

Lawrence Simanowitz, Partner, Bates Wells—written evidence (FOJ0050)

Submission to the House of Lords Communications and Digital Committee Inquiry into the Future of Journalism

Bates Wells is a law firm in the City of London with the largest team of specialist charity lawyers in the UK.

One of its senior partners, Lawrence Simanowitz, is on the advisory board of the not-for-profit-organisation – The Public Benefit Journalism Research Centre which has made a separate submission to this committee.

Over the course of more than a decade Bates Wells has acted for many organisations seeking charitable registration in the news and journalism space.¹

This submission is focussed on responding to the following questions on which the committee is inviting evidence:

a) How can innovation and collaboration help news organisations to maintain sustainable business models?

b) Are there any other ways in which public policy could better support journalists and news organisations?

It proposes one innovation in particular – widening the scope of news organisations which can be permitted to register as charities under the law of England and Wales. This innovation could lead to many more news organisations becoming financially sustainable.

This submission is brief because we have also contributed to the more detailed submission filed by the Public Benefit Journalism Research Centre (PBJRC), which contains a detailed legal analysis which we have assisted in drafting. In summary though we wish to draw the attention of the committee to the following:

1. Introductory points

The fundamental importance of journalism in enabling our society to flourish is well established in the recent Cairncross Review on the Future of Sustainable Journalism, which also recognised that without significant government intervention, such journalism was dangerously under threat.

The government accepted most of the recommendations of the Cairncross Review. However, relying on input from the Charity Commission for England and Wales, the government did not support the recommendation from the Cairncross Review that charitable tax relief² should be given to public interest journalism of news organisations. Whilst we do not here seek to speculate as to the underlying reasons for the rejection of this proposal by the Cairncross Review, we believe that the grounds cited by the Government and Charity Commission for rejecting this proposal did not address some of the key points that need to be considered. For example, whilst the Government noted that in the USA, not-for-profit news organisations are eligible for the US equivalent of

¹ Many of these illustrate the challenges faced in seeking charitable registration which this submission seeks to address. They include the fact checking charity FullFact, which was initially denied registration but subsequently registered; the Bureau of Investigative Journalism which could not obtain charitable status and which now receives restricted charitable funding from other sources; and Eyewitness an environmental investigations charity, which has since closed.

² See Paragraphs 42-47, Government Response to the Cairncross Review

charitable status (i.e. they can register under s 501(c)(3) of their Inland Revenue Service's tax code), it said that this was not necessary because in the UK some not-for-profit journalistic organisations can already register as charities. The government however did not identify any, and in practice the number of such organisations registered as charities is negligible (and nor are they likely to be useful precedents).

We therefore suggest that the committee might usefully encourage the Charity Commission to review this more fully and to use its discretion to recognise public benefit journalism as a charitable purpose (subject to necessary protections and restrictions being in place).

2. Charitable Status

In order to meet the requirements under the law of England and Wales to be registered as charities, news organisations would need to meet the following key criteria:

2.1 They would need to be not-for-profit.

Charities may not distribute profits and any surpluses they make must ultimately be used to further the charitable purpose for which they are established (see 2.3 below). Clearly not all types of news organisation will meet this criterion, but some organisations already have a not-for-profit funding model, and others may be more willing to adopt it if the additional benefits of charitable status were available (discussed below in paragraph 3).

2.2 They would need to be for the public benefit.

The Cairncross Review clearly recognised the benefit to the public brought by certain types of journalism. This included local newspapers (which across the UK are disappearing or denuded) providing essential information to local communities. Investigative journalists exposing abuses of power are another example of public benefit journalism - one of the most at risk, as news organisations' ability to fund high quality research and reporting comes under threat.

To help meet the public benefit requirement, there would need to be a mechanism to ensure that appropriate standards were met by news organisations with charitable status. In particular this would help to ensure that such organisations were not politically partisan, maintained minimum quality standards and avoided sensationalism for example. Proposals for how this could be achieved are set out in the annex to the paper submitted by the PBJRC.

2.3 They would need to be established exclusively for purposes that are recognised as charitable.

This is the area which the Charity Commission and the Government's response to the Cairncross Review did not take sufficient steps to address. Contrary to the Cairncross Review's recommendation they do not accept that any change is needed to enable more news or journalism organisations to achieve charitable status. The Charity Commission notes³ that it is already open for certain types of journalism to be undertaken by registered charities. Whilst this is undoubtedly true, the existing approach taken by the Charity Commission is not conducive to achieving the kind of change which is needed to help enable news organisations to be more sustainable. Yet, as set out within the submission from PBJRC, it falls within the scope of the

³ Charity Commission blog: <https://charitycommission.blog.gov.uk/2020/01/27/read-all-about-it-when-can-journalism-be-charitable/>

Charity Commission's remit and powers to make the necessary change in a way which is entirely compatible with existing law and which does not require any statutory change.

3. How could charitable status be of benefit to news organisations which meet the criteria above?

- 3.1** Charities and those who donate money to charities are eligible for GiftAid tax relief. That means that, if registered as charity, a news organisation would get a 20% uplift on gifts from individuals and donors will be incentivised to give money because they would receive tax relief on the donations.
- 3.2** Charities do not pay corporation tax on their profits (from most sources of income), provided that those profits are applied for charitable purposes. This would mean that charitable news organisations could reinvest the entirety of any surplus they make in delivering more news.
- 3.3** Charities are eligible for business rates relief on their premises, a potentially significant saving on their operating costs.
- 3.4** Some grant funding organisations will only make grants to registered charities. Charitable news organisations will then be able to access this additional source of funding.
- 3.5** There are a number of other potential benefits from receiving charitable status, such as tax relief on legacies and other less specific advantages such as greater willingness on the part of individuals to volunteer their time to the organisation.

4. Conclusion

The decline in journalism has been on the Government's radar since before this committee considered the issue and published its report over 8 years ago. The steps that have been taken since then by Government have been too insignificant. The situation has worsened whilst the need for public benefit journalism is greater than ever.

In effect the Government has fiddled whilst Rome has burned. Permitting certain news organisations to attain charitable status will not, of itself, douse those flames. But, whilst there are challenges to overcome, these are far from insurmountable. And, by helping to contribute to the sustainability of news organisations, enabling more news organisations to become charities is a step on the way to helping secure the future of journalism.

21 April 2020