

Public Administration and Constitutional Affairs Committee

Oral evidence: [Fundraising in the charitable sector](#),
HC 431

Tuesday 3 November 2015

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Written evidence from witnesses:

- Sir Stuart Etherington
- Michelle Russell and William Shawcross
- Rob Wilson MP

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Members present: Mr Bernard Jenkin (Chair); Ronnie Cowan; Oliver Dowden; Paul Flynn; Rt hon. Mrs Cheryl Gillan; Kate Hoey; Kelvin Hopkins; Mr David Jones; Gerald Jones; Tom Tugendhat; Mr Andrew Turner.

Questions 310-516

Witness: **Sir Stuart Etherington**, Chief Executive of the NCVO and Chair of the Review of Fundraising Self-Regulation, gave evidence.

Q310 Mr Bernard Jenkin (Chair): I welcome our witness for this session on charitable fundraising. Could I ask you to identify yourself for the record, please?

Sir Stuart Etherington: I am Sir Stuart Etherington. I am Chief Executive of the National Council for Voluntary Organisations, but I also conducted over the summer a review of the self-regulation of fundraising with colleagues from the House of Lords, a Conservative, a Labour and a Liberal Member.

Chair: Thank you for being with us. We have a great many questions to get through. We will endeavour to ask short questions. It would be very helpful if you gave short answers and I will pull you up if I feel that the answer is going on a bit too long.

Sir Stuart Etherington: Or course, Chairman.

Q311 Kate Hoey: Welcome, Sir Stuart. You have been in charge of the National Council of Voluntary Organisations now since 1994. Were you aware of the alleged practices that we are looking into in the charities before the *Daily Mail's* reporting?

Sir Stuart Etherington: No, I was not. I was not aware of the extent to which these practices existed in the charities concerned.

Q312 Kate Hoey: When you say you were not aware of the extent, you were aware that these practices took place?

Sir Stuart Etherington: I was aware that people engaged in a variety of fundraising techniques, yes.

Q313 Kate Hoey: That could mean a lot or it could mean very little. Could you just clarify a little bit more? What did you know about this before?

Sir Stuart Etherington: I certainly did not know the extent of data trading, data swapping that had gone on, and I was not really aware of what had gone on in call centres or agency practices, which were things that the *Daily Mail* highlighted.

Q314 Kate Hoey: I have just looked through your biography that we were given. Are you still a trustee on all these different bodies? Of how many other bodies are you a trustee apart from your full-time job as chief executive?

Sir Stuart Etherington: I am not a trustee of any of them now; I think they have all come to an end. I chair something called London United, which is a collective of the charitable foundations—

Kate Hoey: I forgive you on that one.

Sir Stuart Etherington: —and I have just been asked to be chair of the Patrons Fund, which is in relation to the Queen's 90th birthday.

Q315 Kate Hoey: But all these other things were in the past?

Sir Stuart Etherington: They have all ended, yes.

Q316 Chair: How surprised were you when these allegations emerged in the *Daily Mail*?

Sir Stuart Etherington: Very surprised by the actual allegations and the detail of what had happened. Very early on we spoke to the *Daily Mail* journalist, who you have had the opportunity to speak with, and I was quite shocked by what had been revealed.

Q317 Kate Hoey: You say you were shocked and that is understandable, but you also said in a speech back in 2001 that the whole sector had to respond to what was then seen back in 2001 as a lack of public trust in fundraising. Then since that there has been the Hodgson report and various work has been undertaken on this. You are seen as the leader of a major representative body of the sector; do you take any responsibility at all for not having looked into this and failed to sort it out earlier?

Sir Stuart Etherington: I do not think we were responsible in that sense, being a trade association. Did the regulator need to look at this more perhaps? Yes. I don't think we take responsibility for that but I was not aware of the extent to which some of these practices were taking place.

Q318 Chair: How much do you think you were conflicted in understanding that part of your responsibility as NCVO, because it is a membership organisation that reflects the charities that it turns out were either breaking the rules or flouting the rules or getting around the rules?

Sir Stuart Etherington: Well, it is an interesting question, isn't it, poacher turned gamekeeper. But my view, when I was asked to conduct a review, was it was quite important that somebody who understood the sector broadly came to some conclusions about the best way forward. I thought it would be more persuasive to the sector if I conducted the review.

Q319 Chair: But how much do you think perhaps blindness to what was going on was because you were representing the charities rather than the best interests of donors?

Sir Stuart Etherington: We do not see ourselves as just a trade association, we also see ourselves as a leadership body. When we conducted the review or when the group of us conducted the review we were very conscious of the need to balance the public interest and the charitable—

Q320 Chair: I am not thinking about the review; I am thinking about why you did not know what was going on or did not ask the questions.

Sir Stuart Etherington: We do not deal directly with fundraising activities and, therefore, we would not necessarily have known that. We dealt a lot with governance issues and we have invested a lot in trying to improve the governance of charities.

Q321 Kate Hoey: You saw that survey in September, which found that something like 80% of the 171 charities that were surveyed were satisfied with how their charities raised funds. Does that surprise you, given what we now know?

Sir Stuart Etherington: The research evidence is quite confusing. There is that survey. There is also a survey by ComRes, there is also a survey by the BBC, which shows higher levels of dissatisfaction with the way that charities are approaching people in terms of fundraising activity. So it is quite a mixed picture.

Q322 Kate Hoey: How are you in your job now going to deal differently with this? What are you going to do differently that might make things different now?

Sir Stuart Etherington: One of the things that we will be focusing on is attempting to improve the governance of charities to make sure that boards and senior management are much more aware of the fundraising activities that are taking place, much more conscious of the need to be more interventionist, thinking about not only the amount of money that is being raised but how that money is being raised. Part of the recommendations in the review and part of NCVO's activities will be focused on developing better governance in charities.

Q323 Kate Hoey: Do you think there are too many charities these days?

Sir Stuart Etherington: No, I think we have to be conscious of the fact that citizens have the right to organise and they have the right to respond to needs as they see them. The

commission does a reasonable job in dealing with new charities as they are emerging and saying, “There is something similar here, you might want to think about whether you put your resources that way”. But people have a basic right to organise as citizens if they see a need in their communities and want to organise to do that, so I don’t think there are too many organisations.

Q324 Kate Hoey: If you were to give us a number between one and 10 of where you personally at this moment feel that public trust is with charities and for fundraising where would you put it at this particular time?

Sir Stuart Etherington: I would say it used to be about nine out of 10; I would now say it was seven out of 10.

Q325 Ronnie Cowan: How can you ensure that people who accept a position as a trustee both understand their responsibilities and are capable of fulfilling them?

Sir Stuart Etherington: There are two avenues to that. The first is the Charity Commission itself, which obviously regulates charities and issues guidance to trustees about their responsibilities in relation to fundraising, so-called CC20, which is being revised at the moment and I hope some of our recommendations in the review find their way into it. So the commission has an important role there in terms of regulation and advice, particularly to trustees. But we ourselves have some responsibilities now, I think, given the recommendations that have been made, to assist trustees in understanding their responsibilities through training, development, induction, various other activities.

Q326 Ronnie Cowan: Is there a limit to the number of charities you can become a trustee of?

Sir Stuart Etherington: No. I think you can be a trustee of as many as you like, as long as you fulfil the criteria and you—

Q327 Ronnie Cowan: Is there not a danger if you take on too many that you are not going to be able to give them the time, care and attention they deserve?

Sir Stuart Etherington: That is true. You would have to consider that; you should not take on too many trusteeships.

Q328 Ronnie Cowan: Is there evidence of that in the past?

Sir Stuart Etherington: No, I have not seen any.

Ronnie Cowan: No?

Sir Stuart Etherington: No, I am not aware of any.

Q329 Kelvin Hopkins: Is it important, Sir Stuart, to have a degree of professionalism amongst trustees and not just have well-intentioned worthies who might not be up to the job, but have some accountancy skills, legal skills and so on, on trustees so they can really get a grip of what managers are doing?

Sir Stuart Etherington: I agree with that. It is important that there is an audit of skills that you have on your board to ensure that they can hold the management of the organisation to account. It is very, very important. But on the other hand you have to remember that this is principally a voluntary activity and you don't want to, in the end, frighten people into not coming forward to be trustees by making the job so onerous that they think, why would they do it? There is a balance to be struck but most trustees are well-intentioned—they come forward for the right reasons. But I think there is an issue about having an appropriate balance of skills, and where that is not true ensuring that good training, good induction, is given.

Q330 Mrs Gillan: Do you think a time limit should be put on trustees?

Sir Stuart Etherington: Yes, I do. In NCVO we have a three and three policy—you can do two terms of three years, so you can do six maximum. That seems to work quite well and I personally think term limits on trustees are a good thing; otherwise you tend to get a situation where people have been there a long time, nobody is really considering their position, and you don't refresh the board. So, yes, I would have term limits.

Q331 Mrs Gillan: Would you like to see that enshrined in law?

Sir Stuart Etherington: I don't see any reason why not.

Q332 Chair: When we first discussed this when you were appointed I did suggest that we were going to be looking at, and we have looked at, to what extent this is just a failure of governance of major charities. Your report lays little emphasis on governance issues.

Sir Stuart Etherington: I think it does talk a bit about governance, Chairman. It talks about the responsibilities of trustees and it talks about the responsibilities of senior managers. One of the things that I felt—and we interviewed a lot of people as part of this review—was that it was not necessarily being taken seriously enough at a senior enough level. There might be interest in how much money was generated but there was less interest in how it was generated. So what we suggested here is that trustees take a much more serious look at the way in which their organisations fundraise.

Q333 Chair: But it is not just a question of fundraising. This is a failure of leadership, of awareness, of communicating to the staff and to the contractors what the values of the charities are. This is far broader than just, as you put it, the audit of skills or the ability to hold management to account. This is about what the responsibility of trustees as leaders of an organisation is about. Why have you not given more attention to that in your report?

Sir Stuart Etherington: In a report you have to have tangible recommendations to make and what we were discussing before was the culture of organisations and how leadership sets the culture and the values. I was asked to review self-regulation—the regulatory structure. I think regulation only goes so far in relation to this; it is a matter of values and how those values are communicated. But I was asked to look at the regulatory structure and that is only a limited part of this, I think.

Q334 Chair: That is the easy bit, isn't it? It is more difficult to talk about these intangible leadership questions.

Sir Stuart Etherington: It is incredibly difficult. During the investigation I spoke to someone who put it like this: that really charities are a conduit between the supporters and the cause, and that is what they are. I think some organisations lost sight of the fact that that was what they were about. You are right that you need a restoration of the values upon which charity is based. That is, I think, quite difficult to write down if you are reviewing regulation because it is only part of the story.

Q335 Chair: But a charity is more than a conduit, isn't it? The NSPCC or the Red Cross are institutions with personality, employing people, caring for people. This is not a conduit.

Sir Stuart Etherington: It is a relationship between people who give them money to do things and what they do with that money.

Chair: I am surprised that you take such a narrow view of what a charity is. I am speechless.

Sir Stuart Etherington: No, it is its essence, Chairman. It is about providing—

Chair: You see it as a transaction.

Sir Stuart Etherington: No, I see it as providing benefit for beneficiaries with the support of the public.

Q336 Chair: You see it as a transaction. The point is that leading an institution is not a transactional business; it is very much a human business. We can have all the regulation in the world, we can have all the structures and regulators, but if people are not behaving as responsible people then it is not going to work, is it?

Sir Stuart Etherington: Well, somebody said to me during the review, the issue of the self-regulation is people have got to want to be regulated. To a certain extent, that is true. People have to change their behaviours, I agree with that, I don't think we are in conflict on that.

Q337 Mr Turner: You suggest that the second line of defence is the non-statutory regulator. Can you explain what makes this new form of so-called regulation different from the failed system we are examining today?

Sir Stuart Etherington: There are a number of differences, Mr Turner. The first is that it is not a membership-based organisation; there will be a levy on charities to support this. If it is a membership based structure it gets into all sorts of conflicts of interest, so that is the first thing. The second thing is that it has a number of sanctions available to it that were not available to the previous regulator—in particular, cease and desist on certain types of fundraising, which I think is potentially a serious sanction that could be applied. Thirdly, it is the relationship between the second line of defence and the third line of defence, if you like. What we are proposing is co-regulation: if a charity persists in not going along with the recommendations of the self-regulator then ultimately the referral would be to the statutory regulator—normally the Charity Commission; some other fundraising organisations will have another principal regulator—which would then see it as a governance issue, would then see it as a failure to act and they would have much more severe penalties. It is a much more structured, simple form of regulation.

Q338 Mr Turner: The Information Commissioner has suggested that some of the functions of the new regulator will overlap with the guidance he issues on direct mail. Why should charities have to look to two regulators rather than just the one?

Sir Stuart Etherington: The Information Commissioner obviously has a wider remit than charities and deals with issues around data protection, principally. Sometimes the relationship between the sector and the ICO has been somewhat confused. The Fundraising Preference Service is what the ICO dealt with in particular. We are not suggesting that that is statutory regulation; we are not suggesting that he should be policing that. We are suggesting that that is a service, and the reason we have suggested that is that we were examining how particularly vulnerable people, if they are getting multiple mailings from organisations, would be able to switch that off. We think the FPS can do that. It is not the same as what the ICO does.

Q339 Mr Turner: So the guidance from the ICO is different from the Charity Commission, partly because some of them are not charities?

Sir Stuart Etherington: Yes, indeed. He deals with private sector organisations and indeed public sector organisations as well, so he has a much wider remit.

Q340 Mr Turner: Currently none of the regulators have a representative of donors on their boards. Whose interests should the new regulator represent?

Sir Stuart Etherington: There should be some consumer interests represented on the regulator. That is obviously a point of detail that needs to be worked through, but why would we not go for the Consumers Association or someone of that nature on that board that can in some ways represent the donor interest or the public interest?

Q341 Mr Turner: Who will be responsible for setting up the new regulator, appointing its officers and so on?

Sir Stuart Etherington: We have suggested in the report that the Minister should appoint the interim chair of the regulator to set it up. It will then be up to that chair to appoint their board through a process that would need to be open and public, and to appoint staff to make it happen.

Q342 Mr Turner: What role should the Charity Commission play?

Sir Stuart Etherington: They would play a very significant role as backstop. If, for example, charities do not respond appropriately to the self-regulatory structure there can be a referral to the statutory regulator, because it would then be a failure of governance that they would have to look at. Of course there will be a reserve power, so if this does not work in two to three years—and we have suggested that they report to this Committee to check progress—if sufficient progress has not been made, then ultimately statutory regulation is probably the only alternative at that point.

Q343 Mr Turner: What would be the consequence financially?

Sir Stuart Etherington: It would cost a lot more money.

Mr Turner: Like?

Sir Stuart Etherington: It is difficult to say. We are suggesting the self-regulator would cost around £2 million to £2.5 million. Probably if you did statutory regulation it would cost a bit more and of course it would fall on the public purse, which happens at the moment. It would cost a lot more, it would be more complex, you would need to ensure that they had the expertise to police this area of work. In some ways statutory regulation is a very blunt instrument in relation to what is quite a fast-moving field—fundraising. You also tend to get a little bit more litigation if statutory regulation is involved, so it becomes a little bit more litigious.

Q344 Kelvin Hopkins: Sir Stuart, you have talked already about the Charity Commission as your third line of defence in your review and what its role might be. How important is the role? How substantial should that dominant factor be?

Sir Stuart Etherington: We spoke to the Charity Commission as part of the review and their anxiety was that the new self-regulator would just keep pumping cases to the Charity Commission to resolve them and they would get a considerable increase in the amount of work without any increase in the resources available to deal with them. I am not sure how much would be passed on. If I was a charity and I was respectful of the self-regulatory structure, I was paying for a self-regulatory structure, and they were telling me that I was not operating effectively in a particular area of fundraising, or not ethically in a particular area of fundraising, I would respond to that quite seriously and my board would respond to that quite seriously. So I am not sure how many cases will be referred on to the commission. We need to look over a period of two or three years to see exactly what the scale of work that is being referred on is. My gut reaction is it will not be an enormous amount.

Q345 Kelvin Hopkins: You have touched on resourcing. Only 4% of the Charity Commission’s current investigations—those between 2007 and 2014—involve fundraising, which has become a major issue. How would you propose funding this scale up in the Charity Commission’s operations, and should it be funded by the charities themselves or by the state?

Sir Stuart Etherington: The commission intends to consult shortly on charging for its services. We have reserved judgment on that. Obviously some regulators are funded by the industries that they regulate. We are waiting to see the actual detailed proposals that the Charity Commission bring forward, which I think will be before Christmas; then we can comment on whether or not the sector should fund aspects of its work. We have not seen the detail—will they be charging for particular services, will they be charging for registration? It is not clear what they would do. But we would take a lot of soundings from our members when they put forward proposals.

Kelvin Hopkins: Many regulators are funded by the state rather than the organisations they regulate.

Sir Stuart Etherington: That is true.

Q346 Kelvin Hopkins: Given that it would put more administrative burden on charities and take away from their charitable work, would it not be possible to have the state do the job?

Sir Stuart Etherington: The state does fund the regulator at the moment, of course, in its entirety in relation to charities and in a sense it is there to safeguard the public interest, and

therefore it is publicly funded. In relation to the regulation of fundraising the self-regulatory model would be funded by the sector that is being regulated.

Q347 Tom Tugendhat: Given that 53% of the public responding to the Hodgson review back in 2012 wanted more stringent penalties—such as being struck off the charitable register—for charities who broke fundraising regulations, how satisfied do you think the public will be with this new regime?

Sir Stuart Etherington: If they are clear what it is, clear who they can complain to, clear that they can register if they don't want any communication from charities and that they will hold that list, I think they will have more confidence in this. The reason that they do not have much confidence in the current situation is that they had never heard of the Fundraising Standards Board; it does not have a public presence. We interviewed a number of different self-regulators as part of the process over the summer, and if you compare that with the Advertising Standards Authority, everybody has heard of the ASA, everybody knows who they complain about in relation to adverts. I would like to see the fundraising regulator in a similar position.

Q348 Tom Tugendhat: Do you think steps need to be taken to raise that awareness? There is certainly a massive distinction between, say, the ASA—where the ordinary man in the street would know to go to that if there was a problem with advertising—the current regime and, indeed, the proposed new regime.

Sir Stuart Etherington: There is a public awareness issue that needs to be tackled by the new regulator because you are right, people know who the ASA are. If they have a problem with their doctor they know it is the GMC—roughly, they know where to go. They don't know where to go in relation to fundraising and that is a public awareness issue.

Q349 Tom Tugendhat: Another issue that arose was that many charities are not regulated by the Charity Commission, including universities, schools and churches. We understand that you did not consult those organisations. Why didn't you?

Sir Stuart Etherington: We were a bit short of time over six weeks over the summer. These are exempt charities—that is, charities who are exempt by virtue of having another principal regulator. What we suggested in the report is that the fundraising regulator will need the Charity Commission as a backstop in those areas where it does regulate, but will need to identify who is the legislative backstop in those areas where they do not regulate. For example, for universities, who are the other principal fundraising operations? It is the Higher Education Funding Council that is the principal regulator, so this fundraising regulator will need a relationship with them, certainly if there are complaints about a university's fundraising techniques. One of the reasons we did not interview them is that there were not really any complaints that we were aware of in relation to the way that universities fundraise, but there might be and, therefore, they would need a relationship with whoever regulates them.

Q350 Oliver Dowden: Presumably the lesson of these most recent allegations is that there were not really concerns previously about those charities and their fundraising.

Sir Stuart Etherington: No, it may well be. I don't know the answer to that question but the solution, if there is a problem, is for this regulator to have a relationship with, in the universities' case, HEFCE, for example.

Q351 Oliver Dowden: What about this issue of the effect that your proposals will have on smaller charities? How do you intend to consult with those smaller charities?

Sir Stuart Etherington: Yes, we did talk to some small charities as part of the consultation exercise and some did provide evidence to us. We set the threshold for payment for the fundraising regulator at £100,000 of fundraising expenditure because we thought that was a better measure of fundraising activity. So anybody with less than £100,000-worth of fundraising expenditure would not be required to pay for this regulation. But it was important, we thought, that there would be universality in coverage, so although they would not pay if people made a complaint about them they could be investigated by the regulator.

Q352 Oliver Dowden: Do you have any sort of de minimis requirements other than the £100,000 to deal with that?

Sir Stuart Etherington: No, but I think when we start to work on the detail of the Fundraising Preference Service we will need to look at the issue about smaller charities in relation to that. But the detail on the FPS is still to be worked out.

Q353 Ronnie Cowan: We are talking about the amount of money that has been raised here for charities and we are talking about how much money it costs to run charities. We seem to be putting more layers in here. Whether it has been funded by the state or has been funded by individuals, ultimately that money comes from the people of the United Kingdom, whether they are paying it through tax or they are putting it in a tin in a shopping mall. Earlier on you stated that you did not think there were too many charities. Surely the solution to this is to have fewer charities and for the Government to step in and do its job so that people do not rely upon charity in the first place. That is a win/win situation for everybody.

Sir Stuart Etherington: I am not sure I would agree with that completely, and of course the vast majority of charities are tiny. It is quite important when people reflect on this that they realise that the vast majority of charities have incomes of less than £50,000 a year, they do not have staff—

Q354 Ronnie Cowan: But why does a small charity exist in the first place? What are they trying to do that society is not providing for them?

Sir Stuart Etherington: I think they are responding to expressions of need from communities in a lot of cases.

Q355 Ronnie Cowan: But why is that need not being fulfilled by Government?

Sir Stuart Etherington: Government cannot do everything.

Tom Tugendhat: There is a charity in my constituency that has just raised money for a playgroup in a village and I think that is a perfectly valid thing to do. I would be

astonished if they raised more than £50,000 in order to build what they built. I do not think that is something—

Ronnie Cowan: Education is provided through Government. Why does it stop at that level? Why is it not providing education for kids that are two years and three years of age?

Chair: Can we ask the witness the questions, please?

Q356 Mr Turner: May I just ask, what are the numbers?

Sir Stuart Etherington: In terms of fundraising?

Mr Turner: Yes, in terms of size. How many are over £100,000, how—

Sir Stuart Etherington: There are 163,000 registered charities in England and Wales.

Q357 Mr Turner: How many of those are tiny?

Sir Stuart Etherington: The vast majority—70% I would say.

Q358 Gerald Jones: My question is regarding the Fundraising Preference Service, which you mentioned in your answer to Mr Turner. We have received some evidence from the Information Commissioner that suggests that it may duplicate the existing telephone and mail preference services. Can you explain in your view what the need is for the Fundraising Preference Service over and above the other two?

Sir Stuart Etherington: The Fundraising Preference Service is inevitably linked to the whole question of explicit consent and opt-in, which is another question but it relates to the FPS. Why did we consider the need for a Fundraising Preference Service? It was in response to some cases, some of which were in the media, where individuals—particularly vulnerable individuals—were in receipt of a range of different fundraising approaches for a range of different channels, mail, telephone, whatever. They were getting a lot of mailings. Lists have been swapped historically. No one charity knew what other charities were doing in relation to that particular individual or person, so it was a reset button that we were looking for—the option of opting out of any fundraising communication. The Telephone Preference Service and the Mail Preference Service do not deal with that in that way, so that is what we were looking for.

The FPS needs a bit of development work, in the sense that we knew what we were trying to achieve with it and how different it was. I think the ICO has expressed some concern that there is no statutory backing for it, so he would not be able to regulate with it. But of course the report does not ask the ICO to do that; it is a service that would be provided by the fundraising regulator.

Q359 Gerald Jones: Did you think, then, that because it is not backed by law it would be somewhat weaker than the existing arrangements under the Telephone Preference Service?

Sir Stuart Etherington: One of the issues that must concern the ICO is how rigorous the TPS and the MPS are. People seem to be getting around it quite a bit—not just charities but others. We interviewed the ICO as part of the review and people from the fundraising community, and there does seem to be a bit of confusion about what the guidance means, what explicit consent is. That is why we say in the report quite clearly that we need the

ICO to have a more developed relationship with the charity sector, so that both sides know what the law requires and what is good practice.

Q360 Mr David Jones: Sir Stuart, the NCVO has commented that this is the last chance for fundraising self-regulation to work. How will we know if it has worked?

Sir Stuart Etherington: There are number of ways in which we will know that. We will know that when we observe how cases are resolved effectively to the satisfaction of consumers. Ultimately public trust and confidence is measured and it has been going down, not unsurprisingly given events. Whether public trust and confidence goes up in charities would be another rather high-level measure. How many referrals are made, how those issues are resolved, the way in which charities react to the intervention of the new regulator—all of those things can be set out. We set out in the report a number of key performance indicators, which we suggest this Committee might look at, that might apply to assess the extent to which it has been successful.

Q361 Mr David Jones: Given that so many people were unaware of the practices that were exposed by the *Daily Mail*—you yourself said that you were unaware of those practices—what confidence could the Committee place in a report prepared by the sector’s regulators?

Sir Stuart Etherington: I would hope that this Committee would have a very clear idea about how it would assess whether this had worked—we suggest some things in the report about how that might be assessed—and that you subjected those regulators to scrutiny here.

Q362 Mr David Jones: But in the absence of knowledge of the practices that are continuing, as exposed by the *Mail*, how could we possibly know what questions to ask? Is that not the difficulty?

Sir Stuart Etherington: I would hope that a new regulator, better resourced with more powers, would be taken much more seriously and you would be able to assess whether or not they had been successful. It is quite difficult because we don’t know what we don’t know, but this Committee has over the years shown incredible ability to get to grips with the facts and you would be in a very good position to make the assessment.

Q363 Mr David Jones: Would you envisage a proactive role for the regulator or an entirely reactive one?

Sir Stuart Etherington: I think more proactive than before. Firstly, in answer to the previous question, the public have to know about this regulator and they have to know how to communicate with this regulator, so proactive in terms of public knowledge. One of the things that I think has been problematic, looking at the current structure, is that the various bits of the regulatory structure did not talk to each other very much. You had the PFRA, you had the Institute of Fundraising who had ownership of the code, you had the Fundraising Standards Board, you had the Information Commissioner on data, where sometimes there was lack of clarity about what was required; you had the Charity Commission. These bodies were not strategically moulded together and they do need to be more.

Q364 Chair: How do you think the Charity Commission should be involved in scrutinising how all this works?

Sir Stuart Etherington: They should be members of the fundraising regulator—they should have a senior presence on the board of the fundraising regulator, in part because I would imagine the fundraising regulator working like most regulators, which is almost a triage thing. A number of complaints would be dealt with at quite a low level, some being elevated to a much more serious level. The commission would need to be conscious of what that regulator was doing in relation to fundraising, so it would need quite a high level of contact with them.

Q365 Chair: On the question of the Charities (Protection and Social Investment) Bill—which is due to have its second reading in our House shortly—what further changes to the law do you think need to be included in the Bill?

Sir Stuart Etherington: I think the Minister plans two more and I agree with both of them. The first is to have a reserve power, if this does not work, to be able to introduce statutory regulation. The second is that it is a reserve power to mandate organisations to join this new regulator. It is a reserve power if they don't come forward and do it. Those are the two principal things that are needed and I agree with both of those amendments.

Q366 Chair: Sir Stuart, thank you very much for the review that you have conducted. It is a tremendous contribution to the debate. We will look forward to giving our own views upon it. Thank you very much for your evidence.

Sir Stuart Etherington: Thank you very much.

Examination of Witnesses

Witnesses: **Rob Wilson MP**, Minister for Civil Society, **William Shawcross**, Chairman, Charity Commission, and **Michelle Russell**, Director of Investigations, Monitoring and Enforcement, Charity Commission, gave evidence.

Q367 Chair: Welcome to our second panel of witnesses. I must apologise that we are in this vast room and you are very far away, but if you shout loud enough we will hear you. Could I ask each of you to identify yourselves for the record, please?

Mr Wilson: I am Rob Wilson. I am the Minister for Civil Society.

William Shawcross: I am William Shawcross. I am Chairman of the Charity Commission.

Michelle Russell: I am Michelle Russell. I am the Director of Investigations, Monitoring and Enforcement at the Charity Commission.

Chair: Thank you to the three of you. We will ask short, concise and open questions, I hope, and if you could reciprocate with short and concise answers it would assist us greatly. May I particularly welcome the Minister? I think it is his first appearance in front of this Committee—the first of many I hope.

Q368 Kate Hoey: Welcome. Lord Hodgson has said that the Cabinet Office should convene a group, including the main regulators of fundraising, to continually review the regulation of fundraising. Has this group met?

Mr Wilson: Could I start by saying—

Kate Hoey: No. I would just like you to start by saying yes or no.

Mr Wilson: We have had a meeting already with large charities in the NCVO and a number of other organisations represented. We are making rapid progress. I hope to be able to announce the new chairman of the regulatory body imminently. We are making rapid progress. There is a working group ready to be set up to look at some of the issues. You have to remember we have only really been at this for a month.

Q369 Kate Hoey: 2012. I appreciate you may only have been at it a month, but it has been a long time since Lord Hodgson made the suggestion to the Cabinet Office.

Mr Wilson: Yes. When I became the Minister a year ago, one of the first things I recognised was that the self-regulatory system was not working, and one of the things I was looking at was setting up a review of the system because clearly something needed to change. I was very aware that there were systemic problems, for example, between the Standards Board and how it was working, how it was interfacing with, for example, the Institute of Fundraising. There were clearly systemic problems that the Standards Board had lost the trust of the sector to a large extent, and a number of large charities were not signing up to the Standards Board, so there were clearly problems. I did talk to Lord Hodgson about doing a review, but unfortunately he was already committed to doing another review on the lobbying and transparency legislation that we put in. Then the Olive Cooke issue blew up and that needed a very rapid and urgent response because it raised issues that we had not previously been aware of, although—

Kate Hoey: I think the answer is yes.

Chair: We will move on, because you are giving one of those long answers. Just a minute.

Kate Hoey: The answer is you have not done an awful lot so far.

Q370 Chair: Just to be clear, there was a recommendation from Lord Hodgson in 2012 that the Cabinet Office should convene a group, including main regulators of fundraising, to continually review the regulation of fundraising. When did that group first meet?

Mr Wilson: As I have indicated, Mr Chairman, I have taken a number of actions. I have been on top of this issue from the moment I was appointed.

Chair: Just say you do not know.

Mr Wilson: I am just telling you the answer.

Q371 Chair: The answer is you should be able to give us a date of when it first met.

Mr Wilson: What I can tell you is that we have made amendments to the Charities (Protection and Social Investment) Bill in response to—

Chair: No, that is not the question. I am sorry.

Mr Wilson: What I am telling you is that we have taken a considerable amount of action in a very short space of time in responding to this issue.

Q372 Chair: The suggestion is, unless you want to correct this in writing afterwards, this group never met until this crisis blew up. Is that correct?

Mr Wilson: I have given you my answer, Mr Chairman, in that we have taken a considerable amount of action.

Q373 Kate Hoey: That is very helpful. There is no harm in admitting that it has not met. That is fair enough. It is not fair enough, but there is no harm in admitting it. Can we take it that we or you owe a great vote of thanks really to the *Daily Mail* for bringing out a lot of these allegations and the Etherington Review, and that until that happened the Cabinet Office really did not take these things seriously?

Mr Wilson: Can I just say that the group did meet in 2013, which was obviously before my time in the Cabinet Office? We can write to you with further details of that.

Kate Hoey: Yes. It would be useful to know what it discussed and what came out of that meeting.

Mr Wilson: Yes. As I say, I was aware of systemic problems in the way that the self-regulatory system was working.

Q374 Kate Hoey: My question is: is it now being taken more seriously, only since these allegations came out in the *Daily Mail*?

Mr Wilson: As I have said to you, it was taken seriously from the moment I got into the Cabinet Office and took on this job. What we did not know was the extent of the unethical practices taking place in the mass-marketing area of the telephone preferences and the direct mailing. I was not aware, and I do not believe my officials were aware, of the scale of what was going on, and that was the thing that the Olive Cooke incident brought to life. It suddenly flushed out, along with a number of investigative journalism-based articles, the extent of these poor practices and the fact that many of them were quite immoral.

Q375 Kate Hoey: It worried you quite a lot, did it?

Mr Wilson: It worried me immensely, and within a week of hearing about the Olive Cooke story I called the regulators in to see me and told them that they had basically one month to start to put things right—to introduce new measures so that they could start to rebuild confidence with the public.

Kate Hoey: Thank you.

Q376 Oliver Dowden: One of Lord Hodgson's recommendations was that the Charity Commission works closely with the FRSB. How did the commission put that into practice?

William Shawcross: We have been working closely with the FRSB and the other two regulators of the charitable sector always, and we have worked with the Cabinet Office also. I should say the Minister and I have talked about these issues ever since he came into office, and our relationship with the Cabinet Office has been very helpful.

It was made clear in the 2006 Act, in the 2011 Act and in Lord Hodgson's review that the best system was for charities to self-regulate and it should not be a statutory duty of the

Charity Commission. We have abided by that, obviously, and we have had a watching brief, but our job has not been to regulate charity fundraising.

Since the horror stories of the summer, which Ms Hoey quite rightly accredited to the *Daily Mail* and *The Mail on Sunday*—they did the charity world a great service in exposing these misdeeds by some, not all, charities. One must emphasise that only some charities have behaved badly. The vast majority of charities in this country, of which there are 160,000, behave well, and we must not tar them all with one brush in this context. Since then, as you know, the Cabinet Office immediately set up the Etherington Review. We have worked closely on and spoken to Sir Stuart and his review team, and we welcome very much the new, stronger self-regulating body that Sir Stuart has recommended and the Cabinet Office has accepted, and we will work closely with that body as it envisages.

Q377 Oliver Dowden: May I just press you a little further on exactly how the Charity Commission worked with the FRSB prior to these allegations being exposed by the *Daily Mail*?

William Shawcross: Michelle, may I ask you to answer?

Michelle Russell: I suppose there are three areas in which you can umbrella our work and support with them. The first is by making clear in our public guidance about trustee duties, and that guidance is CC20 on fundraising to make that plank clear and to signpost to the public and to trustees the role of the three regulatory bodies that exist.

The second area is that we have a memorandum of understanding with FRSB, which makes clear what types of cases we would be interested in and have legal remit to take.

The third area is supporting them in a more general sense. If I can give you a specific example of that, we supported them in an initiative around public supermarket fundraising collections to give the public more confidence that charities that approach supermarkets for permission to collect in their premises are only those that file their accounts on time and, on the face of it, have good financial management.

Q378 Oliver Dowden: How did you feel that relationship worked prior to these allegations coming to light between the Charity Commission and the FRSB?

Michelle Russell: I suppose there are some things that work well and perhaps some things that you always think we could do better or do more of. FRSB is a small organisation with a small number of employees, and it had a limited membership body. We were only ever going to reach a small number of charities through FRSB, so it was important for us as well to make sure that we had a relationship with the other two bodies that have a role to play in the current self-regulatory remit.

Q379 Oliver Dowden: May I ask both William Shawcross and the Minister what your reaction was to these allegations? You have touched on it a little bit already, but what was your reaction when you first saw them in the *Daily Mail*?

William Shawcross: In the summer?

Oliver Dowden: Yes, in the summer.

William Shawcross: It was horrific, obviously. It was an appalling abuse of charity and the whole nature of charitable purpose. As I said, I am very glad that the *Mail* and other newspapers exposed it, and we are here because of that today. I think the Minister and the charity sector have responded properly in coming up with a new, much stronger self-regulatory system, which we are pledged to support.

Q380 Oliver Dowden: Was it one of complete surprise, or did you have any underlying concerns?

William Shawcross: After the Olive Cooke tragedy, it was not a complete surprise, because that had shown that something was wrong. Apart from that, yes, it was a surprise. Sorry, I would like to stress again that not all charities and not all fundraising charities have behaved in this way, and there are a lot of wonderful charities out there that should not be all put in the same basket.

Oliver Dowden: Thank you.

Mr Wilson: My immediate reaction was that this was unethical, immoral behaviour and, on further investigation and reading the stories, it was quite clear that these poor practices were systemic and that large charities were ducking the usual rules of best practice, or even good practice for that matter, and there was a certain amount of what I would call manipulation of vulnerable and elderly people in what they were doing. It should always be stressed that it is in the context of many charities doing wonderful work and fundraising quite properly, but there were these errant organisations, who were not adhering to the rules, who were doing things particularly badly.

Oliver Dowden: Thank you.

Q381 Mrs Gillan: Can I get the timelines clear in my mind? Minister, when were you first aware of the public discontent with the fundraising? Was it before the *Daily Mail* articles or was it with the *Daily Mail* article?

Mr Wilson: I would say that I first became aware of the seriousness of the bombarding of elderly, vulnerable people with both telephone and direct mail, these mass-marketing techniques, with Olive Cooke. I was aware of problems with the systemic structure of self-regulation before that, but really Olive Cooke was the first sign of that, and within a week of that I had the self-regulators in to see me, to tell them they needed to take very urgent action.

Q382 Mrs Gillan: It effectively took the *Daily Mail* reports to allow this to sink into your consciousness and to create the Etherington Review?

Mr Wilson: No, because, as I say, immediately I had already taken action with the self-regulators within a week of the Olive Cooke story coming out. The *Daily Mail* articles came out after. Firstly, I think it was *The Mail on Sunday*.

Q383 Mrs Gillan: When did you set up the Etherington Review? After the *Daily Mail* articles?

Mr Wilson: That was after what I deemed to be a failure of the self-regulators to react in a sufficiently robust way. I gave them until the end of June to do that, and at that point I did

not feel that they had done enough and that more needed to happen, and that is when I decided that I would set up a review.

Q384 Mrs Gillan: You set up the Etherington Review after the *Daily Mail* revelations.

Mr Wilson: Yes.

Q385 Mrs Gillan: Then how did you view the conflict of interest in appointing the leader of the sector's representative body to run that review?

Mr Wilson: I did not see it as a conflict of interest because I saw that what we were doing was setting up Sir Stuart to lead the review, but he also had three Members from the other House that were involved: a Liberal Democrat, a Labour Member and also a Conservative Member. I felt the best way to do this was on a non-party basis, but I also felt that the charity sector had caused itself so much damage with the revelations that we had seen that it should have the opportunity to try to put this right. I think that many people accept that the Etherington Review is a very good review and makes some very good suggestions about how we proceed in the future.

Q386 Mrs Gillan: It is effectively taking someone from that area to carry out the review of the area. What consideration did you give in the Department to a potential conflict of interest?

Mr Wilson: We have to take all these things into account, and it was one of the things that was considered as part of that. I felt that it was appropriate. He had a very strong track record of making good decisions about the sector and I think he had a lot of knowledge. When you are doing a quick review, it is very difficult to get up to speed quickly with some of the issues, and I felt that he would be there quicker than other people. It is very important to stress that we needed to make sure that this happened quickly because there were many practices that we needed to put a stop to very quickly. Having a review that was able to deliver some very solid recommendations quickly, that had consulted the sector, was very important.

Q387 Mrs Gillan: Mr Shawcross, may I ask you the same question? When were you first aware of the public discontent with fundraising? Was it really triggered by the *Daily Mail*?

William Shawcross: Yes. With the Olive Cooke death, the tragic death of Olive Cooke. Then of course the *Mail* investigation compounded that. May I add, Madam, a word about Sir Stuart Etherington?

Q388 Mrs Gillan: No. I just want to continue on this line. I just want to know why it took the Olive Cooke incident to alert you to all of this, for example, when we had the substantial polling evidence from things like Ofcom.

William Shawcross: I did not hear that.

Mrs Gillan: It obviously took the *Daily Mail* revelations for the Charity Commission to be alerted and even for the Minister to be alerted to what was going on in this sector, and to realise that it was much bigger than was anticipated. I just wondered if you were unaware of the substantial polling information and evidence that came from organisations such as Ofcom.

William Shawcross: Everybody was taken aback by first the death of Olive Cooke and then by the extraordinary revelations in the *Daily Mail*, and everyone was taken by surprise and was shocked by that. It is not, as I have said before, our job to control and to regulate fundraising of charities. That was decided by Parliament in the 2006 Act and in the 2011 Act, and again by Lord Hodgson, that self-regulation was the answer for fundraising, and we have abided by that ruling of Parliament. If Parliament ever decided to give us the job of regulating charities' fundraising, which I hope they will not, of course we will fulfil it properly. But so far they have not done so. I very much welcome, as I say, the prompt way in which the Cabinet Office set up the Stuart Etherington Review. If I may say so, he was a very good choice. He is a great critic of the Charity Commission. He is not a great friend of ours all the time but he is an objective and fair-minded man, and I think he was a good person to lead this review and to do it quickly.

Q389 Mrs Gillan: Basically, what you are telling the Committee is that the Charity Commission is prevented by the charity laws that exist from bearing any responsibility or having any oversight into the fundraising activities of charities. Is that what you are saying?

William Shawcross: We all carry responsibility for everything, Madam, but we do not have any regulatory oversight. That is correct. Michelle, do you want to add to this?

Q390 Mrs Gillan: So you don't think that what has been happening in the charity sector is a failure of oversight of the Charity Commission?

William Shawcross: No, I don't.

Mrs Gillan: Ms Russell?

Michelle Russell: There are two different things here, I think. The first thing I would just say is that the research that we commissioned into what affects public trust and confidence, and we publish each year, does highlight that fundraising practices do affect public trust and confidence in charities generally. We have been very clear for a number of years that that is an issue that the sector needs to be aware of.

There are two different responsibilities here. The Commission is responsible for regulating abuse and misconduct and mismanagement. Where there are practices that are illegal or amount to misconduct or mismanagement in a charity, that is where the commission's engagement kicks in. What we have seen over the summer is not necessarily illegal practices—although of course there is the Information Commissioner's Office, which is investigating whether or not there have been Data Protection Act breaches—but that the methods and practices of fundraising, which are self-regulated, while they may not be illegal, are uncomfortable to the public, and that is what has been brought to the forefront this summer.

Q391 Mrs Gillan: Do you not therefore think, Ms Russell, that it is hard for somebody looking at this from the outside to see you set up as the Charity Commission, to have you looking into fundraising practices by your own admission, but then not taking any responsibility whatsoever for bringing charities up to speed on this?

Michelle Russell: First of all, there is a legal remit issue. For example, we have no jurisdiction over fundraising companies. Our jurisdiction is in relation to charities and the charitable funds that they hold. We can hold charities to account for not having with a

professional fundraiser the appropriate agreement or the appropriate clauses in place, and we do have cases that are related to that. But the methodologies and practices of perhaps oppressive or aggressive or repetitive asking for money from donors—that is where Parliament has decided that it is self-regulatory. We are there if there is a persistent breach or it leads to a significant risk to assets to take action, and that is where we have done that.

Q392 Mrs Gillan: Do you have no responsibility whatsoever, because you say Parliament has decided you have no responsibility whatsoever, to report those matters, say, to the Cabinet Office or draw the attention of the Minister responsible for this area to those practices that you are not able to influence but you are obviously aware of? From what you have both been saying, you were obviously aware that there was a lot going on in this area, but it was not your responsibility.

Michelle Russell: On the misconduct and mismanagement, we publish every year what we are finding on fundraising practices in our annual report and in our compliance report, “Tackling abuse and mismanagement”. It is highlighted as one of the themes that we report on there, but there is a difference between the illegal practices and areas where trustees have fallen down on their legal responsibilities, which is our area of responsibility, and those that are not illegal but uncomfortable fundraising practices—as William has said, the first time that it unfolded about how serious that was is when it was exposed over the summer.

Q393 Oliver Dowden: William Shawcross, may I ask a further supplementary question on this? I completely accept the point you are making about Parliament not giving you responsibility for this and it being done on a voluntary basis. Do you think there is a lack of clarity, though, in the public’s mind, or was there a lack of clarity in the public mind that this was not the responsibility of the Charity Commission? Certainly the evidence we received previously from Sir Stuart Etherington was that, for example, in relation to the Advertising Standards Agency, everyone knew that was responsible for advertising. Do you think there was a bit of a presumption that the Charity Commission was responsible for this just because you were called the Charity Commission?

William Shawcross: I am sure you are right.

Oliver Dowden: Admirably succinct. Thank you.

Q394 Chair: The frustrating thing about this is that virtually every witness we have had in front of this Committee has said, “Oh, well, we didn’t know. Oh, this has all come as a terrible shock.” Ultimately, the way trustees have been blind to this surely does fall under the remit of your regulatory role. What do you say about the way trustees have clearly failed in the high duties you set out for them on your website and in your publications?

Mr Wilson: Can I just say, interrupting briefly, Mr Chairman, that it is not entirely true that all the other witnesses have said they didn’t know, because I think the Information Commissioner said that he was already investigating a number of large charities for breaches of the Telephone Preference Service. So, clearly, the Information Commissioner did know this was going on and had admonished, I think, the Institute of Fundraising for trying to—I think he described it—”wriggle out of the rules”.

Q395 Chair: I accept your correction, but I am saying “everyone” in the general vernacular sense rather than in the mathematical sense. I think the Chairman of the Charity Commission gets me drift that not a lot of people are taking responsibility for what has happened, and it is not a question of trying to find people to point the finger of blame at, but what do we learn from that about the governance of charities and what should we learn about the governance of charities?

William Shawcross: What we have learned about the governance of charities is what you know better than I do, Mr Chairman—that the governance of charities does not depend on anyone except the trustees. Trustees are utterly responsible for the governance of their charities. It is not the Charity Commission that runs 160,000 charities; it is the 1 million trustees of those 160,000 charities who are responsible for them. Most of those trustees do a very, very good job. We do not want to discourage people from becoming trustees because we do not want to diminish the world of charity, which is a crucial part of British society. We tread a fine line by having to tell trustees what their responsibilities are and yet not discouraging people and making it sound so onerous that no one wants to become a trustee. In the last resort, you are absolutely right: it is for trustees, and it is the trustees who are responsible for employing fundraising organisations that use extremely dubious methods.

Q396 Chair: What action do you take as the Charity Commission in respect to trustees who have just said, “Oh, we didn’t know”?

William Shawcross: We do need to have a complaint about a charity. We do need to have reason to go into a particular charity. If we had a complaint about a charity’s fundraising practices, we would have referred it to the FRSB. Under the new system that is being proposed by the Minister and by Sir Stuart Etherington, we will have a much bigger role—a backstop role. We will not be on the forefront of it, but we will be much more involved in the system. Do you want to add to that, Michelle?

Chair: No, no. We will go on to the Etherington Review outcome.

Q397 Paul Flynn: We are used, I believe, to seeing Government marching their troops up to the top of the hill and then, a few years later, marching them down again. This disillusionment with self-regulation, is it part of a Pauline conversion by Government, who once thought that self-regulation was a panacea? Is it not, too, that generally self-regulation means that institutes act in their own interests and not in the interests of the public?

Mr Wilson: I did not catch all that, but I still believe that a self-regulatory system can work. I inherited a system that was much criticised and, as I have already told the Committee, I felt needed to be reformed. I am a Conservative. My instinct is not to regulate. My instinct is for sectors and bodies to sort out their own problems. That said, clearly the self-regulatory system that existed has not worked for some time and indeed—in answer to the Chair’s previous question—it made it such that accountability within the system was almost impossible because there were too many overlaps and conflicts between the three main organisations that were involved in self-regulation.

Q398 Paul Flynn: We will forgive you your instincts, but they have been changed by experience, we understand. Are the people who are now saying that self-regulation is a bad

thing and has not worked, has been damaging, the same people who were telling us a few years ago that we had to go on towards self-regulation in all areas? Is that not true?

Mr Wilson: No. Self-regulation, as it was set up, was criticised in 2012 by Lord Hodgson. As I have said, when I started this job a year ago, it was something that I saw immediately. It does not mean that self-regulation cannot work. There are many areas in life where self-regulation does work, and I believe that self-regulation can work as long as the sector gets behind the Etherington Report and the recommendations in it, certainly moves to an opt-in system, supports the Fundraising Preference Service and supports the new fundraising body. If it does that, self-regulation can work. If it does not, we have the backup in that we are going to make some further amendments to the Charities (Protection and Social Investment) Bill to make sure that we can move it to a statutory basis if it fails, because we cannot have the situation that we have had going on indefinitely.

Q399 Paul Flynn: But you have been continued on this mantra of deregulation for a long time now. Would you not have the grace to admit that regulation would have prevented the problems that we are now discussing, and that resulted from self-regulation?

Mr Wilson: A different form of self-regulation might have worked just as well, but unfortunately nobody took that action in a timely manner.

William Shawcross: Mr Flynn, your questions are really important. It seems to me that one of the functions of the whole charitable world is to soften the state. William Beveridge is a great hero of mine and possibly of yours, Sir.

Paul Flynn: Of mine, yes.

William Shawcross: He said, “The making of a good society depends not on the state but on citizens acting individually or in free association with one another”. I think that is absolutely correct, and that is what charities do extremely well. It is only, as I said before, a minority of charities that have been seen to behave badly in their fundraising practices, and I think it would be a terrible backward step if statutory regulation were imposed on all the million trustees who do a wonderful job, just because of the poor behaviour of a minority of big charities. My job at the Charity Commission is to protect all charities, big and small, and I do not want all charities to be encumbered with regulation that is not necessary. That is why I support what Sir Stuart Etherington has produced for the Minister.

Q400 Paul Flynn: I do not recall; did you oppose the Lobbying Bill that gave a kicking to charities quite unnecessarily?

William Shawcross: We thought that the Lobbying Bill would not have a great effect on charities, and I believe we were correct.

Q401 Paul Flynn: Anyway, this is the current mood of the country, I am afraid, and I think we have to look in the future, all of us, to how we put right the great damage that is going to be done to charities by Kids Company, by the abuse of the fundraising and so on. There is a real, serious threat in the future that these scandals will undermine the public’s faith in charities. Could you explain to me who is responsible for the system of regulation for fundraising now, and how it will be altered if the Etherington Report proposals are implemented?

Mr Wilson: The current system, as you probably know, is a tripartite system between three organisations taking different bits. The problem with the current system is that it is very confused—overlapping. You have a representative body, so a membership body effectively controlling the code of conduct for best practice for the whole sector. On that, as we have discussed, Lord Hodgson made some recommendations back in 2012.

The Etherington Review changes it to a single fundraising regulatory body that will have a certain number of powers that end up with, as a backstop, the Charity Commission intervening if the problems are particularly severe or particularly difficult. It is a much more focused operation, which people will understand. It will have clear powers. It will have clarity in a way that the old system did not have.

It will also have two other important things. One is the Fundraising Preference Service, which is a reset button for anybody who is worried about the amount of direct mail or telephone calls that they are getting. They can come off all lists by registering with it. The other is a move towards opting in to any information that people are going to receive from charities. There must be a clear expression that somebody wants to receive the information before they get it, and that is something the Information Commissioner has confirmed is best practice in the industry.

Q402 Paul Flynn: We have had evidence that for some charities that deal with more than £1 million, only a small amount of that money has come from fundraising. Would this be a superfluous regulatory burden on them?

Mr Wilson: I think that a working group is going to be established very shortly to look at how this will work, and that is something for the chairman of the new fundraising regulator to look at alongside the working group.

Q403 Paul Flynn: The Information Commissioner has suggested that his guidance on direct marketing should be laid before Parliament by the Government and the new regulator should have to have high regard for this. What is your reaction to this idea?

Mr Wilson: We want to work with the Information Commissioner to make sure that we come up with a regulatory system that he is happy with, that the Charity Commission is happy with, that is robust and makes sure that vulnerable and elderly people are always protected.

Q404 Paul Flynn: Mr Shawcross, we know the Government have cut your funding savagely. How much of an extra burden have you had or do you expect to have with these new regulations coming in? Is it something that the commission can undertake successfully?

William Shawcross: You are quite right that our funding has been cut, and it is a serious issue for us, from £40 million to £21 million in the last five years. We have had to address this problem, and one of the ways in which we have addressed it is that I brought in a new chief executive to start a transformation programme of the commission to make it more effective and more efficient. We are one year into that, and I hope that, as a result of it, we will come out with a Commission that is better at regulating without such costs as we have had to employ up until now.

In answer to your question, we have said that we will second someone to the transitory stage for the next six months of this new Commission, this new self-regulatory body, and

we will assist them in whatever way we can. We would not expect masses of cases to be flung in our direction because I hope that the new body will be able to sort out most of the cases that they have themselves. Nor would we expect no cases to come to us. We will expect a few, and if it becomes incredibly costly then we will have to come to the Minister and ask his advice. You are right, and I am very glad you mentioned that the Charity Commission does not have enough money. We don't. I know times are hard for everybody so I am not whinging particularly, but it is quite difficult for us to do our job as well as we would like to.

Q405 Paul Flynn: The advice that you provide the Minister will obviously include a request for extra funding, I presume, will it?

William Shawcross: I make those requests usually to the Treasury, Sir.

Paul Flynn: Bonne chance!

Q406 Mrs Gillan: How many people work for the Charity Commission?

William Shawcross: 300 approximately. 294 or something. About 300.

Q407 Chair: That is down from?

William Shawcross: How much was it?

Michelle Russell: It used to be 600.

William Shawcross: Yes, long before I was there. 10 years ago it was 600. I should say, on the question of funding, we were very lucky last year. The Treasury gave us an extra £8 million of one-off expenditure to modernise our systems and to make ourselves even fitter for purpose than we are already. I want to acknowledge with gratitude the Treasury's one-off endowment to us.

Q408 Chair: What discussions are you having with the Government about how the Charity Commission might be funded in the future?

William Shawcross: That is a huge question; I imagine, Sir, you may wish to call us before you discuss it another time. It is my view that for the Charity Commission to be able to continue for the next 10 or 20 years as an effective regulator we need to seek other sources of funding than the taxpayer. We cannot go to the Treasury every year and ask for more taxpayer money—times are too hard for that. I am exploring already with the charitable sector the possibility of charities funding at least part of the Charity Commission. Our budget is £20 million a year approximately, and if we were cut down by salami-slicing of financial reviews year by year to £15 million over the next five years, we wouldn't be able to do the job at all. I think it is time for the charity sector itself to understand that there are advantages for them in funding their own regulator, as happens in many other sectors. That is something that I would love to consult with your Committee on, perhaps early in the New Year, because I think it is a matter of urgency.

Chair: Thank you for the heads-up.

Q409 Mr David Jones: Minister, we have heard from the NCVO that this is the last chance for self-regulation to work. Would you agree with that?

Mr Wilson: Yes, I would, and I have been pretty clear to everybody I have spoken to, both privately and publicly, that this is absolutely the last chance. That is why I am putting further measures into the Charities (Protection and Social Investment) Bill so that it is absolutely clear that if we have to regulate, we will regulate, and we will turn the matter over to the Charity Commission to deal with.

Q410 Mr David Jones: How will you assess if self-regulation has actually worked?

Mr Wilson: We firstly need to give it a fair period of time to operate and we need to see how the large charities react, whether they fund it properly, whether they support it properly, whether they support all the recommendations of the Etherington Review in full. Then there needs to be a period of operation, and I think that there should be a review, probably after a year of operation, to look at all the detail of how it is working and what sorts of problems have been referred to the Information Commissioner, to the Charity Commission, and make a decision at that point. We are proposing that this Committee sees the chairman and chief executive on a reasonably regular basis, and I would expect this Committee to ask those sorts of questions as well.

Q411 Mr David Jones: To what extent will we still be relying upon investigative journalists from newspapers like the *Daily Mail* to tell us about abuses of the fundraising system in this country?

Mr Wilson: I welcome the fact that there are great journalists out there who are exposing very serious concerns, public interest concerns, both to the public and to Government, and I hope that continues long into the future. I congratulate *The Mail on Sunday* and the *Daily Mail* for the great work that they have done.

Q412 Mr David Jones: Shouldn't the new self-regulatory system obviate the need for journalists to do that sort of work?

Mr Wilson: That is what we hope will happen. That is what I hope will happen. I hope that the new self-regulator will make a real difference and change what has been going on in the sector. The difficult thing is changing a culture that has clearly developed among some large charities. Somebody said to me the other day that they were turning a blind eye to some of the practices that were going on. We need to make sure that the culture in the sector changes alongside the enforcement and regulation that we are proposing to implement.

Q413 Mr David Jones: Etherington suggests that this Committee should hold the new regulators to account publicly. What role do you envisage for the Charity Commission in holding the new system to account?

Mr Wilson: There is this "three lines of defence" model that Etherington suggested. The final line of defence to make sure best practice is out there and people are conducting themselves properly is the Charity Commission. The Charity Commission will have considerably enhanced powers once the new Bill is through Parliament, and I would expect it to use those powers as is appropriate to make sure that we have a robust system right the way across the charity sector.

Q414 Mr David Jones: Mr Shawcross, do you welcome those new powers?

William Shawcross: Indeed we do, and may I add to your previous question, Sir? I totally agree that the freedom of the press and a vigorous free press is absolutely essential to any healthy society. I would hope that in this context the charities have learned their lesson that the sort of behaviour that was exposed by the *Daily Mail* must never be repeated. In answer to your second question to the Minister, we hope that means that the new regulator will not discover the sorts of abuse that the *Daily Mail* and *The Mail on Sunday* exposed this year. We, as I said before, are eager to collaborate with the new fundraising regulator. For an interim period while it is being set up under the new chair and chief executive, we will second someone from the Charity Commission to help them and to advise them. Under the new structures as envisaged, we will be the backstop for this system.

I repeat: I hope that it works because I don't think all charities should be regulated by the state. The vast majority of charities are run by decent, good people who seek to do good in their communities, and I do not think the state has to have its heavy arm upon them. I pray that the system will work.

Q415 Mr David Jones: Would you agree too that this is the last chance for self-regulation?

William Shawcross: Yes.

Q416 Tom Tugendhat: We have heard on several occasions people saying that this is the last chance for self-regulation. What would be the cost not only to the Exchequer, but also to charities, of statutory regulation? Have you any estimate of how many of the smaller charities would be forced to close because regulation would become more onerous?

William Shawcross: I have no estimate of that but I am sure a lot of small charities and trustees who give their time and their free evenings and so on would find it onerous. It depends how onerous, of course, the new regulations are imposed on them. As for us, we would need a new remit from Parliament. We would need new powers other than those that are already in the new Bill. Perhaps Michelle can talk about those. We would need new resources. I do not know how much. It would be quite a big job so we would need a lot more staff, and we would need, of course, time to set up any new regulatory system within the Charity Commission. I really hope that this self-regulation will work.

Q417 Tom Tugendhat: It would be fair to say that statutory regulation would massively change the tone of the charity sector.

William Shawcross: I think it would. Yes, that is a very good point. It would make the charity sector an arm of Government. As I have said before—I don't want to be boring and repeat it—charity softens Government. Charity is independent. The voluntary spirit of this country is something quite precious. To quote Beveridge again, if I may, he said that the voluntary impulse in this country is “like a golden thread through the living tapestry of our national history”. My staff get rather bored that I say that so often, but it is a lovely phrase about the role of philanthropy in this country and it should not have to be fettered by regulation just because of the bad behaviour of some fundraising charities.

Tom Tugendhat: Thank you.

Q418 Chair: Minister, you mentioned the need to address culture as well as the regulatory framework.

Mr Wilson: Yes.

Q419 Chair: I think you are right, but what do you think we mean by culture, and how do we address it?

Mr Wilson: The system we currently have has, as I have said, been a pretty unaccountable system and has not been able to deploy sometimes the heavy artillery that is needed to make large charities think more about what they are doing and how they are outsourcing some of their work to these mass-marketing call centres.

Q420 Chair: Let us start again. What do we mean by culture?

Mr Wilson: The culture of the sector is by and large a very good one that is around the idea of volunteering and giving to others. What has happened is, among some larger charities, that culture has been corrupted in that, for example, vulnerable and elderly people have been seen as fair targets, and I think that that is a corruption of the culture of the charity sector.

Q421 Chair: We have seen some very highly regulated sectors in financial services, for example, designed to address that culture or a corrupt culture, but it does not work, does it? It does not make people better people, does it?

Mr Wilson: No. I am not suggesting—

Q422 Chair: How should we address the bad culture that has got into one or two of our charities?

Mr Wilson: I am not suggesting, Chairman, that higher regulation is something that we should do, except for if the proposals we are making do not work. What I think will help change the culture is a feeling of accountability, which is why immediately after the Olive Cooke experience we put two new things into the Charities (Protection and Social Investment) Bill, which enabled us to make trustees more accountable for their actions in terms of the contracts that they sign with these third party organisations, and also putting information into their annual accounts about how they are protecting vulnerable and elderly people. What we are trying to do is, as part of the culture of the sector, improve the accountability that exists so that trustees are more responsive, if I can put it that way, to problems—

Q423 Chair: It is hard to find the language, is it not? We, as a Committee, are still feeling our way through this question of culture, attitude and behaviour, which is not necessarily addressed by regulation.

Mr Wilson: Yes.

Q424 Chair: Do you have anything to add to this, Chairman of the Charity Commission?

William Shawcross: What you just said is quite correct, Mr Chairman. I do think that the question of culture is a limited one in a sense because I don't think that what happened this summer represents the culture of the vast majority of charities; I really don't. The vast majority of charities are aware of their role and their responsibilities and the trustees behave well.

Q425 Chair: I appreciate you are making that point, but it would be interesting if we could identify what elements have made for a neglectful culture or a blind culture among those particular charities and what lessons that has for governance of charities in general.

William Shawcross: Maybe Michelle would like to add to this. The problem has emerged among only large charities, large fundraising charities, but the harsh reality is that competition for funds, particularly for large charities, is fiercer and fiercer than it has ever been, and charities do need money to survive. The practices that those few charities employed were utterly unforgivable, but it is a tough world out there. Maybe Michelle would like to talk about how trustee guidance and so on is trying to help them in these issues.

Michelle Russell: Perhaps I could offer two thoughts. One is that the culture of an organisation comes from the top of the organisation, and that brings it right back to the governance of the organisation and the tone set by the trustee board, which comes back to their trustee duties.

The second issue perhaps exposes the importance of the relationship between the donor and the charity, and perhaps what has gone missing or got lost over the years is the mutual respect and understanding and the importance of the relationship between a charity and its donors. As William says, many do do that well, but while some charities are treading the legal line very carefully to make sure that they are on the right side of the law, perhaps that moral code on top of it has become a bit lost and muddled. What has happened over the summer is a sharp reminder to all charities that that relationship with their donors is vitally important, and secondly, they do have a moral responsibility as well as a legal responsibility to get the relationship right.

Q426 Chair: How can we improve the capacity of the Charity Commission to promote that very, very cogent and obviously passionately felt thinking?

Michelle Russell: It comes back to good governance and strong financial management. Every year, in tackling abuse and mismanagement, we highlight those as core themes. No matter if it is child safeguarding issues, terrorism issues or fraud and financial mismanagement, those two core planks come back to every single charity, whether or not they are small, kitchen-table, a medium-sized national charity or an international charity, and it is a learning lesson that the commission has to continue making its guidance accessible, clearer, helpful to charity trustees, and equally charity trustees need to rise to meet their legal duties and responsibilities.

William Shawcross: If I may add to that, everything Michelle has said is absolutely correct and, as you said, spoken with great clarity and passion. The moral link between charities and beneficiaries and charities and donors, it is a three-way system that reaches both ways, and it is quite, quite correct. Despite all the concerns that are being expressed quite correctly this morning, I think it is important to remember that the vast majority of people in this country still do seem to have great trust in charities. We had a poll commissioned earlier in the summer—before Olive Cooke, I should add—that said that 72% of the public believe that charities in England and Wales are regulated effectively, and 88% had confidence in us. I do not want to emphasise that one. We are not talking about us. We do not want to show off. The vast majority of the public at that stage—I

hasten to add, before Olive Cooke and before the revelations in the *Daily Mail*—felt that charities were an important and trustworthy part of society.

Mr Wilson: May I just say, these mass-marketing techniques are, by their very nature, quite dehumanising because you are essentially flooding enormous numbers of people with telephone calls and direct mail. One of the main lessons that we should learn from all this is that fundraising cannot just be a means to an end, and that donors need to be given much more control about how and whether they should be approached, effectively, and that will help to change the culture if you put more power in the hands of the donor.

Q427 Tom Tugendhat: The culture that you talk of sounds very statist in the larger charities, and the way in which they behave seems to me to be that of civil servants demanding money off the Exchequer. Would you agree that some of the problems may spring from people going from one form of government to, in inverted commas, “another”?

William Shawcross: Is this a question to me?

Tom Tugendhat: Yes, it is to you, Mr Shawcross.

William Shawcross: It is quite a difficult question, that. You are saying that charities are too much like Government Departments, are you?

Tom Tugendhat: I am suggesting that some link between those who have spent a long time in Government Departments, going off to be chief executives and trustees of large charities, may bring an attitude from one to the other.

William Shawcross: Some large charities are huge businesses—we must not forget that—and they have to be run as huge businesses. A charity that has an income of £500 million or something a year cannot be run like a kitchen table charity in a village. Obviously there are different modus operandi and perhaps different cultures developed, but it is important that all charities, large or small, remember what the nature of charity is. We are putting out a new charity guidance for trustees called “The Essential Trustee”, which we ask all new trustees to read. We require them to read it when they become trustees of charities, and it does spell out very clearly what the duties and responsibilities, and the joys, of being a trustee are, and I hope that that will have an effect.

I think perhaps I should speak more publicly about these issues than I have done and write more publicly about them, and I know the Minister does that too, and it is something that we need to lead on. It is quite clear that that is a concern. This concern has to be addressed in every possible way. I hope it is not addressed by regulation because I think that is the last stop, and I hope that this new system that the Minister has devised with Sir Stuart Etherington works, and we will do everything we can to help it work.

Q428 Kelvin Hopkins: These values you talk about are very admirable and I think part of us, as human beings. The public service ethos is absolutely fundamental to society, but is not the real problem that we have been driven by an ideology in the last three or four decades that markets really count, not the public service ethos, and that this is gradually undermining and eating away at those charitable feelings?

Chair: Kelvin, that is one of your speeches.

Kelvin Hopkins: I have made my point.

Chair: Do you want to make a brief comment?

William Shawcross: I think that society has changed enormously in the last 60 years since the end of the 1940s, when William Beveridge made those wonderful remarks that I quoted. Charities, for example, ran all hospitals until 1948. The role of charities and the relationship between charities and the state, as well as charities and markets, has changed enormously. It is our job at the Charity Commission to help charities, to guide them through these difficult changes. We are the regulator. We are the policeman of the charitable world, but we are not the Stasi. We cannot intervene in every charity, nor would we wish to. It is the job of trustees to run their own charities. We are there to guide and help trustees, and I hope we will do that ever more effectively.

Q429 Chair: Before we move on to the question of Kids Company, may I ask a brief question about the recent court ruling concerning charitable funding of CAGE? What is the significance of this case?

William Shawcross: If I may quote from my learned friend Kenneth Dibble, who is our chief legal officer, he set out the lessons of this case in a letter to *The Times* this week. I will not read you the whole letter unless you wish me to. It is not a very long letter. He said that the case “made no change in our position in our responsibilities, our duties and our rights. The Commission’s ability to have regulatory engagement with charities under its powers, including asking for assurances about future conduct, and to move into inquiry mode if and when appropriate, remains intact and is unfettered by the case. Charities should, in the absence of good reason to the contrary, co-operate with the reasonable requirements and requests of the commission”.

Q430 Tom Tugendhat: I was going to ask a follow-on. How do you view your powers following on from this case? It is a very, very fundamental argument on the nature of charity and the nature of charities funding a third party group. I was wondering where you see your powers in reference to it.

William Shawcross: I quoted from Kenneth, because he has a better legal mind than I do, to say exactly that our powers are not changed in any way by this case. Michelle can tell you in more detail what she thinks of this.

Q431 Tom Tugendhat: I was actually going to say, do you feel they should be?

William Shawcross: There is the new Bill coming, which gives us greater powers. Michelle, may I hand that—

Michelle Russell: There are two points there. As William has said, nothing changes in terms of the remit and extent of our powers, and CAGE brought the litigation against the Commission. The Commission defended that litigation. CAGE withdrew that litigation on the basis that there was an agreement about the general nature of the Commission’s powers. The parties may disagree about what happened in the case, but the remit of our powers and our ability to not fetter the discretion of the trustees—there is a balancing act between the Commission as regulator, which cannot interfere with the lawful decisions of an individual trustee, but also, as regulator. The powers where there is a breach of trustee duty or about to be a breach of trustee duty, we have a regulatory role to either seek

assurances that the breach will not happen, or the alternative is, of course, that if the breach goes ahead, we open an inquiry and take the regulatory action with the powers that we have.

Q432 Tom Tugendhat: On this incident in particular you were acting, I think, very much in the public interest. Your decisions were absolutely right and I think you behaved with absolute integrity. It is, however, a concern that two other charities that are large charities that have good trustee mechanisms, in theory, did not see what was so clear to you. It does call into question the trusteeship of those two charities. Have you sought to look any further at them?

Michelle Russell: Perhaps I should make it clear that our regulatory engagement with both the charities is continuing, so our report will be published shortly, once we have finished the process that happens as part of that case. Without commenting on the trustees of both of those two charities, the general point here is you are right—there are duties and responsibilities of trustees. Our job is to make sure that trustees do not breach those responsibilities, but secondly to remind charity trustees that in terms of public trust and confidence and their reputation they are under a duty to protect their reputation and act in the best interests of the charity. The Commission's view is that we were reasonable and proportionate in terms of what we did in that case.

William Shawcross: If I may just add, our view still is, and is not in any way fettered by the court case, that trustees risk breaching their duties for charity trustees by funding groups like CAGE.

Q433 Chair: Thank you. I think it is fair to say that the court ruling was completely consistent with your advice to the charities concerned, that they should not have been funding CAGE, but there was a technical criticism in the judge's ruling about how long you can make that assumption, if circumstances were to change. Have I understood that correctly?

William Shawcross: Yes.

Michelle Russell: I think we probably need to make it clear that the court did not make a ruling, a formal adjudication, so CAGE withdrew from the legal proceedings on the basis an agreed statement was made about the general remit of the Commission's powers. There are always reflections to be had in relation to what has happened and perhaps on how we communicate what we do or do not do is something for us to take away.

Chair: Thank you for that clarification.

Q434 Mrs Gillan: Mr Shawcross, what concerns did the Charity Commission have about Kids Company and when were those concerns first registered?

William Shawcross: Do you mind if I hand this to Michelle?

Chair: May I just make a point? We are not going to be cross-examining the Minister on this question and if you wanted to leave us now you would be welcome to do so.

Mr Wilson: Thank you.

William Shawcross: I will just make one point. First of all, we do have a live statutory investigation into Kids Company and what has happened there, so Michelle and I are somewhat limited as to what we can say about it, which I am sure you will understand.

I would just say briefly and then hand over to Michelle because she has been much more deeply involved in this than I have, that despite all the concerns that have subsequently come to light the Commission received remarkably few complaints about Kids Company before this summer. In hindsight, obviously there were problems in the charity but they were not brought to our attention.

Q435 Mrs Gillan: May I repeat the question? When were any concerns first registered with the Charity Commission?

Michelle Russell: In terms of the concerns about financial mismanagement, it was on 16 July this year, and the Commission took action the following day. Prior to that, the only formal regulatory record we have of dealing with a complaint of any nature about the Kids Company that is on our system goes back to October of last year, where there was an issue between a donor who was unhappy with what happened to their donation with Kids Company.

Chair: We will come to that particular issue later.

Q436 Mrs Gillan: So there was no concern with Kids Company prior to October 2014? No concern was registered with the Charity Commission?

Michelle Russell: On our system, so our system as a Government Department, I am unable to go back—

Q437 Mrs Gillan: No, hang on. You must have had a look at this now in preparation. No concerns were raised with the Charity Commission at all about Kids Company prior to 2014?

Michelle Russell: It has materialised from the public domain that there is a record of a charity coming to the Commission in 2002 raising particular concerns, so that has come forward, but other than that, according to what records we were able to get, the only complaint that is significant on the system is the October 2014 one.

Q438 Mrs Gillan: Okay, so in 2002 there was a complaint. What did the Charity Commission do with that information? Do you have that knowledge?

Michelle Russell: The difficulty we have is I was not there.

Mrs Gillan: I understand.

Michelle Russell: Our systems do not have the case records of that because of the Government Data Protection Act rules, so we have made some inquiries to try to get hold of some of that correspondence. We have clearly seen the letter from the charity that has made its way into the public domain complaining about Kids Company, but we are trying to pin down what the Commission's response is.

Q439 Chair: Does the Charity Commission routinely destroy its records after a certain period?

Michelle Russell: I am afraid it does.

Q440 Chair: Is that a legal requirement or is that just a cost requirement?

Michelle Russell: No, it is not a cost requirement. There are requirements in terms of the Government procedures about retention of data and linked to Data Protection Act issues as to how long we keep it. Generally our records will be kept for five years. I think that is the current rule that applies to the Commission.

Q441 Chair: Obviously good cases make bad law, but is there any mood in the Charity Commission to review this question of data retention?

Michelle Russell: We reviewed data retention probably about four or five years ago, where we indicated that if a charity went into a statutory inquiry, given the significance of what a statutory inquiry is, we should keep those records effectively on our systems and they should not be subject to the normal disposal and destruction rules.

Q442 Chair: Would it not be a good idea to keep a permanent record of complaints?

Michelle Russell: If we did that probably our systems would be unable to cope with the volume of material that we deal with every year from members of the public and also our cases, but it is certainly something that we can look at again in terms of our data protection and data retention rules.

Q443 Mrs Gillan: Coming up to the more modern complaints about Kids Company, what action did the Charity Commission take, and how timely and effective were those actions?

Michelle Russell: It depends what elements we are talking about. In terms of the specific complaints that materialised about financial mismanagement, which came to us on 16 July, we acted within 24 hours. We notified the charity of what happened and what was being alleged and we had a meeting with the charity the following Tuesday, so within days. That resulted in certain actions that we insisted be taken in relation to dealing with those. Events unfolded, a lot in the media and as I am sure you will be aware we opened a statutory inquiry even after the charity had closed because of the nature of what was unfolding, and also the need to put public trust and confidence back in and on the record about what did or did not happen.

Prior to that, we met with the charity in March of this year to discuss a number of things including the donor issue, but also in relation to its funding and some reports about employees leaving the organisation.

Q444 Mrs Gillan: How satisfied were you after those meetings that the actions you were taking were effective, and that the charity was remedying those areas that had been brought to your attention?

Michelle Russell: If we go back to the March meeting and engagement that we had, we left an open door. We wanted to be informed about what was going on, particularly in relation to the financial stability of the organisation. We met them again in June where we were told that there was a plan in place with new trustees who were waiting to come on. They realised the reserves position was not tenable and were making a restructuring plan to deal with that.

In terms of in July when we had the meeting with the charity about the specific allegations of financial mismanagement, we reported seven different areas that we had allegations about that we had filtered were a regulatory issue. The trustees acted quickly to our response, and instigated the steps we required. By the Thursday PricewaterhouseCoopers had been brought in to investigate them properly and they were responding appropriately to the serious concerns that we were raising.

Q445 Mrs Gillan: We will come on to the PwC report in a minute. Did you have any communication with the Cabinet Office at that stage?

Michelle Russell: In July we were in almost daily contact with the Cabinet Office as things were unfolding.

Q446 Mrs Gillan: Do you have a sort of written standing order within the Charity Commission that if you have a concern about a Government-funded charity you flag it with Government immediately?

Michelle Russell: No, there is not a written or a standing order in relation to that.

Q447 Mrs Gillan: I am sorry, I am using parliamentary terms, but is it understood that you contact Government immediately?

Michelle Russell: It depends. So it depends what we are talking about in terms of specific concerns about financial mismanagement. We have to investigate those and ensure we deal with that in terms of due process, so as not to jump the gun in terms of what is there.

Where it is a Government organisation we have a statutory gateway to exchange information with Government in a way, of course, that we cannot do with other donors.

Q448 Mrs Gillan: So what did you do? What is the exact timeline on when you informed Government that you were looking into the financial complaints about Kids Company? Can you produce a timeline and send it to the Committee? Is that possible?

Michelle Russell: Yes, that is possible, if the Committee would like that, but I am pretty sure that it was on the same day that we met with three ex-employees of the organisation, who brought their specific concerns to us, that we flagged up to the Cabinet Office that they needed to be at least aware that these allegations had been made.

Q449 Chair: On what date did you flag it up to the Cabinet Office? Was that before or after the—

Michelle Russell: There are two things. We contacted the Cabinet Office at the beginning of July when it was announced in the public domain that the chief executive of Kids Company was said to be resigning, so we made contact with them then. But in terms of the specific allegations that materialised about financial mismanagement, that was on 16 July.

Q450 Chair: So when did you notify the Cabinet Office that you had concerns, and was that before or after the final payment had been made by the Cabinet Office?

Michelle Russell: I wouldn't like to answer that off the top of my head. What I can say to you is that on 16 July, when the concerns were brought to us, we alerted the Cabinet Office to that.

Q451 Chair: Okay, I understand that, but we are not quite sure how that interacts with the date of the payment. Obviously it is quite important from our point of view. We will find out.

Michelle Russell: I think the date of the payment was on 30 July.

Q452 Oliver Dowden: May I just ask very quickly, when you say you notified them, what was the nature of that notification? Was it chair to Minister or was it official channels?

Michelle Russell: No, it is officials to officials, because at that particular point we were in live engagement on a compliance case with a charity.

Q453 Chair: Was that in an email, or a letter?

Michelle Russell: It would either have been in writing or it would have been a phone call, which was probably either recorded or—

Q454 Chair: Could you clarify that for us, and if there is a written record of a telephone call or a letter or an email, could we have it?

Michelle Russell: It is likely to be email. A lot of the exchanges were email.

Q455 Mrs Gillan: It would be useful for this Committee, because we are trying to learn from this example as opposed to apportioning blame, if you could provide the audit trail, both for the timeline in terms of your contacts with Kids Company and also the documentation of the contacts with the Cabinet Office. That would clarify that for the Committee. This is probably a bit difficult for you to answer, but your aims and objectives as the Charity Commission and its role as regulator are “to prevent, detect and tackle abuse and mismanagement in charities”. Why did the Charity Commission fail to prevent, detect and tackle Kids Company's financial management before its collapse? You were obviously in contact with it; you obviously had a history of looking at it. How did that happen?

Michelle Russell: There are two different things. There are specific allegations of financial mismanagement, which we dealt with when they materialised very quickly. The other broader issue, though, is about the solvency or insolvency of an organisation. The first thing to make clear is that there are many charities that fold every year. There are about 5,000 charities that leave the register every year for one reason or another and cease to exist. So the issue of insolvency in itself is not necessarily a regulatory issue. Many charities go through that.

Secondly, this charity had an unqualified audit report, so it was signed off as a going concern every year, albeit there were comments made about or known about its cash-flow areas. So we did have the conversation with them when we looked at the accounts in March about the reserves and the financial stability of the organisation and, as I say, they had a plan in place which they were executing to deal with it, albeit they needed a £3 million grant to put that into practice.

Q456 Mrs Gillan: What sort of oversight do you have of the plan that they put into practice? Do you go back into the charity and check every week that they are implementing their plan? How do you exercise that oversight?

Michelle Russell: Again, just coming back to the two different issues, restructuring and getting a charity back on a footing that is financially stable is not necessarily a regulatory issue. So we were not overseeing either the terms and conditions of any grant or the restructuring plan. However, it is very different in terms of specific allegations of misconduct and mismanagement in terms of financial management, and we were on a not quite daily basis but in regular contact with the organisation, speaking to the chairman every week, speaking to the trustees about the progress that they had made, after we insisted that the PwC report was instigated.

Mrs Gillan: Could you also provide the Committee with the timeline of that as well—we would be grateful—and who spoke to whom on what occasion, and what was said. Thank you.

Q457 Chair: How tempting would it be for people in the Charity Commission to see that a Government Department is scrutinising and funding a charity and therefore regard it as likely that this charity is being well managed, because public money is being given to it, and that perhaps gave a false reassurance in this particular case?

William Shawcross: I think the fact that successive Governments had been involved with this charity for a very long time obviously shows a level of confidence on the part of Government in the charity.

Q458 Chair: How much do you think that affected what you did as the Charity Commission?

William Shawcross: I don't think it affected us at all, because as soon as the problems came to light in the early part of this year we acted promptly and immediately. It is a tragic story in every way and I wish it had been otherwise, but I think that we responded properly and swiftly, as Michelle has said, as soon as the real problems came to light. We have had very good collaboration with the Cabinet Office. We always have, ever since I have taken on this job.

Q459 Paul Flynn: Shouldn't there be a special vigilance from the Charity Commission about a charity that has extraordinary patronage from the highest in the land? The support was not coming from Government; it was coming from Prime Ministers and their wives, we understand. Shouldn't alarm bells have rung with you? We know, we have a great deal of evidence, that journalists were handicapped. Their papers would not print the stories that they had because there was this general assumption that this was a wonderful charity, it was doing great work, because it was supported by Prime Ministers. But shouldn't alarm bells have rung? You said you wouldn't go along to the Treasury to ask for more money every year; you must have noticed that they were going along to the Treasury and asking for more money—millions—about every four or five months.

William Shawcross: I wish that we had had a regulatory cause to investigate the charity much earlier, but we didn't have that, unfortunately. As for alarm bells ringing, well, alarm bells do ring and everyone should listen to alarm bells when they do ring; I totally

agree with that. *[Interruption.]* But actually, to be fair to us, as I said at the beginning of this conversation, despite all the issues that have come to light since July, we had remarkably few reasons to engage with the charity before that. There were no complaints except the one that Michelle has already spoken about. You speak of the alarm bells now, Mr Flynn, and I totally understand why you do, but I think there is a lot of wisdom in hindsight in this—not in your particular case, of course, but there is the virtue of hindsight. Everyone is saying now that this was a flawed model. A lot of charities live hand to mouth and have very few reserves. In most cases it does not necessarily matter, but in this case it clearly did matter.

Q460 Paul Flynn: There was a great deal of foresight in this case and particularly from two journalists who in fact were writing about this a long time ago. It was because of the cowardice of their editors that it was not pursued.

Can I ask you if you have any general rules to look at the charities, of measuring things, such as the salaries of chief executives and what percentage they are of the total budget of the charity? If it was excessive, would that sound alarm bells with you, or any other criteria that you would use to judge whether there is likely to be problems within a charity, if a possible abuse of that kind was detected?

William Shawcross: On the question of chief executives I will hand over to Michelle. On that problem I got into a lot of trouble with the charities early on in my time here because I said that charities should be very careful about the level of chief executive salaries. I was attacked by many charities for interfering with what is a trustee's responsibility. I still maintain that fact—that in tough times like we are facing today, charities should be very careful about the level of chief executive salaries. I do not think it was particularly relevant in this case, but it is generally. But it is not for the Charity Commission to set salaries; it is for the trustees.

Q461 Paul Flynn: You described your job as being that of a policeman. Wasn't the policeman sleeping on duty during this long period when alarm bells were ringing—not loudly, but certainly there was evidence from Ministers and others that things were not right? The word “mesmeric” was used about the lady involved, but there were two different factors here, as we experienced in a remarkable session a fortnight ago in which there was great influence being used by one woman, remarkably and almost implausibly—very difficult to understand—on Prime Ministers. It was Prime Ministers who were taking the decisions—not ordinary Ministers, not the Cabinet Office, but Prime Ministers.

William Shawcross: One must remember that Kids Company clearly did at some stage do good work for a lot of disadvantaged children. The second thing is, as I said before, we had very few reports about concerns before—remarkably few, given the understandable furore that has happened since July. If you had heard alarm bells ringing, Mr Flynn—I think you and I have a very good relationship and I wish you had told me about them before.

Q462 Chair: Just on this one point, there were alarm bells ringing in the press—Harriet Sergeant and her articles. What would have happened if she had come to you with a complaint?

Michelle Russell: We would have picked it up and we would have dealt with it. However, in February and March of this year, that is when we spoke to the charity about the concerns in the press.

Q463 Chair: Yes, but actually she was writing about the charity years before that. But you wouldn't read an article and say, "There's something fishy here. We ought to go and see this charity"?

Michelle Russell: Sometimes we do. So if you think about our investigative work generally, and this is relevant to the discussion earlier, roughly a third of our investigative work comes from members of the public, whistleblowers, coming to us with specific concerns. A third of it comes from other agencies and a third of it we pick up ourselves, including now by scouring some of the press and media concerns that are aired.

Q464 Chair: Of course, in her book, which I am referring to, years ago, she did not name the charity, but would that not invite you to say, "I wonder which charity this is. We ought to ring her up and find out"?

William Shawcross: Harriet Sergeant's book and her work generally is superb; you are absolutely correct. With hindsight, I wish we had found a way to do more. Under the regulatory regime that we have, we had no legal reason—I think we are a law-based regulator—to go into the charity, but I accept your point.

Q465 Paul Flynn: It is a marvellous book. She is a great writer and she has served us well. What she put in the book, without identifying it, was a very accurate account of the abuses, but she could not get her editor to publish that because of their fear, because it was such a powerful institution. Is there not a special responsibility that you have to look with greater care at institutions that have royal patrons or prime ministerial patrons?

Michelle Russell: I suppose there are three things to say here. The first is that we as a regulator need evidence upon which to act, in order to take regulatory action. The second thing is, we do constantly and regularly now with the press, when they come to us about concerns about charities, say to them routinely, "If you have specific concerns and evidence can you please give it to us?" Some of them do and some of them don't give us that evidence.

The third point is that under William's leadership and Paul Sussex's leadership we are becoming much more proactive than we were before, moving away from that reactive to that proactive work. There is a limited amount that we can do about that, so one of the things that we are trying to do is to get much more systematic ability through tagging accounts to be able to pick the levers within the financial reporting of the 60,000 sets of accounts that we receive every year, so that we can pick out the cocktail of the different levers that would indicate something for us, even if there is no evidence for us to take a greater look with those particular charities.

Q466 Gerald Jones: My question is in relation to financial reserves for charities. Clearly we know the Charity Commission does not recommend a particular amount of reserves, but you do issue guidance in terms of what larger and more complex charities should bear in mind when formulating their policy. To what extent is Kids Company's failure to build up reserves typical of other charities of a similar size and nature?

William Shawcross: It is a problem for all charities, as I said half an hour ago. The competition for resources is fiercer than ever before. It is very difficult for charities to build up reserves. We advise charities that they should spend their money, and at the same time they must have adequate reserves, so it is quite a hard act for them to follow. Recently this summer two substantial charities, BeatBullying and the British Association for Adoption and Fostering, both failed, without the sort of attention that Kids Company has been given. They were both good charities, but they did not have adequate reserves. It is a problem that all charities face—how much of the donors’ money do they spend and how much should they keep in reserve? I know that sometimes charities find that if they do have large reserves potential donors say to them, “You have masses of money in the bank; we don’t need to give to you,” so it is a really serious issue for charities. What do you think, Michelle?

Michelle Russell: It is probably more common than people realise, particularly in the current financial climate. There is no longer the ability for charities to plan and safeguard their funding for two or three years’ time. It is on a yearly basis now.

As William said, there is that balancing act between having to spend the money to help their beneficiaries but keep their financial model sensible and have an eye about what they need.

One of the difficulties we have in our guidance is providing guidance that applies to all charities. So for example what would be suitable for a PTA or a school would be very different from another charity. In reflecting what has happened over the summer, first, we are looking at our reserves guidance to see if we can be sharper, particularly for different types of charities. We think it is common sense, but clearly there is a need to give a bit more guidance than we are giving. In particular if it is a charity that is providing services or has employees or it is working with vulnerable beneficiaries, then clearly the trustees have a higher duty of care to make sure that their financial planning and their business model is much more robust and the safeguards are there.

We know that there are some charities, believe it or not, that are in negative reserves. Clearly we need to make sure that there is a flexibility for the trustees to choose what suits them. The important thing from our perspective is, the buck stops with the trustees.

Q467 Gerald Jones: Do you think that more specific advice on the level of reserves would help trustees to have a bit more responsible financial management?

Michelle Russell: I think we will still err away from setting a limit or a threshold, for example three or six months’ reserves, because it depends for each individual charity. We have to tread the line carefully about not fettering or interfering with trustees’ discretion, but I think what we will say is they have to think about reserves, they have to be able to justify what level of reserves they hold and that they need for their particular services. We will clarify and sharpen up our guidance in light of what has happened over the summer.

William Shawcross: If I may add to that, it would be a terrible mistake if we laid down hard and fast rules for every little kitchen table charity in the country that does great work, that they have to have a specific amount of money in the bank. They raise money day-to-day, month-to-month, and I think the trustees do that well and they should be allowed to do it in the vast majority of cases.

Q468 Gerald Jones: In terms of the reserves and specifically around Kids Company, the Charity Commission guidance on reserves states that a charity without reserves should explain how the charity can prudently carry out its activities in its annual report.

Kids Company's reserves were either very low or sometimes in deficit. In their reports this is attributed to, "The charity's history of delivering the maximum possible charitable objectives with the resources available" and, "The business model is to spend money according to need". Specifically, how satisfied was the Charity Commission with the Kids Company's justifications for its low level of reserves?

William Shawcross: That was their business model and clearly it failed, eventually. It worked for some time, and we have to remember that the accounts were every year signed off by very experienced accountants and audited. Just looking at the accounts, everything seemed to be in order. Is that right?

Michelle Russell: I don't want to prejudice what the Commission will find or conclude in its inquiry, but it looks as if this is what happened. You had a very fast-growing organisation, which is not uncommon in the charitable sector. It had 500 or 600 employees. The reserves and the business model need to adapt with the growth of the charity. Clearly there were not enough reserves or enough financial planning for the stability of the organisation, but the reason why the charity folded when it did was a bit more complicated, and particularly related to it becoming in the public domain that the police were investigating in relation to safeguarding issues, which caused some of the donors to pull out the money that they would otherwise have put into the charity.

Q469 Gerald Jones: Were any specific warnings issued to Kids Company in terms of their level of reserves or any action taken by the Charity Commission?

Michelle Russell: Being honest with you, one of the things we struggle with is we have 164,000 charities. We receive 60,000 sets of accounts. We do not quite have the IT capability to interrogate those electronically, although there is a plan in place already to try to deal with that going forward. So we did have the conversation about reserves in March and, as I said, as things materialised in April, May and June the trustees realised that going forward they needed to change things significantly, put a restructuring plan in place. They were starting to do that. The new trustees who had been brought on board with particular skills and experience that they perhaps did not have on the board were very sharp and they realised that straight away. I have met one of them, and he was very impressive. They realised that they could not continue to have the reserves at that level with the business model that they were operating.

Q470 Chair: Just very briefly, a charity that would have adverse consequences on individuals if it closed is obviously a higher-risk proposition than many other charities. How do you take account of that in the allocation of your attention, or do you have any kind of risk assessment of different types of charities?

Michelle Russell: It is a very live issue for us at the moment. So the two areas where we are seeking to make improvements and developments are in our risk assessment of the different types of risks for different types of charities. There is a plan in place using the £8 million that we have been given as Invest to Save to improve that. So we will look at different formulas for different types of charity, for different types of risk. Also, in

addition to that, as I have said before, if you are dealing with a sector that has a high number of employees or you are working with vulnerable beneficiaries, the duty of care that you have as trustees is very different to a grant-making organisation that can just decide not to give its further grants next year with little impact immediately.

Chair: Could you very kindly drop us a little note to expand on that question of how you look at charities with intense caring responsibilities? We will move on to the question of the PwC report, Mr Jones.

Q471 Mr David Jones: If we go back to mid-July, you told us, Ms Russell, that you had had a number of matters drawn to your attention by whistleblowers, which clearly caused you some concern. You had discussions with Kids Company and as a consequence of that Kids Company were directed to have an independent evaluation carried out of the substance of those allegations. That is right, is it not?

Michelle Russell: That was at our insistence, yes.

Q472 Mr David Jones: PwC were engaged to carry out that exercise. Did you specify PwC or did Kids Company specify them, or how was the appointment of PwC arrived at?

Michelle Russell: It was one of the names that we suggested, but the decision of who to appoint was ultimately up to the trustees. However, we said that we wanted to see the terms of reference for the investigation and to have oversight and sight of the results of it. We have used, for example, PwC as interim managers of a charity before, so the individuals that were raised or eventually did it were known to the commission.

Q473 Mr David Jones: So you required to see the terms of reference. Presumably PwC tendered for the work. Would you know about that?

Michelle Russell: I don't know about that. You would need to ask the charity.

Q474 Mr David Jones: Did you see an exchange of correspondence between Kids Company and PwC in which the terms of reference were set out?

Michelle Russell: I believe we have on file a copy of the engagement letter with the fees attached, yes.

Q475 Mr David Jones: We have heard from Alan Yentob that the fee was some £50,000 for the report that I think was carried out in three days. How usual is it for the Charity Commission to accept reports that have been carried out by and on behalf of the charities that are under investigation?

Michelle Russell: It depends what you are talking about. Sometimes we insist, either by an action plan or by a direction, that the charity engages a governance review, for example, so we would point them to—there are a number of governance consultants in the sector or a number of auditors in the sector. That is quite common—to use an independent, well-respected firm to do so.

Q476 Mr David Jones: You were quite comfortable with the appointment, clearly?

Michelle Russell: Yes, we were comfortable with the appointment.

Q477 Mr David Jones: PwC began their work on 23 July. They concluded it on 26 July, and their report emphasised the very limited nature of the work they had been able to undertake, and they stated that the company has not carried out anything in the nature of an audit. What was the need for such a tight timeframe in preparing the report?

Michelle Russell: First of all, I just need to be clear that they only finished part of their task. We presented seven areas of regulatory concern distilled from the various complaints that were made by the ex-employees that needed to be investigated. A couple of those were quite serious, so they split the task in two, so the immediate piece of work that you are referring to looked at three or four of them, and the remaining work was to be done. They could not complete their task because the charity eventually folded, so their work was only partially done.

Q478 Mr David Jones: Are you saying that there was not a tight timeframe, and that more work was to be done, or was there indeed a tight timeframe?

Michelle Russell: No, there was a tight timeframe.

Q479 Mr David Jones: What was the reason for that?

Michelle Russell: Given the seriousness of some of the allegations that were being alleged.

Q480 Mr David Jones: Were you aware that Kids Company was negotiating with the Cabinet Office for a release of further funds?

Michelle Russell: Yes, they told us they had £3 million-worth of grant that they were expecting to be released.

Q481 Mr David Jones: Did the pressure to release those moneys play any part in the tightness of the timeframe?

Michelle Russell: Absolutely not. Not from our perspective, no.

Q482 Mr David Jones: You were in touch with the Cabinet Office, you have told us.

Michelle Russell: We told them. We made them aware that the allegations had been brought to us, yes.

Q483 Mr David Jones: Was that because of the potential of the release of public funds by the Cabinet Office?

Michelle Russell: I suppose it is, yes, in one sense, once we were made aware that the Cabinet Office was considering making a release of public funds. If we had heard allegations, and at that point we would not know whether or not they were proven or not, but as a responsible regulator and as part of Government we would at least notify the Cabinet Office that they existed.

Q484 Mr David Jones: Did you inform the Cabinet Office of the nature of the allegations?

Michelle Russell: Yes, in broad terms.

Q485 Mr David Jones: All seven of them?

Michelle Russell: Yes, but the charity itself of course made the Cabinet Office aware of what the allegations were and gave them a copy of the report.

Q486 Mr David Jones: Yes, which as you say was only a partial report into all the allegations that were made?

Michelle Russell: It was interim findings, yes.

Q487 Mr David Jones: How much faith did you as a Charity Commission place in a report that was carried out so quickly and under such pressure?

Michelle Russell: We take account of the fact of what its scope was and its ability to carry out in the days that it did, however we made very clear to the charity trustees that it was only an emerging findings piece and that we would wait for the following work to be completed.

Although it provided some assurance about some of the allegations that had been made that were not proven, we made very clear that it raised serious questions about the prudence of some of the spend and the scope of their objects that we discussed the following week with them when we met with them before PwC had been commissioned.

William Shawcross: We also informed the Cabinet Office of our concerns in that regard.

Q488 Oliver Dowden: Forgive me; maybe I have misunderstood this. You commissioned the report. Who was the report intended for? Was it intended principally for you or was it intended principally for the trustees and who did the buck stop with? Was it the trustees or was it with you in relation to the limited information produced by the report?

Michelle Russell: The Commission's remit is not over chief executives. The Commission's remit is over the trustees, and we are holding the trustees to account in terms of what goes wrong or what happens. The people who we were dealing with in terms of commissioning it were the chair, also the new interim chief operating officer and the new trustees elect, if you like. So that is who our commissioning and engagement was with.

The formal relationship in terms of the engagement would have been with the charity, because they commissioned it, but subject to our agreement about what the terms of reference would be, and we made it clear that we expected to see the results ourselves of what the emerging findings were.

Q489 Oliver Dowden: So it would have been the chair and the trustees ultimately who would have looked at some of these conclusions and thought, "There is something wrong here, I need to do something about it"? The buck stops with him, as it were.

Michelle Russell: The trustees collectively, yes.

Q490 Mr David Jones: Only five of the allegations were investigated because events overtook the investigation. How satisfied were you with the PwC conclusions?

Michelle Russell: As I said before, because it was emerging findings we would not be drawn one way or another about whether or not it exonerated or raised more concerns.

However, we made clear that although there were elements of it that provided some assurance on some of the specific allegations that were made, we certainly said to them it was not a clean bill of health and we still had concerns about the prudence of some of the spend and the legitimacy of some of the spend. That echoed and supported the conversation that we had the week before with the charity raising some of these issues.

Q491 Mr David Jones: You told us earlier that some 5,000 charities fail every year. Would you be routinely liaising with the Cabinet Office in the case of the potential failure of all of those charities?

Michelle Russell: No, because the 5,000 charities that each year cease to exist or operate do so for a number of reasons. However, there are some cases where there is a significant donor, whether or not that is the Department for International Development, or the United Nations or other key donors, where if we are alerted to a particular issue and there is engagement we may have a close relationship or informing what goes on there.

In the context of a live compliance case, we are very clear that our remit is about investigating abuse, misconduct or mismanagement whilst we felt a duty to at least notify the other Government Department who was about to donate to it, so that it at least knew that these allegations were on the table.

Q492 Mr David Jones: Do you know how much progress PwC had made in investigating the other allegations that they did not cover in that first report?

Michelle Russell: Not specifically. I followed up with PwC after they had finished stage 1 and at that point they were into the period of time where the charity was in difficulty financially, so we knew that they had not got on with the second part of their remit.

Q493 Mr David Jones: They had not got on with it? They had not commenced it or they had not completed it?

Michelle Russell: I would have to triple-check in relation to the records on file, but my understanding was they had done little, if anything, to move into phase 2.

Q494 Mr David Jones: You have not seen any draft report or initial conclusions relating to those additional allegations?

Michelle Russell: No, because things unfolded so quickly in those days then that the charity was faced with collapse on the 31st.

Q495 Mr David Jones: Mr Yentob told this Committee that, “Kids Company had to go to PwC and pay them £50,000 to tell us there was not much substance in the allegations”. How far would you agree with his assessment of the PwC findings?

Michelle Russell: As I say, we are still in investigation, so I need to be careful that we do not pre-empt any of the work that the statutory inquiry is carrying out, but again, as I said to you earlier, we would not be drawn one way or another whether or not it vindicated them or not. It provided, or seemed to provide, on the surface, some assurance that some of the specific allegations did not add up with the records of the charity, but we made clear to the charity trustees in the conversation that we still had concerns about some of the

substance that was in there, about the prudence of some of the spend that was reported to have been made.

Q496 Mr David Jones: So you did not regard these as trivial matters?

Michelle Russell: No, because we had had the conversation with the charity the week before that said we had some concerns about their remit, the fact that some of the people were reported to be not children and young people and the prudence of some of the spend.

Q497 Mr David Jones: What advice, if any, did you give to the Cabinet Office in the light of PwC's initial findings?

Michelle Russell: In terms of advice, none. It is not the Commission's role to advise the Cabinet Office or any other donor as to whether to make a donation or not. What we did was present the facts, as we knew them at the time, which was factually we had on the table allegations that were made—potentially serious allegations—against the charity.

Q498 Mr David Jones: Did you have any discussions with the Cabinet Office after the initial PwC report?

Michelle Russell: Yes, we notified them in broad terms about the results of the PwC report but, again, at that point the Cabinet Office has told us they had received a copy of it separately from the charity.

Q499 Mrs Gillan: Three days to report on a serious group of allegations—surely that is not enough time for a proper full investigation to take place.

Michelle Russell: No, it wasn't, which is why their actual full remit was in relation to the seven allegations and to do so in a longer time period. However, some of the allegations that were on the table were very specific and needed to just be checked against the financial records of the charity. Whether or not, for example, someone had paid off or signed off £5,000 worth of expenditure, it should be very clear on the records whether or not that was done at trustee level in accordance with the policies or not, so there are some things that could be done quite easily.

Q500 Mrs Gillan: PwC has not completed the task for which the £50,000 was paid, so I presume somebody will be asking PwC for the balance of that money back.

Michelle Russell: There are two things there. My understanding is that the figure you have quoted is in relation to the whole remit and it was staged up, so it is not £50,000 for the work that has been produced. Secondly, that is a matter for the Official Receiver. In terms of the Official Receiver and his position, he has to work out where the debts are of the organisation, whether or not any money needs to be recouped, so that will be something that is dealt with by the Official Receiver's statutory responsibilities.

Chair: Okay. Can we just clear up some aspects of the donation made by Joan Woolard, please?

Q501 Paul Flynn: Joan Woolard, as you know, is a 77-year-old lady and writer of entertaining limericks, which, sadly, are not appreciated by the creative director of the BBC,

but she very generously decided to give the £200,000 that she had from the sale of her home to a charity. She did not want to give it to a big charity; she wanted to give it to a charity that was small, where she could trace what good it was doing. She did this because she listened to a presentation and was bewitched by Ms Batmanghelidjh's charms, but very rapidly became disillusioned and volunteered to work for Kids Company and was appalled because of the lack of children there. It seemed that only a handful of children turned up, except on Friday, when they were handed sums of money in envelopes. Understandably they turned up on Friday. So she has asked for her money to be returned, not unreasonably, and perhaps some of the money that PricewaterhouseCoopers has not spent could go to her. But when we interviewed Mr Yentob and Ms Batmanghelidjh they prayed in aid the Charity Commission. Could we ask you, what influence did you have in this? What knowledge do you have of Mrs Joan Woolard and her contribution?

William Shawcross: I know what you know; I know what I have read in the press about her. It appears to me—and I totally agree with you—she was a fine woman who gave a lot of money to the charity and was unhappy about the way in which the money was spent. We investigated the case—Michelle can give you more details about it—when it came to our attention. Unfortunately, it turned out that she had not placed any limitations upon the way in which the money was spent, so that made it rather difficult to insist that the money be repaid. I think she had asked for fresh vegetables to be bought for the children and was disappointed when she found out that lunch vouchers had been given to them instead. It is clear that her relationship with the charity became a very unhappy one. This does sometimes happen with charities and donors but it was—clearly I agree with you—the fault of the charity that she was not treated better. I believe that the charity has subsequently said that we exonerated them in their dealings with Ms Woolard. We did no such thing.

Q502 Paul Flynn: Can we say what they did say? Alan Yentob told the Committee that the Charity Commission confirmed that “Kids Company had behaved entirely appropriately” and that the Charity Commission stated, “There were no issues in relation to this case”. That is another quote from him. Is this true?

Michelle Russell: I don't think it is appropriate to comment on what Mr Alan Yentob has said. However, what I will say from the Commission's perspective is, we looked into the specific complaint that was made to us by the donor. There was nothing illegal that the charity had done, in terms of spending the money on things that it shouldn't have done, albeit it was not in the way that the donor had intended. There was nothing that required us to make regulatory intervention. That said—and I have seen the correspondence myself—there clearly, at some point, was a breakdown in the relationship between the donor and the charity. It is a timely reminder to all trustees that they are accountable to their donors, particularly this lady, who had sold her home and given the £200,000 in proceeds to the charity for its work. It highlights what we were talking about earlier: albeit there may be nothing that is illegal that we can do anything about in terms of regulatory intervention, there is a moral code and culture that transcends here that goes to good governance and good practice. It was clear there was a breakdown of relationship but in terms of anything that was illegal, there was nothing that we could do in terms of regulatory intervention.

Paul Flynn: Okay, I understand that—

Q503 Chair: Mr Flynn, may I intervene at this point? How did you express that to Kids Company? Was it in writing, and if it was, can we have it?

Michelle Russell: Yes. In terms of similar words that I have used, there is nothing for us in terms of regulatory intervention; they have not spent the money on things that they should not have done. It is in writing and we would be happy to provide you with a copy of that letter.

Q504 Paul Flynn: Is it true what Ms Batmanghelidjh said, “The Charity Commission advised us not to return the money and we followed all those instructions that the Charity Commission had given us.” But would you regard them as instructions?

Michelle Russell: The Commission is prohibited under legislation from acting in the administration of the charity. I cannot comment on what others have said, but we have found no records that we gave specific advice to the charity on repaying the money.

Q505 Paul Flynn: Whether they have a legal obligation or not, they certainly have a moral obligation to return the money to this lady, who thinks she threw her money away and was deceived by Kids Company. Did you really tell them not to return the money? That is what Ms Batmanghelidjh told us.

Michelle Russell: That is what I am saying: no, we didn’t. We have no record at all about advising on repaying the money or not repaying the money.

Q506 Kelvin Hopkins: I will be brief, Chair, because we are running out of time. About lessons learned for the future of the Charity Commission, advice about trusteeship, particularly regarding the management of reserves, are you thinking in terms of giving better advice in the future about that?

William Shawcross: We do already give good advice and I mentioned before that we have revised our advice. It is called “The Essential Trustee” and is on our website, which gets looked at and gets lots and lots of hits all the time. It is very good in the advice that it offers. We will obviously learn the lessons of this very sad story and try to enhance that advice in terms of reserves and donor management—donor management is not a very nice phrase—looking after donors properly because this case of Mrs Woolard obviously illustrates a donor who was not looked after properly, I quite agree with you.

Michelle Russell: We have already started the review of the actual reserves guidance. We mentioned earlier that although we think it is common sense, we are already starting to have a look at whether or not we can give more guidance to particular types of charities to make clear that those that work with vulnerable beneficiaries or have high-committed expenditure need to do more to ensure that their financial planning and business model works alongside reserves. Yes, we have already reflected on that. Yes, we have already started to take action on that. The other bit of reflection endorses what we thought was the issue in relation to our capacity to interrogate charity accounts that are given to us—the 60,000—better in an electronic and systematic way, linked up with the risk work and the risk-profiling work that we agreed to send the Committee a note on. We have already started to do some work and action on those areas.

Q507 Kelvin Hopkins: You have touched on this before, but how can the Charity Commission encourage trustees to be more accountable without deterring people from taking up these important voluntary positions?

William Shawcross: More accountable to us or to their donors or to their beneficiaries?

Kelvin Hopkins: Accountable in their management of the charities and indeed more open and transparent, as far as you are concerned.

William Shawcross: We require all new charity trustees to read our guidance and before they can register as trustees to acknowledge that they have read our guidance to us. How many of them read it and digest it all completely I do not know. But we have talked about this all through this morning; this whole area is very, very difficult. Most trustees are honourable, decent people running very small charities, which often are hand-to-mouth. They rely upon guidance but I hope that guidance does not have to be statutorily enforced, which was the issue we were talking about earlier this morning. In some cases—as we have been talking about this morning—there is very bad behaviour by charities that needs firmer guidance from us but, again, I hope it will not have to become statutory guidance. We have talked this morning about charities that have lost their way or behaved unfortunately, to put it mildly, but I hope that does not lose sight of the fact that most charities are looked after by their trustees well.

Q508 Kelvin Hopkins: Touching on big charities now and a couple of final questions about large Government grants given to deliver public services, should the charities be required to demonstrate greater transparency about outcomes and impact? Should there even be public hearings to aid this transparency?

William Shawcross: It is a huge issue, which we certainly want to look at, but we are already requiring some more transparency on that, are we not?

Michelle Russell: There are two different issues. There is the issue about trustee duties and strong financial management over those contracts, which is our territory, but as we move into effectiveness, that moved outside of the Commission's role as regulator. That said, one of the things we have already taken action on is that in our annual return going forward we will be asking the question of charities about how much statutory funding they get. In terms of transparency, the public will be able to see on the register of charities more information in that regard. We will be able to use that in terms of the work we talked about earlier, about where are the risks and vulnerabilities, coupled with signals about reserves or unrestricted funds and so on.

William Shawcross: But I would welcome the hearing you suggest; it would be very interesting to do.

Q509 Kelvin Hopkins: On this theme again, what are the tools that Government needs to have to decide if a charity should be in receipt of large Government grants?

Michelle Russell: The first thing I would say to start with—and we say this to the public, not just to Government—is look on the Charity Commission's website and if it has got a red banner, which is they can't get the basics right of filing their accounts on time, then that is a warning signal that charity trustees can't comply with their basic duties. That is flag No. 1 and we say that to the public, we say that to charities, the same would apply to

Government. In terms of other areas, the financial transparency that we have talked about using the register to make informed decisions, I can understand when members of the public say, “We are not going to look at the charity’s accounts and go through them to decide whether or not we are going to give £10.” But the more a donor is giving, whether or not that is a charitable donor, whether or not that is a private high net worth individual donor or a statutory donor, there does need to be thorough scrutiny and due diligence in relation to charities.

Kelvin Hopkins: Just in relation to public money, one would assume.

Michelle Russell: We are always there. If a Government Department wants to come to us under our statutory gateway to ask if we have had an investigation or a compliance case into a charity, we can provide that information under our statutory gateway that is written into the Charities Act.

Q510 Kelvin Hopkins: What lessons should the Charity Commission, trustees and Government take from the collapse of Kids Company?

Chair: Let us just stick with the Charity Commission.

William Shawcross: We must be even more alert. This is a very unhappy story; I have said earlier I wish we had done more earlier and I wish we had found a way in which to have statutory regulatory involvement earlier. We didn’t see that and I hope that we will be more alert in future.

Michelle Russell: There is also a lesson to be learnt that even if it is a charity that has an unqualified set of accounts there still may be issues about financial stability, and that is a lesson not just for us, but for the sector and the public themselves.

William Shawcross: That is a very important point.

Q511 Chair: I am extremely grateful to you and to the Committee for being so patient. I just want to ask two or three very brief supplementary questions. First of all, in terms of the tools that the Government or local government has at its disposal to assess whether a charity should be in receipt of public funds, would it be inappropriate for the Government or local government to seek the advice of the Charity Commission about a particular charity before it makes a loan or donation to a charity? How appropriate would that be?

William Shawcross: I don’t see that it would be inappropriate for anybody to ask our advice.

Michelle Russell: As I said before, we have the statutory gateway for public authorities to be able to do that. Our nervousness would be that given the number of donors that there are to charities, we would be absolutely inundated with requests to do that, which would distract us from the job of regulating.

Q512 Chair: I am minded to suggest that this might be a source of revenue for you and that you charge for the advice. Secondly, some additional powers are suggested by the Etherington Review, but do you feel you need any additional powers, as a result of these two experiences, Kids Company and the fundraising debacle?

William Shawcross: We are already, I hope, going to receive important additional powers in the Charities (Protection and Social Investment) Bill, which is going through your House at the moment. Is there anything else you want to add? They will make a big difference to us.

Michelle Russell: There are two different things. If we are talking about statutory regulation in relation to fundraising we would be talking about powers of a different nature. If self-regulation didn't work under the improved area you would be looking at us to have the ability to fine, as well as do the things about cease and desist, which we cannot do under our current remit. Also, we would need our remit extending, so that it was not just over charities, but over philanthropic and other organisations.

In relation to the other matters that we have talked about, as William said, the powers that we have asked for already under the Charities (Protection and Social Investment) Bill should help us to deal adequately with these sorts of situations but it does underline the importance of some of those powers, like official warnings, like the ability to disqualify trustees or individuals who are perhaps no longer in those positions but give cause for concern about whether or not they should be acting in a charity.

Q513 Chair: Finally, my colleague, Mr Hopkins, suggested that maybe you should even hold public hearings. Here we are. We have been holding public hearings into Kids Company, into the charities named in the fundraising debacle. Shouldn't there be some way of the Charity Commission more visibly, openly and publicly holding charities to account for these failings, rather than a blinking Select Committee of the House of Commons having to take on this role? Are we not, to some extent, doing your job, and can you imagine a way in which you could take over some of this role, maybe at a lower level as part of your regulatory role?

William Shawcross: There are two different issues there. Public hearings on different issues of charity governance and charities' responsibility and the tainting nature of charities in the world—as was mentioned, charities are receiving a lot of Government funding, which would never have happened 50 years ago—that sort of hearing would be very, very interesting. Whether we can have a hearing to hold charities to account—can we do that under our statutes?

Michelle Russell: We have under section 46 of the Charities Act the power to open an inquiry. It is broad enough to allow us to open what is called a class inquiry into a class issue or a subset issue. The only thing that would be different or unusual about that is the issue about public hearings because normally, because of our quasi-judicial powers, the gathering of evidence is normally done in public. The complainants and whistleblowers who come to us trust us in a way that their identity is protected. It is something we could think about and it is an interesting suggestion to move us into that public arena in terms of issues such as this.

Q514 Chair: Mr Hopkins suggested there was a need for you to be seen to be regulating and you are quite a low-profile regulator, except among charity trustees. How many people, for example, know that they can complain to the Charity Commission about the conduct of a charity? You probably feel far too many; but maybe it is not nearly enough.

Michelle Russell: Without getting on to the controversial issue about our website and gov.uk and whether or not people can find us on that, it does very clearly signpost the different ways that people can come to us, not just the public but also statutory whistleblowers under the Public Interest Disclosure Act and also other authorities, so that is clear.

Chair: May I just clarify one thing? Are you suggesting—and it would seem reasonable to me—that forcing you to have a gov.uk website has somewhat blunted your independent identity?

William Shawcross: We certainly didn't seek it and the mechanics of the website are not as efficient as the previous website. A lot of people complain to me, "The only way to find something on your website is to use Google" of the gov.uk website, and that is a bit of a problem. But we are trying to improve it and gov.uk is trying to improve itself generally. But if I may go back to Mr Hopkins's point, I am all in favour of us doing whatever we can to make ourselves a more publicly visible organisation. We have changed enormously in the last three years. The number of inquiries we have opened and concluded, the numbers of times we have used our compliance powers, the number of assets we have directly protected and the monitoring cases that we have carried out are enormously higher than they were three years ago.

The Commission has changed direction a lot and I am very happy to talk about that more generally and I am very happy to have public meetings and maybe some or all of you could come and talk at our public meetings. I can chair a meeting at which you can all talk and speak to issues. As you know, I set up a new Charity Commission lecture every year, to which Frank Prochaska gave the first lecture and Frank Field gave the second. They were both excellent lectures about the nature of charity in Britain today and the problems, the values, the greatness and the concerns about it. I would love to do more of those sorts of hearings. It takes time and resources, of course, but it is a very interesting suggestion from Mr Hopkins.

Q515 Chair: But the role and status of the Charity Commission is extremely important to this Committee and I wonder if you share the view of one or two members of this Committee that suggests that your fellow directors on the board of the Charity Commission should all be charity commissioners because of the importance of their role, and that it also sends a very important message about governance—that there is not just one person supported by some others, it is a joint and several effort in which even the chair is first among equals. What do you think about amending the Act so that you are all charity commissioners?

William Shawcross: So instead of the chairman of the commission and the board of the commission, everyone on the board would be a charity commissioner?

Chair: Which was the way it used to be.

William Shawcross: As in days of yore. It sounds rather nice to me. But my colleagues may think that there are all sorts of problems associated therewith, but thank you for the suggestion.

Chair: Well, we will suggest it.

Q516 Paul Flynn: All other members of the committee I am sure will unselfishly delegate the task of addressing these public meetings to the chairman, who I am sure is very grateful for your idea to fill his empty life with something useful to do. Could I make just one final point, which has not been covered? One of the complaints made to us and part of the information made available to us is that one of the reasons that the stories did not get out is that both staff and some of the children—who were being cared for by Kids Company—were inhibited in criticising Saint Camila because she held both their medical and criminal records. In your statutory inquiry, can you ensure you bear this in mind to give them adequate protection if they wish to give evidence now?

Michelle Russell: Absolutely. It is made very public by us that we always protect the identity of complainants that come to us, unless they consent to their details being released. It makes it difficult sometimes that they could be identified by what they are reporting to us. But we do and we will and are continuing to receive people coming to us to give evidence to us in relation to the live inquiry. It will take its due course and we will publish a report about our findings and conclusions in relation to what has happened.

Chair: Thank you very much.

William Shawcross: Mr Chairman, can I just say in conclusion, thank you very much for this very interesting and important hearing? I know it is clear to you and I hope it is clear to your members that this is a job we take very, very seriously. I have a wonderful staff, a smaller staff than I think the world of charity needs and deserves, but they work incredibly hard. It is a marvellous task that we have been given and this is the most difficult job I have ever done, but I am very grateful to you for all your support and the way in which you help us to do it. Thank you.

Chair: The recent staff survey conducted in the Charity Commission is testament to the strong leadership of the Charity Commission and I commend you for that. Please, will you pass our thanks to all your dedicated and hard-working staff?

William Shawcross: Thank you, Mr Chairman.

Michelle Russell: Thank you.