Written evidence submitted by Neil Jeffares

The Charity Commission and the Wallace Collection

1. I am an independent art historian, and I make this submission in a personal capacity. It concerns whether the Charity Commission can properly alter the effect of primary legislation without parliamentary approval.
2. On 21 June 2019 the Charity Commission made an order (under Reference Number: 381/1920 Case Number: C-499681) permitting The Board of Trustees of The Wallace Collection ("the Wallace Collection") to lend and borrow property. The order was issued under the provisions of s105 of the Charities Act 2011 ("CA").
3. It was made at the request of the Wallace Collection. In a document supporting its application, the Wallace Collection stated that it had recently received legal advice that it does not have power to lend objects in the Collection nor to borrow works of art from other collections. It is governed by the Museums and Galleries Act 1992 ("MGA"): in contrast to the other three national museums covered by that act, the Wallace Collection is excluded from s5 MGA which provides such powers to the others. According to the advice, this unambiguously means the Wallace Collection cannot lend or borrow.
4. The exclusion under the MGA was entirely deliberate. For example, Viscount Astor told Parliament (16 March 1992, Hansard col. 1620) during the passage of the bill that it "deals with the [museum boards'] general functions, constitutions and powers, …, and in three cases—not the Wallace—with powers … to lend and borrow such objects."
5. A s105 order by the Charity Commission cannot overturn an express statutory provision: s105(8)(a) states that an order under this section may not "authorise the doing of any act expressly prohibited by any Act." The reasons for this are obvious: the Charity Commission is not there to contradict Parliament; the proper way to change the law is by another statute – which would of course entail broader scrutiny of the proposal.
6. The Charity Commission nevertheless made the order requested, thus changing the effect of the 1992 statute. In doing so it presumably relied on the Wallace Collection's submission that this would be lawful because the effective prohibition on lending and borrowing is not an "express provision" of MGA.
7. It is true that the words "Wallace Collection" do not explicitly appear in s5 MGA (they do not need to for the Act to have its effect through the rules of statutory construction); but the claim sits uncomfortably with Counsel's advice that the lending and borrowing prohibition under MGA was perfectly clear. It does not seem satisfactory for the Charity Commission to make an order contrary to the express intention of Parliament (and without public scrutiny) by relying on a narrow reading of "expressly" that may be seen as a loophole in s105(8).
8. What steps did the Charity Commission take independently to conclude that it had the power to issue this order? Does the Charity Commission consider that it is appropriate for it to amend the considered and deliberate effect of primary legislation?

March 2020