

Written evidence submitted by Bond

Digital, Culture, Media and Sport Committee

Inquiry into the work of the Charity Commission, March 2020

1. Introduction

- 1.1. Bond is the UK network for organisations working in international development and the humanitarian sector. We have over 400 members, ranging from small specialist charities to large international NGOs with a world-wide presence. Bond is a charity registered in England and Wales, as are most of our members. We work with our members, government and regulatory bodies both to strengthen organisations and improve the operating environment for charities so that they can deliver their charitable objects in an effective and impactful manner.
- 1.2. Bond and its members work closely with the Charity Commission across a number of areas, including two of its operational priorities: safeguarding and counter-terrorism. On safeguarding, we have worked with the regulator to ensure organisations are equipped to prevent sexual exploitation and harassment across the international development and humanitarian sectors. On counter-terrorism, we have worked with the Charity Commission through the Trisector Dialogue on International Nongovernmental Organisation (INGO) Operations in High Risk Jurisdictions, which seeks to improve understanding between governments, charities and financial institutions and find solutions to problems associated with working in these environments.
- 1.3. Bond members want and need an effective regulator who supports them to deliver public benefit, use resources effectively, ensure compliance, enhance accountability and increase public confidence. At present, the Charity Commission for England and Wales is struggling to perform basic regulatory functions in a timely and effective manner. Since the publication of its “Statement of Strategic Intent” for 2018-2023, the Charity Commission has become increasingly focused issues beyond its core statutory duties. We are concerned that this is having a negative impact on the operational performance of the Commission, and the ability of charities to ensure they comply with the regulatory framework and deliver their charitable objects.

2. Concerns about the operational performance of the Charity Commission

- 2.1. We are concerned about the operational performance of the Charity Commission, particularly its ability to deliver basic regulatory functions, such as the processing of Serious Incident Reports and concluding investigations in a timely manner.
- 2.2. According to its guidance, charities must make a Serious Incident Report to the Charity Commission if there is an “...adverse event, whether actual or alleged which results in or risks significant” harm to beneficiaries, staff, assets, property or reputation. They must tell the Commission what happened and let them know how they are dealing with it, even if the charity has reported it to the police, donors or another regulator.
- 2.3. The number of Serious Incident Reports submitted has increased significantly in the past few years as a result of high-profile safeguarding incidents. In their most recent Annual Report, the Charity Commission states that in 2018-19 it “received 2,504 reports of

safeguarding incidents, up from 1,580 the previous year” and “in total, charities reported 3,895 incidents in 2018-19, compared to 2,819 in 2017-18, a 38% increase year-on-year”.

- 2.4. The Charity Commission has struggled to cope with this increase in reports and their response to individual reports is often slow and inconsistent. Members have informed us that they have either had to wait several weeks or even months for a formal acknowledgement from the Charity Commission or, in some cases, they have not received an acknowledgement at all. Other have reported delays in investigating reports and or have not received updates on the progress of investigations.
- 2.5. The Charity Commission issued new guidance on reporting serious incidents in December 2019. Members have told us that the guidance lacks clarity on what constitutes a serious incident and when charities should report it to the Commission, leaving organisations unsure what to report and when. The new guidance also requires charities to report serious incidents that occur in a partner organisation, even when it does not involve their own charity. This will almost certainly lead to a further increase in reports. It is also not clear how the Charity Commission will use this additional information.
- 2.6. Another issue relates to delays in concluding investigations. For example, it took the Charity Commission almost two years to complete its investigation into Save the Children. The Commission launched its inquiry in April 2018 and only published the report in March 2020. It is vital that the Commission can conclude investigations in a timely manner. Failure to do so, makes it harder for the charity concerned to act on the recommendations made by the Charity Commission and for the wider sector to learn lessons from the case. It can also damage public trust and confidence in both the charity and the regulator.
- 2.7. We also note that several members of the leadership team have left the Charity Commission in a short period of time. In the last year, the Director of Operations, the Director of Investigations, Monitoring and Enforcement, and the Director of Policy, Planning and Communications all left the Commission within a relatively short space of time and only one post has been filled to date. Bond used to have regular quarterly meetings with the Director of Investigations, Monitoring, and Enforcement but these have not taken place for some time. We value these meetings as they enable us to flag concerns and issues with the Charity Commission in a timely and efficient manner and provide better support to our members so they are able to comply with the regulatory framework. We look forward to them resuming when a new Director is in post.

3. Concerns about the strategy of the Charity Commission and tone of public messaging

- 3.1. The Charity Commission published its “Statement of Strategic Intent” for 2018-2023 in October 2018. This strategy is ambitious and sets a new direction for the Commission. It requires the Commission to work on issues beyond the scope of its core statutory duties (generating understanding of the public benefit requirement, promoting the effective use of resources, ensuring trustee compliance with the regulatory framework, enhancing accountability, and increasing public trust and confidence). For example, the new strategic objective of “keeping charity relevant to today’s world” reflects a desire to influence both the policy and public debate about charity, and lead thinking about the future of charities and their activities.
- 3.2. Since 2018, the Chair and Chief Executive of the Charity Commission have made several public statements which reflect this new strategic direction. Several of these statements have focused on their understanding of “what charity means”. For example, in a speech in October 2019, the Chair of the Charity Commission explained that under her leadership, the

Commission will regulate “in the public interest” and is “aiming to maximise the benefit of charity by upholding what charity means in the eyes of the public”. In the speech, she goes on to cite examples of what she and “the public” consider to be charitable behaviour.

- 3.3. Our concern is that this statement, and many others like it, appear to reflect a subjective view of what constitutes charity, rather than an impartial or objective view based on the legal and regulatory framework. In several high-profile speeches made since the publication of the new strategy, the Chair of the Charity Commission has conflated “public benefit”, a concept in charity law, with “public opinion” or “public expectations”, terms that have no legal basis. According to the statute, charitable status is conferred on those who exist to deliver public benefit. This can at times be at odds with public opinion or expectations. For example, in the past, organisations that worked with marginalised groups, such as LGBTQI people, BAME communities or people living with mental illness, have not always had the support of the general public, but their work has still been considered charitable because it delivers public benefit.
- 3.4. We are concerned that this will lead to a narrowing of what constitutes charitable activity and the ways that people can engage with and advance charitable causes. The charity sector in England and Wales is extremely broad and diverse, as are public expectations and opinions. The public statements made by senior Charity Commission leaders since the publication of their new strategy, do not capture the nuance and variety of the charity sector or the wide range of ways in which people engage with charities. Almost all of these speeches have included generic statements on what charity means and have not indicated an understanding of the wide range of purposes, roles and activities charities undertake and the huge benefits this has for our society.
- 3.5. We also have concerns about the views of the current leadership of the Charity Commission on campaigning. In November 2019, the Chair of the Charity Commission sent an email to all charities on the register warning them that “appearing to take a political position on either side could risk undermining public confidence in charity as something special”. Charity law states that charities can engage in campaigning as long as it furthers their charitable objects but they cannot not engage in party political activity. Warning charities against appearing to take a political position is much vaguer and could be seen as a further deterrent for civil society organisations to become involved in public debate. The reason that the Commission gave for this is that, “the political context for this election is very different from that which people may have experienced in the past”. This statement was particularly confusing, as the official Charity Commission guidance for the 2019 election remained the same as that at previous elections.
- 3.6. Charity law and Charity Commission guidance explicitly recognises that campaigning is a legitimate and important activity for charities to undertake. However, research by the Sheila McKechnie Foundation (Annual Campaigner Survey 2019, Annual Campaigner Survey 2018, The Chilling Reality Report 2018) shows that many charities are reluctant to speak out, especially at elections. This is because they find the rules on campaigning at elections confusing and because of an apparent lack of support for campaigning among policymakers and public figures such as the Chair of the Charity Commission. We are concerned that statements such as these serve to exacerbate this self-censorship, and ultimately make it harder for charities to deliver their charitable objects.

4. Safeguarding

- 4.1. Bond works closely with our members, government and regulatory bodies, including the Charity Commission of England and Wales to ensure organisations are equipped to prevent sexual exploitation and harassment across the international development and humanitarian

sectors. We recognise that in some cases, the sector has fallen short in terms of safeguarding and let down the vulnerable people we work with. Bond's members have been working to improve their safeguarding practices, building on the best examples from the aid and UK domestic sector. Our "Commitments to Change in Safeguarding" pulls this work together and demonstrates how the international development charities are driving forward consistency and leadership on safeguarding so we all reach the same standards and work together to protect people from sexual exploitation, abuse and harassment. The Charity Commission is an important partner in this task.

- 4.2. As part of our "Commitment to Change on Safeguarding", a series of 12 commitments and 34 related actions to drive change on safeguarding, Bond members pledge to "work towards consistent, rigorous reporting and complaints processes that are gender-sensitive and survivor-centred, so that the people we serve, our partners, staff, volunteers and trustees have confidence that we deal with alleged incidents swiftly and comprehensively". This includes reporting all safeguarding incidents to the regulator as serious incident reports. A detailed analysis of these reports would help charities better understand the nature of these issues and provide them with further information on risks and how to mitigate these as well as an understanding of how the sector is making progress on safeguarding. However, the Charity Commission does not have the resources or capacity to undertake such a task.
- 4.3. Since 2018, we have seen good progress towards better safeguarding practice from across our membership. In March 2018, Bond set up 4 cross-sector NGO working groups, which included representatives of the Charity Commission. Since then the co-chairs and members of the different groups have come together at over 70 meetings, to drive progress in areas of accountability, leadership and culture, employment cycle and reporting and complaints mechanisms. We will continue to work with the Charity Commission to ensure progress on this important issue, however we are concerned that delays in concluding inquiries and processing Serious Incident Reports could have a negative effect on this work.

5. Counter-terrorism

- 5.1. Bond works closely with the Charity Commission on counter-terrorism. We are both members of the Trisector Dialogue on International Nongovernmental Organisation (INGO) Operations in High Risk Jurisdictions, which seeks to improve understanding between governments, charities and financial institutions and find solutions to problems associated with working in these environments. Bond and its members greatly value the participation of the Charity Commission in this dialogue, and we hope that they will continue to prioritise this work.

6. Conclusion

- 6.1. Bond members want and need an effective regulator who supports them to deliver their charitable objects. This has never been more important given the challenges faced by the sector on safeguarding and counter-terrorism. Bond and its members work closely with the Commission on both these issues; we value their participation in key processes such as the Trisector Dialogue on INGO Operations in High Risk Environments and will continue to work with them to ensure organisations are equipped to prevent sexual exploitation and harassment across the international development and humanitarian sectors.
- 6.2. However, we are concerned that the Charity Commission has become increasingly focused on issues beyond the scope of its core remit, and this has come at the expense of

discharging its statutory duties and delivering basic regulatory functions. As a result, it risks losing the trust and confidence not only of the sector it regulates but also the wider public.

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