Select Committee on Charities

Corrected oral evidence: Charities

Tuesday 6 December 2016

3.55 pm

Watch the meeting

Members present: Baroness Pitkeathley (Chairman); Baroness Barker; Lord Bichard; 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. 21 Heard in Public Questions 199 - 208

Witnesses

I: William Shawcross, Chair, Charity Commission; Kenneth Dibble, Legal Director, Charity Commission.

Examination of witnesses

William Shawcross and Kenneth Dibble.

Q199 **The Chairman:** Good afternoon, Mr Shawcross and Mr Dibble. Thank you very much indeed for coming to see us. There is a preamble that I have to say before we start our broadcast. Welcome to you. The session is open to the public, as you know, and is being broadcast on the parliamentary website. A transcript will be taken of your evidence. You will be sent a copy of the transcript to check it for accuracy and to advise of any corrections. If after this session you want to clarify or amplify any points you have made during your evidence, or if you have any additional points to make, you are welcome to submit supplementary written evidence to us. We are not expecting any votes this afternoon, so I am happy to say that we will not be interrupted by that. The other thing to say is that you do not both need to feel you have to answer every question that we put to you, but please feel free to do so if you wish. Perhaps you would like to introduce yourselves for the record, and then we will begin with questions.

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

***Kenneth Dibble*:** I am Kenneth Dibble, the Chief Legal Adviser and Legal Director of the Charity Commission.

The Chairman: Thank you very much. We were very grateful to have an excellent visit to the Charity Commission, as a Committee, a few weeks ago. Some of the questions and the views we are asking you for will have been covered in that session, but we are anxious to have them again, or, indeed, any amplification you want to make of them, for the record.

I am going to start the questions. The first is about the role and operation of the Charity Commission. How has it changed in recent years, and how have you responded to past criticisms of the way in which it functions?

***William Shawcross*:** I arrived some four years ago at the end of 2012, and we were immediately subjected to a lot of criticism by Parliament and the NAO over a number of cases. It was something of a baptism of fire. I have been here for four years now and it is a job I really love. It is a huge honour to be in this position, because charities are one of the most important parts of life in the UK and in England and Wales, which are the parts of the UK that we regulate. It is a fantastic job and a fantastic part of English life. We see it as our job—in fact, it is our statutory duty—to enhance public trust and confidence in the charitable sector generally. That is what we have tried to do in the last four years, more strongly perhaps than before.

That is partly because, in the last eight years, we have endured—perhaps that is the right word—a 50% cut in real terms our budget and a 50% cut in our staffing. Most of that happened before I arrived. It is very difficult to meet those sorts of cuts in resources, but we have tried to do so. As you say, we had some pretty hostile reports on us. There was a PAC report in June 2013 and an NAO report about our effectiveness in December 2013—both during the first year I was there. The NAO's report had three themes, saying that we needed to be much more efficient organisationally, we did not have enough powers, and we did not have enough funding.

On the powers, that has been met by the new Act that came into force earlier this year, the Charities (Protection and Social Investment) Act, which we welcomed enormously. It is very, very helpful to us. On our organisational efficiency, we have done a great deal. We took on a new chief executive, Paula Sussex, from the private sector, who has great experience in digitalisation and management change. For the last two and half years, she has led a transformation programme, which is already reaping benefits. It is based on the fact that we simply cannot do manually, or by people, the same amount of work that we did when we had 400 people. In fact, we had more than 400 people before I was in post, did we not, Kenneth?

Kenneth Dibble: Yes.

***William Shawcross*:** I believe we now have 280. The digitalisation is a really important part of our process.

The new board that I appointed also decided in 2013 that in order to be seen to be effective as the regulator and to carry out our statutory duty under the 2006 and the 2011 Acts, we had to be much more open, forceful and fair as a regulator towards those few charities of the 165,000 that needed to be brought up or counselled for mistakes that they had made. We have taken abuse much more seriously, and not everybody in the charities world has welcomed that, but most of the public who speak to me about it, and most charities that speak to me about it, which have nothing to fear from a firmer hand, have praised it as the only way that we, with our reduced resources, could continue.

I do not want to go on and bore you too much. If you like, you can ask me for more details about the way in which we have tried to modernise our systems and management and our IT. We had a very welcome grant of £8 million, a one-off capex grant from the Chancellor, in the summer of 2014, specifically to finance the modernisation and transformation on which Paula Sussex has embarked. I believe that that has helped the commission meet its statutory duties much more effectively than before.

Of the targets laid out in the NAO's very critical report in 2013, the only one left is funding. We continue to improve on organisational efficiency all the time. We have been granted powers by Parliament, thanks to you and your colleagues in both Houses, and funding is the crucial one left. The NAO did a follow-up report in January 2015, saying that there was more still to do, but we had made good progress since their first report. We have been in constant touch with the NAO every quarter since they first came, and we expect them to come back and do a follow-up report early next year. I hope that is not too longwinded a way of saying that we have seriously addressed the criticisms that were made of us.

The Chairman: That was very helpful. You talk about the transformation. Would you say the transformation is now complete or is it still ongoing?

William Shawcross**:** It is not complete; it is still ongoing. We have made progress, but I suspect it will never be complete. We always need to make more progress. For example, one of the complaints about us was that we had a vast backlog of applications to register charities. We have dealt with that. There is now no such backlog. It is a remarkable thing: the number of applications to register new charities keeps growing. I think four or five years ago it was 5,000 a year, and it is now up to 8,000. Am I right, Kenneth?

Kenneth Dibble**:** It was the previous year, yes.

William Shawcross**:** It is a wonderful testament to the philanthropic spirit of people in England and Wales, which has been such an important part of our lives, as I said to you before. Eighteen months ago, registration timeframes were 62 days, and we have now got them down to 48 days. In answer to your question about improvement, yes, of course we can improve that, and I would wish to. That is just one example.

Lord Bichard: I should declare my interests as chairman of the National Audit Office.

William Shawcross**:** They have been very helpful to us.

Lord Bichard: Indeed, I am pleased to hear that. You mentioned a figure of 400 staff down to 380.

William Shawcross**:** Two hundred and eighty.

Lord Bichard: Right. I wondered what your ambition was over the next two to three years for staffing numbers.

William Shawcross**:** We would like to preserve as many of them as we can, but we have a flat settlement of £21 million from the Treasury for this Parliament, which is better than having a cut. None the less, inflation, which has not been very high so far but is predicted to go up, will eat away at that. In maintaining the £21 million, we will probably have to lose 10 or 12 posts next year. That is a serious issue for us and I expect you will want to discuss it. I would certainly like to discuss with you our funding problems and how we try to resolve them.

Lord Bichard: You would accept, would you not, that those sorts of reductions are not unknown in the public sector at the moment? In fact, they were regarded as quite generous.

William Shawcross**:** I accept that. I know these are very hard times and there are huge pressures on the public purse, and I do not want to be a nimby on this issue. I will just say that we had a 50% cut in staff only five years ago, and the continued attrition and salami-slicing would eventually make it impossible for us to carry out our regulatory duties. I have one more year left at the commission and I really want to try to stabilise it financially. It is not going to be easy, but that must be my mission for the last 12 months that I am there.

The Chairman: Did you want to add anything, Mr Dibble?

***Kenneth Dibble*:** I would like to add one or two points. The 2006 Act, when Parliament set the statutory remit for the commission under an incorporated body, was extremely ambitious. It was mentioned at the time that even then the commission did not have the resources to meet that ambitious regulatory remit. Of course, our resources have declined significantly since then.

The task for the commission is about modernisation internally through the Transform programme, which not only means digitalisation of some of our low-risk transactional services, but means a transformation in culture and organisational change. We are in the middle of that and will progressively deal with it.

Anything we can do to ease the burden of regulation on charities and to improve our efficiency is to be welcomed. As you know, the Law Commission is currently looking at both those aspects. We hope next year a Law Commission Bill will be introduced to help particularly smaller charities make regulatory changes themselves without coming to the commission, and to help the commission deal with some of its regulatory challenges, which are quite complex at the moment and which we believe the Law Commission will help to resolve. Those are the two points I wanted to follow up on.

Q200 **Lord Bichard:** How would you describe your relationship with government Ministers and officials? To what extent are your priorities shaped, influenced and dictated by government, and are you comfortable with the relationship as it currently exists?

***William Shawcross*:** We are, as you know, a non-ministerial department and completely independent of government. We all take that independence very seriously on both the board and the executive. We are accountable to Parliament first of all and in no way to Ministers. We must be seen to be independent of both government and of charities. We have a lot of memorandums of understanding with various government departments from HMRC onwards, as you would expect. Our collaboration with government departments is close, effective and absolutely necessary.

As for the politicians, since I have been there I have had nothing but assistance first from the Cabinet Office. Then, following the change of Prime Minister a few months ago, we were moved to DCMS. Our officials moved with us, which was very nice. The people who knew most about this organisation and the charity sector for the last 20 years or so came with us and are now in DCMS, instead of the Cabinet Office. Our Ministers have always been extremely helpful. I have not had any interference or anybody saying, "You must do this, you must do that. Go after these people, go after those". It has been impeccable in that way.

Q201 **Baroness Stedman-Scott:** How does the commission intend to pursue the question of alternative funding models, including the prospect of charging charities to register? What other options are being considered, if any, for the development of an independent income stream?

William Shawcross**:** As I have mentioned, this is one of the $64,000 questions, if I may use that phrase in this context. It is really important that I undertake the responsibility, in the next year, of trying to stabilise our finances. I do not expect more from government at this time. I have asked the Treasury for more, and we were very lucky to get the extra £8 million in June 2014 for our transformation programme. It was an incredibly generous surprise.

Given the fact that we cannot expect the Treasury to give us more when everybody else is being cut, it is imperative that I seek funding from the sector. This will be a huge cultural change, because ever since the commission was created in 1853 it has been funded by the taxpayer. Government officials and others have made clear to me that we should try to reduce the burden on the taxpayer of the £21 million that now finances us. I have already discussed this with many senior charity leaders, chief executives, trustees and chairmen. I will go out much more consistently from January onwards to argue that if they want and agree that they need a well-financed and efficient regulator, some of the burden of that must be paid by the charities themselves. This is not uncommon. Many sectors pay for their own regulator, and the regulator still remains at an arm's length from the sector that is paying them. It will be a cultural change but we have to face it. I would want to exempt, if we can, all little charities.

As I am sure you all know, of the 165,000 or 166,000 charities, over half have an income of less than £25,000 a year. They are what I call kitchen table charities, and in a way they are the heart and soul of the philanthropic movement in this country. They are nearly all run by volunteers. We should not impose any extra burdens on them. We would seek to have a scale. This is all to be consulted and I would certainly wish to consult with you as well. We would probably have a scale of charges, going up to the top for the richest charities but starting pretty low.

Baroness Stedman-Scott: Would this be a levy or a registration fee?

William Shawcross**:** It would be an annual fee for being on the register. We have considered charging fees for services and for registration, but the income stream simply would not be adequate in any way. We would never get it to £20 million or more. I would be very happy to share with you a document on our possible or partial funding by the sector. To begin with, we would only ask for an extra £5 million a year. With that £5 million a year, we would offer to do more enablement and more support of the kind that the commission traditionally was able to do. As well as being firm on compliance, I would love to return to enabling as well.

Kenneth has been there a very long time. There used to be phone lines, and trustees could ring in and get advice, could they not?

Kenneth Dibble: They could.

William Shawcross**:** Now they cannot, because we simply do not have the resources for people to man the phones like that.

The Chairman: I think many of us remember those days. We used to do it ourselves.

William Shawcross**:** I am sure you do.

Baroness Barker: Can I ask for one point of clarification? Other regulators that have gone down that route have had their funding by central government cut. Are you suggesting that this would be additional funding?

William Shawcross**:** That is a really key question. You are completely correct. There is no point in us spending a lot of effort persuading charities to fund us if that means the Government are going to cut proportionately. I would have to get an agreement from the Treasury that that does not happen, at least to begin with. Eventually, I would like to relieve the burden on the taxpayer. By the end of next year, say, I would love to have £5 million extra from the sector, from the charities themselves, so we would come up to £25 million from around £20 million. I do not want to be categorical, but if it works well it would be nice to gradually relieve the burden on the taxpayer. It is not going to happen overnight; I should think it is quite a long process.

The Chairman: You will not be surprised to hear that we have lots of people wanting to ask questions on this issue.

Baroness Gale: You spoke in your remarks about changing the culture. How on earth will you set about doing that? It is a very hard task. Changing the culture of any organisation takes a lot of work and diligence. How will you get acceptance that charities, albeit the big charities, will be paying a fee? That will be part of changing the culture. It is about convincing the people who give to those charities as well.

William Shawcross**:** Do you mean changing our culture internally?

Baroness Gale: Up until now, charities have not had to pay anything. I thought that was what you were talking about.

William Shawcross**:** No. We have, as Kenneth said, made a lot of effort to change our internal culture, and under the Paula Sussex transformation programme we have done a lot of that. Kenneth can tell you more about that because he has been there so much longer. You are absolutely correct that it is a huge cultural change, but I want to persuade charities that, to continue to have an effective regulator, it is a cultural change that we must all embark on. It will be a long learning process and a process of persuasion, but you are completely correct; I do not expect it to happen overnight.

Baroness Scott of Needham Market: I wanted to go on to the question of accountability, because in an earlier answer you referred to the fact that you are accountable to Parliament. If there were a point in the future where you were not receiving any taxpayers' money and all the money was coming from the charity sector, would that not change the nature of your accountability to Parliament, at least morally, if it was not putting anything in?

William Shawcross**:** I hope not, but Kenneth can answer that question.

Kenneth Dibble**:** I do not think it would. For our regulatory decisions, we are primarily accountable to the tribunal and the courts. That is our primary accountability. We are accountable to the Treasury for how we spend our public funds, but we are generally accountable to Parliament for the regulatory functions that we exercise in a more general way. We are accountable to the charities and the public at large in a different way. I would see that accountability still being maintained. It is something that we would still want because Parliament, having constituted the commission in the way it has, has a right to know how we discharge our duties and functions.

William Shawcross**:** I agree. I would hate it if we were no longer accountable to Parliament. We must always maintain that accountability.

Baroness Barker: You are accountable to charities in a different way. Can you tell us exactly how?

Kenneth Dibble**:** We are accountable to charities in that we regulate them fairly, proportionately and in the public interest. That is our accountability: that we are a good, solid, proportionate regulator in which the sector can have confidence that it is being regulated in a fair and equitable way.

Lord Bichard: Going back to this charging issue, your chief executive said recently that charging for regulation, if you go down the road you are describing, would match examples of other regulators such as the Solicitors Regulation Authority. Some might say that solicitors belong to commercial organisations and have income, and therefore it is not unreasonable that they pay for the regulator to ensure that income is used appropriately. Charities—you referred to them in a recent answer as "rich" charities—are not in that situation. They are not per se rich. They have money for the benefit of their clients; otherwise they would not be charities. Is this a fair comparison and are there other examples of non-commercial organisations paying for their own regulation? Sorry about the longwinded question.

Kenneth Dibble**:** I do not think there are, but if there are they are done consensually with the organisations that they regulate.

Lord Bichard: There are none that you know of.

***Kenneth Dibble*:** None that I know of.

Lord Bichard: This would be a first, then.

***Kenneth Dibble*:** It might be. I would like to make the point that this concept of charging charities is not new. In 1992, Parliament introduced a power for the commission, subject to subordinate legislation, to charge for its services. At the time, it was thought that the best way of doing that was for a discharge of particular functions such as registration, making schemes, making orders, giving formal advice. We never proceeded with that, first, because every study we did found that it would not increase the revenues to a particular extent. Secondly, it would be difficult to collect. Thirdly, it would be counter to our regulatory mandate, because if charities were charged for registration they might not wish to register, so it acted in a contrary way. That is why we never carried that forward.

Lord Bichard: That is the point, is it not? There is a difference between giving a charity the choice of whether to buy services, which is what you have just described having the power for, and forcing charities to pay to exist, which is what the regulation would be for. There is a difference, is there not?

***Kenneth Dibble*:** I agree there is a difference. It is a concept that has been accepted by the new Fundraising Regulator, on a voluntary basis.

***William Shawcross*:** The new Fundraising Regulator was started in the wake of scandals 18 months ago by government and by the charities themselves. It is, as Kenneth says, an important precedent, in the sense that it is paid for by charities and it is doing a very good job.

Lord Lupton: I am trying to find some balance on the £21 million grant in aid you get from the Government. The Exchequer gives a lot of tax reliefs: income tax, capital gains tax, corporation tax, gift aid—all those tax reliefs. What does that total for the whole sector, annually? Have you a rough idea of that?

***William Shawcross*:** I am ashamed to say that I do not have that number at my fingertips. It is a very good question.

Lord Lupton: I imagine it is hundreds of millions, or billions.

***Kenneth Dibble*:** It is significant.

***William Shawcross*:** It is a lot of money.

The Chairman: If you could come up with the figure for us, that would be useful.

***William Shawcross*:** I do not want to spend my last year trying to persuade charities to give us money, but I see no other way in which this organisation, which is essential to the charitable world, can continue to be effective if it suffers salami slices every year. I do not want to be nimbyist, and I do not expect the Treasury to give us a massive new source of funding, but that is the only alternative. If you Lords and Baronesses have any ideas, I would love to hear them.

Baroness Stedman-Scott: You said you had spoken to some charities about this. What was their response? Was it horror?

***William Shawcross*:** It was mixed. Some said it was inevitable that we should do it. Others threw up their hands in horror, as you suggested.

Q202 **Lord Rooker:** Good afternoon. Before I get down to my questions, I want to give you some ammunition for the last decision you have just been asked about. You could put it to the Government that when the food industry, the biggest manufacturing industry in the country, starts to pay for its regulation, then it will be time for charities. The meat industry is subsidised by at least £20 million because the FSA, the Food Standards Agency, cannot recover its full costs. You have there a purely commercial area with free regulation in the interests of the public. There is an issue there, because when it was originally going to be set up in 1999-2000 there was a plan that the food industry would pay for it. That position was dropped. I thought I would give you that ammunition.

***William Shawcross*:** That is very helpful.

Lord Rooker: It is my declaration of interest. At one time, I chaired a non-ministerial department that was a regulator, which met in the open. Are your meetings open to the public?

***William Shawcross*:** Our board meetings are not open to the public, no, but we are pretty open to the public. We have four public meetings every year, and that is just the start of it. We mix and visit charities, the NCVO and other groups like that all the time. I would hope that we are very transparent, but our board meetings are not open to the public. They were at one stage, were they not, Kenneth?

***Kenneth Dibble*:** They were, yes.

Lord Rooker: I went to your website and looked at your last annual report. You have these transparency documents for the governance framework. I want to ask about a housekeeping management matter. It is about the interaction between the board and the executive staff. As I see it, you have a board secretary, which is the main point of contact between the board and the rest of the organisation. That is what it says in the documents that I printed off your website last night. Is that correct?

***William Shawcross*:** We do have a board secretary who is a very efficient person but I would not say they were the main contact.

Lord Rooker: It says here, "The board secretary shall have the following responsibilities: supporting the chair and chief executive and acting as a primary point of contact between board members and the rest of the organisation".

William Shawcross**:** The board secretary is certainly a primary point of contact, but not exclusively. I should let Kenneth answer this.

Lord Rooker: By all means. I also have a follow-up to that.

Kenneth Dibble**:** The directors' relationship with the board and the board members is probably characterised as porous, interactive and at times very robust. It is certainly not the case that the board is a remote figure from the organisation. There is a heavy and continuing engagement on particular issues. The relationship between the board's responsibility and the directors' is set out in our governance framework. That may be the document you are looking at, Lord Rooker.

Lord Rooker: That is the other document I have here, yes.

Kenneth Dibble**:** That divides the responsibility. Generally, the board is responsible for setting policy and strategy, and for supervising the work of the commission and the executive. It reserves for itself certain key decisions that have to be made, whether on a strategy or policy basis, or on particular cases because of the reputational issues or serious issues that they present for the commission. The relationship is active and very healthy. To characterise it as being focused through one individual is not how it works in practice.

Lord Rooker: I wanted to ask about how it works in practice. On the other framework, your chief executive is the accounting officer. Is that correct?

Kenneth Dibble**:** Yes, that is correct.

Lord Rooker: The chief executive is responsible, therefore, to the Public Accounts Committee, and he is responsible for the commission's propriety. That is also a responsibility for the board secretary. How can you have two? I presume they are both civil servants, by the way. Is that correct?

Kenneth Dibble**:** They are both civil servants.

Lord Rooker: Are they of the same grade?

Kenneth Dibble**:** No, there is quite a difference in grade between the chief executive and the board secretary?

Lord Rooker: How can you have two people responsible for propriety when one of them is the accounting officer?

Kenneth Dibble**:** The accounting officer has to take full responsibility for those matters within the commission. However that is written, that person has to take that responsibility.

Lord Rooker: I am coming to the end of the question. Where do the board members get their advice from on propriety and the way they should act and on the operation of corporate governance? Does it come from the accounting officer or the board secretary?

Kenneth Dibble**:** It comes from the board secretary, as advised by me from time to time, and as advised by the chief executive. That is the source of the board's ability to comply with the Nolan principles on public life and public law issues in relation to their decisions and their work.

Lord Rooker: Has the Public Accounts Committee ever commented on this relationship?

Kenneth Dibble**:** Not as far as I know.

Lord Rooker: Who goes to the Public Accounts Committee? Do you go, Mr Shawcross?

William Shawcross**:** I went. As I said, when I arrived at the end of 2012, there were various things that we had to account for. One of them was a charity called the Cup Trust, which Mrs Hodge held special hearings on, and I had to go before her then. I was not present at subsequent hearings of PAC; it was just the accounting officer, Paula Sussex, but I have appeared, and I appear every year before PASC. Now that we have gone to DCMS, we are no longer before PASC. That was our invigilating committee and we had very effective and helpful relationship with them.

Lord Rooker: Finally, how does the board of the Commission get advice or follow-up when the accounting officer has been before the Public Accounts Committee?

William Shawcross**:** I do not quite understand what you mean.

Lord Rooker: Would the board be interested if your chief executive was up before the Public Accounts Committee on behalf of the Charity Commission?

William Shawcross: Of course.

Lord Rooker: How do they get feedback about that from the accounting officer?

William Shawcross**:** I would probably be either in the room or watching the session on parliamentary television. Other board members might also be watching it. I would certainly speak immediately afterwards to the accounting officer, the chief executive, and to Kenneth. I have quite a close relationship with members of the directorate, do I not?

Kenneth Dibble**:** As I outlined, yes, we do. Following an appearance, the board would be briefed, it would be discussed at the next board meeting, and the transcript of the hearing would be circulated.

Lord Rooker: Who would brief the board?

Kenneth Dibble**:** Paula, the chief executive, would brief the board.

Q203 **Lord Foulkes of Cumnock:** Mr Shawcross, you have recently appointed some new members to the commission. What skills and experience were you looking for when you made the appointments, and was previous experience in the charity sector among them?

***William Shawcross*:** It is always useful that anybody on the Charity Commission board has previous experience in the charity sector. I think I am right in saying that every member of our board has been a trustee of one or more charities. I agree with you that that is important.

In this case, NAO asked us in its first and second reports to appoint a board member with specific digital expertise, to help with the transformation programme, so we advertised for that. We found an excellent person, a woman with great digital expertise, who was appointed.

Secondly, we needed to appoint someone who had experience in security and counterterrorist work, because one of the board's priorities is counterterrorism and stopping the extremist abuse of charities. We had an excellent board member before called Peter Clarke, who had been in the Metropolitan Police. He was then poached from us, I am sad to say, and invited to become Her Majesty's Chief Inspector of Prisons. We wanted to find someone to replace him and we did. We found a very effective person.

The third person we have appointed is a woman, again, who has been involved in the charity sector for a long time in quite big charities and is a trustee of charities. She will be a very effective help in our management.

I am very pleased with all our new appointees. They came to their first board meeting last week, and they have already been up to Liverpool, our second office. They were much welcomed. Everybody in the executive is very impressed by what they can add to the commission.

Lord Foulkes of Cumnock: Why are there no black or ethnic minority members on the board?

***William Shawcross*:** There were. There were two ethnic minority women on the board, both of whom have left, largely due to the pressure of work. They were both extremely helpful and good members of the board. Unfortunately, when we advertised for new board members on this occasion, there were not very many ethnic minority applicants and we chose the best people who came to us.

Lord Foulkes of Cumnock: Was that because you were restricting the applications to particular skills? Would it not have been better to recruit someone from the black and ethnic minority population?

***William Shawcross*:** I would have loved to have someone from the black or ethnic minority communities who would have been able to fulfil those three positions.

Lord Foulkes of Cumnock: You do not seem to have done very much to get anyone, though, have you?

***William Shawcross*:** We worked very hard to get one.

Lord Foulkes of Cumnock: Which of your trustees live in the north of England?

William Shawcross**:** I do not think that any of them live there now.

Lord Foulkes of Cumnock: Which of your trustees is under 50?

William Shawcross**:** I have not asked all their ages. I will come back to you with that.

Lord Foulkes of Cumnock: I do not think any of them are. If someone was to describe your board as a fairly right-wing, upper-middle-class, white, middle-aged group of people from the south-east of England, would that be unfair?

William Shawcross**:** It would be grossly unfair.

Lord Foulkes of Cumnock: Why?

William Shawcross**:** Because it is not an accurate description of the way in which this organisation is run.

Lord Foulkes of Cumnock: How many members of your organisation have links with the Henry Jackson Society?

William Shawcross**:** I was on the council of the Henry Jackson Society before, and I gave it up when I became chairman.

Lord Foulkes of Cumnock: Who else?

William Shawcross**:** I am not sure if anybody has links, but people may attend meetings of the Henry Jackson Society, the Fabian Society, the Adam Smith Society or the John Smith Society. Anybody can attend any meetings of any think tanks they wish. I encourage that sort of diversity.

Lord Foulkes of Cumnock: But you have no black people, no one living north of the Wash, no young people.

William Shawcross**:** We have a lot of young people in the whole organisation.

Lord Foulkes of Cumnock: But not on the board.

William Shawcross**:** This is true. At the moment, they are not very young. As you know, these balances are difficult to achieve everywhere, even in Parliament, my Lord.

Lord Foulkes of Cumnock: Not in the House of Lords.

The Chairman: Lord Foulkes, can you put your question about the dates?

Lord Foulkes of Cumnock: Why was there a delay in announcing the appointments?

***William Shawcross*:** I do not know that. I think it took a long time going through government. It is a fairly new Administration and we were moving from the Cabinet Office to DCMS. I suspect it was a bureaucratic thing. I do not know the answer.

Lord Foulkes of Cumnock: They not been welcomed in the charity sector, have they?

***William Shawcross*:** I do not know why you say that. Not many people in the charity sector have met them yet. I think that when they meet them they will welcome them and see that they are extremely valuable people who will help our organisation regulate and assist the charity sector very well. I have total confidence in them.

Lord Lupton: It is not really a question. I just regret the tone. We are a rather mature, white Select Committee. That is the only point I want to make.

Q204 **Lord Harries of Pentregarth:** What is your position on the role of advocacy charities and their contributions to civil society, in the light of recent controversies regarding the Lobbying Act and the Commission's EU referendum guidance?

***William Shawcross*:** The charities have an absolutely crucial role in advocacy, and advocacy is crucial to charities and always has been. Neither I, nor the board, nor the executive would ever want to do anything to limit the distinguished history that charities have in public debate. It is crucial to a thriving democracy. As you know, the law sets limits on such involvement and it is our job at the commission to issue guidance to trustees, to make them aware of the law and the limits. I am sure you know all this as well as I do. Basically, charities can campaign in furtherance of their own purposes, but they cannot campaign in the furtherance of any political interest. Most charities understand that perfectly and, on the whole, it is observed very well. As for the Lobbying Act and grant funding, that is not in our domain. Kenneth, is there anything you want to say about that?

***Kenneth Dibble*:** No, not about the lobbying Act. That was an individual piece of legislation passed by government. We understand that it has caused concerns in the sector. The sector is generally concerned about any restriction on, as it sees it, its right to carry out what we call political activity in support of its purposes, and we understand that very well.

***William Shawcross*:** His Lordship also asked about the referendum. Do you want to speak to that?

***Kenneth Dibble*:** The referendum guidance that we put out prior to the referendum met with some criticism within the sector and still does. That guidance should be seen as a singular piece of guidance in relation to the referendum. Our general policy on political activity in charity remains that in our published guidance *Speaking Out*, or CC9 as it is called. That is our general position.

We had some difficulty with the guidance itself, because it was quite a difficult exercise. In the first place, we had very little time to prepare it. There were concerns in the sector that we should prepare guidance, which we did, but we had very little time to consult. Unlike a general election, when there is a set period for which campaigning takes place, the referendum was rather more open-ended. As you know, there were general issues circulating about this up to a year in advance.

We were under pressure to produce the guidance. We did not have enough time to consult on it. The style in which it was written conformed to the board's position on compliance matters. That is to say, it approached the matter from the following position: "If you want to do this, be careful. These are the rules. You must justify what you are doing". Although it was technically accurate, the guidance produced concern within the sector that they might transgress or give regulatory concern to the commission by what they did.

That was certainly not our intention in writing the guidance. If there is a lesson to be learned from that piece of guidance, it is about the way we positioned it and our style of communication. There were some immediate concerns about the width of the guidance, and at that point we revisited the guidance and reissued it to deal with those particular concerns, which we were happy to do. The general message about that particular guidance is that they style with which it was written did look restrictive, even though it was technically correct in law. That is a lesson on making any future guidance that we need to take away.

Lord Harries of Pentregarth: You probably now regret the fact that that guidance went out, but I have another question. Have you in recent years had any occasion to strictly regulate charities that you felt were breaching CC9?

***Kenneth Dibble*:** On the whole, CC9 is respected by the sector, and charities that wish to engage in what is called political activity, which they are authorised to do, fall within its remit without any difficulty. At general election time, there are always cases that come across our threshold, where charities stray over the line and there is an issue about whether they go beyond political campaigning in an unacceptable way. There were about 14 or 15 instances at the last election[1]. We produced a report on those. There were about four or five transgressions from the referendum guidance, which we dealt with.

In our normal casework, we very seldom come across grave breaches of the guidance. There are one or two cases at the moment, which I cannot identify because they are still subject to regulatory involvement.

Lord Harries of Pentregarth: There are still some hanging over from the previous election, then.

***Kenneth Dibble*:** No, not from the previous election.

[1] Note by witness: Clarification that the correct figure is actually 17

Lord Harries of Pentregarth: You said you had 14 cases.

***Kenneth Dibble*:** They have all been dealt with and we have produced a report. We have one or two cases at the moment, which I cannot go into for obvious reasons, where there are thought to be breaches of the rules governing political activity in charity. We deal with these in the normal way. Most charities respect our position and our view, and these issues are resolved by them correcting their activity and behaviour.

Baroness Barker: The referendum guidance was signed off by the board.

***Kenneth Dibble*:** The referendum guidance was prepared by the executive and was signed off initially by the policy guidance committee, which is a board committee. When certain criticisms were made of it, it was reviewed with the executive and signed off by the chief executive and a legal board member.

Q205 **Lord Lupton:** Can you tell us what changes you think remain to be made to ensure that the Commission fulfils its duties as a regulator? When answering that, would you respond to criticism that some of your investigations have been disproportionately focused on certain types of charity?

***William Shawcross*:** Do you wish to say which types of charity?

Lord Lupton: Some of the evidence we have had suggests that there has been a focus on Muslim-based charities.

***William Shawcross*:** Yes, that is correct. There have been allegations of that and we have looked seriously at those allegations. I can tell you confidently that we are not biased against Muslim charities or any other set of charities in the way we assess concerns or make case decisions. I looked up these numbers in case this question came up here. Of the inquiries that we opened last year, just six charities, or 11%, were religious[2]. Only one of those six charities was Muslim. The year before that, 20 religious charities were open to inquiries. That was 15% of our total inquiries. Of those 20 religious charity inquiries, there were three Muslim charities, six Christian and five Jewish. I really do not think that that reflects any kind of anti-Muslim bias.

I would repeat that, as I have said before, we have three strategic priority risk areas: to tackle fraud and financial abuse, to protect vulnerable beneficiaries, and to guard charities against terrorism and extremist abuse. I am not going to apologise for our concentration on any of those three areas. They are absolutely crucial for us to work hard to stop. While terrorism and extremism is not the most frequent issue that we face, it is undoubtedly among the most serious. We have a very important role to play in this regard, to protect charities.

[2] Note by witness: Clarification of correct figures - of the inquiries that were opened last year, just ten charities, or 10%, were religious. Only two of those ten charities were Muslim.

I had a group of Muslim leaders in some months ago making the same point that you made: that we were focusing unduly on Muslim charities. I said, "That is not the case. We are here to protect Muslim charities from abuse by extremists, as well as protecting the public". I fear that, given the current circumstances in the world, that will continue to be a really serious responsibility for us in the foreseeable future. We will continue to carry it out. There is no bias there, I can assure you.

Q206 **Baroness Gale:** Should the Commission retain its dual role of regulator and adviser to charities, and are these two roles meaningfully linked?

***William Shawcross*:** That is a wonderful question, because we have had that dual role since the commission was founded 160 years ago, or whenever it was. I would hate to see it lost, because I think our primary responsibility under the 2006 and 2011 Acts must be to enforce compliance with the law among the few charities that are not compliant. As I said before, that is the way we think we can best maintain and enhance public confidence in the whole charitable sector.

As I said earlier, in the old days—Kenneth can talk to this, because he has been there so much longer than I have—we did much more enablement, because we had more money and support. I would love to be in that position again, because charities are a vital part of our society. We want to support them, but, as Kenneth agreed, we no longer have the resources for the telephone lines and other support. We would love to do more and, yes, I think we should have both responsibilities.

***Kenneth Dibble*:** Perhaps I could just add to that. We regard enablement, support and compliance as part of the regulatory spectrum. We take the view that you cannot expect charities to comply with the rules governing the administration of charities unless you tell them what the rules are in the first place. The commission's website is populated with guidance as to how trustees ought to administer their charities. That is an invaluable part of what the commission does, and we will continue to do it.

The guidance extends from SORP, the statement of recommended practice on accounts, to guidance about end use of funds, overseas transactions relating to charities and issues about vulnerable beneficiaries. It extends to your fundamental duties as a trustee. It extends to financial controls, trustee decision-making and conflicts of interest for trustees. I could go on. It is invaluable and crucial that the commission performs that role of giving general advice and guidance to the sector, alongside its compliance role. It is fundamental to what it does as a regulator. It is part of regulation in the broadest possible sense.

***William Shawcross*:** I absolutely endorse that.

Lord Harries of Pentregarth: Have you tested your website widely and professionally as to how it scores on user-friendliness and ability for people to access the information they want? Websites vary hugely in terms of how easy and good they are to use.

***Kenneth Dibble*:** If I can put it this way, the website has gone beyond the commission's direct control, because it is no longer hosted by the commission. It is part of GOV.UK, which has particular rules about how material from a government department has to be portrayed on the website. We have concerns and we know there are concerns about people trying to find the right bits of advice on our website, and we raise them. This matter is, to some extent, outside our control.

When we develop our digital services, we take great strides to see whether they are suitable for customer interaction. We think that is very important. As we move towards digitalisation, we want the ease and use of those services to be known and appreciated, and we have good feedback. Throughout the development of those services, we focus on customer and user experience. We do not neglect the external customer. When the matter is within our control, we do what we can to facilitate positive engagement with the sector and trustees.

Lord Bichard: I want to come back to the division of roles. Not all regulators take the view that you have just articulated, Mr Dibble. Some take the view that they are there to ensure compliance, and in some cases to inspect, if you think of CQC, Ofsted and others, but not to advise and to improve. The line you are taking is not shared by all. The examples you gave were quite connected with your particular responsibilities. I accept that. They were administrative and financial. But if a charity, for example, wants to improve its use of digital, where does it go? It probably does not go to you.

***Kenneth Dibble*:** No, it does not come to us.

Lord Bichard: I am asking you this: do you think there is a gap in relation to helping charities not just to comply but to improve their performance?

***Kenneth Dibble*:** There is a gap. Our dual role stems from our governing statute. It is absolutely clear that we have power to do those things, and we do them.

In relation to improving the effectiveness of charity, we have a role when we exercise particular powers. Beyond that, there is a real issue about the efficiency and effectiveness of the sector. It is probably a matter for peer support within the sector itself to develop more effective models, which we would want to encourage and be part of but which do not fall squarely within our remit. We cannot act in the administration of charities; we are there to ensure that trustees comply with what they have to do and are as effective as they can be. We do not, cannot and would not have the expertise to deliver or to advise on effectiveness in that sense.

Lord Rooker: To follow up on that, going back to the very beginning of the session this afternoon on charging or paying, would it not be possible for the Charity Commission in effect to separate out its functions, so that the management consultancy service for charities to become efficient, change, innovate and get advice from was a service you sold, but you did not sell the regulatory bit? They will have to go somewhere and pay a lot of money. People are full of praise for the Charity Commission website; there is no question about that. We heard that when we travelled round the country, by the way. I used it last night myself and I found everything I wanted except the names of civil servants, which is hardly surprising because I suspect they are not published on the website.

Could you not separate it out, so that you have a function that you do? My analogy goes back to food, because the local authorities would like to charge for inspections and advice, but not charge for the annual check, if you know what I mean. There is an added service that you could sell. That would solve part of your income problem and at least give the charities a centre of excellence to go to.

***Kenneth Dibble*:** As part of Transform, we are reorganising ourselves internally so that the operational units of the commission form more discrete functions and are less generalist. What you are proposing is a step beyond that to marketing and selling a particular aspect of our service. We may get to that, but we are not at that point yet, I am afraid.

***William Shawcross*:** I have to say that I get slightly irritated when our civil servants and legal advisers, Kenneth's staff, are called up by very expensive law firms working for very rich clients, which get free advice from us. It is slightly irritating. I do not know quite how we deal with that.

Lord Lupton: Can I continue on the same subject of advice and maybe having a new unit? One thing that I hear about the sector is that there is no real catalyst. There is no way of changing the strategic direction of charities, particularly when you see inefficiencies or big overlaps between charitable purposes and charities duplicating costs. Maybe the sector needs a body that can advise and prod it, without that being a regulatory function. Have you any thoughts on that?

Baroness Stedman-Scott: You might appoint a board member with those skills to help you package a service.

***William Shawcross*:** I hope one, possibly two, of our new board members will be able to do that.

***Kenneth Dibble*:** It may well be a regulatory function for example to assist charities to amalgamate or assist them with their governance review. It is an area that we have a real interest in. Resources, as they are at the moment, mean that we cannot go there. We have had several units in the past, which had specialities. For example, we had a large charities unit, which dealt with the larger charities and had good informal relationships with the chief execs of those charities to deal with problems that came up. We had a reorganisations group in the commission, dealing with groups of charities that wanted to amalgamate. We cannot afford those units any more. We have to have the work done on a much more general basis.

Lord Lupton: Were those regulatory or advisory functions?

***Kenneth Dibble*:** They were both regulatory and advisory, because it may well be that some regulatory action is needed from the commission for charities to amalgamate, for example.

Q207 **Baroness Scott of Needham Market:** In the last decade, I have served on the board of three very different regulators, with different models and ways of being funded. I wonder to what extent regulators these days spend time together, learning from each other about both the different ways in which their structures and funding can be approached and the different models of regulation. Underneath that, at an operational level, there are regulators with which you might share common interests. I am thinking, for example, of HMRC, but I am sure there would be others. I wonder if you can say a little about relationships with other regulators.

***William Shawcross*:** I can answer briefly. We have such relationships. They become more intense if there is a concern about one particular charity that falls under another regulator. We meet with them on a pretty frequent basis, but we do not have an annual dinner or conference of regulators, or anything like that. Perhaps we should.

Baroness Scott of Needham Market: There used to be. Not so long ago, there was a group of heads of regulators.

***William Shawcross*:** It is a very good idea. I will try to start one.

***Kenneth Dibble*:** We have established memoranda of understanding with at least nine regulators, which are on our website. There are other formal relationships with institutions that cannot be named, and we have several in the pipeline. As the commission, part of the way to maximise our effectiveness is to join forces and have proper exchanges of information and policy discussions with other regulators with charities on their radar. The Information Commissioner's Office is one with which we have such a relationship, and there are others. There is a lot to be gained and learned, so that charities do not become the victim of multiple regulation from different sources and the regulatory messages are consistent across regulators for the charitable sector. It is very important that different positions are not taken without consulting us.

Baroness Scott of Needham Market: Very briefly, how about looking beyond this country? Are there examples of overseas regulators with approaches that you think would be helpful to you?

***William Shawcross*:** You have the right man here.

***Kenneth Dibble*:** There are some, but the commission's form of regulation of its sector is seen as the gold standard internationally, although, as we have mentioned, we cannot live up fully to the ambition of the 2006 Act. It is seen as the gold standard. In North America, for example, the regulation is done through the tax inspectorate. That is not the situation here. In some countries, regulation is dealt with by different government departments so there is no consistency of approach. Other countries they have regulation-lite, as opposed to the sort of regulation we have.

There may be certain things, particularly in the digital area. Australia, for example, has a very good digital relationship with its sector. There are bits that we can learn from, but not across the board. We have an excellent, first-class regulatory system for the sector in this country.

***William Shawcross*:** Kenneth has recently signed a memorandum of understanding with the Government of China. He has been to China a number of times, advising as to how it should improve its charitable law and regulation.

The Chairman: We will take some tips from that as well, perhaps.

Baroness Barker: You have explained to us this afternoon that you are independent of government and charities, and that you are accountable only to Parliament. You have also told us that your accountability to charities is to regulate them fairly, proportionately and equitably, in a way that increases support and confidence. Who could challenge the board of the commission on its effectiveness in doing that?

***Kenneth Dibble*:** Every few years, we have a public trust and confidence survey, which is done through proper statistical means, in which we take the temperature of the sector and our relationship in that equation. It has slightly gone down on our last analysis, but that is not unsurprising, given the concerns about fundraising that emerged about 18 months ago. Public trust and confidence in this sector has taken a bit of a dip.

Baroness Barker: That is the mechanism by which the charity sector gets to influence your work.

***Kenneth Dibble*:** It gets a comment on our effectiveness, yes.

***William Shawcross*:** We get quite a lot of comments in the charity sector press and suchlike on our performance. We are under quite a lot of scrutiny, and quite rightly.

Q208 **Baroness Barker:** We are asking everybody this: can we have one recommendation only that the Committee should make to improve and support the sustainability of the charity sector?

***Kenneth Dibble*:** We hope the Committee will make a recommendation to improve the governance of charities, both small and large. It is clear from our publication *Tackling Abuse and Mismanagement* that a considerable proportion of concerns about charities arise through governance failures of one kind or another. That is absolutely clear. That may be failure to deal with conflicts of interest, poor decision-making, non-attendance by trustees or not taking care of the property of the charity.

The sector, of course, is a voluntary sector. There are no special qualifications to be a trustee, yet they carry out very onerous obligations and responsibilities, and have the regulator to account to. In addition, trustee boards continue to lack diversity, having particular demographic characteristics. Now, what should be done about this? We would recommend: improving diversity of trustees, the availability of equality guidance training and support for trustees, a supportive regulatory framework for trustees, and a real focus on appropriate governance structures within charities to ensure compliance and make charities more effective.

One issue is that we do not have enough data on trustees and governance issues. The commission at the moment is embarking on a research project with Cranfield and Cass Business School to evaluate current issues within the trusteeship of charities and to set a baseline for improvement. The commission wants to be involved in this work, to assist in leadership and support for any initiatives that may flow from that research. By highlighting this governance issue, the Committee will give an impetus to any initiatives in this area.

The Chairman: We shall certainly take that one on board. May I, on behalf of the Committee, thank you very much indeed for your thoughtful and wide-ranging answers? We are very grateful for your time. Thank you very much.

***William Shawcross*:** Thank you, Madam Chairman, and thank you all for listening to us and inviting us here. I would be very happy, and I am sure Kenneth would too, to come and speak to any of you, individually or collectively. I would love, Lord Foulkes, to come and talk to you about the issues that you raised. They are very important and very difficult to get right. If anybody else would like that, I would be happy to do so.

The Chairman: Thank you very much for the offer. It is greatly appreciated.