



HOUSE OF LORDS

Select Committee on Charities

Corrected oral evidence: Charities

Tuesday 5 July 2016

4 pm

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Members present: Baroness Pitkeathley (Chairman); Baroness Barker; Lord Chadlington; Lord Foulkes of Cumnock; Baroness Gale; Lord Harries of Pentregarth; Baroness Jenkin of Kennington; Lord Lupton; Lord Rooker; Baroness Scott of Needham Market; Baroness Stedman-Scott

Evidence Session No. 1

Heard in Public

Questions 1 - 14

Witnesses

Paula Sussex, Chief Executive, and Sarah Atkinson, Director of Policy and Communications, Charity Commission

Examination of Witnesses

Paula Sussex and Sarah Atkinson

Q1 The Chairman: Thank you very much for agreeing to participate today. We are very grateful to you for changing your time, as we had to ask you to do. This session, as we all know, is open to the public. Indeed, we welcome members of the public to the session today. A webcast of the session goes out live, and it is subsequently accessible via the parliamentary website. A verbal transcript will be taken of your evidence. I am sure you are very familiar with that. This will be put out on the parliamentary website. A few days after the evidence session, you will be sent a copy of the transcript to check it for accuracy. We would be grateful if you advised us of any corrections as quickly as possible. After this session, if you feel that we have not given you a chance to say all that you wanted to say, or if you want to amplify or emphasise any points you have made, please feel free. You are very welcome to do that. I am going to ask you to introduce yourselves for the record. Then, we will begin with the questions.

Paula Sussex: My name is Paula Sussex. I am the chief executive of the Charity Commission.

Sarah Atkinson: I am Sarah Atkinson. I am the director of policy and communications at the Charity Commission.

Q2 The Chairman: I am going to ask the first question but, before that, I am going to declare my interests. All members will be doing that the first time that they speak. Please do not be disconcerted.

My interests are that I am co-chair of the All-Party Parliamentary Group on Civil Society and Volunteering and of the All-Party Parliamentary Group on Carers. I am the chair of the Big Society Trust, a vice-president of Carers UK, an ambassador for National Voices, a trustee of Cumberland Lodge and a non-executive director of Third Sector PR. As I say, every member will be declaring their interests as we go.

Let me start by asking you a first question—one that you might expect. Has the role and operation of the Charity Commission changed in recent years? How has it responded to past criticisms? I think that everybody will be familiar with some of the past criticisms on the way that it functions.

Paula Sussex: Thank you, Lord Chairman, and our thanks for inviting us to this pretty key meeting at a pretty important time for the charity sector.

Indeed, in its role and operation, the Charity Commission has had to up its game, shall we say, after criticism from both the National Audit Office and the Public Accounts Committee. We have had to look to both the efficiency and the effectiveness of the commission. That coincided with a 40% budget cut, so the efficiency goal came sharply into relief. Effectively, we had to do more and make more impact with way fewer resources. That coincided with a clear strategy direction set by the board, chaired by William Shawcross, which was one whereby the regulator can be most effective where it regulates on a compliance basis. Our strategy

is, first, compliance based, but a second and very important plank of that strategy, which we hope to be able to talk through this afternoon, is our enablement strategic priority, which turns to permissions and consent—enabling the sector.

The Chairman: Thank you. Is there anything that you would like to add to that, Sarah?

Sarah Atkinson: No.

The Chairman: Are you happy with that? Okay.

Q3 **Lord Foulkes of Cumnock:** My only interest is as chair of Age Scotland. As you know, it is responsible to OSCR, rather than to the Charity Commission.

You have mentioned the 40% budget cut. Have you looked at alternative funding models?

Paula Sussex: We constantly look at alternative funding models. The first thing we must do is look to our own efficiency within that 40% budget cut. The reality for any public sector body in a time of austerity is that you need to look at how to do more with less. More with less is coming a lot through digital technologies, which the private sector and other parts of the public sector, notably local authorities, have made great good use of, but we will look in an open and transparent way at alternative sources of funding. In the meantime, our focus is on doing the very best job with what we have.

Lord Foulkes of Cumnock: Have you ruled out charging charities for registration?

Paula Sussex: As is on the record, we have been having discussions—informal as yet—with many parts of the sector about what that might look like, but we have not yet gone to a formal consultation on funding.

Lord Foulkes of Cumnock: Can I ask a wider question, not just on funding, but on all your operations? Do you look at other countries and at how they deal with charity registration? Can you learn anything from other countries?

Paula Sussex: We work very closely with the regulators of the British Isles, which have the most analogous models. As you know, there are very few charity regulators globally. We learn a lot by looking at OSCR, with my colleague David Robb up in Scotland. Equally, a number of other regulatory bodies and the revenue authorities overseas come to look at our experience and our transformation. You mention registration. There, we are probably leading the pack. We have a new system to register, which is proving a good deal more effective and faster than our previous system, which was launched just three months ago.

Q4 **Baroness Barker:** Good afternoon. I should declare my interests. I am involved in two consultancies, Third Sector Business and Barker and Woodard Consulting, which have a lot of charities as clients. I have ongoing involvement with several charities in a non-pecuniary capacity—

ambassadors and so on.

My question is about relationships with government. Thanks to the use of iPads, we have been able to determine that you are a non-ministerial government department, which was something that the Committee was discussing before you came in. We wanted to know exactly what your status is. How does the Charity Commission interact with government? There has been a lot of controversy in recent months about certain actions of government, and we wanted to know how you work with them.

Paula Sussex: I am sure that Sarah Atkinson would want to add some comments on this, but let me kick off. Exactly as you say, Baroness, we are an independent regulator, so our influence—our shaping—comes from Parliament and from the public, but we are independent both of government and of charities. However, we interact closely and operationally with various parts of government. You will know that we often co-operate with a number of other government agencies. We have about a dozen important memorandums of understanding, which means that we liaise on a very regular basis, certainly weekly, but our independence is prized, operationally and from a policy perspective.

Baroness Barker: How does the commission deal with the issue of its accountability? Is its accountability primarily to the public?

Paula Sussex: To Parliament first.

Baroness Barker: To Parliament first. Via a Minister? Via the Cabinet Office?

Sarah Atkinson: Our key accountability mechanism is our annual report, which is presented to Parliament, and our latest annual report will be presented to Parliament tomorrow. We report annually to the Public Administration and Constitutional Affairs Committee, which has a remit for charity and third sector issues, and includes scrutiny of us. For example, when our chairman was the preferred candidate, it ran the scrutiny of the potential chairman, as well as holding our annual hearing.

As you have said, we are a non-ministerial department. On a practical level, day-to-day parliamentary accountability runs through the Minister for Civil Society. Parliamentary Questions that are directed to the Charity Commission—Written Questions—come through the Cabinet Office to us. For Oral Questions, we put up a briefing through the Minister, and correspondence often goes to the Minister in the normal course of events, and we pick that up. We do not have a Minister who is our Minister or who represents our interests; we have a good working relationship with the Cabinet Office and Cabinet Office Ministers, but they are not our Ministers—they do not speak for us, and we do not expect them to, but we have to work side by side.

Lord Harries of Pentregarth: Declaration of interests: I am chair of the Commission on Civil Society and Democratic Engagement and I am a trustee of the Woolf Institute.

If it is all right with you, Lord Chairman, I am still really on the first question. On the changes that have taken place in recent years, as you

have indicated, there have been some criticisms, particularly from the National Audit Office in 2015, about the relationship between the board and the executive. Would you like to explain what changes have taken place since that report? There was a suggestion that the board was too involved in the day-by-day executive running of the commission.

Paula Sussex: Indeed. I think it was the 2013 report that was critical, followed up by the 2015 report, which showed that progress was being made, but you are quite right: there were questions raised about the role of the board and the role of the executive. The board and the executive have taken that very seriously. There has since been an independent governance review, which we published a summary in December 2015, if my memory serves me right, which provided some recommendations. It endorsed the role of the board and it went back to the genuinely unique constitutional arrangement that the legal incarnation of the commission is the board. If one looks through the lens of traditional non-exec and executive, that lens does not always hold.

Lord Harries of Pentregarth: Right. That needs a little further thinking about. Following up with a more particular question, a number of separate committees or sub-committees of the board operate, as I understand it, particularly in high-level cases. Could you give some indication of how those are accountable and what kind of areas are delegated to them?

Paula Sussex: There is one committee, which has been running for about two years now, which exercises oversight of our public interest, high-risk and litigation cases. The two legal board members, who are a requirement of the Act, sit on that committee, and I am a member of that committee. It is chaired by one of our legally qualified board members. In practice, it is an oversight role. They bring tremendous legal skills to the proceedings of the commission. Were they to direct, which they legally have the right to, they declare that they are directing, but in my two years of sitting on that committee I cannot recall an instance where they have directed the executive in one particular direction on a case.

Lord Rooker: I am Lord Rooker, and I have to do the technical, management bit. I am the chair and trustee of the British Motor Sport Training Trust and a member of the following charities: the RNLI; RSPB; the WWT, which is the Wildfowl and Wetlands Trust; Friends of Kew; Friends of the Lake District; and English Heritage. I am a governing trustee of James Brindley school, Birmingham, for another month. My wife, Helen Hughes, is the chief executive—unpaid—of the Ludlow and District community association, which is a registered charity and operates the Ludlow assembly rooms arts and community centre.

I want to follow up on what Baroness Barker asked you about the legal status. My own personal experience, with four years as chair of the Food Standards Agency, is that most of Whitehall does not have a clue about how to deal with non-ministerial departments. They do not quite see where they fit. Therefore, maintaining the independence that Parliament has given you is pretty crucial. There are only about 20 such bodies, compared with the hundreds of others. How do you set about maintaining independence from pressure from Ministers—who do not have a right to

pressure you, but nevertheless are government and feel as though they have to answer to Parliament? How often do you appear before the Select Committee? How is that taken into account in the membership of the board? They are the legal entity of the body, as I understand it. They are the legally structured body. How much experience do they have of working in the third sector, for example?

Paula Sussex: Perhaps I can take the first part of your question. You are quite right. Our independence is something, as I said to Baroness Barker, that we prize. That therefore means that it is a weekly vigilance. Many people will seek to influence the direction of the Charity Commission, charities included, and complainants, but it is absolutely vital that decisions are taken decision by decision so that we can see a straight line from the Act through charity law, through what our colleagues—an excellent team of case workers and lawyers—opine to be the right technical and regulatory result. It is absolutely something to which we need to pay attention every week. This is a sector that draws a lot of emotion and attention.

On your second point, the board has a number of members who either have had charity experience or who currently have serving experience on charities. We have advertised for four new posts on that board. Again, we are specifically looking for charitable expertise in the adverts that have just recently gone out. The applications have recently closed, and I am very pleased to say that we have had a very good, strong showing from the charities sector.

Lord Rooker: Working in charities or as charity trustees? It is not the same thing, is it?

Paula Sussex: Both.

Q5 **Baroness Gale:** I declare my interests. I am the president of the National Old Age Pensioners Association of Wales, although we now call ourselves Active Wales. That is more appropriate, we think. I am president of the Treherbert and District Branch of the Royal British Legion, honorary vice-president of the James Whale Fund for Kidney Cancer, patron of the Kidney Wales Foundation, patron of Bees for Development and a member of Parkinson's UK. I co-chair the All-Party Parliamentary Group on Parkinson's.

What factors does the commission take into account when issuing guidance to charities on matters such as lobbying and campaigning? How does the commission perceive its role in influencing charities legislation such as the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014?

Sarah Atkinson: My department is responsible for producing most of the guidance that the commission produces for charities. Some of the technical accounting guidance is produced by our accounting specialists, but the bulk of the guidance, which is for trustees running their charities day to day, is put together by my team. The guidance is a really important part of our job as a regulator, to ensure that trustees understand the rules and are able to keep within the rules, which most of

them want to do and are able to do if they understand the framework in which they are operating. We produce guidance driven by charity law, much of which comes from case law rather than statute, and by our casework experience. There are occasions when we see in our casework a need either for additional guidance in a particular area or for amendments to guidance, because it is clear that practice is not being followed. Sometimes, guidance is driven by external changes. With the Charities (Protection and Social Investment) Act 2016, which has just been passed and given Royal Assent, there will be quite a bit of new guidance around the provisions in that Act.

My team, as I said, produces the majority of our guidance for trustees, and we follow a template around aiming to be clear, because we recognise that the majority of trustees are lay individuals without particular expertise in charity law, and it needs to be something that they can understand and follow.

We are conscious that we try to produce guidance for charities in a range of different contexts, from some very large, well-equipped and able charities of many millions of pounds of income to the majority of the charities on our register, which are very small and entirely voluntarily run. We try to find a balance, putting those principles into an explanation that all trustees are going to be able to follow, and we try to signal clearly where guidance applies and where it does not.

You had a specific example, I think, about our role in influencing legislation as a non-ministerial department. We are sometimes called on to give advice to government departments in developing legislation. Sometimes we recognise the need to give that advice, even when it is not sought, because of the interaction with charity law. We have had several examples over the time that I have been at the commission of where policy or legislative changes will impact either all charities or many or most charities that operate in a particular sector or that undertake a particular activity. We seek to bring our understanding of charity law and of the implications of particular policy and legal approaches for charity law. Sometimes it is about identifying unintended consequences for charity independence, and we try to bring that expertise to bear.

The Chairman: I think that Lord Harries wants to come in, but please continue, Lady Gale.

Baroness Gale: I am thinking about the run-up to the 2015 general election and the recent elections that we have had. Were charities consulting with you? Do you think that the Bill—the Act, now, which was controversial at the time and was called a gagging Bill; charities were concerned at the time that they would not be able to lobby in the way they did before the Bill—has had some effect? If you get problems with the charities coming to you and perhaps saying, “We cannot operate this way”, would you then take that up and speak to government Ministers about it so that they could take a look at any particular issues?

Sarah Atkinson: That particular piece of legislation was electoral law. We do not have the expertise on electoral law; the Electoral Commission

does. We worked very closely with the Electoral Commission, because, noting how charity law applies to campaigning, lobbying and political activity and how electoral law applies, they are different frameworks and they apply differently, but we recognise this. Charities were saying to us, "We want to understand how to navigate both these frameworks. We do not want you to be contradictory with the Electoral Commission. We want to understand how your guidance fits together". We worked quite hard with the Electoral Commission to understand those dovetailing points, and with our counterparts at OSCR and the Charity Commission for Northern Ireland, because these are obviously cross-border issues.

Q6 Lord Chadlington: I declare my interests. First, I am chairman of LAPADA. We are working this year to help stroke victims. I have a number of local unpaid trusteeships. I am governor at the Ditchley Foundation, a trustee of the Atlantic Partnership, a trustee of the Dean & Chadlington Summer Music Festival and a trustee of the Dean Trust. The height of my trusteeship knowledge is that I am also a trustee of Chadlington village green.

I have two questions. I would like to understand how you communicate with new trustees about how they can influence policy. How do you go about that? It is clearer if you are a trustee of a large organisation, but the one that I slightly make fun of here, Chadlington village green, is all made up of local people, and they want to be able to understand and talk to you about things.

Secondly, I want to know whether you encourage people to have a conversation with you. Is it something that you regard as good practice by a trustee to be in touch with you, asking questions about how to organise themselves?

Paula Sussex: The symmetry of scale is not with us. We are 300 civil servants. We know more than 160,000 charities and 850,000 trustees. Those odds are not good, which is why we are putting so much focus on what we do digitally, through the web, not to the exclusion of using the phone channel, but the web will be by far the most effective mechanism. We have to get that really right. There are many instances. We have some way to go. We have started, and we are absolutely committed to that.

There are a number of other ways. We will travel around the regions. We either hold public meetings or we do small, informal meetings with some of the CVSs. We will often invite trustees in, sometimes as user groups, to talk about how we are developing our operational policy, so we get their involvement. It becomes most important to take all of that commentary and feedback and, as you say, make it as much of a dialogue as possible. It is tremendously important to us that we are as accessible and have as focused a dialogue with trustees as possible.

We are particularly interested in this point in time, because we think that this Committee provides a fantastic window of opportunity to focus on how we communicate with trustees and on the role that trustees need to play for charities over the next decade or two in challenging environments.

We are actively engaged with other stakeholders in the sector such as NCVO, CASS (the Centre for Charity Effectiveness at CASS Business School) and the Cranfield Trust, asking, "How can we communicate more effectively with trustees?" We do not believe that we are yet doing a good enough job. It is an absolute focus for the team at this point in time.

Lord Chadlington: So, from that point of view, you are encouraging a debate.

Paula Sussex: Yes.

Lord Chadlington: One of the things that comes up over and over again is the time it takes to register a new charity in a particular area. As we have discovered in talking here among ourselves, that is variable, as opposed to a set of rules.

Paula Sussex: Yes.

Lord Chadlington: Can you comment on that?

Paula Sussex: A number of factors drove a tremendous increase in the number of applications. We have stayed at the same size of team that carry out our registration, which is 19. Applications went up by 25% last year and this year. We are now running at about 8,000 applications coming through. That is why the simple piece of technology that we put in in March has made such a big difference. We have an internal target, which we share externally, of 55 days. We met that target all the way through last year. Under the new system, which is called apply to register, charities are going through in about five or 10 days. We think that we have made a significant improvement in that area. We are always keenly aware of the importance of improving that piece of our operations first.

Lord Chadlington: Can you repeat that? You said there was one particular website that you can use.

Paula Sussex: If you go into "Register your charity", the system is called "Apply to register a charity". It is new as of March, and it is considerably faster than the previous system.

The Chairman: I am sure that all Committee members will be testing it.

Q7 **Lord Harries of Pentregarth:** I do not know whether you have yet had a chance to look at Lord Hodgson's review on third party electoral campaigning. This is the background of my work as chairman of the Commission on Civil Society and Democratic Engagement, which is a loose amalgam of 100 or 200 charities and NGOs, who were very opposed to Part 2 of the lobbying Act. It is interesting that, with one exception—it was unrealistic to get it accepted—all the things that we campaigned for have been accepted by Lord Hodgson. What the Government will do about them is another matter, but one of the implications of this, if it was accepted, is that it would take charities—leaving aside other bodies—out of the purview of Part 2 of the lobbying Act altogether.

The background to this is that charities are basically happy with the

guidance you have in CC9. People are used to that and happy about that. I would like your reflections on that guidance and how you feel about it. When you come to look at Lord Hodgson's review, you may very well draw the conclusion that, if those recommendations are accepted, it would withdraw registered charities out of the purview altogether. They would be very firmly covered by CC9.

Paula Sussex: Perhaps I can deal with your last point first, and then Sarah can speak about the lobbying Act.

As I am sure has been said many times in this room before, we are living in exceptional times. We are very well aware that the most recent referendum continues to present important questions for charities. Precisely on the point about how and where charities can make their point and be part of the discussion, that may happen over anything from one or two to five years, depending on your views. We are, in relatively short order, going to meet a small number of quite high-profile and very active charities to discuss and set out where we think charities may wish to be active and what we think the law and our guidance will be around that. We think it is important to have that dialogue. We have time to do so now. We will do that not as a formal consultation; none the less, we have written to invite those charities in the next couple of weeks to have that discussion with us.

Sarah Atkinson: On the point about Lord Hodgson's review, which was a careful and expert run-through of the issues, and on the point about whether charities could be exempted, our concern has always simply been that the Charity Commission is not capable of administering electoral law. If it is expected that the Charity Commission would have oversight of electoral law as it applies to charities, we could not do that. We do not have that expertise or remit. If it is a cross-border issue, colleagues in OSCR and CC Northern Ireland would be of the same view: they are not electoral law regulators, but our job is to administer charity law. If the view were taken that electoral law requirements did not need to apply to charities, that would be perfectly sensible, but we worry that people think that we will take the electoral requirements on.

Lord Harries of Pentregarth: Your guidance in CC9 is quite clear. Charities have to abide by that, and that impinges on electoral law. If they abide by that, they do not fall foul of the law.

Sarah Atkinson: But our guidance relates only to charity law, so we do not make any comment on electoral law. Our supplementary guidance that applies in election time clearly signposts you to the Electoral Commission for administration, spending and those sorts of requirements. We do not cover that in our guidance. I do not think that we would feel capable of doing so, because it is not our expertise—but that is not to say that we could not.

Q8 **Lord Lupton:** I should disclose my interests. I am a trustee of the British Museum. I am chairman and a trustee of our family foundation, the Lovington Foundation. I am a member of the advisory board of Grange Park Opera. I am a creditor of Kids Company, having made a loan to it in

2014.

On the comment you made about the time it takes to register charities, in my own case, as I was saying before, I was both amazed and surprised when I set up the foundation that it took three days from application to approval from the Charity Commission of the charitable status of the foundation. I just worry about targets. The question I have is: if you are now approving people within 10 days of application, which, on the one hand, is laudable, do you feel, on the other hand, any responsibility, as the regulator, to make checks on the suitability of trustees and the charity? How would you do that within that space of time?

Paula Sussex: First of all, those are averages. A quickly registered charity will usually have a very strong case. It is a fulsomely made application, and it raises no flags. It is very straightforward and is well presented, et cetera. The relative speed that we are now achieving on average is because, if somebody registers a charity now, the decision-making process is such that you do not proceed unless you have made a very clear case for charitable status. We have made that much clearer up front in the application process.

We absolutely do make checks on charities' suitability. As you will know, if the charity none the less has charitable status, we are legally obliged to put it on the register, but we have a post-monitoring programme if we have a charity that gives us cause for concern, which is not the same as having a compliance case opened, but it means that we will formally follow through with the charity if there are areas of concern that we want to follow up.

Baroness Barker: One thing that the Charity Commission used to have, which was enormously helpful to the sector, was the confidential hotline, where people could ring up in confidence and ask, "If such and such were to happen, would that be okay or would it be a contravention?" That was on a whole range of issues—financial or whatever. That was stopped.

On the campaigning guidance, if a trustee had doubts and they just wanted to test something out, I do not think that they would immediately go to the Electoral Commission for advice. Does the commission have a digital equivalent of that confidential hotline? If you do, do charities know about it?

Paula Sussex: We do. When you go through to our call centre, you can request for it to be confidential. If you make a complaint or if you are a whistleblower, you can still ask for it to be confidential. The team on the phones, which is currently a small provision, is really quite expert.

Campaigning is quite a challenging area of the law. It tends to lend itself to slightly more considerate exchange. It is perhaps not a simple, practical yes/no answer, as you can imagine. In practice, we have had quite a number of in-principle discussions with a number of charities, which will say, "We are thinking of doing this", or "We are thinking of doing that. What do you think? What should we watch out for?" We do not find that charities are, shall we say, backward in coming forward if they want to ask our views before doing something.

Lord Foulkes of Cumnock: I just want to pick up on the figures that you mentioned, which I have been thinking about. On this huge increase in the number of registrations of charities, did you say 25% one year and then another 25% the next year?

Paula Sussex: It is an increase of another 10% on top of that, yes.

Lord Foulkes of Cumnock: I do not understand why that is. Are charities set up that duplicate what other bodies are doing? I get the impression that, if someone dies of cancer in a family, they set up yet another cancer charity, and that is registered; or are they substituting for work that was previously done by the public sector or moving into totally new areas?

Paula Sussex: As ever, it is a number of factors. There is one quite dominant theme, which is the creation of the charitable incorporated organisation, which has caused quite some interest. From memory—and I can come back to the Committee—I think that something like 20% to 30% of that increase are CIOs. Some of them are conversions.

It is the continuation of the philanthropic urge, which is a fantastic thing, that individuals still want to set up a charity to do good. At the point of registration, we ask questions such as, "Have you checked to see if there is any charity with a similar set of charitable purposes that perhaps might meet your goal?" We are the regulator, but we do not regulate on the number of charities. If it has a legal charitable status, we will register it.

Lord Foulkes of Cumnock: You do not feel that you have any role to say, "Look, there are already 29 or 500 charities doing something similar"—or even three or four. "Why not get together?" Do you have a role to try and make it a more efficient operation?

Paula Sussex: We currently gently suggest that, but we do not have a legal remit to attempt to consolidate the sector.

Lord Foulkes of Cumnock: Do you think that is something we should look at in our study? I am trying to get a feel for things that we could look at that have not been looked at before and that might improve the sector and make it more efficient and effective. Do you think that is something we could look at?

Sarah Atkinson: One of the challenges for us is that, at registration, as Paula says, we cannot stop someone registering on the basis that there is already a charity in existence. We can encourage people to look, but, at registration, people are beginning an organisation; they are fired up and full of enthusiasm. The challenge comes three to five years down the line, when running a charity is hard work. You might find that you cannot recruit trustees or find the skills. Perhaps your charity is growing, and you are finding it more demanding than you expected, or you are starting to run quite a big set-up, and that is not what you went into it for in the first place. In some cases, your enthusiasm or the immediate drive is waning. In some ways, that is when it could be more fruitful. Again, we do not have a remit to do that—to intervene—but, in an effective and thriving sector, which we all want to see, at those stages those are the questions. We have done some communications work, saying that it is okay to call it

a day. If you think you have gone as far as you can with an organisation, please do not carry on driving yourselves into the ground. Finish and close. There is nothing wrong with that. There is a fruitful area of scrutiny there.

Paula Sussex: Leadership among trustees is where you would start, with the existing base of 165,000 charities, to take that strategic leadership, and to say, “We are going to do better for our beneficiary base, broadly, if we perhaps consider the sharing of services or merging with other charities”. We find in the trustee body, quite understandably, particularly over the past year—this is something that we all share in common—the fear of taking bold decisions in the interests of beneficiaries, and we are continuing to encourage trustees to have that foresight and that courage to say, “We are not about the charity; we are about our beneficiaries and our charitable purpose”.

The Chairman: Can we go on to your question?

Q9 **Lord Foulkes of Cumnock:** Yes—sorry, Chairman. I am deviating wildly here. I am supposed to be asking you about the Charities (Protection and Social Investment) Act. What are you doing in relation to guidance and priorities for implementing it?

Sarah Atkinson: It was quite a lot of work for us in supporting the parliamentary process, and the pre-legislative scrutiny of the Bill was quite a bit of work for us; but the real work of the regulator starts when the Act is passed, and we now have a responsibility to implement it effectively, to communicate effectively with trustees and to put the guidance in place. There is also our own staff training and support and the internal guidance that supports that.

Again, working with Cabinet Office and Ministers on the implementation timetable, we have had the stages of that set out. The most immediate commencement is our initial priority: those are the most straightforward powers to implement. Those with a longer lead include the fundraising changes, where there is a change to reporting requirements, and there is some communication work with charities to ensure that they are ready to respond to that. The longest lead time is for the changes to automatic disqualification, where trustees and some staff who are not currently disqualified from that role in law will be disqualified in the future, and we will need to communicate with them about what that means for them and what they need to do. That has the longest lead time. There is quite a bit of work there.

One of the key things that we need to do is to ensure that the charity trustees understand where they need to worry about the Act and where they do not. We have a new piece of legislation, and lots of people worry that they need to do something different, but, for most charities, most of the provisions of the Act will never affect or touch them. Our blog, “How will the new Charities Act affect your charity?”, has been very widely read and shared. One of the key messages in it is that, for most of you, it does not change anything about what you do, and you should carry on doing what you do.

Lord Foulkes of Cumnock: But will it change your approach to regulation, investigation and intervention?

Sarah Atkinson: Some of the changes in the Act give us new powers to be used in an investigation. We envisage relatively few uses of those powers but, in those very serious investigations where we need to use those serious remedial or protective powers, having the capacity to do that will speed up our ability to act and will enable us to get better outcomes more quickly and effectively.

Other aspects—the fundraising reporting and social investment power, the warnings power and the automatic disqualification—change environmentally how we operate.

Lord Foulkes of Cumnock: Would it have helped in the Kids Company case to have had those powers?

Sarah Atkinson: It is very hard to say, not least because I am not close to the current investigation of the case, which is still open, but having different powers closes loopholes and gives us modern regulatory powers. That is always going to be useful. However, we do not envisage that we are going to be using the new powers very regularly, because they are the sorts of powers, in most cases, that you would use in the most serious cases.

Lord Lupton: This is an area that really troubles me. I wonder whether you can put systems into the commission that would help you. Let me give you an example. When you set up a foundation like we have done, you are besieged by hundreds of letters a week. I have to sift through them. We have no staff, so it is all voluntary help. Occasionally, I have alighted on charities that raise concerns. I will not name names but one charity was wholly involved overseas, with all its charitable activities overseas. It is a small charity, and about 60% of its total revenues were spent on management and administration costs, all of which were in the UK. That sends alarm bells ringing to me, and the person named as chief executive was quite well paid. Can you systemise that so that, when the charities file their accounts, a metaphorical alarm bell goes off in the system which says, “The management costs here are more than half the revenues of the charity”? That would put you on alert to have a better look at what was going on.

Paula Sussex: Without going into too much detail, one of the ways in which the NAO and the PAC wanted us to improve was to move towards risk regulation—having a much better sense of risk assessment and understanding, with better powers of analysis of the data that we hold on charities, precisely for that reason. Where we see an indicator of concern—solely an indicator of concern—that would give us a flag, as you say, to ask a further question, which may well be or may not be borne out. There could be very good reasons, and there often are, but sometimes there are not.

Part of reforming and upgrading our processes and our ability to manage that data and financial data and to move more swiftly and proactively has

been the very focus of our transformation programme over the past year or so.

Lord Chadlington: What exactly happens when you find that they are not? You have looked at an indicator, to take Lord Lupton's point. A lot of the time it is absolutely fine, but a few times it is not. What is the process then?

Paula Sussex: Typically, we go into a formal regulatory path, which can be a compliance case, or it could be an inquiry if it reaches the threshold for an inquiry, which is somewhat more serious. Typically, the very next step is that we do what is called a books and records. We take our hypothesis, that this does not look like a good ratio, we dig underneath it and we interview the trustees and their advisers to see if there is a good reason in the first instance.

The Chairman: Can we go on to your question, Lord Lupton?

Q10 **Lord Lupton:** This is really in relation to your primary role as a regulator and to your role in the oversight of charities. What role does the commission play in providing support, advice and assistance to the charity sector? Lord Chadlington touched on this half an hour ago. Is that role as a sort of adviser and almost friend of charities an institutional priority for the commission? If it is, how do you manage the inherent conflicts of being adviser, advocate and arbiter or judge of the charities?

Paula Sussex: Perhaps I can kick off. Our three-year strategic plan has enablement, which is support and assistance, as the second strategic priority. In that, we talk about what that means to us. First of all, it is guidance, in every sense of the word. That is formal guidance, informal guidance, cases, tips and hints, much of which is provided on the web—and we want to do more with it.

The second area, which is a very substantive area of our work, often goes unseen by the public and unremarked. To give you the statistic, we probably have—open and closed—about 1,300 compliance cases a year. We open and close 1,500 to 1,600 permission and consent cases. A considerable amount of our work is about enabling, and those permissions and consents are about land, paying trustees and changing objects. It is a hugely important part of our work.

The third strand is working with partner organisations. If we go back to the asymmetry of the size of the team and the size of the sector and the task, not only do we need to do more digitally but we need to work with partner organisations, be that NCVO or UK Community Foundations. We work with a number of organisations that are able to disseminate our messages, and we can work in partnership if we have a particular permission or consent that we want to apply to a particular segment—for example, almshouses or small charitable trusts.

Over the past year since the strategic plan, we have had a clear focus on understanding what compliance and enforcement means. It has been a busy year. We are clear that we know how to do that in a proportionate and effective way. As we move into the second year, we are putting a

good deal more focus on the enablement strand across the piece. In March, the board and the executive discussed in quite some detail what that could look like and, indeed, how we might innovate in that area and be more effective. We would hope to become more vocal about this as the months go on this year.

Baroness Scott of Needham Market: I am Baroness Scott of Needham Market. I have no pecuniary interests to declare, but I am a member of the NCVO advisory council, and I am also patron of a local charity, Ace Anglia.

I want to bring some threads together from the previous questions. It seems that there is a real challenge, particularly for your chief executive, in that you have a fixed income which is outwith your control. You have had a 40% cut and you could get another 40%, but you have no idea: you have no control over the demand that comes from the number of charities registering. You have some control on compliance by changing your risk model, but that is limited. If people start misbehaving, you have to deal with it.

It seems to me that the only bit you have left over which you have any discretion is the advisory role. I am trying to square what is evidently your desire to have that role with your financial ability to continue to do it. You said at the beginning that you were having talks with the sector. I would like to hear a little more about that, particularly if we move to a different financial model, about how you would then deal with the potential risk of regulating the people who are paying to run you, and about how you manage that tension.

Paula Sussex: I know that Sarah would like to say something on this. We potentially have one other dial or lever: the trustees themselves—the power of the trustees as legal guardians of their charities, the clarity with which they understand their responsibilities and accountability, and the way in which we can equip them. There is also the quality and the nature of trustees that we have at the moment. This is a fantastic opportunity for the Charity Commission, along with a number of other bodies, to have a long, hard look at that enormously important group, who have so much accountability and are privileged to do the job, but are they sufficiently equipped to do it? I stress that this is not our primary role, but we are working very actively in the sector to look at the root cause: what is a brilliantly run charity? What is a really effective charity? We are looking to our insights of what works and what does not work. Which charities get on our radar and why? It is often about governance or the quality of trusteeship. The dial that we would like to get to, with others, is how we can work to improve that supervisory layer. More directly, Sarah?

Sarah Atkinson: Exactly so. As you say, on some of the demand dials—we cannot do very much about the compliance dial. Actually, we can: there will always be a small number of cases of deliberate abuse—cynical, nasty abuse where people have used a charity for criminal or abusive ends—but the majority of our compliance work stems from poor understanding and poor decision-making. There may be a lack of understanding, for example, about what conflict of interest means in the

charity context and about how to apply that. There is a lack of understanding of what trustee decision-making means or of what the trustee's role is. There could be dominance of a particular individual, either a very powerful trustee to whom everyone else defers, saying, "If Fred thinks that is all right, then it is all right by me". There could be a very powerful chief executive, who is not effectively scrutinised.

All those things lead to compliance issues, sometimes involving a great deal of money or vulnerable individuals. Sometimes they do not involve either, but they involve community assets of great benefit, such as village halls and community centres, which you have all talked about, and which are of huge value to the local community or the local environment. Those are the things that we think we can address, through guidance and work to set standards and to support initiatives to help trustees and governance. We cannot do that on our own, however, because this is not a regulator-only set of activities, although we are a crucial agent in that, and we really take that seriously.

Baroness Scott of Needham Market: I have a very quick, totally unrelated question. Are you subject to freedom of information?

Sarah Atkinson: Yes; very much so.

Q11 **Baroness Stedman-Scott:** My declaration of interests is that I am the ex-CEO of Tomorrow's People, a trustee of New Philanthropy Capital, a trustee of the Stefanou Foundation, governor of the Bexhill Academy, chair of the East Anglia youth pledge, patron of the Rye Studio School, patron of Gloucester House for the Salvation Army and a co-chair of the All-Party Parliamentary Group on Youth Employment.

We can get down to business now. Obviously, the sector faces enormous challenges, and they could get even more challenging. How will you, as the commission, support the sector in guaranteeing its sustainability and in supporting its growth and development over the next challenging period?

Paula Sussex: I think we have touched on that. Our enablement work is the priority for us, and getting that support—what good looks like—into trustees, but not exclusively trustees; the executive as well. At perhaps a more prosaic level, particularly for the smaller charities, it is about dealing quickly, efficiently and effectively with the Charity Commission over the years, which is transaction efficiency. We take that burden away so that we are simply more accessible.

The long-term sustainability of the sector is something that we can support but, in a sense, particularly where we ask whether we have the model of charity and the model of supervision around charity right, we have to wait for other bodies, perhaps including this Committee, to make recommendations to the regulator to say, "We think we need to review the standards or the operating principles by which a trustee operates, because we think that this needs to be upgraded". We have an important role to play in the sustainability of the sector, but we respond to Parliament, the public and civil society itself, saying, "We think we need

to do things slightly differently. Therefore, the regulator needs to do its regulation slightly differently”.

Baroness Stedman-Scott: Following on from that, do your colleagues sit in your office and say, “If only we could do this”, in this particular question?

Paula Sussex: I rather feared you might ask that. I almost feel like pleading the fifth on this, as I can see it is going to go down—

Sarah Atkinson: We do, but we recognise that there are levers that we only want to pull if they are the right levers to pull. We are often asked about choking off demand at registration. Should we do that? Would it help if we were more liberal about the payment of trustees or if we moved to unitary boards? The answer is: we would happily do any and all those things if we knew they were the right things to do and the right levers to pull, but I do not think you want a regulator just deciding to pull a few individual regulatory levers to see what happens.

The Chairman: We are not in the business of seeing what happens here either.

Q12 **Lord Harries of Pentregarth:** The new emphasis is on compliance and enforcement. You have helpfully stressed your role in enabling. It follows logically that, if you prioritise one thing, other things get deprioritised. What do you feel you might have lost out on or wanted to do that you were not able to do over the past two or three years, with the shift in priorities towards compliance?

Paula Sussex: I do not see them as mutually exclusive, nor do I think that one has lost out to the other. One of the ways in which we can do more now on enablement—I am so sorry to keep coming back to digital, but that is the reality—lies in the fact that we now have the investment money to do this much better, which we did not before. The time is now right for us.

On compliance and enforcement strategy, we regularly discuss this with both the public and charities. Time and again, as was underpinned in our recent public trust and confidence survey, both charities and the public come back and say, “We want a robust, strong regulator. We want a regulator that is going to find the bad apple in the bucket”. We get an endorsement for a compliance-based strategy.

Lord Rooker: On powers of investigation, I assume that you want to follow up on Baroness Stedman-Scott’s point. It really concerns your answer about only doing things about which you were confident. You told us that there are 800,000 trustees. Is that the figure that you gave us?

Sarah Atkinson: There are 850,000.

Q13 **Lord Rooker:** I was going to ask for a view about this. You have talked about trustees a lot, saying that it is their responsibility. There is—how can I put it?—no firm idea from the Charity Commission about how long a trustee should serve. I am not saying that there should be, but there is

not. People raise this. Trustees get re-elected and re-elected. Founders stay for ever. I understand that it is called the founder syndrome, and it is a very difficult issue for charities to deal with. You would not take a blunderbuss to the issue, saying that there should be a fixed limit on service, because you do not have a reason to say so. That is the point that I am making. On the other hand, there are 850,000 of them. Who is watching the watchers? You cannot be doing it, because you do not have the facility for doing that. In the reports or in the indicators that they give to you, are there any new indicators that could flag up issues of governance so that you might say to yourselves, "We had better have a look at this one"? I am just leaving that with you; I do not really expect an answer. I can see the problem.

There are those who say, first, that not being able to shift trustees snuffs out the role for people who want to contribute. There is that issue—leaving aside the extra charities being made. There is a role there.

I want to ask about the powers of investigation and how proactive you are in putting mechanisms in place to try and prevent malpractice or to spot it earlier than you might otherwise do. That must be a role, because the first thing that happens when something goes wrong is that someone asks, "What has the Charity Commission been doing about it?"

Paula Sussex: There are two things. Our approach to risk assessment in charities is advancing, and it is getting more sophisticated. We also have a team dedicated to proactive work. They are called a monitoring team. They take themes that the case workers identify as vulnerabilities in charities. We were talking before about a very high ratio on management costs. They will look at charity accounts or at the annual return. That will enable them to go to a particular charity and say, "Look, we are worried about this ratio". Although we are currently looking at about 400 or 500 cases, which is not huge, we seek to be able to do more deterrence, as you say, and more prevention than ex post facto work, so we are seeking gradually to shift the balance between the two types of work.

Lord Rooker: What is the Charity Commission's relationship with the Financial Conduct Authority, particularly in respect of charities that run operating companies?

Paula Sussex: Do we have an MoU with the FCA?

Sarah Atkinson: Yes. We have an MoU. We do not have a great deal of operational work with the FCA, other than around some investment issues.

Paula Sussex: We have a closer relationship with Companies House, for example, and with a number of the law enforcement agencies when it comes to suspected fraud or extreme financial mismanagement.

Lord Rooker: What is your view if a charity's trustees set up a trading operation? Someone has to run that trading operation. Is it your view that the charity trustees are always in control of that trading operation, or is it the Financial Conduct Authority—that they are an independent trading body and they should be allowed to get on with it?

Sarah Atkinson: If it is a trading subsidiary of the charity, yes, our guidance says that, whatever activity the trading subsidiary carries out, the trustees are responsible for the trading subsidiary and for its acting in the interests of the charity in just the same way as if it were within the charity itself. Some very large charities have some quite complex relationships with trading subsidiaries, but we have been very clear that we expect the trustees, whatever they have delegated, to have an interest in and to control the activity of that trading subsidiary.

Lord Lupton: I will get back on my malpractice high horse again. Lord Rooker has a very good point. The FCA bars people from time to time. It takes away their criminal act but because they have done something immoral, amoral and improper. Would you know about it, and would you then bar that person from being a trustee of a charitable trust? If not, why not?

Sarah Atkinson: That is a good question. If you are barred from being a company director, you are barred from being a charity trustee.

Lord Lupton: No, it is not necessarily a company director. Your licence to trade is taken away.

Sarah Atkinson: It is your licence to trade and operate in financial positions. We are going to have to come back to the Committee on that one.

The Chairman: That is fine. You can come back to the Committee on that.

Lord Chadlington: Chairman, I apologise. I forgot to mention the fact that I am also patron of the Ley Community in Oxford.

The Chairman: That is recorded.

Lord Chadlington: It is recorded, but I want to ask a question as well. I was not going to delay us just for that. I wanted to try to pursue Lord Rooker's point, which I think is very interesting and very important.

What happens if it happens the other way round? You have a commercial enterprise, which is separate from the charity, but it may be a business that has a particularly ethical role of some sort. It is not maximising profitability, but it has an ethical, social purpose. It decides, alongside it, to form a charity, but there are perhaps external trustees on the charity. The directors may also be serving as trustees on it. How do you separate out those two things?

How do you pursue the point that Lord Rooker is making about the behaviour of the director and the trustee on the charity?

Paula Sussex: There are many levels and layers of this. We have this not infrequently in our work. Sometimes other regulators will have primacy, depending on the instances of case. We always go back to the charitable purposes, and it is the tail wagging the dog; so we need to make sure that the dog is firmly in control of the tail. As Sarah was

saying, if it is a full subsidiary of the charity, it is simpler. If it is a social enterprise on the side, sometimes it will depend on whether it is the majority of funds or trading activity that is intended to be ring-fenced for the social enterprise, or to go to the charity. We do not have charitable and non-charitable cases that often. As you can tell, they are always tricky, and they are getting more common.

Sarah Atkinson: The rule is simple in that, when you are a charity trustee, you must be acting in the best interests of the charity. As regards other interests that you have as directors of other companies, or whether they are gift-aiding funds to the charity or are beneficiaries of that, as the charity trustee you must act in the best interests of that charity. That is the simple rule to establish, and, as Paula says, it is sometimes quite a complex rule to follow through in some of these complex structures, but that is what we are looking for.

Earlier, I mentioned conflicts of interest as being a recurrent theme in some of our compliance issues, and this is sometimes an example of conflicts of interest where either a board has been dominated by interested parties or those with another interest, or they have acted mindful of their other interests, and that is not lawful. In charity law, you must act in the interests of the charity. We are working through that, and it can be complex.

Lord Chadlington: I am still a little unclear. May I, Chairman?

The Chairman: Yes, please, although I was going to suggest that they might take this and perhaps come back to us in writing.

Lord Chadlington: Yes; I was going to form this in exactly that way, Chairman. I was going to ask this question. Again, trying to push Lord Rooker's point, if you have a commercial enterprise, even if it has a purpose to promote social betterment in some way or another, it is a commercial enterprise, and it is profitable—it is a proper commercial enterprise. Alongside it, but different from it—not a subsidiary, but alongside it—you have a charity, which may have similar, but not necessarily the same, objectives as the commercial enterprise. You have four directors—perhaps a family of directors—on that company. You say to those directors, “We will also become trustees of the charity”. I could see that as being a perfectly reasonable thing for people to do. In those circumstances, the point about conflict of interest that Sarah Atkinson raises is clearly there.

Paula Sussex: Yes.

Lord Chadlington: You do not insist that we have independence in the same way that we would in business terms. In public companies that I have served on, you have to have three or four independent directors to ensure that the overweening chief executive does not get too carried away. In this situation, you are not insisting that I have independent trustees in order to offset the commercial interest.

Paula Sussex: No. We do not insist on separate individuals, but we expect—and we expect to see this evidenced—that, when you have your

charity trustee hat on, you are working unequivocally in the interests of the charity. In practice, it is often quite difficult for the same individuals to demonstrate that.

Lord Chadlington: Yes, I think it is.

The Chairman: If there is anything that you would like to follow up with us in writing on that, we would be very pleased. For the moment, we will go on to the last question, from Lady Jenkin.

Q14 **Baroness Jenkin of Kennington:** I would like to declare my interests, as a trustee of WRAP, UNICEF UK, Cool Earth and Feeding Britain, and a patron of Restless Development. I am married to the Chair of PACAC.

As you know, the point of this inquiry is about the sustainability of charities. Could you give me one key suggestion for any change that you think we should recommend to help ensure their sustainability? Perhaps you could give one each.

Paula Sussex: This Committee is a particularly influential Committee, we consider, at a particularly key time. If this Committee, over the course of its life, can come to some conclusions and recommendations about charity governance and trustees fit for modern charity leadership, we, as part of the charities sector, would be enormously grateful.

Sarah Atkinson: I absolutely echo that. If you are inviting me to have a second go, I would say that, in addition to the theme of trusteeship, we would probably be interested in recommendations for us and for the sector around accountability. Last week, as Paula said, we launched the latest edition of our every-other-year research into trust and confidence in charities. It showed a drop in trust in charities for the first time for over 10 years since we have been recording that. It has consistently shown that the drivers of trust in charity are around close connection with charity, often epitomised by connections in the communities, and around honest and ethical fundraising, on which an awful lot of work has been done in the review that you sat on, Chairman.

Another great driver of public trust in charity is understanding what they do with their money. We know that we and the sector have a great deal of work to do there to make the public feel confident that they can trust charities because they feel confident about what is done with the money. We would be very interested in the Committee's work on that. The trustee one would absolutely be our first, if we only had one.

Baroness Barker: If the Committee were to consider the issue of transparency, would there be things that the commission would want to say about standards of transparency for charities?

Sarah Atkinson: Yes, I think there would. We look at all of them. We have factual things to say about the quality of financial reporting and data that we get in—both the extent of compliance and the quality of the information that comes in. We could also reflect on what data are available and how they are used. Yes, there very much would be.

Lord Harries of Pentregarth: Could I return to something that you said

earlier, to help us understand it a bit more? You stressed the fact that all the legal responsibilities were invested with the board and that you could not understand the structure of the Charity Commission in the same way as you could that of a commercial company, with a CEO and chief executive. Does that mean that the chairman of the Charity Commission also has chief executive responsibilities, in some sense? You did not spell out what it meant. You said it was different, but I am trying to understand what the implications are of that difference.

Paula Sussex: That probably does not lend itself to a short answer. It is certainly not like a traditional chair and chief exec relationship. I will very happily send our summary of the conclusions that we found on the governance review that we did not too long ago, which I think might help set out all the ways in which it is slightly different.

The Chairman: It would be helpful if you would do that. Thank you very much.

You have given us a longer session than you were scheduled for, for which we are enormously grateful. I am therefore not going to ask any of my colleagues if they have any more questions to put to you because I dare say they would have. We thank you very much indeed for your attendance today and for your full and thoughtful answers. Do not forget that you can come back to us when you get the transcript. Thank you very much.