

## Written evidence submitted by The Small Charities Coalition

### 1. Introduction

As the national umbrella body for small charities, The Small Charities Coalition (SCC) welcomes the opportunity to provide evidence and comment on the practice and performance of the Charity Commission. We engage on a daily basis with the Charity Commission's work through our helpdesk and have a membership of over 13,000 members - a significant number of whom have concerns about the work and role of the Charity Commission. Our comments drawn here are based on direct evidence from our helpdesk and also from discussions with some members.

### Executive Summary

SCC's response to this call for evidence is therefore divided into the following three key areas

- The Charity Commission as a provider of guidance to charities, including those wishing to establish charities
- The Charity Commission as a regulator
- The Charity Commission as an influential communicator within the charitable sector

**SCC is clear that the Charity Commission has a valuable role to play both as a regulator and advocate of charities.** We are also of the opinion that the Commission should not seek to impose a levy or charge for the service.

### 2. Background

- a) The Small Charities Coalition (SCC) is the national membership body for small charities and has over 13,000 members across the UK. It provides information, advice and advocacy to small charities and those interested in working with them.
- b) At the time of writing and as a result of our current funding profile our work is predominately within England and Wales. It is the Charity Commission's oversight of charities in England and Wales that we will for the most part be commenting upon.
- c) Currently the term small is used to define any organisation with an income of under £1 million.
- d) In April 2020, SCC will be launching its new strategy. Within it, SCC will be seeking to redefine the definition of small to include those with an income between 0-£350k. Data drawn from the Charity Commission found that in November 2019, 80% of all charities had an income of under £200k.
- e) One of SCC's principle services and where it draws significant insight and intelligence from is its helpdesk. At the time of writing the helpdesk is open only two days a week, but this will increase to 5 days in April and possible weekend opening by the summer. One of the drivers for the expansion of the service is because of the increasingly complex nature of queries and referrals received

from the Charity Commission. At present 44% of referrals to the helpdesk are referrals from the Charity Commission. In February the organisation dealt with 232 queries.

- f) SCC is clear that the Charity Commission has a valuable role to play both as a regulator and advocate of charities. However, it is increasingly apparent through individual and open discussions with our members in surveys, newsletters and meetings, that a large number of our membership struggle with understanding and engaging with the Charity Commission. There have also been concerns about its attitude to the charitable sector. In a survey conducted amongst readers of SCC's newsletter 54% said they found the commission to be too negative about charities.

### **3. The Charity Commission as a provider of guidance to charities**

#### **a) Start up**

A large percentage of calls to SCC's helpdesk are from those who have been referred to us for advice on setting up a charity by the commission. It is indeed right that the Commission does not blur its role in administering the registration process and also providing advice to charities. The registration process remains cumbersome and problematic. Questions and fields are frequently changed and altered without informing advice agencies like SCC.

- b) Currently it takes six months for a response to an application to become a registered charity. This is in stark contrast to the process of registering a commercial venture (which includes a charitable company and a community interest company) with Companies House, which can be done (for a premium charge within 24 hours) for most people within 2-4 weeks. Yet it is not clear why it should take so much longer to establish a not for profit venture than a commercial venture. Most charities are initiated by volunteers, loaded with enthusiasm, goodwill, and no or nominal finances. Whilst it is accepted that ease of access to establishing a commercial venture is essential for a flourishing economy, we would argue that ease of access to establishing a charitable venture is as necessary for a flourishing and cohesive society, especially at a time when the state (nationally and locally) has fewer resources.
- c) Caseworkers reviewing charity registration applications often go to great lengths to 'legalise' the discussions about the set up process in communication with applicants. For some of the people that SCC works with, their first encounter with us will be as a result of them wanting support to complain about their caseworker's handling of their application for registration. In many cases whilst it was right for the application to be refused from a technical perspective, the tone of engagement is extremely unsupportive and obtuse. If we liken this to the approach of the Community Interest Companies regulator and Companies House, here the guidance is clearer. The decision makers managing the registration are clear and supportive in their discussions about the application process and registration.
- d) **Everyday guidance**

The Charity Commission has undertaken a commitment to making all of its guidance more accessible and easily understood. This is to be welcomed, but it is no longer enough for this to be done in a piecemeal manner, we need a consistent approach with execution at greater speed.

e) **Except charities**

SCC is concerned at the end of 'except status' registration in 2021. Working in partnership with Quakers and other individual charities and commercial providers, we are acutely aware that there will be a need to support organisations who may now need to register with the Charity Commission. Guidance and discussion about the process has been slow to materialise. Except charities are by their very nature very small, and rely largely on volunteer good will, however some have capital assets and there will be a need for engagement with members and due diligence as part of any registration process. These are issues that the commission seems to not be mindful of in its planning. Discussions with such organisations and those that provide support and assistance needs to start now.

f) **Lessons learnt**

The Charity Commission is really adept at promoting what it thinks it has learnt from enquiries, research and investigation into the formal charitable sector. However, such evidence is often based on a skewering of evidence arising from a desire to message a strong enforcement activity. A very good recent example was the Commission's publication on complaints in February 2020. The Commission reviewed 200 cases that did not meet the regulatory threshold for investigation and in no uncertain terms said the sector should do better in making sure that complaints were dealt with. There are several issues with this. The use of a sample below the threshold would suggest that the commission had exceeded its regulatory remit. It cascaded this into yet another attack on charities as suffering from complaints and needing enforcement. In short this was a smoke screen to infer that charities could not be trusted and need better enforcement. It is no coincidence that this comes at a time when there have been rumours circulating about the role, need and continual survival of the Charity Commission. We hasten to add, we do believe that there is most defiantly a need for a regulator for charities - but it has to be more receptive to the concerns and experiences of those it regulates.

#### **4. The Charity Commission as a regulator**

a) **Maintaining the register**

The commission has an inconsistent approach to maintaining an updated register, which must in part be central to maintaining the public's trust and confidence in charities. Last autumn the Commission proudly claimed to have removed 28 double defaulters from the register. The press release accompanying the development said '£14.5 million of charitable income had not been accounted for'. However, there is no evidence to suggest that such charities had not informed their funders, donors or beneficiaries on how they had spent that money, or that it had been used for ill intent. There are also a multitude of reasons why people find navigating the website pages of the Commission difficult and fail to file.

It is important to remember that there are thousands more, that have not filed for more than 3-4 years, demonstrate being in existence with just one trustee and are seemingly inactive. There is no public explanation of why certain charities are identified as double defaulters and others are not. Again, it is worth comparing the approach with Companies House where repeatedly failure to file results in a removal of company status.

**b) Serious incident reporting**

There remains considerable confusion around what qualifies as a serious incident and more worryingly, what the Charity Commission can and should do in such situations. We share concerns already raised by ACEVO that the Commission insists on organisations reporting, for example bullying, but has no powers to act in such situations. This is true at both the larger and local national charity level. In one of the most recent incidences shared with us by an SCC member, one group had reported an internal dispute within their organisation's management committee as a serious incident. The report included the fact that one faction within the organisation was refusing to bank cash donations drawn from the public until the other faction conceded to their viewpoint. SCC was asked to intervene by the party that was retaining the donations. The Charity Commission dismissed the report saying that it was nothing to do with them and deemed it an internal matter. This was an issue with criminal implications, and that could have cast serious doubt on the credibility of charities, and amounted to possibly more than £20k having gone missing. We subsequently insisted that all monies were immediately banked and are working to resolve the conflict between the two opposing sides.

**c) Official investigations**

There also remains a perception within certain communities that the Charity Commission only conducts investigations onto faith based or race based organisations. There is a similar pattern at the set up phase. Certain applications that have a specific faith or race dynamic are questioned more closely and take subsequently longer to process.

Our evidence of this is largely anecdotal and we are unaware of any official studies or academic research into the issue. Nonetheless the topic has regularly featured at sector discussions with faith groups where the Charity Commission presents its services.

Returning to the issue of investigations. Investigations often take an extraordinarily long period of time. At the remedy stage an interim manager is sometimes placed within an organisation to support the trustees to address any shortfalls found as a result of the investigation. In many cases the interim manager is viewed as head of the organisation. Yet no consideration is given, especially when Muslim organisations are investigated to the interim manager being someone who shares the faith upon which the organisation was established.

This is not acceptable, and suggests a colonial approach to managing faith and race based charities. It does not bode well for future practice and learning for the charity (should it continue) and nor does it bode well for public confidence, as it reiterates structural discrimination, prejudice and perpetuates institutional racism.

## 5. **The Charity Commission as an influential communicator within the charitable sector**

- a) The Charity Commission often adopts a very passive aggressive approach in its communication with charities. They have been seen to chastise them for crimes that the majority have not committed and have inferred guilt amongst the many, for the actions of the few. It has also on occasion sought to prescribe the function and form of charity. It is inconsistent in its approach. A good example of this is Baroness Tina Stowell's speech at the last Annual General Meeting in October 2019, where she starts by valuing the work of charities, and then stating that they need to change. This is unnecessary. Charities are independent agencies, their strategic direction and sometimes operational activities (especially in small charities) are defined by their trustees, not by the political whims of the Charity Commission. The Commission has a big role to play in making sure that the sector is both relevant and robust. It can't do either by also trying to undermine it. Trust remains an issue of concern from the most basic operational activity of registration to strategic discussions about the updating of guidance.
- b) Questions of trust and confidence in charities are frequently raised, as if to cast suspicion within the charitable sector. We would draw the committee's attention to the tone of the discussion in Scotland where OSCR uses engaging techniques to provide supportive messages, guidance and harsh reality checks
- c) Since coming into post in July 2019, SCC's CEO has made several approaches to the senior management team of the Charity Commission, it is accepted that this was done at a time when there was significant disruption amongst the leadership team, but there has been a distinct lack of engagement. Approaches made to middle management on operational matters has been well received – however none of the commitments to partnership work have been honoured by the Commission. Once again it is accepted that this maybe because of changes internally. However, this is unsatisfactory. There is no clear guide for agencies like SCC on the structure of the Charity Commission, the digital by default approach adopted by the commission means that communication is either not replied to or is replied to so late to be of little value.
- d) The website is less helpful than it was previously since being integrated into the Government's website. Search optimisation is limited within the site. Terminology is used interchangeably, and there is a failure to adopt plain English in many situations, especially for those wishing to set up a new charity. It was exactly this frustration that led SCC to develop the Charity Set Up Tool, which even advisors at the Charity Commission we understand refer to.
- e) There has been some significant improvement in the Charity Commission's production of information for trustees and those running organisations, yet this is limited to a handful of areas. A bulk of information remains unnecessarily complicated. It is very difficult to use especially for those with access needs around disability and English as an additional language. There is no consideration given to the style or design of information (both on the website and for publications), which

means that many people are often deterred by the obtuse nature of the information. Many then feel that running and volunteering for a charity is not for them. At a time when other policy drivers from Government are encouraging volunteering the work of the commission seems to be a hindrance for those eager to contribute as small charities. Increasingly those approaching SCC's advice line will choose other not for profit structures, rather than entangle themselves in the mire of the Commission's decision making process.

- f) We need to also understand the way the Charity Commission operates, and their lack of informed engagement also leads to a reduction of trust from charities. There is no recognition that many charities have also low levels of trust in the Commission. In January 2020 the Commission withdrew a function from its online filing portal that allowed those filing their annual return to receive a pdf copy of the information they had submitted. This is crucially important for small charities, who often need to share this with colleagues and it also means that small charities are unable to retain a corporate memory of what has been filed in their name.

In conclusion, SCC is currently undertaking a review of other regulators. The committee's attention is drawn to the upbeat and helpful tone of OSCR engaging and the good practice offered by regulators from other sector like the CQC who deliver regulation and improvement within the sector.

Less stick, and more carrot can only benefit all of us who are charged with ensuring that citizens invest their social capital in our communities.

*March 2020*