The Work of the Charity Commission, HC 823

Tuesday 4 February 2014

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Written evidence from witnesses:

- Charity Commission

Watch the meeting

Members present: Mr Bernard Jenkin (Chair); Alun Cairns; Paul Flynn; Sheila Gilmore; Robert Halfon; David Heyes; Greg Mulholland; Lindsay Roy; Mr Andrew Turner.

Questions 1-96

Witness[es]: **William Shawcross**, Chair, Charity Commission, and **Sam Younger**, Chief Executive, Charity Commission, gave evidence.

Q1 Chair: Welcome to this annual scrutiny session of the work of the Charity Commission, somewhat delayed by various circumstances, but that allows us to catch up on a lot of issues that were not resolved, which have now reached a conclusion of one sort or another. Could I ask each of you to identify yourselves for the record, please?

William Shawcross: I am William Shawcross, the Chair of the Charity Commission.

Sam Younger: I am Sam Younger, Chief Executive of the Charity Commission.

Q2 Chair: As I always say, it is very helpful if you keep your answers crisp and short. I will pull you up, unfortunately, if they are getting a bit rambling, and the same goes for the questions that we ask. Our Twitter tag is #charitycommission if anybody wants to follow on Twitter. There has been very widespread discussion about the inability of the Charity Commission to regulate the sector effectively. For example, David Walker described the Charity Commission as a regulator that does not regulate. How fair do you think this criticism is?

William Shawcross: I do not think it is fair. We regulate effectively. The overwhelming majority of the 160,000 charities in this country are wonderful, law-abiding, small—as it happens—organisations. The majority have incomes of less than £20,000 a year. They do not need much regulation. There are only a few charities that step out of line, and we are determined to regulate them as effectively as we can. We have stepped up the number of inquiries that we have and the pace has changed considerably.

Sam Younger: We did acknowledge, in particular with the National Audit Office Report, that there was much we need to do to improve our performance at the toughest end of the regulatory spectrum. That is what the NAO Report focused on. We are aware that we need to do better there and we already are. I will tell you a bit more about that in a moment.

The National Audit Office Report, and I would suggest also the comments that have been made by others who have picked up on that, looked at a very narrow element of what the Commission does. We do a huge amount of consents, of working with trustees when they get things wrong, rather than moving to use of powers and formal inquiries, in the provision of generic guidance and the public register. If you look across the totality, the Commission regulates well within the context of very limited resources. However, we know, in those key areas the NAO looked at, we can and must do a lot better.

Q3 Chair: In your evidence to the Public Accounts Committee, you said that the Commission had been weakest in "identifying deliberate wrongdoing and escalating that effectively into action". Why has that been so?

Sam Younger: There are a number of things, Chair, that have happened. If you go back a little way and you look at the period after the passage of the 2006 Act, there was a very strong emphasis in what the Commission was being asked to do on the enabling, working with trustees and improving charities element, rather than on the regulation. I was also quite struck—this was before I came to this post—that there was a Hampton report under BIS on the Charity Commission, which said that the Charity Commission was regulating proportionately, and needed to focus in future on public benefit, improving guidance and helping charities to be more effective. There was a sense there that the role was an enabling one, and that has begun to turn around.

Secondly, there has been, and it is part of the same thing, a sense that these are volunteers running charities—nearly a million of them across the piece—and that the Commission's approach ought to be to work with trustees as far as possible if things go wrong, in order to put them right again. As the Chairman said, there are only a small minority of cases where it is appropriate to move to powers.

The third element was that in the early days of the Charity Tribunal there was one particular decision—where the Charity Commission had removed a trustee—where the Tribunal said, "You should not have removed the trustee. You should have engaged more with the trustees and worked with them." That had a bit of a chilling effect. We have recognised that all needs to be turned around and that we need to be ready to cut trustees less slack when we do identify potentially serious wrongdoing. We are beginning to do that now, but there is still further to go.

Q4 Chair: We are going to the Cup Trust later, but, Mr Shawcross, why do you think that you have to admit that this has been your weakest function when, in fact, most people think it is your most important function?

William Shawcross: I did not admit that it has been our weakest function; I said that we had stepped it up. I do not want to bore you with statistics, but in the six months from April 2013, we opened 26 statutory inquiries. In the previous year, we had opened 15 inquiries, so you can see that in the last 12 to 14 months we have stepped up our engagement quite considerably.

Q5 Chair: It sounds like needles in haystacks; how many charities are under your jurisdiction?

William Shawcross: 160,000. I hope it will always be needles in haystacks, because I hope there are not masses of pitchforks hidden in these haystacks; I do not believe there are. I think the overwhelming majority of charities are well run, as Sam said, by volunteer trustees.

Q6 Chair: The consensus appears to be that, as David Walker put it, the Commission never really recovered from Labour's 2006 legislation, which is what piled all these other duties on the Charity Commission. Do you agree with that?

William Shawcross: The 2006 Act was a huge watershed, and in particular in the definition and requirements of charities displaying public benefit. After the 2006 Act—which was long before I arrived; I have only been here 14 months—a lot of our resources were taken up with defining and writing guidance on public benefit. There are fewer resources used for that now, partly because we have fewer resources and partly because that guidance on public benefit has been established. But certainly the 2006 Act was a very important moment and a difficult moment for us.

Q7 Chair: All these things you have to do: accountability, effective use of charitable resources and ensuring that charities use their resources effectively—how are you meant to do that? Is this not an unfair burden on you?

Sam Younger: It is a very wide remit, and it is fair to say that there is an increasing disjunction between the breadth of the remit and the resources available to do it, but if I look at the totality of what the Commission does, there is a unity to it. We have already in the past three or four years, since the 2010 spending review and a 33% cut, which we then needed to adjust to, focused on what I think are the five core elements of what we need to do.

Q8 Chair: What are the duties you think you should dispense with or be allowed to dispense with?

Sam Younger: The key duty that we effectively have dispensed with, which was very strongly a part of what the Commission did in the period after the 2006 Act, is providing advice to charities. We were seen as, and regarded ourselves as, a hand holder or a helpmeet to charities. They came to us a lot of the time and we would give them a lot of one-to-one advice. We stripped that right out. Our advice to charities is now generic guidance that is available on the web, which has to be there. Indeed our contact centre's main role is directing people towards the web. However, we still need to undertake that core guidance, but we cannot move out of registration. Registration is essential.

Q9 Chair: Mr Shawcross, are there other duties that you think should be lifted from the Charity Commission?

William Shawcross: I do not think so. As Sam said, the guidance was a very big burden after 2006 because there was a brand new Act and a lot to explain and understand. That burden has diminished considerably now and the duties we carry out are our core duties, which is to be the regulator. Sam is also right that eight years ago the Charity Commission was seen much more as a supportive organisation for charities. I do not think that is our role. Our role is to be the regulator and regulate, regulate, regulate. That is what we are trying to do more effectively all the time.

Q10 Chair: There is now a consultation that suggests you should have extra powers, extending the range of criminal offences that automatically bar a person from acting as a charity trustee, a new discretionary power for the Charity Commission to disqualify a person who is unfit, a new statutory warning power, an extension of several existing powers and technical changes to close loopholes. Are you happy with this?

William Shawcross: Yes, it would help us enormously. For example, it seems to me quite absurd that the only basis on which we can disqualify a trustee now is for the crime of fraud. If he has committed a terrorist offence, he is not automatically disqualified as a trustee. That seems to me absurd.

Q11 Chair: Can you identify any additional powers that are not in the consultation that you would like?

William Shawcross: If we get the powers that are in the consultation, we will be much better equipped to deal with errant trustees.

Sam Younger: The proposed powers that are in the consultation have effectively come from what we have been pressing for for some time. We are very glad to see them in that consultation. We are aware that there will be push back on some of them. We had a public meeting in Bristol last week talking about the trustee disqualification areas, and there was a lot of support for that increased ability to disqualify trustees and not, in particular, have trustees able to escape disqualification by resigning before the formal disqualification takes effect.

Q12 David Heyes: In my constituency, and I am speaking about before and after 2006, I have come across cases where there is cause for concern—allegations of abuse of charity status by trustees—and my experience ties in very much with the comments made by the National Audit Office. I would agree that you were slow to act, not tough enough and there was insufficient follow-up. Mr Younger, you have agreed you need to up your game considerably on this. All this came to a head around The Cup Trust case, did it not? The Charity Tribunal were very critical of the way you handled that. The National Audit Office said, among other things, that you were too passive and, again, Mr Younger, you have admitted that you got it wrong in that case. What if another Cup Trust comes along? What will you do differently? What have you learnt from the experience of this case?

William Shawcross: Do you want me to take you through the whole Cup Trust history?

David Heyes: I would like to hear from both of you, yes.

Chair: No; what have you learnt?

William Shawcross: Cup Trust was registered before I came to the Commission. Even the NAO said that we had to register the Cup Trust at the time but we should have asked more questions about the trustees. I completely accept that; that is true. The biggest mistake we made in the Cup Trust saga was to close down the investigation in 2012, while HMRC were still continuing their investigation. We should not have done that. I have said that before. The Commission has said that before. Now, it is an inquiry before the Tribunal, and that is the proper place for it to be.

Sam Younger: In terms of whether we can be confident that there would not be other Cup Trusts in the future, one could never say 100% anyway, but we have certainly tightened up considerably our practices in registration and the range of things that raise red flags and lead us to ask further questions. As the Chair says, that does not necessarily mean you will not be forced to register a charity, but we have tightened that up.

We have also developed a new system for monitoring, which is if we are in the position where we do not have any alternative but to register a charity but we still have some doubts, not about the charitable purposes but about how they might be carried out in practice, we have an improved system to put them into formal monitoring so that we can keep an eye on what is going on. We are also working much more closely with HMRC in this area. We have a new memorandum of understanding. There is much more information exchange with HMRC.

Q13 David Heyes: That is encouraging, but are you able to go as far as you want with the existing powers that you have?

William Shawcross: No; that is why we have asked for new powers. We have not been able to go as far as we want. As Sam mentioned, there was one case of removing a trustee that was turned over in the Tribunal, which had a very debilitating or dampening effect on our ability to do that. I hope if the new powers are agreed that case would not happen again.

We are using our powers. As I mentioned before, we have had many more statutory inquiries in the last year and we have used our powers in the last six months 350 times, as opposed to 215 times in the year before I came. We really are stepping up. The NAO Report was very useful to us. It is only a partial survey of what we do, but in that part that it did survey, we accept its recommendations and we are stepping up to the plate.

Sam Younger: It will always be a problem that, among the 165,000 charities that are registered, as well as many more that are not registered, concerns will be expressed. In any conceivable resourcing level, the Commission is not going to be able to pursue them all. It is quite striking—and we have been expecting this because of having to hunker down a bit over the last two or three years—the most frequent complaint that we get, both to ourselves and effectively those complaints we see going to the Ombudsman, is about what people see as the Commission's failure to engage. These are very difficult decisions to make. Sometimes there is a dispute that we cannot have an effect on, but these are all passionate issues for the trustees and others involved.

Q14 Chair: I was very struck by the Charity Tribunal's comment that the Commission, in relation to the Cup Trust, had been "transfixed by its misconception that tax matters were not for it and also on whether or not conflicts of interests had been properly managed rather than focusing on the central issue: has the trustee … acted as an ordinary prudent man of business?"

William Shawcross: That judgment is probably correct.

Q15 Chair: What does it suggest, though? Does it not suggest something of a failure of imagination about what the role of the Charity Commission as regulator actually is?

William Shawcross: As I said, this all happened before my time.

Q16 Chair: I am not interested in when or where. In terms of the leadership of the Charity Commission, has it not become rather absorbed in detail and missed the big picture? Would you not agree with that analysis?

William Shawcross: No, I do not think so. First, you have a new leadership of the Charity Commission now. Last year, I appointed a brand new board.

Q17 Chair: How did the Charity Commission become "transfixed"?

William Shawcross: Because HMRC does the principal responsibility for tax; it is not our principal responsibility. However, as Sam says, we are liaising with HMRC much more closely now, and as I also said to you earlier, I think we were wrong to close down our investigation in 2012 when HMRC continued theirs.

Q18 Chair: Mr Younger, how do you think you became rather restricted by this constipated view of your responsibilities?

Sam Younger: There was a degree of—if you want to put it this way—risk aversion. That was partly driven by some of the early decisions of the Tribunal. It was also driven by the fact that the Commission as a regulator under charity law is complex. It is something we have been moving to turn around, but these things that are cultural and attitudinal do not change overnight. We have been in a process of turning that round over recent years. Some of the evidence that it has changed is there in the statistics we have had recently and an internal audit report from our internal auditors—from BIS.

Q19 Chair: How are you now enlarging and encouraging the imagination of your senior leadership in the Charity Commission so that people see these things that they did not see before?

William Shawcross: In the case of the Cup Trust, it was the sole corporate trustee in the British Virgin Islands.

Chair: I am asking a more general question.

William Shawcross: I am trying to answer it from the particular to the general. That kind of particular instance would lead to generalised concerns: is this kosher? Is it proper? We would now ask many more questions than were asked when the charity was registered.

But I return to the fact that even the NAO said we had a duty to register it, because its purposes appeared to be completely charitable.

Sam Younger: One of the things that has been there for all sorts of reasons is that the Commission has focused its regulatory work on what the risks were—and risks in legal terms of taking action—and insufficiently focused on the wider public policy risks of not taking action. That is the balance that we have to change. That is the message that has been going out to our staff through our board and through our senior staff now over the last 18 months. I was very pleased that in the BIS internal audit done recently they said they found no evidence that the Commission was now reluctant to use the powers it has.

Q20 Mr Turner: When you were asked whether you had a figure for the amount of money the Commission would need to carry out its required functions, Mr Younger, you said, "No I do not have the figure; I have other things to do." Have you a figure now?

Sam Younger: I do not have a figure right now, because a committee is being set up to prepare the Commission for the case it needs to make to an incoming government about future funding; it is being constructed now. The point I was making there was that the focus of my work in the last three and a half years has been to structure the Commission in a way that allows us to cope with what we need to do within the increasingly limited figures that Parliament has voted us. Therefore, spending resources in that period on constructing what we would like to have as resources has not been something that we have found very worthwhile to do. The Chair is now working with others to construct that very sense of what the Commission needs to do the job properly.

William Shawcross: We are down roughly from £30 million six years ago to £20 million and falling now. If it is still falling with the latest spending review, I will have to spend a lot of time this year going to the Treasury and to ministers to argue for more funds, because the salami slicing that happens is very damaging. I do not want to whinge about this. I know all departments are subject to cuts and I totally understand that. To answer your question, if we had another 10% on what we have now—that is to say another £2 million—that would be extremely helpful and we would not have to cut back as much as we may have to. Using our resources and investigative powers more intensely is very expensive. We will be spending more time in the Tribunal doing reviews, etc. We want to be a tougher regulator but it does not come cheap.

Q21 Mr Turner: Mr Younger, I have forgotten when that evidence was given by you. When was that evidence given approximately?

Sam Younger: 16 December.

Q22 Mr Turner: 16 December last year? I see. So, you have not had a great deal of time since then, but when is such a figure going to be available?

Sam Younger: I think this is more a question for the Chair than for me.

William Shawcross: I have said it is very hard. I would like more money, but all departments would like more money. Last year when I came before your Committee, I was told not to whinge.

Q23 Mr Turner: I am not asking for details. I would simply like to know whether this is something that will cost £21 million rather than £20 million or £30 million rather than £20 million or what? Give me some vague view.

William Shawcross: It would be absurd for me to say, "Please restore the status quo to £30 million." I have already said, and I will repeat, if we could have a 10% increase rather than a 10% cut, which is envisaged, that would be wonderfully helpful.

Sam Younger: One of the reasons the equation is not one of saying that we should go back to what there was before, but of something much more modest is that—and this is very much a tribute to the staff of the Commission—there have been remarkably successful initiatives, through automation of transactional processes, the improvement in the web and partnerships with umbrella organisations, to reduce incoming demand for the Commission's services very significantly. That has opened up quite a lot of possibility. It makes it very difficult to invest in anything new, given that that absorbs what you need to cut. However, it means we would not say that we want a restoration of the status quo ante; I would say it is probably more in the realm of, as the Chair says, an increase of 10% on our current position. That would enable us to breathe a bit and cope with the real pressures that there are; something more than that would enable us to do a great deal more.

However, when you are dealing with 165,000 charities, there is an element of: "How long is a piece of string?" We will never in any realistic funding environment be able to do everything we would like to do in terms of those 165,000 charities.

Q24 Mr Turner: The number of concerns about charities that the Commission does not investigate due to limited resources is what? Are we talking about 10%? Are we talking about 90%? Where does that fit?

William Shawcross: It is awfully hard to know. Eliza Manningham-Buller was asked a year or two years ago, when she was still at M15, "How many investigations into terrorist plots do you have at the moment?" She said, "34." She was asked, "Why 34?" She said, "Because that is all I have resources for." So, as Sam says, it is: how long is a piece of string? I am not here to say that we have got to have fantastic amounts of money. I am realistic about the cuts that all government departments are facing. But I must spend the next few months arguing that there will come a point where, if the Charity Commission is just cut and cut and cut down to £15 million or something, we would not be able to do the job that you rightly expect of us.

Sam Younger: It is fair enough to say that there is a link between resources and how many investigations there are—not necessarily the top-end inquiries, but the broader ones on compliance. In our Operations area, in 2012-13, we opened about 1,500 compliance cases. In relation to our risk framework, I would not say we are often turning down engagement in issues because we do not have the resources. It is taking a tough view against our risk framework, and if you go back a few years, it is fair to say that the Commission—or at least this is what I found when I came in—was being drawn into more things at a lower level than it really needed to be. I am not sure it is so much a question of saying that the resources are what drive how many investigations you do. It is the clarity and consistency with which we operate a risk framework.

Q25 Mr Turner: Could you tell me whether you have sufficient resources to effectively regulate the sector?

Sam Younger: My sense is that the answer to that is very close to being no. The initiatives we have undertaken in recent years have managed to create that space, but we are now facing having to take another 25 posts out for 2015-16. I am very concerned there that what we will need to do—and the one way in which we can begin to cope with this—is to put significantly less resource into some of the lower risk areas, which in itself carries a risk, whether it is registration or our consents work.

Mr Turner: Mr Shawcross, do you agree?

William Shawcross: I repeat that my job is to try to get as much funding for this Commission as we can in order to be able to exercise the regulatory powers that we are statutorily obliged to do. It is difficult, but we will carry on doing it the best we can. You, in this Committee, have been very supportive in the past and I am very grateful to you for that. I would like to come and see all of you individually to help frame that argument. However, we are not giving up. We will regulate to the best of our ability with the resources that we have.

Q26 Robert Halfon: With the internal cuts that you face, what have you done internally in terms of reforming management, waste, expenses and all this kind of thing to cut costs?

William Shawcross: As Sam said, a lot of costs we have been able to cut because of IT advances, although, as you know in Parliament, there are usually problems with IT systems. The other thing that we have done in the last year is move resources—and this is a continual process but we are certainly doing it—from back office into investigations. We have more staff in investigations now. I think it is 78%. Is it the case that already 78% of our staff run frontline activities?

Sam Younger: About 76%.

William Shawcross: 76%, and we are trying to increase that to the frontline activities. Within the terms of the diminished budget, we are moving more to investigations.

Q27 Robert Halfon: Have you cut back on simple things that nevertheless add up: press cutting services, travel and all that?

William Shawcross: We have four offices, which is another question, so there is quite a bit of travel between all the offices, but I do not think it is extravagant.

Q28 Chair: You mentioned terrorism. How reassured are you that you are able to monitor what charities should not be doing to encourage terrorism?

William Shawcross: This is a hugely important area and, sadly, an area that is growing more and more critical. We have opened two investigations into two charities recently that are linked to Syria. We work very closely with the Home Office on terrorism in charities and the way that some charities are infected or subverted by terrorist activities. The Home Office has increased our Prevent budget on this, and I am very grateful for and glad of that. We work very closely with other agencies on this issue. It is a growing issue.

I am very glad you raised it; it is really important. It is sometimes difficult, particularly in the case of Syria, to know exactly what is happening.

Q29 Chair: How confident are you that your budget in this area is sufficient?

William Shawcross: With the help of the Prevent programme from the Home Office, it is much better than it was a year ago. They have increased our budget and I am very glad of that.

Q30 Robert Halfon: In terms of your four offices, do you think you could merge them? Are they cost-effective?

William Shawcross: We are looking at that very seriously. The answer is that we will concentrate on the hubs, and I suspect that, in two years' time, it will be a different picture, but I am not sure. It is very hard.

Q31 Alun Cairns: Can I come back to the terrorism investigations? You said that the Home Office has increased your Prevent budget, but have you sufficient funds in order to pursue those inquiries?

William Shawcross: You ask anybody if they want more funds and they will say yes.

Alun Cairns: No, about this serious issue. This goes much further than investigations into other charities.

William Shawcross: The Prevent money that we have at the moment lasts until April 2015, does it not?

Sam Younger: That is guaranteed.

William Shawcross: Guaranteed, and I hope that the Home Office, after 2015, will continue it. I hope they will think that our work is important, because subversion of charities by terrorists is obviously a terrifying and awful activity.

Sam Younger: The investigations or the inquiries are one thing, but probably the most important element when it comes to combating potential exploitation of charities for terrorist purposes is the monitoring of charities that we might consider to be at risk. That was something that came up in the PAC hearing before Christmas in the sense that we had been forced to reduce our monitoring for resource reasons over the previous two or three years. I am conscious that is something we would like to raise again. The resource from the Home Office has helped us do some of that, but it is the one among the things where we set out what we would need to do to regulate really effectively. I want to see us able to boost capacity in that area.

Q32 Alun Cairns: The straight answer to my question is that resources are not sufficient for these activities?

William Shawcross: They will never be sufficient. As Eliza Manningham-Buller said, we are limited by our resources. We will argue for more money on that, and I would love your support on that particular issue of terrorism.

Q33 Lindsay Roy: I want to turn now to staffing in the Charity Commission. Can you explain briefly what the employee engagement index is?

Sam Younger: The employee engagement index is something that comes out of the Civil Service People Survey on an annual basis and is a composite of some of the elements that go to make up staff engagement. It is by no means the whole story in there, but on staff engagement, the Commission has, in the period since 2010, been on an upward curve. It is not among the top performers in staff engagement but it is solidly placed. I was very pleased to see, frankly, given the difficulties there had been due to both the financial pressures and the pressures of criticism, that in the Survey in 2013—done in early October as the point of reference—our engagement index has remained where it was the previous year, and not gone down against the number of engagements; the Commission's position has improved. The People Survey as a whole is something we take very seriously and look at very carefully year on year, and look to undertake improvements where things are not going as well as we would like.

Q34 Lindsay Roy: It includes things like pride in work, motivation, inspiration at work and so on. How disappointed are you that the employment engagement is at 58%? That seems disappointingly low.

Sam Younger: I would love it to be higher, but at the same time it has been on the right track and a lot of the individual dimensions, which are the ones I would hope to be able to affect, we have been able to affect. Our real difficulty is that a lot of it is things that are beyond our management control—for example, career opportunities when you have a declining budget in terms of pay. However, dimensions such as trusting your manager, feeling you are able to say what you want to and feeling that you are properly informed have all been going up, and I am rather proud of that in the circumstances that we have been facing.

Q35 Lindsay Roy: In truth, it is not an upward trend. It has stagnated at 58% for two years.

Sam Younger: As I said, it was the same this year as it was the previous year. I am quite relieved, to be honest, that it did not go down both because of the loss of jobs and the external pressure the Commission has been under.

Q36 Lindsay Roy: How high a priority then is it to improve employee engagement and what have you been doing to do that?

Sam Younger: It is a very high priority for me. It always has been the key priority. If I was to give one piece of advice to my successor when he or she comes in, it would be to work very hard at working with the staff of the Commission.

Q37 Chair: What do you need to do to improve it?

Sam Younger: The main thing that is in our control is to make sure we keep up the levels of engagement of managers with staff, talking to staff. I do open staff meetings every month right across all our sites, and that has been part of what has driven the improvements there. We are looking very much at how we can improve staff views of career opportunities and training, which is always a very difficult area and one of the ones where we always score lower than we would want to. I feel a need to be realistic about this in an environment where the organisation is getting on for 50% down on where it was.

Q38 Lindsay Roy: You said it was a key priority. Have you an action plan then to improve it and can you share that with us?

Sam Younger: Yes. We had an action plan for last year's People Survey, where we looked particularly at issues that remained a problem, about perceptions of bullying and harassment, and about the clarity of objectives for the Commission. This year we have only had the detailed results of the People Survey very recently, and we are currently constructing that action plan. It is an important area for us and there will be an action plan, which will probably be ratified by the end of March.

Q39 Lindsay Roy: It has plateaued so far. What lessons have you learnt from your past experience?

Sam Younger: In terms of staff engagement?

Lindsay Roy: Yes.

Sam Younger: The main lesson I have learnt is that staff will be as engaged as you could expect them to be and, hopefully, they will increase their engagement if they have a management that is open to their suggestions, communicates with them and does not hold things back from them. All of those measures have been improving.

Q40 Lindsay Roy: Has that been a problem in the past?

Sam Younger: Yes, indeed, I think it has. There was a fair distance between management and staff, I felt, when I came into the organisation. That is something I have been working very hard to improve.

Q41 Lindsay Roy: This Committee will get a copy of your action plan on employee engagement in March?

Sam Younger: I am very happy to pass that to the Committee. It will be in March or April.

William Shawcross: I would like to add that, in going around all the offices, I have been struck by what a good job Sam has done in keeping up staff morale. Everyone says to me, "He is a terrific chief executive; he listens to us all the time," and I think he has done a fantastic job in that regard in the last three years.

Sam Younger: I was just wondering whether I might go back at some point to Mr Halfon's question about accommodation, but I will leave it if you wish to.

Q42 Robert Halfon: I would just like to know what they are doing with their offices, that is all.

Chair: Perhaps you could deal with that now then, Mr Younger. I am sorry.

Sam Younger: We have looked at this very hard. There are some obvious inefficiencies when you are on four sites. However, in the accommodation reviews we have done, we do not have the resources to rationalise. It does not make sense as a business case. Equally, having lost nearly 50% of staff over five years, we should not be kissing goodbye to skills and experience that are very valuable. That said, we know we need significantly to reduce our accommodation cost, but by 2016-17 we will have halved our accommodation cost through both reductions in space—albeit on existing sites—working more smartly and putting more pressure on our people-to-desk ratios in terms of space. We are confident that we will achieve that by 2016-17. I say by then; it cannot be now because of the opportunity of the end of leases, which were entered into many, many years ago, which fall in 2015 and 2016.

Q43 Robert Halfon: Where are the sites?

Sam Younger: Our biggest site is Liverpool, which is where all of our first contact is concentrated. The next biggest site is in Taunton, which particularly has a registration specialism. Then in London we have 50 or 60 people, and a very small presence in Wales in Newport.

Paul Flynn: Too small.

Chair: Can we now ask questions about the recruitment of your successor? You are advertising for a new chief executive, so can we help by drawing attention to this?

Q44 Sheila Gilmore: Before I ask that, having listened to what you are saying, I wondered whether the registration process itself is too automatic and do you need to change that?

Sam Younger: It is a very interesting question. The registration process is not automatic. There is a human eye that looks across every single application for registration. I think, at the last count, this year, we receive 27 new applications for registration every single working day of the year. In terms of our resources, we need to get better at how we identify which ones carry risk that we need to look at more carefully, and which are the ones that are essentially very low risk and we can process much more readily.

Currently, when our registration applications come in they are labelled green risk or red risk, which are very easy to run with. Red risk you will do significantly more work on. Green risk you can get through very quickly, sometimes in 24 hours. However, there is a significant swathe in amber, and we need to get better at isolating which of those carry real risk in terms of the integrity of charitable status, and which are simply about lack of adequate explanation or detail on what people want to do.

We do need to be very careful that we do not make registration a process that discourages people from setting up charities. One of the things one should celebrate is that, even though we have had a significant period of recession, there are still 5,000 to 6,000 people and groups of people wanting to set up charities to help people in their communities every single year. That is a remarkably positive phenomenon.

William Shawcross: I quite agree with what Sam just said. The core of the charitable world is the small charities in communities that are set up all the time by people for their local areas and for specific reasons, whether personal, family or local. William Beveridge described it as the golden thread in the living tapestry of our national life. He said that in 1944 and I think it is still true and is marvellous. Although we must put more emphasis on regulation, we must do nothing to discourage that.

Q45 Sheila Gilmore: That is correct, but anybody would know from their local areas that being small and apparently worthy does not necessarily mean they are not problematic. There was an example on our local paper's front page this week.

William Shawcross: Of course.

Sam Younger: In all our compliance work, when we do get complaints about charities, which will come from a local level—somebody worried about something in their local charity—in the overwhelming majority of cases what we find is you have trustees who are getting it wrong through ignorance, perhaps in some cases bordering on negligence. Pretty rarely is it deliberate wrongdoing. The Chair mentioned the phrase needle in a haystack, and I think there is a needle in a haystack problem of how you detect, in what somebody referred to as "the chaos of 165,000 charities", that small number where deliberate wrongdoing is being undertaken. That will remain a challenge, and however good we get at it, there will still be cases every year where we fail to take up something we should have taken up or where we have taken up something we should not have bothered to take up.

Q46 Sheila Gilmore: If we could go on to the questions about the recruitment process, what costs have been incurred so far?

William Shawcross: Of the new chief executive?

Sheila Gilmore: Yes.

William Shawcross: After deliberation, we engaged a headhunting firm and we interviewed three or four firms. There were different levels of estimates that they put in of bids. The firm that we engaged is costing us £23,000.

Q47 Sheila Gilmore: Do you think that is a better way of recruiting?

William Shawcross: Better way than which?

Sheila Gilmore: Than doing it yourselves.

William Shawcross: They have been very effective in this and very good in the search. I am very much aware that £23,000 is £23,000 of public money. This was not undertaken lightly. I do not think we have the resources and skills to do this on our own, and the search has been well done. I believe that we will find a very effective new chief executive.

Q48 Sheila Gilmore: How did you set the salary level that you have advertised?

William Shawcross: That was very difficult, as you can imagine. We had a big debate about that: should it be higher or lower? We chose the rate that we did, which was £125,000, which is a bit lower than the present chief executive and it is considerably lower than the chief executives' salaries in many other regulators. We could have set it lower still. There was an argument for that. I accept that these things are difficult to decide. We have had one person who was high on our list who withdrew because the salary was not high enough. I hope we have it about right, but one could always argue about that.

Q49 Sheila Gilmore: This is a board decision?

William Shawcross: Yes.

Q50 Chair: What equivalent civil service grade is the chief executive?

Sam Younger: SCS2, which is director rather than director general level. I think I am right in saying that. I am not good on civil service grades.

William Shawcross: I am sure that is right.

Q51 Greg Mulholland: This is a question that needs to be asked, particularly, Mr Shawcross, in the context of some of the comments of this Committee, including mine, when you were appointed and the recent suggestion of political interference in appointments. Can we be absolutely confident that the new chief executive and the recruitment process will be absolutely free of any political interference?

William Shawcross: Absolutely. It is chaired by a civil service commissioner, who is extremely good, and would certainly not allow any political interference, were there to be any, and there is not. I can assure you of that.

Q52 Greg Mulholland: Going back to your appointment, obviously now we have got to know you and have had a couple of sessions with you; however, the Charity Commission is nevertheless still being named as one of the public bodies where there is a suggestion that someone—yourself—was put in because they fit the bill in terms of political views according to the current government. How do you respond to that?

William Shawcross: I have seen those suggestions and I have got to know you all better in the last 16 months, and I have enjoyed that process very much. I hope you have got to know me better and I hope that you would agree that is not the case. I try to run this organisation as it should be run—in a nonpartisan way. As I said to you in my confirmation hearing, I am not and have not been a member of a political party for a very long time. That is, I hope, a testament to the fact that I do want to run this in a nonpartisan manner.

Q53 Greg Mulholland: Do you feel you have gained the confidence in the charitable sector to be able to do that?

William Shawcross: I do not know. You would have to ask them.

Greg Mulholland: In that regard—to be seen as nonpartisan.

William Shawcross: I hope so, because I cannot think of anything that I have done that is obviously partisan in favour of any particular interest. I hope that is your understanding also.

Q54 Paul Flynn: What was your estimate of the likely cost of defending your 2012 position on Hales' Exclusive Brethren aka Plymouth Brethren Christian Church aka Preston Down Trust?

William Shawcross: The costs that we incurred altogether on the—

Q55 Paul Flynn: No, no; that is not the question. What was your estimate of what the maximum cost would be if you had pursued it through the courts?

William Shawcross: I do not know the answer to that. Do you know the answer to that, Sam?

Sam Younger: I do not have a figure.

Q56 Paul Flynn: Is the lesson of your climbdown on this that money-no-object lobbying triumphs?

William Shawcross: No.

Q57 Paul Flynn: The lobbying campaign run by Hales' Exclusive Brethren was the most intensive I have encountered in 26 years in Parliament. They decided they were going to meet every MP and peer face to face. They were a pestilential nuisance to us. They pursued us everywhere and they spent £2 million in their campaign and were willing to spend more. They persuaded a large group of our rather more gullible colleagues that they were not an exclusive group. They changed their name; they did everything. They employed very expensive legal and presidential people—people who were in the public relations trade. I have to give you this background, because this is a very exceptional case. Is that the advice—that if someone is discovered by you not to be providing public benefit; that was your firm decision, very convincingly—they then go out, engage PR and legal people, and you will climb down because you do not want the financial and other problems of fighting for what was an entirely rational decision?

William Shawcross: No, I do not think that is the outcome, and I do not agree with that.

Q58 Paul Flynn: There are a number of cosmetic changes they are making, and I understand that they went around to their neighbours, bringing food and drinks, to show they were in tune with their local communities, and other stunts like that. They had a presentation in this House. Again, you have agreed to surrender your previous principled position as a compromise for an easy life. Is that not true? If it is not true, how are you going to police this new deed they have entered into? How are you going to ensure that they have changed?

Sam Younger: I do not think this is a question of giving in in the sense that, as you mentioned, the deed and the commitments that were made that have led us to say yes to registration now are very different.

Paul Flynn: How are you policing that?

Sam Younger: It is also worth saying that there was an entirely different set of people looking at the new circumstances. Yes, there was a very significant lobbying campaign, and that lobbying campaign, and the requests we had, did lead us to do one thing.

Although we would have preferred to see things sorted out in the Tribunal, we agreed to go back and look again. What was looked at again was on such a different basis.

Q59 Paul Flynn: The new set of people are your new members who were lobbied at the meeting in his House, in my hearing, for the Plymouth Brethren line. So, the original board took a firm line and you surrendered because of lobbying.

Sam Younger: I do not agree with that.

William Shawcross: I really do not think that is true, with great respect, Mr Flynn. When I came in I decided to request a stay in the Tribunal's proceedings to see if we could find a position that was taking account of the new realities. The Brethren said they were prepared to change their basic doctrine of faith, and when I created the new board, I asked three of the lawyers on our new board, one of whom you know, who is our Welsh member, to look at the Brethren's case and their new application.

After several months of negotiation and discussion with their lawyers, we drew up a decision document in which they restated their doctrine of faith and they acknowledged past mistakes—maybe you think that is not a strong enough word—in the way in which they dealt with recusants and so on. Many of the Brethren's opponents in the House have welcomed this decision as well as people who supported the Brethren. I was very pleased that it was welcomed by opponents and critics of the Brethren.

Q60 Chair: How do you convince people like Mr Flynn, and indeed myself, that these changes are not superficial and are substantive?

William Shawcross: If you read the decision document, it is clear that on paper they are substantive, and we will be following up. If Mr Flynn or any of his constituents, or anybody else, has unhappy dealings with the Brethren in the next 12 months or thereafter, we will examine their complaints very seriously.

Q61 Paul Flynn: Had this group not had unlimited resources—£2 million and a whole army of people to lobby us with presumably unlimited time—that decision of 2012 would have stayed. If there is a poor organisation that suffers an injustice, the message to them is, "Tough luck; you are going to have to put up with it unless you can afford to hire these smart lawyers and PR people to change the Charity Commission's view." That is the lesson. That is what happened.

William Shawcross: It is not what happened. You are completely right and, as Sam has said, there was a very strong lobbying campaign. I was made aware when I came in of the position—the decision we had made in 2012—and I thought we could look at it again. I asked my new legal team to do that. In consultation with the Brethren and their lawyers, as you say, we came to a completely new decision on a new application from the Brethren. As Sam says, it could have happened more quickly in the Tribunal, but it was fair and proper that we looked at it again. I am rather proud of the decision that we made, and particularly the fact that serious critics of the Brethren both in this House and in the other place welcomed it. That was very cheering to me that we had reached the right decision.

Q62 Paul Flynn: I think we could all welcome it if you could convince us that you have some way of policing it. I have asked you several times.

William Shawcross: I believe we have. Mr Flynn, if you want I will come and talk to you later this week or next week, and if you have any specific complaints about misbehaviour, as you see it, by Brethren Halls, we will follow them up instantly.

Q63 Robert Halfon: Can I put on the record that I would like to thank the Charity Commission? I believe that you came to a morally just decision in recognising the Christian Brethren. As I have said many times before, I have seen the charitable work they do—food days for the homeless in my local area and the work they do in schools as well. Are the standards you are setting, which I have no problem with whatsoever, the same standards for the Christian Brethren as they are for other religious organisations?

William Shawcross: In principle, yes. If we have any complaints about any other religious organisations, we would follow them up in the same way.

Q64 Robert Halfon: Do you think that because of the whole controversy—because of what occurred—it would be right for Parliament to look at the public benefit test and how it affects Christian organisations and other religious organisations?

William Shawcross: That is up to Parliament, not to us. The 2006 Act did, as this Committee has said in its report, make the definition of religious charities and the public benefit they have to give a complicated one. The law was not very clear in the 2006 Act, and it was left to us to interpret it in matters of education, relief of poverty and religion.

Q65 Robert Halfon: You must have a view on whether it should be reformed or not.

William Shawcross: I have a realistic view, in that Parliament is not likely to revisit this very soon because there are usually decades between charity Acts. It has certainly made our task more complicated. I hope now these decisions have been made in all these three areas—religion, education and relief of poverty—case law has been established in a sense and we can move on from that.

Q66 Chair: In our previous report, we were both very critical of the way the Charity Commission had handled this matter in becoming very litigious and that you had also got into litigation about previous guidance. I do not think we have changed our view that you should have the obligation to produce guidance removed from you, because that is an intermediate stage between what the jurisprudence is and what the charities are intended to do. What have you learnt about the production of this guidance in relation to this question? Because you have to produce this guidance. Am I right in saying that all you can do is produce a summary of what the previous court judgments are? Is that the only safe guidance for you to produce?

Sam Younger: It is fair to say that a disproportionate amount of commission lifeblood and resource in the post-2006 environment was put into the statutory obligation to produce guidance on public benefit.

Q67 Chair: Can you put a figure on how much you spent on producing guidance and then litigating about it?

Sam Younger: I could not. I could go back and see whether we could derive one.

Q68 Chair: Would you like to guess?

William Shawcross: It is very hard to say.

Q69 Chair: It runs into millions, does it not?

Sam Younger: I would be surprised if it was millions. This predates me and we could go back and have a look at it. The important thing is to make one distinction. The odd thing about the public benefit guidance is that it is the only area of commissioning guidance where we are under a statutory obligation to produce it. That seems odd to me.

Generic guidance for trustees is very important. We are dealing after all with close to a million trustees. Most trustees will find it very difficult to look at statute and interpret statute. They need simple, accessible guidance, and there are many areas where we have experienced that. That is important.

Clearly, when it comes to public benefit, the tribunal found that the public benefit we had provided, particularly in relation to independent schools, could be interpreted as being too prescriptive. What we have produced now, which went live back in September, is much broader, much more generic and much easier to understand, and has indeed been welcomed across the spectrum. That is the right kind of guidance. I do not think it is realistic for the Commission not to be producing guidance. We are constantly under pressure to improve, clarify, update our guidance in a number of areas, and we have to do that. Apart from anything else, it is very difficult to regulate against non-compliance if you do not have clear guidance.

Q70 Chair: The important thing about this guidance is that it should not be trying to create new definitions of public benefit. It should only be restating what the historical definition of public benefit is. Otherwise you are in trouble, are you not?

Sam Younger: It is clear, and what is in our new public benefit guidance—

Chair: That is a yes or no answer, is it not?

Sam Younger: It is not entirely yes or no, because if you look at the Tribunal's judgment that we had to follow in changing our guidance again, there was a suggestion that there is an objective measure somewhere that says that public benefit has to be—with fee-charging charities—beyond the minimal and tokenistic. We have to try to address something of the kinds of things that you need to do to demonstrate that.

Q71 Chair: Where you departed from previous jurisprudence on independent schools, for example, your guidance was challenged successfully, was it not?

Sam Younger: Yes, there were elements of it—not the whole of it.

Q72 Chair: Because you tried to move the goalposts, and your guidance should not be trying to move the goal posts.

Sam Younger: On my reading of the guidance, it was very detailed. It risked coming across too prescriptively. There was a sense that what the Commission was saying was you had to do a lot of bursaries, for example, if you were going to merit charitable status. In fact, reading the guidance carefully, it did not wholly say that. But we accepted that; we did not challenge the judgment that there was. We acknowledged that we had to redo the guidance. We redid it with a great deal of consultation. What has come out has been well received and is clearer than it was before. Even if it was not a statutory obligation to produce guidance on public benefit, we would have to provide some guidance. Indeed, now we are involved in some work that charities and those who promote charities have been asking for for some time: a bit more clarity in terms of how we apply the test in relation to different heads of charity.

Q73 Chair: Maybe you cannot provide that clarity. Do you not have to admit that?

Sam Younger: In some cases, we cannot provide total clarity, and we have to say, as indeed is the case in most areas of our guidance, that we can provide some of the things trustees must take into account, but in the end these are trustees' own decisions. It is not for the Commission to be involved in the administration of charities.

Q74 Chair: They must look at the law for themselves, because your guidance is not law.

Sam Younger: Our guidance is not law. Our guidance is designed to help trustees understand what they need to do to stay within the law.

Q75 Chair: Any particular lesson you take from this, Mr Shawcross?

William Shawcross: The lesson that I have learnt since I have been here in the last 15 months is, to quote Francesca Quint, one of the best charity lawyers in London, charity law is hard. It is hard for everybody. It is especially hard perhaps for trustees setting up small charities. The guidance we have on our website is probably essential for many people.

As Sam says, it was very resource intensive after the 2006 Act; it is much less so now. If someone rings up the Charity Commission and says, "Can you explain this?" we would say, "Please can you look on the website. This is where"—on page whatever it is on the website—article 66 or whatever—"you will find the answer."

Q76 Alun Cairns: Mr Shawcross, can I commend the work that you did on the Plymouth Christian Brethren? I, as well as Mr Halfon and I am sure many others, am familiar with their work. If facts changed, conditions changed or a new application came forward and you had ignored it, that would have been prejudicial against the charity and, therefore, the only thing you could have done was consider it in the way you did. Would you not accept that it possibly took longer than it needed to take in the first place?

William Shawcross: Yes, I accept that it took longer than it needed to take. A lot of things take a long time, partly because it is a question of negotiation and not everybody does everything overnight. Of course, if the facts change, you are right.

Q77 Greg Mulholland: A key phrase that was just mentioned—going back to the public benefit test—was that guidance is not law. Is that not the nub of the problem and the invidious and very difficult situation the Charity Commission has been in? To quote from our report last year, we as a Committee said, "The Charities Act 2006 has been an administrative and financial disaster for the Charity Commission and for the charities involved, absorbing vast amounts of energy and commitment, as well as money." Is the answer not to keep looking to you and blaming you but that this place, Parliament, should legislate? I know you have views on this, Mr Shawcross, but surely, after the lessons of the very unhappy experiences of recent cases, is the lesson not now for Parliament to define in law what a charity must do to deliver public benefit—to pass a test that we would all agree so we do not have to go through the previous episodes that you have had to go through, and take up a lot of your time and public money?

Chair: That was not the conclusion we reached in our report.

Greg Mulholland: But it is a question that needs to be answered.

William Shawcross: I am delighted to hear you say that the Charity Commission should not always be blamed for these matters. I quite agree with that, obviously. Parliament clearly in 2006 found it impossible to define public benefit. That is why it was left to us and, in effect, to the court and the Tribunal that was set up in the 2006 Act; in other words, to the development of common law. That is how British law has always worked and worked wonderfully well over centuries. This will settle down; as more charity law cases go to the Tribunal, a legal consensus will emerge.

As to your question about whether it is the responsibility of Parliament, of course that is true. Parliament wrote the 2006 Act and passed it into law, and it is up to Parliament to change it if it wishes. Obviously, the guidance is a burden on us that we could have done without, but it is our statutory obligation at the moment and we will carry it out so long as that is the case.

Sam Younger: One of the attractions for us of Parliament being clearer about definitions is that there would be less scope for misunderstanding and getting the guidance wrong. Insofar as there is discretion left to the courts, in a sense we do need—and this is an area of sensitivity—to look to the Tribunal to provide statements of law, because our guidance is not law. If you are going to operate on the basis of case law establishing what public benefit means, you need to have the case law to go with it. That is a dilemma for us, because neither we nor those, for example, promoting charities for registration wish to go through the expense and process of the Tribunal. That is partly why some of these registration cases take longer, because you are having a to and fro of discussion in order not necessarily to go to trial. This is one of the reasons why in the first instance we wanted to go to the Tribunal for the Brethren.

Q78 Greg Mulholland: Even taking that into account, is the situation not clearer north of the border in Scots law than it is in English law, where they do not appear to have the same kinds of huge episodes we have had here?

Sam Younger: In Scotland, there is a clearer sense of what public benefit is, and it relates to activity as opposed to purpose. This is something that is followed up and looked at in detail by the Scottish regulator. That path of making charitable status a matter of activity as opposed to purpose is not a path that Parliament has wished to go down. It is a long tradition and it goes well beyond my pay grade to think about it.

Q79 Chair: Has the Scottish tradition of charities always been different? The 1601 statute predates the Act of Union.

Sam Younger: This is a matter of the legislation specifically that set up the Office of the Scottish Charity Regulator not so very long ago. It was only seven or eight years ago. It is curious when you look at it. For example, if you take it in terms of independent schools, they have been looking in detail at almost all of the independent schools on the register. That is a different sort of charity regulation from that which we have in England. My understanding is, and I think that of many of those involved in charities, the lawyers and others, that the core of English and Welsh charity law in terms of charitable status is about charitable purposes, not the detail of activity.

Q80 Paul Flynn: That leads us to a situation where privileged public fee-paying schools get tax benefits that are denied to comprehensive schools on council estates.

Chair: That is the same in Scotland.

Paul Flynn: I think the Scots are voting to do something about it, are they not?

William Shawcross: In many of the investigations of independent schools that have happened so far, the schools have passed the investigation.

Q81 Paul Flynn: You are weakened now and emasculated. You gave charitable status to 841 religious groups in two years and turned down one. You were challenged. It cost you a huge amount of energy, resources and money; you are not going to turn down anyone again because you have become cowardly because of the effects of the law and the might of a lobbying organisation.

William Shawcross: We will turn down people again if their charitable purposes are not clear. Sometimes there are borderline cases. If that is the case, we would welcome that. I would much prefer the Tribunal decided these things.

Paul Flynn: But you will surrender if they get the right lobbying and make some cosmetic changes?

William Shawcross: No, no.

Chair: We are going over the same ground. We have dealt with that already.

Q82 Robert Halfon: Could I just ask you about political campaigning? What is the difference between a charity like Shelter, which does many noble things, but it does not do any charitable work on the ground—it is a pressure group, campaigning—and the TaxPayers' Alliance, which is regarded as a pressure group, not as a charity, but just does campaigning. What is the difference between the two?

Paul Flynn: The taxdodgers' alliance, did you say?

Sheila Gilmore: Shelter does do charitable work.

William Shawcross: Any charity is allowed to campaign; in fact, many charities have it as a key part of their purposes to campaign for those purposes. In the case of Shelter, it is campaigning on homelessness. No charity is allowed to campaign for a political party or for political interest. I know you understand that very well, Mr Halfon. Political campaigning is always going to be a neuralgic issue and I am conscious that it is still today. It is something we are always looking at in terms of whether we should change our guidance, but at the moment we have not done so. We might look at it again.

Q83 Robert Halfon: If a charity spends the majority of its time on campaigning and not necessarily doing practical work and field work, do you still regard that as a charity?

Sam Younger: The issue goes back to the previous discussion. The issue is what the charitable purposes are and campaigning is legitimate—even a lot of campaigning in support of those charitable purposes. What cannot be the case is the purposes themselves being political rather than charitable.

There will always be arguments. I remember that it was something this Committee has taken an interest in and it was in your report, particularly in relation to think tanks, which is a very difficult one. We said we were going to be looking at or revising or clarifying our guidance on think tanks. We recently took the first major step on that, which was a round table with a range of think tanks and lawyers and academics involved in it. Two things struck me from that. One is that there was a universal sense that the current Commission guidance, CC9 on political campaigning, was about right. The other consensus was that we need to try to clarify more where—the courts have found this very difficult—that boundary is crossed between campaigning in support of a charitable purpose and what might be seen as a political purpose. I would not deny that that is a difficult area.

Q84 Robert Halfon: There have been some notable cases which I think we have brought up before. The IPPR is recognised as a charity but the Centre for Social Justice, which does welfare reform and is seen as taking an alternative view slightly right of centre, is not regarded as a charity. What I am trying to understand is what the difference is. If an organisation spends all its time campaigning, which I have no problem with, that surely is a pressure group, not a charity. There are pressure groups out there that are not allowed to become charities and yet there are charities that are doing nothing but campaigning or 99% campaigning and yet are regarded as charities. Surely that needs to be looked at.

Sam Younger: In a sense, that is part of what we are looking at to see whether we can clarify the guidance in terms of the criteria, in terms of what flips an organisation over or might flip an organisation over from being registrable under educational purposes—albeit with people coming from a broad philosophical standpoint maybe—into being too politically connected. We have had those issues, for example, with Atlantic Bridge and

The Smith Institute before. We recognise that we have to try to be clearer. It is not at all easy to do but that is the path we are going down at the moment.

Q85 Robert Halfon: Can you not look at one way of squaring that circle? That is to say if the majority of activities that the charity does are on the ground, making a difference to people's lives, that is regarded as a charity, but if the majority of an organisation's activities are just campaigning, that is regarded as a pressure group?

Sam Younger: That takes us back again to the question of the basis of charitable registration and charitable status in this country, which are a matter of purposes rather than activity. What we have to focus on is: are the purposes charitable? Are the activities being carried out thereafter in support of those charitable purposes? Legislation could make any stipulation, but it is not there currently in charitable law.

Q86 Robert Halfon: Do you think that charities should have a clear statement—not just buried in annual reports, but a top page on their website that is easy to find—that goes into detail about what campaigning they do, how much campaigning they do and how much they spend on public affairs professionals or—

Chair: —Which we recommended in our report and it was a recommendation accepted by the Government.

William Shawcross: Charities should be as transparent as they can on every issue. That probably would be a good idea that we should look at and encourage charities to do. It might meet resistance in the charitable sector and it would be very hard in many cases for them to separate: "This is 10% campaigning, 20% this, 30% that". That is quite difficult.

The other thing that I have suggested is that charities that receive the bulk of their funds from national or local government should be clearer about that. That should, perhaps, be on our website. Again, that is something that we are exploring and I suspect that it will meet some resistance, but it is an interesting and important issue. Many members of the public are not always clear that a charity which they love is largely funded by national or local government. That does not mean to say that its work is any worse at all, but it is an important thing for people to be transparent about.

Q87 Chair: In our report, I quote, "We recommend that the Charity Commission requires charities to declare in their annual returns how much of their spending has gone on political and communications work." That recommendation was accepted by the government.

Sam Younger: We have a consultation that we will be launching pretty soon now for what goes in to our annual return, which is what this amounts to. That will be one of the propositions that makes up that consultation. We are required to consult charities before we do it. The other thing we need to bear in mind is that, under the cutting-red-tape agenda, there is a sense of, if we are asking for more from charities, we have to find somewhere to ask for less as well. Although transparency across the board is a very good thing, we have to be careful about the balance of what we require and not go over the top in what we require from our charities. That will be a formal part of our consultation to take to go into the annual return. Indeed, the annual return changes what it requires regularly.

Sheila Gilmore: Before my question, perhaps I could just clarify, for the purpose of the record, having responded to something Mr Halfon said about Shelter, that I was on the Shelter Scotland Committee for a couple of years before 2010. I no longer am, but I would repeat my statement that Shelter carries out a number of in-field activities, such as giving advice, setting up advice lines for people who need help and providing support services. So they are not wholly a campaigning organisation.

Chair: Ms Gilmore, you remind us that we should all declare our charitable connections. I guess we all have them, but I do not suggest we waste time by going into too much detail. They are non-declarable interests, but we are all involved in charities of one kind or another.

Q88 Sheila Gilmore: We are indeed. Mr Shawcross, you chose to speak out on the question of chief executive pay. I would like to ask you why you did so. Perhaps as a parallel question, there has been some commentary that you did not make any statements in relation to, for example, the proposals that were contained in the lobbying Bill in relation to charities.

William Shawcross: I spoke out on executive pay because I was called by a newspaper which was doing an article on this and they wanted me to make a comment. I just made one comment in which I said that it is for trustees to decide how much they pay their chief executives, not for us to dictate. However, in straitened times, trustees should be aware that large salaries for chief executives might excite comment and so on. That is the only intervention I have made and it caused a huge storm, as you say. I am very glad that the NCVO in response to this storm—which was created by the newspapers, not by me—has set up a commission now to examine the question of chief executive pay. That is a very good solution.

On the lobbying Bill, it was our view—from our legal advisers—that the lobbying Bill was not something that we had a dog in the fight for, as it were. We did not have a leg to stand on in regulatory terms. It was not a matter of regulation, so we did not intervene in the way you suggest we might have done.

Q89 Sheila Gilmore: In the respect that charities already have certain rules about political campaigning, do you not think it is indeed relevant even to express a view or be able to explain what that was?

William Shawcross: I do not think it was our job, as the regulator, to enter into that debate in Parliament. That was the decision we took. If you think it was incorrect, I would be happy to come and discuss it with you, but I think we were right.

Sam Younger: Our view was, as a regulator, it was for the Electoral Commission to take a lead in this because it was a matter of electoral law rather than charity law. We were asked in the course of the debate about any view we had on practical implications and we did say there were concerns for us if there were exemptions for charities from the lobbying Bill, because we thought that would put more pressure on to us in terms of people either trying to use charitable vehicles to avoid registration as a third party or potentially setting up charities to get round those rules. There were some practical issues that I think were right for us to engage in as a regulator, but the fundamental issues were on electoral law, not charitable law. They are certainly there for, and right for, the umbrella bodies of the sector. It is for them to champion the needs of the sector, not for us as regulator.

William Shawcross: I agree with that. On the question of the amendment that was put up to exempt all charities from the lobbying Bill, NCVO itself came out strongly against that.

Q90 Sheila Gilmore: In terms of salary, which was the starting point of this, your comment appeared to be that there was a risk to the reputation of charities. Why might commenting and singling this out yourself, in a position where you say you do not have a role, not have some risks to the reputation of charities?

William Shawcross: I hope that has not been the case. I was just answering a straight question straightforwardly I hope. As I say, it is a matter of public interest. Most charities are run by trustees voluntarily and the fact that many charities with large staff and large budgets have chief executives on substantial salaries is a matter of public interest. I am not criticising them. I am just saying it is a matter of public interest and the NCVO has responded very well to that.

Q91 Robert Halfon: I have no problem with how much charity executives are paid, but I do have an issue that those who donate should know about it easily. It goes back to my previous question on political campaigning. Surely you should make it a requirement that charities put it in an easy accessible form on their website what their chief directors and executives and so on are paid in average salaries so that when the public are choosing whether to make a donation, they can at least look at the website and make a judgment for themselves.

William Shawcross: I agree with you. I have said before that the more transparency in charities the better. At the moment, they have to put the bands of pay every £10,000—we pay six people over £50,000; we pay four people over £60,000 and so on. That is what this system is at the minute. As Sam said, though, we are consulting with the charities as we are bound to on the recommendations in the PASC report. We will act upon them as best we can.

Q92 Robert Halfon: Do you have it in your power to make it a requirement that it should be properly open and transparent for people to see?

Sam Younger: We and the Office of the Scottish Charity Regulator are responsible for the SORP—the Statement of Recommended Practice in the presentation of accounts. That can, consistent with the Financial Reporting Council rules, require charities to make disclosure in their accounts. Already the requirements we make, which have to be consulted on, are ones that require making clear your senior staff salaries in bands, but not for individuals. Indeed, in the new SORP, which is coming out in 2015, that requirement is being extended to all charities as opposed to only those that are currently over the audit threshold of £500,000 turnover, so we are moving in that direction. What we cannot do is require charities to put anything particular on their website. We can require something in terms of their accounts or in their annual return but not in terms of what is on their website.

Q93 Robert Halfon: In a number of discussions with a couple of charities that I have had, I feel there is a view that they are moving towards this transparency issue in terms of wage brackets. Do you believe you are knocking at an open door or not?

Sam Younger: I agree with you. There is an increasing sense in charities generally that the best position to take is maximum transparency, and to explain why they do what they do in their approach to a whole range of things. That would be keeping faith with their donors, their beneficiaries and other supporters. What we need to calibrate is what it is right for a regulator to require, mindful of the need to deregulate as well, and, if possible, what is appropriate to require every charity to do. Our current view, based on a lot of consultation and our discussions with the Office of the Scottish Charity Regulator, is that requiring individual salaries to be stated in accounts is a step too far.

Q94 Chair: Finally, we move on to the topic of charity investments. We are raising this issue as a result of the so-called exposé that Comic Relief had invested their funds in things like BAE Systems, tobacco companies and alcohol companies. I should emphasise that we are not here to prosecute a case against Comic Relief and we have invited them to respond to us with any comments, and we will put them on our website if they want us to do so. I wrote to you, Mr Shawcross, as a result of this asking what guidance you give charities about ethical investments. Could you tell us what you think about the level of risk to public trust in charities because they finish up invested in the kind of investments that their public do not expect?

William Shawcross: I think you wrote to Sam about it and he replied to you, so can I ask Sam to answer first?

Sam Younger: It is an important issue and our guidance is pretty clear. The core point in the guidance is to say that the responsibility of charity trustees in terms of resources they have available for investment, is to make the best possible return for their charitable purposes and their beneficiaries. At the same time, it is within the discretion of trustees in relation to their charitable purposes or in terms of what they think might put their support levels at risk, to have an ethical investment policy that will limit those returns or may limit those returns. The important thing about that guidance is that it is not for the Charity Commission to give any answers. It is for the Charity Commission to say in its guidance that these are the factors that trustees must take into account. The first responsibility is to maximise returns, but you may have an ethical investment policy if that is appropriate to your charity, either in terms of its object—for example a health charity and smoking—or it is relevant to you in terms of feeling that the continued support of those that support you would be at risk if you did not have an ethical investment policy.

Q95 Robert Halfon: Would you agree that to define an ethical investment is very subjective, difficult and entirely depends on the organisation?

William Shawcross: Yes, I agree with that and that is why it is a matter for the trustees principally.

Sam Younger: That is absolutely right. It is fair to say that the broader your charitable objectives, the more difficult it is to come up with an ethical investment policy that makes sense. In a sense, if you have a very broad range of support, one person's unethical investment is somebody else's no-brainer investment.

Q96 Robert Halfon: It could lead, heaven forbid, to a situation like the Co-operative movement where one thing led to another and inevitably they face the financial difficulties that they have had.

William Shawcross: Heaven forbid, as you said.

Sam Younger: I would not want to comment on an individual case.

Chair: Are there any further questions for our two witnesses? It just falls to me to thank you both very much for attending today. We have had a very vigorous and interesting session. Can I particularly pass on the thanks of this Committee to Mr Younger for his years of service as Chief Executive that are now drawing to a close? We are immensely grateful for everything you have done and we wish you well for the future. This may well be your last appearance in front of this Committee. Mr Shawcross, if you could also take our best wishes back to all the staff at the Charity Commission. We know that this has been an exceptionally difficult time with regular controversies, downsizing and redundancies as well as big changes and challenges. We are immensely grateful for the commitment that they show to the Charity Commission and to charities in our country.