

House of Commons
Committee of Public Accounts

**GIVING CONFIDENTLY:
THE ROLE OF THE
CHARITY COMMISSION
IN REGULATING
CHARITIES**

Thirty-ninth Report of Session 2001–02

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*Report, together with
Proceedings of the Committee,
Minutes of Evidence and Appendices*

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Committee of Public Accounts

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Contacts

All correspondence should be addressed to The Clerk of the Committee of Public Accounts, Committee Office, 7 Millbank, London SW1P 3JA. The telephone number for general inquiries is: 0207-219-5708. The Committee’s e-mail address is: pubacom@parliament.uk.

Footnotes

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THIRTY-NINTH REPORT

The Committee of Public Accounts has agreed to the following Report:

GIVING CONFIDENTLY: THE ROLE OF THE CHARITY COMMISSION IN REGULATING CHARITIES

INTRODUCTION AND LIST OF CONCLUSIONS AND RECOMMENDATIONS

1. There are some 185,000 registered charities in England and Wales. In 2000–01, these charities had an estimated gross income of £25 billion, and net assets of some £70 million. Continuing public confidence in the charitable sector depends on the efficient and effective use of resources by charities, and transparent accountability to donors and beneficiaries. The primary responsibility for achieving these objectives rests with the several million people, often volunteers, who act as trustees of charitable bodies. The statutory responsibility for promoting the effective use of charitable resources lies with the Charity Commission for England and Wales (the Commission).¹

2. The Commission's annual budget for 2000–01 was £21 million and it employed 547 staff in its three offices at London, Taunton and Liverpool. It discharges its statutory responsibilities primarily by:

- scrutinising new organisations seeking to register as charities;
- providing a support and advisory service to charities;
- collecting and analysing information from charities; and
- carrying out preliminary evaluation and detailed inquiries where weaknesses are suspected.

In 2000–01, the Commission registered some 6,000 new charities, responded to some 36,000 requests from charities for advice and support, carried out 1,152 preliminary evaluations of potential weaknesses in charities and 212 full inquiries.²

3. We have previously taken evidence from the Commission in 1988, 1991 and 1998 and on each occasion we found severe shortcomings in the Commission's performance. In our 1998 Report we made recommendations for improvements in: the effectiveness of management in the Commission; the accuracy of the Register of Charities; submission of accounts by charities and the Commission's monitoring arrangements; and support and investigation of charities.³

4. On the basis of a Report by the Comptroller and Auditor General, *Giving Confidently: The role of the Charity Commission in regulating charities*, we took evidence from the Charity Commission. We examined the Commission's performance in making charities more transparent and accountable to the public, its investigation of maladministration and abuse, and the quality of service provided to the public and the charitable sector. We drew three key conclusions from our examination:

- A significant minority of charities, some 38 per cent in 1999–2000, still fail to submit annual accounts on time or at all, or to provide adequate information on performance. The Commission must pursue very much more quickly and

¹ C&AG's Report *Giving Confidently: The Role of the Charity Commission in regulating charities* (HC 234, Session 2001–02) paras 1–3

² C&AG's Report, paras 3, 1.6, 2.4, 3.3, 3.13, and Figures 7, 11–12

³ C&AG's Report, para 4 and Appendix 2

vigorously those charities who fail to submit annual returns and/or accounts by the due date. They must be prepared to impose penalties on persistent offenders. For example, they could levy fines on culpable trustees or to restrict a charity's access to the advantages of charitable status such as the ability to obtain a licence for a street collection.

- The Commission has increased the effectiveness of its investigations into potential abuses of charitable status by increasing resources devoted to this important role, and by greater transparency through publication of the results of its work. To further strengthen investigation work, the Commission should plan investigations more systematically, complete investigations more quickly, and make greater use of statutory powers to expedite problem cases. Completed investigations should be followed up to confirm that the Commission's recommendations have been implemented and have been effective in remedying the original concerns.
- The Commission's advice and support activities are well regarded by charities overall. Complaints procedures have been strengthened through the appointment of an independent reviewer of cases where the complainant is dissatisfied with the Commission's initial response. Following independent scrutiny, however, around a quarter of complaints have been partially or fully upheld, suggesting that the Commission should give greater recognition to the lessons from such feedback, through faster and wider dissemination of key points throughout the organisation, and where relevant by promptly changing its operating procedures.

5. Our more detailed conclusions and recommendations are as follows:

On making charities more transparent and accountable

- (i) The Commission should monitor charities' compliance with the revised Statement of Recommended Practice to improve the quality of information provided by charities to the public on their performance. For example charities should be expected to make clear in their annual reports what they have achieved against plan and explain any major variances. The Commission should disseminate the results of their monitoring in aggregate to charities, and provide feedback where necessary at the individual charity level.
- (ii) The Commission should examine, in consultation with the sector, the scope for publishing comparative information on the performance of charities of similar type and size.
- (iii) Whilst the Commission has made progress in removing inactive charities from the Register of Charities, it is important that any unused charitable resources are identified, recovered and reapplied for other charitable purposes. In evaluating the results of its current project to track such assets the Commission should review not only the amount of funds recovered but how well they have been redeployed.
- (iv) There are no procedures for ensuring that established charities carry out appropriate checks on prospective new trustees. Although the number of changes in trustees may make it difficult for the Commission to carry out checks in every case, the Commission should check a sample of changes to ensure its guidelines are followed. Such checks should reflect relative risk, for example where trustees may be in contact with children or vulnerable adults, or where changes occur shortly after a charity is registered.
- (v) The Home Office should resolve the issue of granting the Commission access to records kept on the Police National Computer, giving due weight to the benefits

of enabling it to carry out more comprehensive checks on the prospective trustees of new charities.

On investigating maladministration and abuse

- (vi) In utilising the extra resources earmarked for investigation work, the Commission should enhance performance, for example by increasing the number of investigations where justified by the potential abuses identified, and by reducing the median time taken to complete inquiries.
- (vii) The Commission should make more extensive use of the statutory powers granted by Parliament to help expedite its investigations. It should train its staff to be more confident in applying the powers, and disseminate case examples where use of the powers has proved effective.
- (viii) Whilst the primary responsibility for checking claims for relief on business rates lies with local authorities, potentially fraudulent claims could undermine confidence in the charitable sector. The Commission should work with local authorities to identify whether sufficient controls are in place to guard against the risk of this type of fraud.

On quality of service to the public and to charities

- (ix) A similar quality of service should be provided to charities irrespective of which Commission office provides the service. The performance of each Commission office should therefore be monitored regularly at a senior level and prompt action taken when variances appear. Effective mechanisms should be in place for sharing ideas on good practice between offices.
- (x) The Commission should review its arrangements for providing advice and support to charities to determine how rising demand can be best managed and organised. The Commission might, for example, explore the scope for working more closely with representative bodies within the sector to help encourage charities to learn from their peers.
- (xi) The Commission should build on the steps already taken to strengthen its complaints procedure, by ensuring that all complaints are logged and by acknowledging potential problems earlier in the complaints process. The Commission should set targets for reducing the number of complaints subsequently upheld by the Independent Complaints Reviewer.
- (xii) The Commission should interpret flexibly its three month time limit for the referral of cases by complainants to the Independent Complaints Reviewer, recognising the opportunity to learn from potential mistakes made in handling its work.

MAKING CHARITIES MORE TRANSPARENT AND ACCOUNTABLE

6. Charities are accountable to their donors, beneficiaries and the public through their annual reports and accounts. Whilst some charities' annual reports provided helpful information on their activities, others did not permit comparison of planned with actual performance or comparison of performance over time. A Statement of Recommended Practice had been issued by the Commission in October 1995 to encourage greater consistency in the way charities report their activities, but the Commission acknowledged that transparency had yet to take hold across the sector. To improve reporting practice, the

Commission had issued revised guidance in October 2000, the impact of which it was too soon to see.⁴

7. There are wide variations in the proportion of charitable income spent by charities on administration. The Commission considered such differences to be inevitable given the diversity of charities and the work they do. A charity providing services, for example, might have higher administration costs than an endowed charity whose function was to pay grants. To enhance scrutiny of performance the focus should be on groups of similar charities operating within the same or similar sectors. The Commission recognised the scope for improving the overall performance of charities through this form of comparison.⁵

8. In 1998, our predecessor Committee was critical of the large number of charities failing to provide annual returns and accounts to the Commission, and the lack of a policy for dealing with such non-cooperation. By June 2001, the Commission had collected 89 per cent of annual returns due from charities with financial years ended between March 1998 and February 1999, compared to an equivalent figure of 62 per cent at the time of our last examination. Despite this improvement in overall submission of returns, only 62 per cent of charities submitted their returns on time for financial years ended between March 1999 and February 2000.⁶

9. In 1998, the Commission established an Enforcement Unit to chase up outstanding returns, focusing initially on charities with annual income or expenditure over £100,000. Charities with income or expenditure in the range £10,000 to £100,000 receive reminder letters but are unlikely to be followed up more vigorously. Whilst the public might expect that charities of this size should be actively pursued the Commission noted that in the context of its limited resources it had given appropriate priority to pursuing the largest offenders. Unlike Companies House, the Commission does not have the power to fine charities for the late submission of documents. The Commission had, however, recently adopted a name and shame policy, publicising on its website details of when charities had last updated their records and submitted their returns.⁷

10. Charities that fail to update their entry on the Register for four or more years are referred to a specialist monitoring team to check whether they are still active. In September 1999, when the team was established, there were some 18,800 charities to check. By October 2001, the Commission had re-established contact with some 9,000, removed just over 9,000 from the Register, mainly inactive charities, and was still pursuing some 500. The Commission has procedures in place for safeguarding charitable assets when a charity is being wound up, and will seek to recover any assets over £2,500. The Commission was concerned, however, that inactive charities might hold on to charitable funds which could be better used. The Commission had launched a project to identify such funds and recover them.⁸

11. In 1998, our predecessors were concerned that the Commission was not sufficiently rigorous in checking the suitability of trustees of charities seeking registration. The Commission now carries out a series of checks on the trustees of new charities, for example against records of undischarged bankrupts or disqualified company directors. Once registered, however, the Commission expects charities to carry out their own checks on new trustees. Recent work undertaken by the Commission suggests that not all charities carry out such checks. The guidance available to charities is currently published in a number of places but not in an easily accessible form. The Commission was planning to

⁴ C&AG's Report, paras 4.10, 4.13 and Cases 11, 12; Q11

⁵ Q10

⁶ C&AG's Report, paras 4.2, 4.7

⁷ Qs 40–50, 65–74, 109

⁸ C&AG's Report, paras 4.1–4.2, 4.6; Qs 69, 51–57

issue new guidance once it had consulted with the sector. The Commission had also sought access from the Home Office to the Police National Computer to carry out checks on a sample of new trustees appointed to existing charities, but had yet to gain permission.⁹

INVESTIGATING MALADMINISTRATION AND ABUSE BY CHARITIES

12. One of the Commission's key aims is to maintain public confidence in the integrity of charities. Figures published in recent years have suggested that amounts collected via charitable fundraising, as distinct from amounts raised through shops etc, have declined. Factors affecting the level of funds raised vary. The Commission accepted that the public's confidence in the charitable sector had an important influence on donors although, in its view, it was not possible to identify the precise impact.¹⁰

13. To help maintain public confidence, the Commission has wide ranging powers to investigate potential maladministration and abuse. In 1998, our predecessor Committee was concerned that the Commission was not devoting sufficient attention to its investigation work. Between 1997–98 and 2000–01, the number of investigations declined by 22 per cent, from 272 to 212. The Commission has, however, evaluated potential concerns more effectively before deciding whether to launch an investigation. As a result, the proportion of investigations where weaknesses were substantiated rose from 76 per cent to 90 per cent over the same period.¹¹

14. The Commission had acted promptly when potential causes for concern were brought to its attention. Some weaknesses remained, however, in the Commission's approach, for example in deciding the scope of investigations, monitoring the progress of inquiries and ensuring that effective remedial action was taken by the charity concerned. The Commission was issuing a new investigations manual to help staff tackle the weaknesses identified, including encouraging better identification of risk and improved use of the Commission's own investigation resources. Following the Government's spending review, announced in July 2000, the Commission's budget was planned to increase by some 20 per cent from April 2002, to £25 million a year. Around £1 million of this increase would be devoted to investigation work, for example, by recruiting additional investigation staff.¹²

15. The Charities Act 1993 granted the Commission wide ranging powers to deal quickly and firmly with failings in charities, for example the power to appoint receiver managers, remove trustees and freeze bank accounts. Where a charity was under investigation for irregularity, it was unlikely that it could succeed in dissolving and de-registering without the Commission's consent. In 1998, our predecessor Committee was concerned that these powers were not being used to expedite the closure of investigations. Since then the Commission's use of its statutory powers has generally declined further (Figure 1). The Commission said that its staff were encouraged to make use of the powers to help close an investigation, but was unable to explain why, if this was so, use of most of its powers had continued to decline.¹³

⁹ C&AG's Report, paras 3.6–3.9; Qs 9, 16–19, 130, 132

¹⁰ C&AG's Report, para 3; Q151

¹¹ C&AG's Report, paras 2.2–2.4

¹² C&AG's Report, paras 2.5–2.6, 2.10–2.11, 2.16–2.17; Qs 2–3, 6, 94, 135

¹³ Qs 75–83, 90–93, 112–117, 126, 129; Ev 19, Appendix 1 (ref to Qs 112–117)

Figure 1: The Commission's use of inquiry powers 1996–2001⁽¹⁾

Powers	1996	1997	1998	1999 ⁽²⁾	2000–01	2001–02
Receiver manager appointed ⁽³⁾	9	1	3	2	7	6
Trustees removed	9	26 ⁽⁴⁾	9	4	4	0
Trustees prevented from acting	89	50	34	26	21	16
Trustees appointed	19	24	5	4	8	4
Bank accounts frozen	58	41	37	31	39	48
Orders and directions requiring information or presence at a meeting	238	248	201	186	171	256
Other orders	Not collected	11	18	7	1	8

Notes ⁽¹⁾ These figures show the number of times the statutory powers have been used not the number of cases in which powers have been used—since several powers can be used on one inquiry.

⁽²⁾ In 2000, the Commission moved from reporting on a calendar year to a year beginning in April—so for this reporting period published statistics cover a 15 months period. The figures in this column are an estimate for the 12 month period.

⁽³⁾ The Commission will appoint a receiver manager to a charity to carry out specific tasks, including winding up the charity, which the trustees are unable or unwilling to do.

⁽⁴⁾ Eight discharged at own request.

Source: *Charity Commission*

With few exceptions, the Commission's use of its statutory powers has declined in recent years.

16. Registered charities are eligible for certain tax reliefs, for example, from income and corporation tax, and business rates. The tax authorities routinely check whether an organisation is a registered charity via the Commission's website. Local authorities, which grant reductions in business rates to registered charities, also need to know whether a charity owns the property. However, the Commission does not maintain information on

relevant properties owned by charities, and considers that the primary responsibility for carrying out checks against potentially fraudulent claims lies with local authorities.¹⁴

PROVIDING A QUALITY SERVICE TO THE PUBLIC AND CHARITIES

17. The Commission has set targets for handling most of its core activities including registrations, provision of advice and the completion of investigations. Our predecessor Committee noted that the Commission had met only 10 of 26 key targets. By 2000–01, however, the Commission had met 23 out of 32 targets, without reducing its performance standards. Further progress is still needed, for example in meeting the target for determining charitable status – an average of 117 days compared to a target of 95 days.¹⁵

18. The Comptroller and Auditor General's Report identified differences in performance between the three Commission offices. In 2000–01, for example, the Liverpool office took 146 days to clear cases requiring advice and support compared to 89 days in London. Differences were also evident in the quality of case handling. The Commission acknowledged the disparity in performance between its offices which it was reviewing. Regional differences in performance were narrowing. By October 2001, the Liverpool office, for example, was clearing much of its backlog of charity support cases and the average turnaround time had fallen from 146 to 114 days. This remains, however, 15 days above the 99 day target for turning around requests for advice and support.¹⁶

19. The Commission's difficulties in meeting targets for handling advice and support requests are in part a reflection of increasing demand from charities. Over the period 1996–97 to 2000–01, demand for the Commission's services increased by 42 per cent and the average length of time taken to deal with cases increased from 80 to 112 days over the same period. The Commission was not satisfied with the slippage but its budget had been capped for the six years prior to 2001–02 which represented a cut in real terms of about 11 per cent. Despite the difficulty in providing timely responses, a customer survey set up by the Commission showed that 83 per cent of respondents were satisfied with the help received, and only two per cent were dissatisfied.¹⁷

20. Charities or individuals who are dissatisfied with the service provided or by the Commission's decisions can invoke the Commission's complaints and review procedures. Since January 2000, complainants who are not satisfied with the outcome of this internal review procedure can ask an independent person, known as the Independent Complaints Reviewer, to consider the case. Information provided by the Independent Complaints Reviewer showed that investigations of the Commission had been completed into 59 allegations of maladministration, of which 16 were either partially or fully upheld. The Commission said it was concerned by instances of maladministration, though these should be put in the context of the 40,000 cases it deals with each year.¹⁸

21. The Reviewer's first Report had commended the speed with which the Commission had responded when complaints had been upheld. However, the Reviewer had also noted that the Commission did not record all complaints received. The Commission noted difficulties in determining whether a complaint was actually being made, particularly in telephone conversations where it could be hard to pin down the source of the complainant's

¹⁴ Qs 121–123

¹⁵ C&AG's Report, Appendix 3; Qs 97–100

¹⁶ C&AG's Report, para 3.5; Qs 101–106, 147–149

¹⁷ Qs 13–14

¹⁸ Qs 21–23; The Independent Complaints Reviewer's Report to the Charity Commission, October 2001

concern. Since the hearing in November 2001, the Commission has informed us that, on a trial basis, it has begun recording the number of complaints made by telephone.¹⁹

22. The Independent Reviewer can only consider cases if referred by the complainant within three months of completion of the internal review procedure. The time interval was set by the Commission who were not aware of this limit causing any difficulties during piloting of the new complaints procedures. The Commission acknowledged that some demand existed for older cases to be reviewed.²⁰

23. At the time of the National Audit Office examination the Commission had not fully analysed complaints received to identify any lessons and pass them on to staff. The Commission said that it had now established a mechanism to feed back lessons to its casework staff.²¹

¹⁹ Qs 21–27

²⁰ Q28

²¹ Qs 87–89

MINUTES OF PROCEEDINGS OF
THE COMMITTEE OF PUBLIC ACCOUNTS

SESSION 2001–02

WEDNESDAY 28 NOVEMBER 2001

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon	Mr Brian Jenkins
Mr Ian Davidson	Mr David Rendel
Geraint Davies	Mr Gerry Steinberg
Mr Barry Gardiner	Mr Alan Williams
Mr Nick Gibb	

Sir John Bourn, KCB, Comptroller and Auditor General, was further examined.

The Committee deliberated.

Mr Glenn Hull, Second Treasury Officer of Accounts, was further examined.

The Comptroller and Auditor General's Report on Giving Confidently: The Role of the Charity Commission in Regulating Charities (HC 234) was considered.

Mr John Stoker, Chief Commissioner, and Mr Simon Gillespie, Director of Operations, Charity Commission, were examined (HC 412-i).

Ordered, That for the remainder of the evidence to be taken this day, the Committee meet in private.—(*The Chairman*).

The witnesses were further examined.

* * * * *

[Adjourned until Monday 3 December at half past Four o'clock.

* * * * *

WEDNESDAY 12 JUNE 2002

Members present:

Mr Edward Leigh in the Chair

Mr Richard Bacon	Mr George Osborne
Geraint Davies	Mr David Rendel
Mr George Howarth	Mr Alan Williams
Mr Brian Jenkins	

Sir John Bourn, KCB, Comptroller and Auditor General, was further examined.

Mr Rob Molan, Second Treasury Officer of Accounts, was further examined.

* * * * *

Draft Report (Giving Confidently: The role of the Charity Commission in Regulating Charities), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 4 read and agreed to.

Paragraph 5 postponed.

Paragraphs 6 to 23 read and agreed to.

Postponed paragraph 5 read and agreed to.

Resolved, That the Report be the Thirty-ninth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select Committees (Reports)) be applied to the Report.

* * * * *

[Adjourned until Monday 17 June at Four o'clock.]

MINUTES OF EVIDENCE

TAKEN BEFORE THE COMMITTEE OF PUBLIC ACCOUNTS

WEDNESDAY 28 NOVEMBER 2001

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon
Geraint Davies
Mr Barry Gardiner
Mr George Osborne

Mr David Rendel
Jon Trickett
Mr Alan Williams

SIR JOHN BOURN KCB, Comptroller and Auditor General, National Audit Office, further examined;
MR GLENN HULL, Second Treasury Officer of Accounts, HM Treasury, further examined

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL: GIVING CONFIDENTLY: THE ROLE OF THE CHARITY COMMISSION IN REGULATING CHARITIES (HC 234)

Examination of Witnesses

MR JOHN STOKER, CHIEF COMMISSIONER, AND MR SIMON GILLESPIE, Director of Operations, Charity Commission, examined.

Chairman

1. Good afternoon, and welcome to the Public Accounts Committee. This afternoon we are looking at the Comptroller and Auditor General's Report on the Charity Commission's regulation of charities. We welcome Mr Stoker, who is our witness today. Would you like to introduce your colleague?

(*Mr Stoker*) My colleague is Simon Gillespie who is the Director of Operations, Chairman.

2. Thank you very much. This is a very important subject. There are 185,000 charities, two million trustees. In the past this Committee has been quite critical but there have been improvements. I will not ask you to detail those improvements but you will have the opportunity during the course of the afternoon to show what progress you are making. I will go straight into asking a few questions so that I can open up some issues for my colleagues. There has been some criticism in the past and it is mentioned again in this report that when problems arise in charities the Commission's investigations are not always as rigorous and thorough as they should be. What assurances can you give us on this matter, Mr Stoker?

(*Mr Stoker*) The assurances I can give you, Chairman, are that we recognise and have done something about the difficulties. Over the past 18 months we have actually reviewed the procedures for carrying out investigations pretty much from top to bottom and for the first time we have put the result of that into a comprehensive manual for investigations staff which addresses a great many of the particular points which are raised in the NAO's Report, including issues like selecting and allocating resource to investigations on the grounds of a structured analysis of risk, such things also as regular monthly reviews in the management line of each investigation as it proceeds, the construction of a proper study plan for each investigation and an organised and consistent approach to follow-up once investigations

are closed. The other thing is that we made investigations very much a main feature of the bid that we put into the Comprehensive Spending Review for 2000 and, as a consequence of that, we are having a substantial increase of the order of one million pounds being spent on investigative work which comes on line next spring in April 2002. Those, I would say, are the headlines.

3. Thank you very much. There is a criticism raised in paragraph 2.10 of the report that sometimes your inquiries do not go beyond the original cause for concern. I think there is a particular case, I think it is case two, which mentions the problem. Would you like to answer that question? How are you ensuring you do not get your people just to look at the original cause for concern but actually seek to go behind the picture, as it were, and see what is causing the problem?

(*Mr Stoker*) The thing here is that a lot of attention is paid in the new procedures to what happens at the outset of an inquiry. Among other things there is a prompt there for study officers to consider what they need by way of professional advice. A feature of the way that things are working, and will work in the future, is you will have little running teams which will include a manager who is overseeing the study officer generally, plus often a lawyer and/or an accountant, and from that process you will get a more rounded picture and a more rounded initial study of the issues in the report. The other thing that the regular monthly review by line managers in the line is supposed to achieve is exactly to keep track of where the investigation is going, what issues are coming up and always what the exit strategy or the next step should be. These new procedures are very much designed to have a broad mind, where that is required, on the subject at issue.

4. Let us just stay on case two for a moment, which is on page 18, and refers to unauthorised street collection and a concern that we have, presumably

28 November 2001]

MR JOHN STOKER AND MR SIMON GILLESPIE

[Continued

[Chairman Cont]

you have, to help local authorities combat these. Would you like to share with the Committee the name of the charity involved in case two?

(Mr Stoker) I will indeed share it with the Committee if that is what you and they would wish, but I would just point out that to my knowledge the charity concerned has not had any prior notice that they are likely to be identified this afternoon in a public forum.

5. We will deal with that in private session, thank you very much. Do you want to make any general comment about unauthorised street collections?

(Mr Stoker) Yes, I could say a fair bit about unauthorised street collections but perhaps what I would say on case two is this is definitely not one of our best or better cases. It has been followed up and the review that is referred to at the end in the commentary has been carried out but there are continuing concerns with this charity and an inquiry is now open into it.

6. We will come back to that in private session, if we may, at the end. There is some concern that sometimes once you have made these inquiries, and I know you are doing your best on that front, you have difficulty ensuring that the charities are actually implementing the agreed recommendations. Is this a concern for you? What steps are you taking to overcome this problem?

(Mr Stoker) It is a concern for me that before we had the new procedures codified there was not a consistent approach to this issue. What the new instructions now include is consistent arrangements for closing inquiries which specifically require an action plan to be put in place and revisited a suitable period on. The failsafe would be six months but it might be more or less in a particular case. I think this is a message that we have picked up and are very much trying to build into the way that we do this work.

7. Case five on page 21, I think, shows different parts of the Commission are operating different policies. Would it be fair to say that your investigatory staff are under enormous pressure? We are talking about 185,000 charities. Do you think they have the resources to deal with the problem adequately and to reassure the public that in this huge area things are not happening that should not be happening that you are not aware of?

(Mr Stoker) This is page 21?

8. Case five. You do not have to worry too much about finding your place in things, just deal with the general point. It is the pressure on your investigatory staff given the vast area they have to cover.

(Mr Stoker) Yes. You are always going to have a problem of where you put your resource if you have got 500-odd people and £21 million and 185,000 charities in the catchment that you are trying to regulate. Inevitably that means priorities and choices, including some things taking lower as well as higher priorities. The way that we think this needs to be managed is actually to apply resources as smart as we can. Examples of that would be the extent to which we rely these days on information technology. Five years ago we did not have a website and now we have a website with extensive information and guidance on it, together with other relevant

information including, for example, reports on our investigations for the first time since last year. That has had a considerable effect in pre-empting what might previously have come to us as specific case inquiries. We have also done a great deal of work on reviewing and integrating the helplines through which we give guidance to telephone enquirers. That is now an integrated operation and we are moving towards the aspiration of a full contact centre approach for aspects like that. The common feature in this, and in many other features of the work that we are trying to do, is we are trying to get the maximum return from what we spend and to reach the maximum number of people through all the avenues open to us, including the website.

9. That is all I want to ask you on that subject, investigating charities, because colleagues can come back on those points. I want to ask you a couple of questions on registering and supporting charities. The charities themselves have to carry out their own checks to ensure that all new trustees are suitable. What evidence do you have that these checks are being carried out properly and are effective, or indeed that they take place?

(Mr Stoker) The evidence that we have so far is that the picture is patchy. We have done some survey work on this for the purpose of a study that we are piloting for our thematic reports. We do think that it is an area where advice needs to be codified and brought together and we are planning to do that this financial year.

10. Okay. Can I ask you one question about administration. I was sitting in the International Development Standing Committee yesterday when the Minister said that the administration costs for charities range from five to 12 per cent, quite a wide range. Are you happy with that very wide range?

(Mr Stoker) I think a wide range is inevitable given the enormous diversity of charities and the kind of work that they do. If I could just give a couple of examples. If you have a charity which is a hands-on operator which is delivering a service, like care for the disabled or elderly, the chances are that is going to have quite a high administrative cost level. If, on the other hand, what you have is a charity which is a large, old-fashioned endowed charity whose business is to give grants you would expect to see a very, very much smaller percentage of total cost going on administration. You have to look very carefully at categories of charities within charity as a whole and the picture is a complex one. On the wider question though, I think that there is certainly scope for bringing pressure to bear and certainly scope for bringing attention to bear on the performance of charities in this and in similar respects and we intend to do our bit in developing that.

11. The important thing here is transparency and the vital role of the annual reports. What role do you see for your Commission in ensuring greater transparency in comparing the performance of different charities with regard to the annual reports?

(Mr Stoker) Part of it is the basic ground work of having the accounting standards and reporting standards codified and out there. Before accounting periods beginning in early 1997 there was no standard consistent set of accounting standards that

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charities observed. We introduced those in 1995 for periods subsequent to early 1997 and we updated them in 2000. The introduction of that was itself a big forward step, and there were changes in 2000 aimed to encourage charities to give a better and more rounded picture of their activities than had been the case up to then. The cases in the NAO Report show, and I think I would agree that they show, a general need, that transparency and accountability has not yet taken root as much as it needs to in that area. We intend to keep up the pressure through our general contacts with charities to improve the standard of narrative reporting as far as we can. We are also in discussion with the Performance and Innovation Unit who are, of course, considering this as one of the matters in the study that they are doing that they have rightly, I think, seen as an area for priority.

12. Figure three shows that one of the risks faced by the charitable sector is poor governance. What is the Commission doing to tackle this risk of poor governance?

(*Mr Stoker*) I think that practically everything that we do has got a bearing on this. The work that the Commission does is aiming to produce good governance and good practice generally on matters of regulatory concern through the life cycle of a charity. The way that we deal with registrations is aimed at spotting and handling risks of this kind at that stage. A lot of the work that we do in the mainstream charity case work is involved with, if you like, preventative work to give charities the advice and guidance that they need to operate properly within governance parameters which are acceptable. We monitor an awful lot to see what the actual picture out there is on the ground and we do that with the accounts each year of every charity which raises or spends more than £10,000. Of course, if all else fails there is evaluation and investigation. The whole thing is a continuum which addresses governance issues right across everything that we do.

13. Can I ask you about charity support cases. We see from paragraph 3.13 that the average time taken to clear cases has increased from 80 days to 112 days.

(*Mr Stoker*) Yes.

14. Are you happy with this trend?

(*Mr Stoker*) I am not happy with that trend but the hard truth is if you are in a position where your resources and budget are capped for six years so you are being cut in real terms by 11 per cent over a period then something sometimes has to give if at the same time you are getting a case work increase in demand of 42 per cent. I am not happy with it. The comfort I take from it, to the extent that I do take comfort, is that the customer surveys which we have now started to do—we did the first last year—showed that 83 per cent of our customers were content with the standard that we delivered and only two per cent were dissatisfied.

15. A very last question to wrap up. This Committee in the past has been critical of you, that your attitude has been to enforce legislation, you have not had a sufficiently proactive role. Of course, charities operate under a very traditional framework, many of them have been set up for a long time, but we live in a very different world now and charities are really business organisations. Are you satisfied that

you are changing the whole culture of your Commission to take this proactive role to seek out and deal with abuses?

(*Mr Stoker*) I am, Chairman, yes. We have got a major increase in activity coming up next spring. If you look at the areas where that is happening, it is happening in IT, which is partly connected to the Government targets but which has a big spin-off in terms of communications and influencing the world out there, there is putting a more proactive and structured approach, a regulatory approach, on to the visits that we make to charities, there are investigations where, as you will have seen from the figures in the report, one of the trends here historically is that more and more of what we do is generated from our own monitoring and our own resources, and we are also doing for the first time thematic reports taking a leaf, if you like, out of the NAO's book to take a cross-cutting look at issues in the sector out there and use that to highlight good practice, bad practice and areas that need attention. I think those are all very proactive things.

Chairman: Thank you very much, Mr Stoker. Mr Alan Williams.

Mr Williams

16. Thank you, Chairman. May I apologise to Committee colleagues and to the witnesses for the fact I have to leave early, and that is why I have come in early, but today is the day of the great parliamentary occasion of the year, the Welsh Grand Committee. I have already missed a part of it and I want to be in for the end, my apologies. May I say it is good to see someone new here because my recollection is your predecessors were not happy. I remember the Committee being infuriated by the complacency and the lack of responsiveness. I am hopeful from what I have read that will be a thing of the past. In the spirit of wanting to help you, which is the purpose of this Committee as well as having to monitor what you are doing, I see that you are seeking access to the Police National Computer to check the suitability of prospective trustees for new charities. Is that application going favourably to the best of your knowledge?

(*Mr Stoker*) This is a long running story, Mr Williams, and the person who is most up-to-date on it is my colleague, Mr Gillespie.

17. In that case, to save us going over the same ground twice, can I ask the second part of the question which is what puzzles me is that you are not seeking a role relating to the suitability of trustees appointed by existing charities, only new charities. Can you encompass in your answer, if possible, both aspects of this?

(*Mr Gillespie*) I will take them both together, if I might do. Firstly, the Police National Computer is something of a long running saga. I think it is true to say that we would welcome any support that is given by this Committee in continuing our negotiations for access.

18. What is the obstacle? Is it data protection?

(*Mr Gillespie*) There are elements of data protection. The Commission does not have a clear statutory mandate to have access to this information

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[Continued

[Mr Williams Cont]

so, therefore, it is a question of persuasion and convincing rather than being able to hit with an Act of Parliament, for example. That access will be available to authorised Commission staff if we are given access in the first place and that will be available for all aspects of the Commission's work but it will obviously all be carefully controlled and the Police National Computer Authority will make sure that we are properly regulated in that respect. As far as checking trustee details generally is concerned, we do conduct a number of checks at the moment as far as the visits programme, checks into trustees that are already in charities. There is a huge scale issue here. As the Chairman has mentioned, there are a large number of trustees and in many cases those turn over quite regularly, sometimes as often as annually in the case of Parent-Teachers' Associations, for example. Trying to keep track of everyone I think would be an impossible task, so we will be looking to target our resources and our access on areas of risk, not just on those trustees coming on to the Register of new charities.

19. I can understand the logic of wanting to deal with new appointees but I would have thought the same logic applies under new charities or old charities, the same principle applies, and at least if you cannot deal with the backlog you can start ensuring that newcomers to both sections, old and new charities, are monitored effectively.

(Mr Gillespie) We are trying to approach this on a risk basis. We already do trustee background checks into all of the charities that are visited as part of the review visits programme. That is being piloted at the moment with 150 visits and as part of the new money that goes up to 600 visits next year, so we will be looking at the trustees of 600 charities.

20. Within the legalities I would hope that possibly when the Committee, and obviously it is a collective decision, comes to consider our report we will give whatever support we can to you in that ambition because it seems an entirely logical one, certainly to me. Now I am afraid we move to slightly more critical things. I only received this morning, and it is my fault I did not open the envelope, my colleagues probably received this earlier, a report from the Independent Complaints Reviewer.

(Mr Stoker) Yes.

21. And she refers to complaints now against you yourselves. We will first of all deal with that and then I will let you deal with complaints against charities. As far as you yourselves are concerned, we are told that they have carried out and completed investigations into 59 allegations of maladministration against your organisation—I do not know how far back they go, there has been a backlog I assume—of which 16 were fully or partially upheld. That is over one in four and that is somewhat worrying. Are you concerned about it? How could it reach this proportion?

(Mr Stoker) Yes, I am concerned about it, Mr Williams. I think you have to see it in context which is that this is the slice of complaints against the organisation which it cannot or has not succeeded in resolving according to its own internal procedures. This is the fine end of what in itself is not a huge number of complaints given the numbers of bits of

casework we do every year, which as you will have seen from the report is well over 40,000 and we are talking here about double figure complaints. The trend so far is that about 30 per cent of the Independent Complaints Reviewer's findings are partly or entirely upholding complaints. Within those there is 20 per cent, in other words two-thirds of the 30 per cent, which on experience so far have been acknowledged and, where appropriate, rectified and apologised for through internal procedures, so it is really only the ten per cent on top that have not been addressed by internal procedures.

22. I gather that there are still 30 complaints undergoing investigation.

(Mr Stoker) Yes.

23. If the same proportion applies there, and there is little reason to suspect it will be different, it will mean another eight cases of maladministration held against you bringing the total to 24, which is quite considerable however many cases you are handling.

(Mr Stoker) One is too many, Mr Williams. When we actually introduced the Independent Reviewer last year there was a certain amount of unease about what would follow for the organisation. What we have found is that it is a process which enables us very much to learn lessons from what has gone wrong in the past so we can diminish the chances that the same things will go wrong in the future. In that report the Reviewer herself does say that she feels we have actually been quite quick and quite eager to learn those lessons and to feed them back into our casework.

24. That is fair enough and it does commend your responsiveness and the speed with which you have responded when they supported criticisms against you. Now let us look briefly at your procedures. I think all of us will think in constituency terms and people with complaints against the Benefits Agency, the CSA and so on, more often than not pick up the phone rather than write a letter because many people do not like writing letters, many people do not feel confident articulating their concerns in letters. I understand if someone phones in you require the complaint against yourselves to be put in writing. Does this become an excluding process? I think of elderly people, people who lack literacy, people who do lack knowhow, people even from ethnic backgrounds with linguistic difficulties. Does this not put an unnecessary obstacle in their way?

(Mr Stoker) That is certainly not the intention, Mr Williams.

25. I am not asking if it is the intention. I am sure it is not the intention but I know what it is like sitting across a desk from a constituent who can hardly speak any English and you are trying to fish out information. The idea that they could go away and write a letter explaining their problem is just beyond sustenance.

(Mr Stoker) The point at issue and the purpose of asking for a complaint in writing is simply to have certainty for the organisation that you know what it is that you are dealing with. One of the features that struck me from looking at the back catalogue, as it were, of Commission's complaints cases was that complaints are sometimes hard to pin down, they do change and they do develop, when complainants

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receive an answer that they do not welcome they shift their ground. The intention in asking for it in writing is purely so that we know what it is and it cannot actually continually develop in a kind of circular direction, no more than that.

26. We now have a follow-on product arising from that which is, as we understand from the briefing we received from the NAO, most complaints, in fact, are made by telephone - and that we understand, but then it goes on to say that the Commission does not record all of the complaints received and, as yet, reports only those received in writing. This leaves an enormous gap in your accountability to us and to the public and, indeed, in relation to your statutory duties if we do not have this sort of information. Why do you not try to get that information, try to collect it? You have got the information, why do you not try to record it?

(Mr Stoker) I think the difficulties very much are simply with knowing what is a complaint. A passing comment from somebody on the phone who has had a frustrating morning trying to find something out from a number of sources, for example, would be something that ideally I think we would capture and we would score as a complaint so we could keep a line of numbers. The kind of complaint we would expect to have in writing is really one where there is not an expression of dissatisfaction as such in isolation but somebody who is pursuing something that they want changed or put right or that they want an apology for. In a way I think that we are comparing perhaps oranges with apples but I agree with you that we ought to, if we can, find ways to count both at least.¹

27. As you are both new to the post and cannot be held responsible for things that have gone wrong before, could I suggest that you go away and consider the possibility of running a pilot scheme on this for a while to see whether there is any useful information as to how you might modify your procedures that could be obtained as a result of recording all complaints and not just reporting on those which are written? I am not asking you to commit yourself but will you go away and consider it?

(Mr Stoker) Yes, I am quite happy to go away and consider that.

28. Okay. I must be running near the end of my time and colleagues watch very closely that you do not run 30 seconds over because you run into someone else's time. There are some complaints which the Independent Reviewer is not even allowed to look at and these cover statutory decisions which give you a rather absolutist power if they cannot be examined. Also you have introduced, and I understand why you have to have some sort of cut-off date, a rule that complaints that are not referred within three months of the completion of your internal complaints procedure are then ruled out of date. Three months seems rather early. People can be

ill, a lot of people are ill in hospital for fairly long periods and many of these may indeed be involved with various charitable bodies. Three months seems rather arbitrarily brief. How did you arrive at it and are you open-minded or is it your decision to reconsider it? Who decides what the ICR should look at?

(Mr Stoker) It is basically, I think up to us to decide. Yes, we can actually vary that. I am not conscious of it having been a difficulty during the pilot although I am aware that some people would like the whole procedure to be much more radically retrospective than that.

29. Do you have records of cases that have been turned down because they are out of time?

(Mr Stoker) Yes, we do.

30. Do you have them to hand or would one of your advisers sitting behind you have the figures, or have a ballpark figure? If not, could you put it in a note to us.

(Mr Stoker) I do not have it to hand but I would be happy to put in a note about how out of time the out of time refusals have been.²

Mr Williams: To my regret my time is up but thank you very much and my apologies, again, for having to dive out.

Chairman: Thank you, Mr Williams. David Rendel.

Mr Rendel

31. Thank you, Chairman. Am I right in saying, Mr Stoker, that you have been doing some sort of a consultation on the status of sport as to whether that should be of charitable status?

(Mr Stoker) Yes.

32. Has the consultation been completed?

(Mr Stoker) It has, yes.

33. What are the results of that?

(Mr Stoker) We are announcing the results on Friday, Mr Rendel.

34. So you do not want to tell me now because it will spoil your press release?

(Mr Stoker) It is linked to other Government Departments' announcements so it is a bit difficult to go into too much detail. The consultation which we carried out envisaged some expansion of the recognition of charitable status in the direction of sport which effectively promoted health, and I expect that, broadly speaking, that will be the kind of announcement we will be making. The other point is that a great deal of sport is already charitable, either because it is concerned with young people and education or because it is concerned with meeting special needs.

35. The second general question is what are the restrictions on a charity running a business of some sort? Obviously a lot of charities run shops but they may run other businesses too to make money. What are the restrictions on that, particularly if they are nothing to do with their normal charitable purpose?

¹Note by witness: Since the start of November 2001, the Commission, on a trial basis, has begun recording the number of complaints made by telephone and cleared by operations staff. The published guidance on making complaints says that people can make a complaint by telephone, or by asking to speak to the Customer Complaints Manager.

² Ev 18, Appendix 1.

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(*Mr Stoker*) The basic restriction on that is where there is a commercial activity which is not connected to the primary purposes of a charity our approach is basically to require it to be carried on separately. You can have a business which is set up effectively for the purposes of a charity as a separate entity which is then able to covenant its profits back with tax advantages to the charity itself. The separateness of the operations is very important from the point of view of accountability and transparency.

36. Thank you. I do not think I quite understand that. Are you saying that any business, if it says that all of its profits will go to charity, can then run as one body or has to run as two bodies in some way?

(*Mr Stoker*) No, the business can run as one body, it is just that if you have a charity and a business they have to run as two bodies. If you think of it in terms of, for example,—

37. If, for instance, you had a trust which was going to give all of its money to whatever charity it chose but, for example, owned a large amount of land on which it rented offices or whatever, then would that be run as one business or two?

(*Mr Stoker*) It all depends on the relationship with the charity that gets the money, Mr Rendel.

38. I am suggesting that there is a trust that gives out money to whatever charity it wishes to give money to.

(*Mr Stoker*) A trust of that kind could itself be charitable and might not need to have a separate structure at all. It could also own land and other property and if it owned those as investments rather than as some kind of component in a business that would not necessarily require a change in structure.

39. If it wanted to develop that land it would then have to have a change in structure, is that what you are saying?

(*Mr Stoker*) It would depend quite a lot on the circumstances. It would depend on the basis of the interest that the bodies had in each other and vice versa. It is a little difficult to deal with in isolation but I would be very happy to look at any individual case you have in mind.

40. The next question refers to figure 14 on page 29 of the report. In the bottom right-hand corner there it states that the follow-up for charities not returning their accounts and annual reports will take place for those whose annual income or expenditure is over £100,000 if the return is two months late. They are referred to the Enforcement Unit. Does that mean that you never follow-up those with an income between £10,000 and £100,000?

(*Mr Stoker*) No. All charities get reminders. They get reminders on annual returns being due at the eight month period, in other words two months before they fall overdue, and at the ten month period. What then happens really on the basis of risk is we concentrate enforcement activity on £100,000-plus. If, however, there was some sort of reason that came to our attention from any source, whether it was our monitoring or somebody who told us about something they knew, then certainly we would not refrain from chasing up a smaller charity's accounts.

41. But if you do not chase them up, and this is the case and you have asked for them, what will happen, even though it is a statutory responsibility?

(*Mr Stoker*) They will continue to get reminders.

42. That is all, you just go on and on reminding them that they have not sent in the accounts?

(*Mr Stoker*) It is really a question of priority. The Enforcement Team does look at the larger charities on grounds of cost, but one of the recommendations that is made in the NAO Report which will affect this is we might address this issue simply by putting the record, the filing record, of charities on the website. That is something that we can do, indeed it is something that we have done. In a sense there is an element of name and shame. If anybody then goes to the Register and looks at a particular charity's entry they will be able to see that charity is overdue.

43. But that is the only action you take. If a charity has an income or expenditure in your view between £10,000 and £100,000 it may get named and shamed and reminder letters but no other action is taken to ensure that it sends in its accounts, even though perhaps by that time it has gone over £100,000? If the last report was four years earlier it might now have an income of more than £100,000.

(*Mr Stoker*) If the last report was four years earlier we will have been chasing it to see if it was still active.

44. Sending reminder letters.

(*Mr Stoker*) The number of charities in those categories, of course, since 1999 has come down very considerably from something over 18,000 to something around 700 at the time of the report here. There is that action which has certainly affected a number of charities in this category.

45. Those ones you are talking about here are the ones where you have heard nothing at all. You may have heard that they have sent in their annual report and who are the trustees and that sort of thing but have not actually sent in the accounts.

(*Mr Stoker*) I think we would regard that as odd.

46. I should hope so.

(*Mr Stoker*) That might well get chased up. The fact is there are lots of things that could bring these charities to our attention and when we have got a reason to chase them we will. The fact is also although there are 120,000 of these charities below £10,000 a year, so they are very large numerically, it does come back to the fact that they only account—

47. I am talking about the ones between £10,000 and £100,000.

(*Mr Stoker*) Even they only account for something like, I think, five per cent of charitable incomes.

48. I am still concerned if all you do is send follow-up letters. I entirely take your point that it is more important to go after the bigger ones first and if they are two months late you immediately get after them but I would have thought there should be some procedure under which even those between £10,000 and £100,000 you do not leave them forever with just follow-up letters or putting it on the web.

(*Mr Stoker*) I accept that is an entirely reasonable point of view. I think what this comes back to ultimately is the fact that resources are not infinite, that we have a limited but I think perfectly reasonable envelope of resources to use. As I said in

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response to the Chairman's question earlier, that does mean prioritisation and that does sometimes mean things taking a lower as well as a higher priority. I can perfectly understand the rationale of your feelings on that but it does come down to hard decisions about priority.

49. But the priority surely grows as the length of time since they last submitted something grows?

(Mr Stoker) Yes.

50. And, therefore, eventually they become a higher priority I would have thought than some of the others higher up?

(Mr Stoker) Yes, which is why we have got the arrangement that when they have been out of touch with us for four years— No, I beg your pardon. If you are talking about £10,000 and £100,000, if we have not had any submission from them for four years then they will come into the arrangements for identifying inactive charities,³ which has been very successful in getting things down from 18,000-odd to 700 at the time of this report and less now.⁴

51. Can I come on to those because I was interested in what I call the obsolete charities as well. Firstly, why as long as four years because that does seem quite a long time for a charity to be out of touch? In my experience of these things if a charity has been out of touch for that long it is probably because the last trustee has now died and it is difficult to get in touch with anybody. Who remembers four years later who was the trustee of a particular charity? People lose their treasurers, do they not, and you find bank accounts without anybody able to sign the checks.

(Mr Stoker) I think the point here is there is an interaction between the enforcement arrangements on charities that do not send in their accounts and the arrangements on charities that do not send in their Register updates. If one of the charities that has been out of touch for as long as four years has also been of a significant size financially it will actually have fallen foul of the chasing arrangements and enforcing arrangements for the £100,000-plus charities that apply to accounts and annual returns. It will not have been left there without attention, it will have been chased for its accounts and returns and that would have had the effect of chasing it for its Register update.

52. That is quite true of the ones over £100,000 but there must be an awful lot of charities, I would have thought, that are quite wealthy in terms of their assets but have not got a great income or expenditure that were set up in the 1850s or whatever and may have grown in terms of the assets over a long time and nobody has been doing anything with that money for a long time. If that sort of situation occurs you could be putting quite large sums at risk if you leave it very long before you look into why they have not been in touch with you.

(Mr Stoker) I would expect that to get flushed out by accounts monitoring because any charity which has actually got very large amounts of assets is likely, in the nature of things, to have large amounts of income.

53. To get £100,000 income you would have to have a very large amount of assets if you are just doing nothing, many millions of assets.

(Mr Stoker) But if it is over £10,000 and it has large amounts of assets and the amount of its expenditure in relation to its income is small then it will trip a trigger and it will generate a referral from the monitoring group to be further investigated by various bits of the Commission.

54. Are you talking about after four years or because you have not had the accounts in? I thought it was only over £100,000 income that you actually look at if it has not got the accounts in. What I am saying is you could have just under £100,000 income on a very large asset base and you would not look at it for four years.

(Mr Stoker) It is possible but, again, it is quite difficult to envisage in the abstract. I would expect charities basically with very large asset bases to have appreciable income.

55. They would but your income is never going to be more than, whatever it is, five per cent of your asset base. Can we go on from that. Of the 18,800 charities that you have removed from the Register between September and 2001, according to paragraph 4.6, how many of those were removed and how many have you re-established contact with?

(Mr Stoker) I am afraid I do not have that split to hand but I would be quite happy to—

(Mr Gillespie) I can fill in the detail there, if it is helpful, Mr Rendel. Of the nearly 19,000 we established contact with the vast majority of those and we are now down on a year to date figure of 495 of those 18,800. About half of those charities, of the order of 9,000, are still existing, are still running quite happily, they just had not bothered to tell us effectively. The other 9,000 we have removed having done checks to make sure there are no significant assets there.

56. So what has happened to the remainder? Even if they are not significant they have probably got something. Did they just disappear, you have lost contact with them?

(Mr Gillespie) I think this becomes an issue of the risk management, that we have to make a decision on whether we think it is significant enough to go after it.

57. So what you are saying is that nobody does because it is too small for the Charity Commission and in practice if one of these charities becomes obsolete and it is a comparatively small amount of money nobody follows it up, that money just sits in a bank account and it is forgotten about.

(Mr Gillespie) That is not entirely the case because we have a pilot project that we are starting up now to try to identify exactly those pools of money. We have recognised that as a potential problem and we have got action in hand to try to deal with it.

Mr Rendel: Thank you.

Chairman: Thank you very much, Mr Rendel. Jon Trickett.

³ Ev 18-19, Appendix 1.

⁴ Note by witness: As of 31 October 2001, the number of charities' active status to be confirmed stood at 495 out of the 18,800. Ref Q 55.

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[Continued

Jon Trickett

58. I would like to follow up a couple of things that Mr Rendel raised. The charities which have been deleted from the Charities Register, do you have an estimate of the amount of assets which they held?

(Mr Stoker) I do not have an estimate unless my colleague does but, by definition, the judgment would have been that they were not significant.

59. Presumably they were deleted because you had not heard anything from the trustees? Rather than that they had minimal assets, or is that not a factor?

(Mr Stoker) The process is not that you delete them from the Register simply because you have not heard from them. The process is because you have not heard from them you establish what has happened to them, whether they are operating or not, whether they have any assets, and then you reach a judgment according to what you find. What you find may be the case described by Mr Rendel, that effectively the charity ceased to operate and it is extremely difficult to tell precisely what has happened to assets which were there. If those were significant we would go after them.

60. What is your definition of the word "significant" then?

(Mr Stoker) It is a case by case issue really.

61. You must have a rule of thumb.

(Mr Stoker) I would not care to give a hard and fast rule of thumb.

62. Most organisations I know would have some kind of *de minimis* definition and you would not pursue something that was *de minimis*, but say it was £5,000 or £10,000 or £250,000 or whatever, who makes the decision not to pursue an asset because it is not significant in your words?

(Mr Stoker) It would be the case officer and line managers who would make that decision.⁵

63. And there are no guidelines at all for those people?

(Mr Stoker) They would take into account basically what appeared to be at stake in terms of assets that might have been there in the past together with the likelihood of actually being able to track them down and the cost in terms of Commission resources in doing so. It is the kind of calculations that regulators are making all the time.

64. I understand that. I would be interested, I do not know if the Committee would be, in a further note as to how that operates. Is it not possible then that some case officers are pursuing sums of money that other case officers would not pursue since there are not guidelines across the whole of the Commission?

(Mr Stoker) In every case you have a judgment which has been made by the individual so I would not claim that it is going to be perfectly consistent right across the board. All I would say is there are so many differing factors that can apply in any particular case that the sum of money is not the only comparison.⁶

⁵ and ⁶ Note by witness: Internal guidelines do set out the criteria for removal and the *de minimis* asset level set at £2,500. My apologies to the Committee for my answers not reflecting that on the day.

65. There are two views on that. One is if you leave things to discretion you will get very large variations in practice. I think that is a view that probably should be taken and I would have thought some sort of guidelines should have been given. I just want to follow up on another issue. You are supposed to get, as I understand it, two pieces of paper per year from each charity, one is a Register update and the other one is the annual accounts. Presumably quite a few charities manage to produce one but not the other in any one year. In relation to this four year trigger that you were just speaking about, would the receipt of just one of these documents be sufficient to delay the trigger mechanism or do you require compliance in both matters?

(Mr Stoker) If they had been out of touch for four years and we had not chased them up already because they had not sent us accounts they would be at the level where they did not have to send us accounts.

66. In your earlier answers you were saying you might have received a Register update or the annual accounts but then you were talking about a four year trigger. I was unclear in my mind that you were clear that you would pursue them.

(Mr Stoker) Yes.

67. If you received the Register update you might think "it is an active charity and we are not going to pursue it at this stage", so a number of years might pass beyond the four years when you have not received the accounts. That is the point I am trying to make.

(Mr Stoker) If we have not had the update within four years we would be pursuing these charities.

68. Let us just be clear about words then because you just said the "update". I assume that means there are charities which have regularly updated their Register but have failed to lodge their accounts and are not pursued because at least you know something is happening and the updates have been received. You just said if the update is received you would not pursue them.

(Mr Stoker) If they have been sending us their updates and not their accounts we would not pursue them thinking that they were inactive, but if they had been sending us their updates and not their accounts and they were above the £100,000 a year enforcement threshold we would have been chasing them as soon as they became due.⁷

69. I think I am clear in my own mind and I am glad I asked the question. It just seemed to me in a case where they were updating the Register but failing to deliver the accounts you primarily keep on sending the reminders. I think you then said that the number had been reduced from 18,000 down to 700.

(Mr Stoker) Yes.

70. What figure was that relating to?

(Mr Stoker) That is relating to the charities which we had not heard anything about for a long time, the apparently inactive charities on the Register.

71. So they are people who had not done a Register update or an annual account?

(Mr Stoker) Yes.

⁷ Ev 18-19, Appendix 1.

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[Continued

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72. But there may be significant numbers of others, or not, we do not know unless you can tell us, which are continuing to update the Register but failing to submit their accounts.

(Mr Stoker) There are not large numbers of those.

73. How do you know?

(Mr Stoker) Because we track the numbers that we get and we stratify the returns that we get for each annual round according to different size ranges.

74. How many charities with less than £100,000 income have updated the Register but failed to deliver their annual accounts?

(Mr Stoker) There are small numbers. There are small differences between the return rates for accounts and for updates.⁸

75. I want to move on into another area which is the issue of the Commission's use of inquiry powers which has declined, has it not, substantially over recent years?

(Mr Stoker) Yes, I cannot argue with the figures in the report.

76. Why?

(Mr Stoker) It is difficult to tell why they have declined. It is not that there has been any kind of signal from the Board of Commissioners or the management that they are not there to be used.

77. But they have declined though, have they not?

(Mr Stoker) They have, yes.

78. Why have they declined?

(Mr Stoker) I do not know why they have declined. Basically what we have here is a set of investigations which are being managed in each case by inquiry officers. They run against whatever difficulties they find in a particular investigation and they know they have got that panoply of powers there available if they want them. The message that we are putting out is if genuinely using those powers will help to close an investigation then investigating officers should be using them.

79. I might just suggest to you that if I was a manager of a large body like this this would be exceedingly important management information from which I might draw lessons. You have not drawn lessons because you have not asked the question as to why this has declined. There is one particular power that has never, ever been used, and it is very striking because I think it would be a useful power, the imposition of external auditors. Given the fact that you have got limited resources, you just told us that you have made a successful bid but you also pointed out that you have been capped for six years, it seems to me it would be quite a useful power to exercise since I do not suppose the cost falls on the Commission but rather on the charity to see external auditors being imposed on some of these things. Given the fact that we have got delays all over the place in your organisation, have we not, the use of

external auditors might well be a way of accelerating progress in a number of areas. Why have you never used that power?

(Mr Stoker) I do not know why that power has never been used, to be perfectly frank.

80. Why not? I do not understand why you have never asked.

(Mr Stoker) I have looked into these powers. I must confess I do not know why this power has never been used. As a matter of fact, it is not the case that the cost of the audit would fall on to the charity, rather it falls on to the trustees themselves. I suspect that historically, going back to 1993 and the periods following the Act, that may be part of the reason.

81. Okay, but the point I was making was the cost of external auditors would not fall upon yourselves and the budgetary implications are not for you. If the trustees are going to be required to pay for the external auditors that would certainly concentrate minds. I wonder how it is you are head of an organisation which has not used a particular power? You have not said this is a useless power?

(Mr Stoker) No.

82. And I made the point I think it is a very wonderful one, maybe, and you have not contradicted that either. I do not understand why you have not asked the question and I do not understand why you have not issued an edict, if it is within your power to issue such things, to ensure that power is utilised in the future.

(Mr Stoker) Edicts are perhaps not quite the modern style these days but certainly the very clear message that we have sent out for all these powers is if there are cases where they will help to close inquiries that people should use them. For example, if you look at powers such as the power to appoint a receiver and manager there is an increase in that in the last year in the figures here and that increase is being sustained into the current year. We are also running at high levels in the year to date on orders to attend meetings and provide information. It is those kinds of powers, the ones which are actually there to break logjams and speed things up, which I agree with you we ought to use where they are appropriate.

83. Perhaps you would go away and ask the question that you have not asked so far, why you have not used that power.

(Mr Stoker) I have asked the question, I have not been able to find out the answer.

84. Perhaps we ought to go back to old-fashioned mechanisms like issuing edicts. You said it was old fashioned or was not the current vogue but perhaps if you were to issue edicts you might get answers to the question you have asked and have not had the replies to. I guess my time is running out fairly quickly but I want to go back to the ICR, the Independent Complaints Review. I take it that managers use complaints to guide them in terms of internal procedures, or to make it possible to identify where there are break downs in the system if one uses it in an appropriate way. The Reviewer—this is a very interesting document that we have just received dated November this year—really says that your staff react to complaints in an old-fashioned way and they tend to regard complaints in a negative way. It says

⁸ Note by witness: At September 2001, for accounting periods ending between March 1999 and February 2000, 1% fewer charities, with income or expenditure between £10,000 and £100,000, had submitted register updates than had submitted annual returns and accounts.

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it in a very gentle way. It says that other public bodies might react in such a way. I think the implication is your staff are reacting that way. It goes on to make the point Mr Williams made, that you do not even log most of the complaints and there needs to be a massive culture change in your organisation, which you are attempting to achieve. Mr Williams put it to you that you ought to consider reviewing all the verbal complaints as well as the written ones. That was not a novel proposal, was it, since the ICR has made this suggestion to you in writing? Why have you not been able to respond to the Committee and say "that is precisely what we are doing"?

(Mr Stoker) I do not think that what Mr Williams said was that we should be reviewing all of the complaints that were put to us verbally, I think what he was saying was we did not count them, and I agree.

85. I think I said you should be recording them and it is not a novel idea at all, this was suggested here, and it seems like a very useful suggestion. It might guide you as to where there are defects in your organisation and areas which might be improved. Why did you not say "this is something we are going to do"?

(Mr Stoker) As Mr Williams invited me to, he said do not agree now but go away and have a look at it and I am very happy to do that. The other thing to bear in mind is that this whole complaints system is a new system and it is a pilot that we introduced because we wanted to improve our relations with and our accountability to our customers. I am not pretending that it is perfect yet but I am very happy to go away and look at ways that we can get the measure of recording these complaints.

86. Is this an experiment that should be continuing beyond the two years then?

(Mr Stoker) Yes.

87. Good. Finally, you have established a committee, which I think is a good idea, no doubt an innovation that you introduced, to review the results of ICR reports and recommendations with the view of trying to identify lacunae in management. I just wonder what lessons you have already learned from those reviews since this committee seems to be in place already?

(Mr Stoker) I think the main ones would be that you avoid trouble if you are as clear as possible upfront about exactly what you can do and what you cannot do. You need to avoid creating expectations on the part of anybody involved, whether it is a complainant or anybody else in the process, which you cannot fulfil.

88. They are methodological, are they not? Both of those two lessons learned are methodological as to how you deal with complaints. I think I am to finish.

(Mr Stoker) Sorry, they are not how you deal with complaints, they are how you deal with the cases that gave rise to the complaints in the first place. What you tend to get is somebody who was led to believe that you can do X for them and you can only do X minus Y for them.

Mr Trickett: If I had another two minutes we could have had some interesting conversation but I have not.

Chairman: If you are desperate, Mr Trickett, have one more question.

Jon Trickett

89. The ICR is there, they made a report to make it into a committee which you have established, and the purpose of establishing the committee was to try to identify management problems and I do not think you have indicated to the Committee that you have learned anything from that process at this stage.

(Mr Stoker) I think we have learned a good deal and we do feed back information from those complaints from the ICR directly into the casework and the Report does say in the Independent Complaints Reviewer's own words that she had been very impressed by the extent to which she has seen lessons being learnt.

Jon Trickett: I do not know if that is exactly what she says but, anyway, I really must not press the Chairman's patience any longer.

Chairman: Mr George Osborne?

Mr Osborne

90. Can I pick up on an area of questioning which Mr Trickett was exploring with you, which is the use of your legislative powers. I find it rather extraordinary that you did not know why the use of these powers had declined or why, for example, you had never used the power to appoint an external auditor. Am I correct in saying, and is the Report correct in saying at 2.15 that you have never used the power to reclaim charitable trust assets from debarred trustees, or to prosecute for failure to provide information?

(Mr Stoker) Yes, if it is in the Report it must be. We have pursued by other means assets from trustees whose conduct of their charity has been unsatisfactory. That is very largely what case one is about.

91. There are other powers. You say you have used other means. Table 10 shows "The Commission's use of inquiry powers" and shows a dramatic fall in virtually every power with the exception of the first one, a fall in the use of the power to remove trustees from 9 in 1996 to 4 times for 2000-01, down from 89 to 21 in trustees prevented from acting, down from 58 to 39 in freezing bank accounts, down 19 to 8 in trustees appointed, down 238 to 171 in orders and directions requiring information or presence at a meeting. Why are you not using these powers?

(Mr Stoker) The message that we are trying to hammer home to the people who are at the case level using these powers is that where they will help to resolve a case and resolve an issue they should use them. In some cases, for example receiver manager appointed and, for example, orders and directions requiring information and attendance at a meeting, that message is producing an increase in the powers. At the moment we are running at a level which would produce a considerable increase when the numbers for this year are compared with last year. I cannot pretend that there is a systematic reason that I can identify why these powers have not actually been used. I can speculate that part of the picture along with the messages we are giving about closing cases is the fact that we have just had the Human Rights Act and, along with everybody else, the organisation has been considering what its obligations are under

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the European Convention on Human Rights. There are a great many of these powers, particularly when you are talking about suspending or removing an individual trustees, which are slap bang in the middle of ECHR territory and the fact that, to reflect that, we have been putting separation of powers of one kind and another into the systems as good practice post HRA may have some influence, I do not know. What I would like to see is an increase in these powers to close cases when that can be done and that is the message I am getting from the current year's figures.

92. You just said you are speculating that it might be the Human Rights Act, you are not sure and so on. When you were appointed two years ago you surely read this Committee's report into the Charity Commissioners. On Appendix 2 which helpfully summarises it, it includes conclusion (i) where it talks of the "failure to show more drive in exploiting the opportunities for greater effectiveness which the 1993 legislation provides" and it says that this is a result of a lack of management grip. You were the new manager, you came in, you must have seen that; why do not you know the answers to these questions?

(*Mr Stoker*) There is no single answer, I suspect, to the reason why these powers have not gone up. All I can say to you, as I said earlier, is that it is not because of the management messages that we have been sending, it is not because of any lack of commitment to effectiveness in investigations work, as the fact we made it a priority for resources (£1 million pounds extra from next spring) and a thorough review and thorough improvement of procedure shows. This is part of the picture. It is part of the picture that I am not myself entirely happy with but I do not think that it is symptomatic of any kind of lack of commitment to effective investigations.

93. So you are saying there is no lack of commitment from the management, that you are sending down these messages down your organisation but you are not sure why these messages are not getting through to the people you employ?

(*Mr Stoker*) We are finding out why. As part of the work that we have done on the investigations systems we have got a project team which is following through the implementation of the investigations manual. As part of the work involved in that, it is looking at a range of closed investigation cases to analyse them to see what the drivers of a lot of this are. I am hopeful that one of the things that will come out of that is something which will shed more light on not so much why these powers have not been used in the past, although that is an important question and of interest, but more where they might have been effectively used where they have not been and that gives us a management handle to do something about them. I cannot give you a plain, straight, single reason why these figures are as they are.

94. It would be good to know that we are not wasting our time by passing laws that are not then used by the organisations they are designed to be used by. Is this general approach because you as an organisation take a very softly softly attitude to investigations? In paragraph 2.12 on page 20 the NAO says: "Our case examination found that the majority of inquiries were conducted through

correspondence, telephone calls and meetings with officials of the charities concerned. When inquiries included visits to charities, they were generally confined to meetings with trustees and other key personnel and in only a very small proportion of cases did they also carry out checks of control systems and file searches." So you sit round, have a cup of tea with trustees, you are satisfied with what they have said and you do not carry out a proper rigorous investigation. Presumably by the time you have turned up at the charity you have got reasons for suspicions. Is this not an extraordinary approach to take to matters of this seriousness?

(*Mr Stoker*) I do not think that is a generally correct description of the attitude the investigators took towards charities, the one you have just given of a 'cup of tea' culture. I accept that there was a need for more rigour and structure to be put into investigations procedures. I accept that as part of that what was needed was a more rigorous approach to case planning. I accept that what was needed was a more structured approach to making investigations officers consider what specialist professional support they needed from accountants and lawyers and that is why we have done precisely those things in the investigations manual which we have put into place from October last year. As for the cosy position with charities, I think the more indicative point of our current approach to this would be that since October 2000 we have for the first time starting putting a public report on the web site of the findings of each inquiry that we have carried out, precisely so the charities are exposed to public scrutiny and so that the lessons get put across publicly.

95. Thank you for that answer, although one of my concerns is that your information manual, rather like your instruction to make more use of legislative powers, may not deliver results down on the ground, you may not be aware it is having an effect because you have this strange management structure where you do not even know the results of your management decisions.

(*Mr Stoker*) We are an extremely quantified organisation. We have got a great many quantified targets which you will find in the appendix to the Report and, as I mentioned, one of the things we have done as part of the investigations project is precisely so that there is structured follow through, as well as keeping track of what is happening in the management line, we have actually put in place a development team to work on the implementation of the new procedures and to analyse what actually has been happening in cases that are being closed. I accept that managers need to know what is going on; that is why we are trying to find out.

96. I am glad you are trying to find out.

(*Mr Stoker*) In a structured way.

97. Rather than in an unstructured way. I am glad you raised the issue of targets because if you turn to Appendix 3 which is on page 39 of the Report, this sets out your various targets and how effective you have been. If you look at the top box in the report which is Objective One, it is "to ensure that charities are able to operate for their proper purposes within an effective legal, accounting and governance

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[Continued

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framework". Could you tell me in that last column "target met Y/N" how many of the nine targets you failed to meet?

(Mr Stoker) How many of the nine targets?

98. There are nine targets in box one Objective One set out at the top of Appendix 3.

(Mr Stoker) The difficulty I am struggling under, Mr Osborne, is in this light without my reading glasses I cannot read very easily but it looks to me like four nos and five yeses.

99. So you have a 50/50 hit rate with your targets?

(Mr Stoker) If you look at the targets as a whole you will find there are 32 of them, we hit 23 of them and were within five per cent of another three. One of the ones we did not hit was the forecast number of registrations which the NAO in the discussion of how we have been putting a more rigorous approach into registration would say was not a tragedy to miss that one. So I think that takes you to a slightly different proportion.

100. One of the targets you failed to hit is turnaround time for determining charitable status. Your targets is 95 days, which sounds quite a long time to me anyway, and you are currently conducting them in 117 days. How do you intend to meet the 95 day target next year?

(Mr Gillespie) The figures that we have available to us—shall I read them rather than have Mr Stoker struggle with his eyesight? Our year to date achievement this year is 104 days which is already quite considerably down. Last month in the month of October we achieved a 97-day turnaround. So you can see we are putting considerable effort into that and those figures are coming down quite substantially.

101. I am glad to hear that. Am I right in saying there is still quite a difference between the performance of different regional offices?

(Mr Stoker) There is a difference between different offices as measured by the quality review system we have in place, yes.

102. I am looking at paragraph 3.13 which says that the Liverpool office took on average 146 days to clear a case but in London it only took 89 days. That is a huge difference, is it not?

(Mr Stoker) This is 3.13?

103. Yes.

(Mr Stoker) That is correct. The underlying reasons, we believe, are that basically the figures in Taunton are better because the experience of the staff was higher and the caseload was lower, but there again the whole point of the quality review system, which looks at five per cent of cases on each site each month, is so that you can analyse the reasons for that and derive direct management messages from them. What you will get from quality review, for example of registration cases, is a number of triggers which are of different kinds. Some of them are about timeliness, some of them are about an assessment of the technical quality of the governing documents which have finally been finished, and some of them will be about record-keeping. There is a direct message for managers which comes out of that series of comparisons every month. There are regular cross-site meetings of people who do the quality review. We

put out guidance for staff, staff instructions, which come directly from experience with this. So we do try and learn the lessons of this and times are converging.

104. Sorry to interrupt, I will admit the figures I was quoting you were the figures about the time it took to give advice and support.

(Mr Stoker) I was talking about the registration ones.

105. There are also big regional differences in registration. Paragraph 3.5 and paragraph 3.13 point to very big differences between your offices and the way they handle the various work that comes before them. Surely it is a management issue why it takes Liverpool 146 days to clear a case and London only 89 days?

(Mr Stoker) It is and that is why we have a system of measuring these things on a monthly basis.

106. You measure them but what do you do about them?

(Mr Stoker) We have an operational management group that discusses them monthly and there are bespoke direct management messages to staff on every site. We distil them into guidance that goes to operational staff. That is what we do with them.

Mr Osborne: Very sadly my time is up.

Chairman

107. Mr Stoker, you seem to be throwing some doubt in answer to Mr Osborne on paragraph 2.12. You do agree 2.12?

(Mr Stoker) I am sorry?

108. Page 20, paragraph 2.12, they are talking about the 'cup of tea' culture.

(Mr Stoker) I was not objecting to 2.12, Chairman, what I was saying was that the 'cup of tea' gloss which Mr Osborne put on it gave perhaps the wrong impression. I do not quarrel at all with 2.12 as an analysis of what the NAO found.

Chairman: Thank you. Barry Gardiner?

Mr Gardiner

109. Mr Stoker, I refer you to paragraph 4.8 and Figure 15 on Page 31 where it says that 38 per cent submit late or do not make their annual return to the Charity Commission. It also says that you do not have any capacity to impose fines under Companies House.

(Mr Stoker) This is on submission of accounts.

110. Would you like to have that power?

(Mr Stoker) I think that there are some quite difficult issues around that which are essentially issues for ministers. On the one hand, you have got considerations about increasing compliance. On the other, you have got considerations about fines coming out of charitable resources.

111. All the administration of charity comes out the charitable resources, does it not, and therefore if this is ensuring more effective and proper administration of the charity, would that not be a good thing?

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[Continued

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(*Mr Stoker*) That might well be the conclusion ministers came to if they considered this but I think it is a matter they would need to consider. They would need to balance these considerations. It is not for me as a creature of statute to call on that one I do not think, it really is one for ministers.

112. If you were investigating an irregularity in a charity, and that charity shuts down, what powers do you have to stop it shutting down so that you can continue your investigation?

(*Mr Stoker*) A lot would depend on the circumstances but if a charity were shutting down while it was under investigation the one thing I can say is that they would not be able to avoid that investigation being carried through, and if there were charitable assets involved, we would be able to pursue them from trustees whether or not the charity itself remained in existence in those circumstances I should think. But again, it is difficult to answer in isolation.

113. I would not have thought it is difficult at all. It is very clear that the Inland Revenue can say to a company, "No, you cannot close down until we have concluded our investigation." My understanding was that you could not do that, you had to allow them to shut down. I do not want you to be pushed into an answer that you feel you cannot give. Why not give us a note on that to say yes or no?

(*Mr Stoker*) I would be quite happy to give you a note on that. I think the important thing is we would not allow a charity to shut down as a way of escaping scrutiny from investigation.

114. If you could give us a note of all charities that have tried to shut down in the last two years and tell the Committee in the note how many of them have been successful in shutting down and how many you have refused to allow to shut down.

(*Mr Stoker*) I do not know whether we would have that information, Mr Gardiner, but I will certainly have a look at what we do have.

115. You would not have that information so you do not know out of those charities that you have investigated whether any of them have shut down, whether any of them have sought to shut down?

(*Mr Stoker*) We know how many have shut down, it is whether we know how many sought to shut down, which is difficult to get a handle on.

116. Is not the way in which they seek to shut down by notifying you of that?

(*Mr Stoker*) It might or it might not be.

117. If we can have a clear note on that, it would help.

(*Mr Stoker*) Okay.⁹

118. Mr Gillespie, you have had a quiet afternoon so far, can I turn to you. I do not know whether you recall we had correspondence earlier in the year concerning a charity called Options Development Agency Limited and you undertook at that stage that further investigations would be made into this. I have to say that that was on 15 May this year and I have not received anything further from you since then, which I did find disappointing. You will recall that in

the documentation which I sent to you there were a number of points. I had suggested that ODA Ltd had bid for a gardening project previously run by Kilburn Skills and funded by Brent and Harrow Health Authority and that there was a capital bid regarding equipment that ODA had received of £1,110 in February 1998 in respect of the bid and ODA did not supply the gardening equipment nor make any other expenditure at all in relation to that bid. Is that something you have pursued with them in further investigations?

(*Mr Gillespie*) Can I give a general answer and then deal with that specifically. We have been in correspondence as a result of the information you provided us with the council. We are not satisfied entirely with the information that we have been provided with. In fact, we have not been provided in certain instances with key pieces of information. We have threatened, to pick up an earlier point, use of our powers if we do not receive it by a particular time. We have not received it yet. If we have not received it within that time we will serve an order to get that information. That has been threatened and will be carried through, if need be. So we are actively pursuing the case.

119. Does that also apply to the project funding of £5,553 from the health authority and the £2,025 also obtained from the health authority?

(*Mr Gillespie*) Again if I can answer the general question that we are following up the issues that you raised and, if necessary, we will use our statutory powers.

120. I am very happy to leave that there. I take it that you will inform me of the conclusions?

(*Mr Gillespie*) Yes indeed. I do not think I gave you an absolute commitment to tell you within a particular time. We have not had the answers in and I have not been a position to answer your concerns.

121. That is the absolutely fine. As long as it is followed up, I am very happy. Can I also pursue another issue and I am not sure which of you it is best to pursue this with, perhaps you can pick and choose among yourselves. Charitable status confers on any organisation very distinct benefits, one of which of course is their reduction in local taxation for any properties that they might hold. What investigations or what correlation do you have with the local authority revenue and benefits departments whereby you are notified by them of those organisations which are claiming council tax relief on the basis of their charitable status? Is that something which you do have correspondence with revenue and other departments on?

(*Mr Gillespie*) We approach it from the other way round. Local authorities are aware obviously of the discount, for want of a better expression, that can be obtained by charities. The information on the registration details of charities is available on our web site. The vast majority of local authorities access the information on the web site to check out whether an organisation is legitimate or not, ie, whether it is registered. We have had a number of cases where councils have approached us to check the *bona fides* of particular organisations and we have responded to those on a case-by-case basis.

⁹ Ev 19, Appendix 1.

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[Continued

[Mr Gardiner Cont]

122. One of the things that I have had specific cases of is groups claiming that the property is owned by the charity when in fact, on further investigation, the charity claims to know nothing about that property whatsoever. Given that on the returns submitted by companies to you I presume it is evident what assets those charities have, is there a way for local authorities to check off your web site about the properties?

(*Mr Gillespie*) No, and I do not think that will be ever be the case, not in the foreseeable future, on a property-by-property basis because the requirements are for a statement of general assets rather than a listing of a register of assets to be disclosed. That information is available from each charity, it is legitimately able to be disclosed to local authorities and should be disclosed.

123. The obvious problem is that somebody applies stating that they are a charity when in fact they may not be and local authorities can check it out on the web site and say, "This charity exists, therefore we will give them the charitable status", but on further investigation it can then be found to be wrong.

(*Mr Gillespie*) This is an issue for the local authority. We provide baseline information which is available to them. It gives the address of the charity, for example, for them to contact.

Mr Gardiner: I am not trying to bring you to book for the fraudulent practices of various property owners. What I am trying to suggest is perhaps there should be a way for local authorities and yourselves engaging more closely and co-operating more closely to avoid such instances.

Chairman

124. In answer to Mr Gardiner, Mr Stoker, who asked how else can a charity seek to close down except by approaching you, you said that that is not necessarily the only way. Are you going to do a note to us on that point? I did not quite understand your answer.

(*Mr Stoker*) The point is that charities sometimes do have the power to wind up so that what happens is that they wind up under powers they have got and basically they tell us. So the path to winding up is not necessarily through coming through us and asking our permission to do so.

Chairman: Thank you. Do you want to come back, Mr Gardiner?

Mr Gardiner: I am sure the note will be full and very clear.

Chairman: Mr Richard Bacon?

Mr Bacon

125. Thank you, Chairman. Mr Stoker, when I first started looking at this I started off with that document and presumably when you first became boss of the Charity Commission you took that document, and did you not then treat it as a laundry list of things that should be a top priority to you?

(*Mr Stoker*) I did yes.

126. When you said you are a highly quantified organisation, my colleague was astonished that you have got these powers. I am not familiar with the debate that led to that but presumably the 1993 Charities Act did not come out of the blue, it presumably came out of a response to pressure for the Charity Commission to have more powers. The Act came in in 1993, you took over two years ago so you were aware of that Act, aware of the extra powers and aware of the document that said not only, as Mr Osborne pointed out at the beginning, that a lack of meeting existing targets shows a lack of management grip but there are specific references in here to the slow progress made in using the powers. Paragraph 55, the Commission's powers were only used in a small proportion of cases. I cannot find the exact quote, it is there somewhere. The point is that the need to use the enforcement powers that were available is clearly flagged up. I am puzzled given this was your laundry list and you are an extremely quantified organisation that it was not something that you picked up.

(*Mr Stoker*) I think the question is why was it important to use those powers and the answer was to get better performance on investigations, so approaching that objective in the round, the way I did it was, first of all, to look at resources and there are substantial extra resources; to look at management, and we had a review and we changed the way that we managed it, and we put clear desk instructions in place that met the concerns that are referred to specifically.

127. Desk instructions?

(*Mr Stoker*) Desk instructions.

128. What is a desk instruction?

(*Mr Stoker*) This is a manual for investigations officers telling them what they have got to do at various points. It tells them how to select, how to manage, how to plan, how to close, how to follow-up investigations. On top of that there are substantial extra resources going in next year. There is the fact that in 2000-01 we did for the first time hit the targets of closing more investigations quickly, 75 per cent within 12 months, and we have also got, compared with 1996-97, a proportion of inquiries which are establishing causes for concern up from 76 per cent to 90 per cent. So that really was the outline of my response to the issue which I took to be the broad one of how do we get a better all round position on investigations.

129. We have got here in paragraph 17: "We urge the Commission to show more drive in exploiting the opportunities to achieve greater effectiveness for which the 1993 legislation provides." Here four years later we have got in 2.15: "Given that weaknesses were substantiated in 191 inquiries in 2000-01 and that 53 took more than 12 months to resolve a more assertive use of powers might have been expected." You mention various reasons for not using the powers. It is not because of the management messages so you have obviously been putting out the stuff. But is not part of management doing more than putting out messages and ensuring follow through and that something is done?

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[Continued

[Mr Bacon Cont]

(*Mr Stoker*) That is why we have got the project that has been put in place to follow through the changes we put into the management of investigations to analyse what is actually happening to ensure that the changes that we have written into the new arrangements are being followed through and to understand better what is happening. I am not in any way reluctant to see greater use of these powers where they can actually solve problems and close down investigations.

130. Can I raise another issue mentioned both in the report from four years ago and in this one, and that is the issue of trustees and selecting trustees and the scrutiny that goes on. The Committee of Public Accounts Report four years ago said that the Commission was not making full use of information on unsuitable trustees, this is paragraph 23 xi, and standard procedures were not in place to check prospective trustees of newly registering charities against the records of unsuitable trustees. Standard procedures were not in place. When you turn to this four years later you find in paragraph 3.11: "The ... Commission has not yet issued guidance on the subject"—that is of who should be suitable to act as trustees—"The Commission plans to do so once it has finished consulting on what information it should gather on individual trustees." Four years ago it was pointed out that you were not making full use of information on unsuitable trustees and standard procedures were not in place and four years later we are still waiting for guidance so people know what they should be looking for. I fully understand the point you made that the Commission expects charities themselves to operate checks and standards to ensure that all new appointees are suitable to act as trustees. Plainly you cannot do all of that yourselves, just like companies to some extent should be making sure they have got good directors. I fully understand that. Nonetheless they cannot do it as easily as they might be able to unless they have got some sort of standard guidance, and four years later you still have not issued any.

(*Mr Stoker*) With respect, the first part of that question was about the arrangements that we had in place, standard procedures for ourselves in the Commission checking the position of trustees who were going to be appointed to newly registering charities. Is that correct?

131. Just reading from here, this is Paragraph 3.11, "The Commission plans to do so"—that is issue guidance on the subject—"once it has finished consulting on what information it should gather on individual trustees ..."

(*Mr Stoker*) That is about the appointment of trustees to existing charities.

132. Whether it is an existing or a new one surely there is a suitable laundry list of people whose characteristics you would not want as trustees? You would not want murderers, thieves paedophiles. It would not take that long to draw up a laundry list.

(*Mr Stoker*) There is a laundry list at the moment for existing charities. What we do accept is it is not brought together conveniently in a way which would be most useful to charities which are appointing trustees. With respect, the answer to the first part of your question is that the standard procedures for

checking trustees who were to be appointed to newly registering charities, which the Committee criticised the Commission for not having in place in 1997, are now in place. One of the things that the NAO Report acknowledges is that there has been a good deal of advance on the rigour of the procedures that the Commission uses to scrutinise applicants for registration at the point of registration including trustee checks.

133. Perhaps I could take up the question of case two for a minute. Mr Osborne raised this a minute ago. This talks about a case under investigation that ran for nearly three years without clear objectives and planning. You mentioned that you did not have clear risk assessment guidelines in place and I know you started your remarks at the beginning by saying you are putting more focus on risk. It also says in relation to case two: "The Commission apologises to the charity because it had not informed the charity that an inquiry had been opened." Whatever set of standard procedures one had in place would that not be a rather obvious one, to have to tell them that they were being investigated?

(*Mr Stoker*) It might not always be appropriate if the knowledge that they were being investigated might lead them to do something which would get round the purpose for which they were being investigated.

134. In this particular case you were relying exclusively on the word of the Chief Executive and did not meet with the trustees and other key stakeholders.

(*Mr Stoker*) I am certainly not defending this as a well-handled case in this or in other respects.

135. That is a relief. I wanted to ask you about training. It says in 2.11 that inquiries carried out by more experienced staff were generally better planned, better scoped and better carried out inquiries, and there is a need for closer supervision of less experienced staff. What training and supervision is in place right now in order to ensure that that experience is passed on?

(*Mr Stoker*) There is extensive training. There has been training specifically carried out to introduce investigations staff to the new procedures to make sure they understand them and the need to implement them. There is also a good deal of on-the-job training which takes place in the management line between skilled investigators and less experienced investigators. Levels of experience are a factor taken specifically into account in instructions about how investigations are to be selected and allocated at different levels within the grading of the Department, and the Commission is, in fact, a very extensive and very committed training organisation. We have been reaccredited as an 'Investor in People' for a further three years on the basis of what was supposed to be a 18-month mid-term assessment.

136. How many staff have you got devoted to investigations?

(*Mr Stoker*) I would need to check the number.

137. Figure 5 on Page 13 says there are 51 based in London, Liverpool and Taunton. Is that 51 figure accurate?

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[Continued

[Mr Bacon Cont]

(Mr Stoker) That figure is out of date. The figure would be slightly higher and of course it will get higher again when the money from the 2000 Comprehensive Spending Review comes on stream in March next year.

138. How much money do you have altogether?

(Mr Stoker) £21 million.

139. I thought I heard you say that and wrote that down. How many staff do you have altogether?

(Mr Stoker) At the time of this report it was 547.

140. In paragraph 11 of our report from four years ago it says that the Commission had 600 staff and £13 million. How is it that you have got 53 staff fewer while you have got £8 million more?

(Mr Stoker) 13 million?

141. I read paragraph 11 of this Report, which you say you have read as saying that the Commission spent £13 million on staff in 1995-96. Am I not comparing like with like? Is the £21 million not just staff costs?

(Mr Stoker) No, the £13 million is presumably the staff costs within the total budget of £21 million.

142. What is your staff cost now?

(Mr Stoker) I would have to get that figure for you.

143. If you could do a note on that, what I am looking for is the comparable figure to paragraph 11 of this report.

(Mr Stoker) The £13 million.

144. Yes exactly, so I can understand

(Mr Stoker) It is still £13 million.

145. So you have lost 50 staff and that is basically because you could not keep up with competitive pay rates is it, or not?

(Mr Stoker) The effect of having a level budget over a period of six years is a real terms cut of 11 per cent. What that means you have to do to keep operating and to carry on giving your staff pay increases is you have to find continuous savings.

146. Elsewhere?

(Mr Stoker) Yes and staff are among the most expensive items that we have.

147. I wanted to ask you about the Liverpool office Mr Osborne raised the question of paragraph 3.13, the question of this difference between Liverpool and London and the backlog of cases where advice or support was sought, 146 days in Liverpool and 89 days in London. Paragraph 3.14 goes on to say that the London office was 13 per cent under-staffed. I take it that the Liverpool staff office was not under-staffed?

(Mr Stoker) No

148. So that highlights even more the difference between the Liverpool and London offices. The London office under-staffed managed to considerably out-perform the Liverpool office with its full complement, that is right, is it not?

(Mr Gillespie) Can I just clarify some issues here, the first of which is that the figures are based on the average case duration and the Liverpool office was dealing with some considerable backlogs for a number of historical reasons which I think it is true to say management were not happy with. We have got a situation now on the year to date figures where the

Liverpool office is clearing cases in an average of 114 days as those backlogs are reduced, compared to 99 days.

149. But it is still not performing as efficiently as the London office?

(Mr Gillespie) They are clearing a lot of cases but they are having to deal with backlogs and that is reflected in the average figure.

150. I must press on, I have not got much time. If there is anything further you want to add perhaps you could add it in a note. I would like to ask a general question. Am I right in thinking, Mr Stoker, that charitable giving is declining?

(Mr Stoker) The latest figures I believe from NCVO show that the trend recently is slightly up but they are declining from historic levels.

151. I have got some figures from the Charitable Aid Foundation which are not completely up-to-date, 1997-98 compared with 1998-99, of the amount fundraising charities raised from fundraising, as opposed to shops etcetera, a total of £263 million down to £207 million, which is a 23 per cent decline. Do you think there is a relationship between declining confidence among the public in their giving and the declining amount that is given, because the Performance and Innovation Unit has raised this question and says there does need to be an input and they said there is a growing public demand for openness and accountability. Since many voluntary organisations are getting money from the taxpayer and even more importantly from the point of view of this Committee that is the case, is there a relationship between the lack of transparency and accountability and openness and public confidence and the diminution in giving?

(Mr Stoker) The factors which affect trends in giving are very, very many and complicated so I would not care to guess, and it would be a guess, at any direct relationship between those two. What I would say is whatever way you look at it, whether or not there is a direct correlation between those figures, it is very important that we do all we can.

152. There is not a direct correlation?

(Mr Stoker) I did not say there was not.

153. I did not catch the last bit you said. You said that you thought there was not a correlation.

(Mr Stoker) I did not say that at all. Shall I start again?

Chairman

154. Start again briefly.

(Mr Stoker) It is too complicated to say what is determining trends in giving but, whichever way you look at it, confidence in charities is important to donor confidence.

Chairman: Thank you very much for that. That sums it up quite well. May we now move into private session to discuss case two. Will all members of the press and public leave the room and also any officials not directly concerned with this inquiry. Thank you very much for your presence.

The Committee continued to take evidence, in private.

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[Continued

Chairman

155. Mr Stoker, case 2 makes some pretty sorry reading. The case ran for nearly three years, no contact was made with beneficiaries, the Commission relied almost exclusively on the word of the chief executive. What was this charity and what was going on?

(*Mr Stoker*) It was a charity called the *****. It was a regionally based outfit as described in the background note here. It was operating on its fundraising in a way which, as you see from the case, was far from satisfactory. Basically the first time round, I regret to say, we failed to crack it. What we have done since is go back, as we said we would, to review this case as a result of the work that the NAO did on it, and what we found was that there were further problems. Some of them were about governance and standards of administration, some of them were about high fundraising costs relative to expenditure, some of them were about the financial position of the charity as a whole, and there were one or two other issues as well about remuneration matters. So there is now an inquiry open on this case and I can give you my commitment that we will do a better job on it this time than we did last time.

156. Was it fraud or was it just that the people that run this charity were running it for their own benefit? What was actually going on?

(*Mr Stoker*) *****

157. Was somebody at street level trying to fiddle something or not?

(*Mr Stoker*) *****

Chairman: Do any colleagues want to ask further questions on this?

Jon Trickett

158. I just think that there is no evidence that you are managing your investigatory officers in an appropriate way and this is a case where they seem to have conducted it in a haphazard and basically slack way. You have been told to expand substantially your investigatory division, you have been given an extra £1 million. What steps are you taking? Are you going to recruit internally? How are you going to get the management to respond to the kind of things which you want them to do and which the Committee wants them to do? I have no confidence that you are managing. That is probably a statement rather than a question.

(*Mr Stoker*) I am sorry to hear you make it. I will ask Simon Gillespie to answer the question about recruitment in a moment. What we are doing about the management is what I have described before, the resources which you quite rightly mention are part of the mixture, the review of the procedures that we put in place, the fact that we have got new structured instructions to investigatory officers, backed up by training, backed up by a project team to do the embedding of the new arrangements and analyse what is happening behind the introduction of the new arrangements, a greater public spotlight on issues in this field through publishing reports on the web site. I am sorry if you do not have confidence in that. All I can tell you is that we are determined through the avenues that I have mentioned to make a real impact

on the quality and consistency of investigation work. I will ask Mr Gillespie to answer on the training point.

(*Mr Gillespie*) There is one other thing that may be helpful here. Both case 1 and case 2 were pre the significant internal review that we conducted of our investigative procedures. All the items Mr Stoker mentioned have been put in place since the completion of case 2. To be frank, this case does make sorry reading and it was a case study in how not to do one and we have learned very much from it, which I think is reflected in our results both towards the end of the last financial year and also in the current year. As far as recruitment is concerned, we are moving ahead to recruit, we have advertised in the last couple of weeks for new staff, predominantly for the review visits teams who form part of the regulatory arm, but also for new inquiry officers. These were advertised externally nationally in *The Guardian*, also in the sector press and we have also trawled across the Civil Service in the normal arrangements for that and advertised internally. At the last count, Capita, who are running the recruitment exercise for us, had received 3,000 applications for the 35 or so posts and had to reprint the application pack. The indications are that we will be successful. We were obviously successful in drawing in a wide number of people. We will go through a rigorous and thorough recruitment process which will involve a proper sifting of those people to get down to an assessment centre where individual candidates will be examined on the particular skills they can bring to review visits and investigations work and then they will be interviewed in front of a team of people from the Commission, but teams that are being set up specifically to make sure that we get the right people through the door. We know exactly what we are looking for, we have done a lot of work in this area and we are satisfied we will get the right candidates through the door.

Mr Osborne

159. The commentary on case 2 says that it ran for nearly three years without clear objectives and planning. You readily concede that. I notice in the Report, Paragraph 2.7 on page 16 that you still have 16 cases that have been open for more than three years and indeed have 40 cases which have been open for more than 18 months. Can you give the Committee an assurance that there are not such similar nightmares sitting in the 16 cases running for more than three years or the 40 cases that have been running for more than 18 months?

(*Mr Gillespie*) One of the things we are concerned about is looking at "cradle to grave" times for a particular case. It is quite difficult to monitor through the systems but nevertheless we are looking to introduce systems for that.

160. It is difficult to monitor how long the investigations take?

(*Mr Gillespie*) It has proved difficult because of the information systems that the Commission has in place which we have to reprogramme and rejig to make this happen. We are doing that because we recognise that it is a problem. For investigations work it is very clear, and you will see at the beginning

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[Continued

[Mr Osborne Cont]

of every inquiry report on the web site there is a start point for the inquiry and a finish point for the inquiry. I am referring to a lot of the other cases going through the system. I review the longer standing inquiries myself to try and make sure we have got direction. There are some good reasons why some of these cases are open a long time, court proceedings being a prime example where we are not in the driving seat and we have to accept it. We do actively review the caseloads and do exactly the same process but obviously on a sample basis with a much larger volume of work going through than the normal casework stream of charities' work.

Mr Gardiner

161. Can I just ask you, it comes out of the case that you are dealing with that I referred to, obviously there are a number of public bodies, local authorities amongst them, who are, not to put too fine a point on it, strapped for cash and they are looking at creative accounting as a way of generating money to do the sorts of things that they want to do, often very laudably. Are you aware of a substantial body of charities that have been set up by such bodies as local authorities in order to access funds in this way and are you content that all of them are operating clearly within their charitable remit rather than the shady area between what is a local authority obligation and the charity?

(Mr Gillespie) I think there are probably three things I would like to say in response to that, the first of which is that our registration staff are very well aware of the potential difficulties involved here and they scrutinise applications where they think this may occur with particular rigour. We are not consciously aware of putting a charity onto the register where we know that it is going to be an issue to start off with. We put arrangements in place to try

and make sure that the two sides are disengaged and there are clear guidelines. Secondly, we have become aware in a number of cases, the most obvious one you can read about on the web site is Stratford College and Guild Estates. The trustees of the charity were Stratford Town Council which was clearly using income from the charity to provide statutory functions. We are very hot on that issue and Stratford Town Council knew exactly our views on that and we have followed through the actions to put the charity and the town council straight. As far as guaranteeing that there is nobody else on the register that is doing that, clearly I could not give that guarantee but our monitoring process is designed to look very closely at the relationships between charities and other organisations. It is one of the things that may trigger one of our accountants to have a look at the accounts and reports. In answer to your main question am I aware of a body of charities that has been set up like that or are behaving in that way, the answer is I am not aware of a body like that, but we are very alert to the possibility.

162. I see *****, the charity dealt with in case 2, grew very rapidly from a small beginning in the 1980s until it had a turnover of £700,000 in the late 1990s. What percentage of its turnover was accounted for by administration?

(Mr Stoker) I think that we would need to give you a note on that, Chairman. I could not give you an answer off the top of my head.¹⁰

Chairman: Thank you very much. You obviously have a very difficult job and we wish you well. Thank you for answering our questions.

¹⁰ Note by witness: Based on the charity's accounts to 31 December 2000. £41,385 out of £318,266—some 13 per cent.

APPENDIX 1

Supplementary memorandum submitted by the Charity Commission

Question 30: The number of Complaints turned down because they are out of time?

The specification of the Independent Complaints Reviewer's (ICR) role and function provides that she will not normally investigate complaints received more than three months after the conclusion of the Commission's internal complaints procedures. She retains, however, a degree of discretion to take account of exceptional circumstances. To date she has declined to investigate three cases on the grounds that they are out of time. Of the three declined, two related to cases considerably predating the introduction of the ICR arrangements. The Commission will continue to keep the operation of the three month limit and of the ICR arrangements as a whole under review.

Questions 40–50 and 65–68: The four year trigger point at which potentially inactive charities are referred for examination and whether this would occur where a register update but not an annual return and accounts had been submitted (or vice versa); or whether in such circumstances the trigger would be disappplied?

Submission of register update forms by charities is not a statutory obligation. Submission of Annual Returns and accounts is a statutory obligation only for charities with annual income or expenditure above £10,000. All charities receive a number of reminders (at least two) in relation to any financial year for which neither submission is received. In addition, charities with annual income or expenditure above £100,000 that do not submit a statutory Annual Return and accounts are referred to an enforcement team.

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From charities with annual income or expenditure between £10,000 and £100,000, the Commission continues to seek statutory Annual Returns and accounts in respect of each financial year, via the reminder process referred to above, whether or not a non-statutory register update for that year has been received. It does not pursue the non-statutory register update from charities in this category if the statutory Annual Return and accounts have been received.

The four-year trigger (reference of charities from which nothing has been received for four years to a team which checks whether the charity is inactive) does not apply where a submission, either statutory or non-statutory, has been made within the past four years indicating that the charity remains active.

Questions 112–117: The Commission’s powers to prevent a charity under investigation for irregularity shutting down, and the number of cases where charities had successful or unsuccessfully shut down in such circumstances?

For reasons explained below, it is unlikely that a charity subject to a section 8 inquiry could succeed in dissolving and deregistering without the Commission’s agreement in order to frustrate the inquiry. If, hypothetically, they were to achieve this, the trustees would still remain responsible for their actions during their trusteeship. The Commission would be able to continue to pursue breaches of trust and other outstanding issues, including financial restitution where appropriate. The police and tax authorities would remain in principle to take action in respect of criminality or tax evasion.

Charities normally have the power to wind up on their own authority only if their governing documents contain a power of dissolution, although they may come to an end by applying all their assets. Whether or not a charity has a power of dissolution, the trustees are under a statutory duty to inform the Commission if it ceases to exist. In addition, statutory provisions forbid charities that are companies from amending their memoranda and articles of association in such a way as to render them non-charitable unless they have obtained the prior written consent of the Commission.

Before removing from the Register a charity that is exercising a power of dissolution or has applied all its assets, the Commission seeks evidence that the assets have been properly disposed of in furtherance of the charity’s objects. A charity which was under investigation under section 8 of the 1993 Act, and which was purporting to have exercised a power of dissolution or applied its assets without prior agreement with the Commission, would clearly come under extremely close scrutiny at this point, and there would be opportunity for outstanding questions, whether concerning assets or other matters, to be pursued.

In any case, where it became apparent that a charity might be seeking to dissolve or apply its assets in order to frustrate an inquiry under section 8, use of a number of the Commission’s protective powers might, depending on the circumstances, be appropriate. They include powers to suspend or remove trustees, or to appoint additional trustees; to appoint a Receiver and Manager to manage the charity in the place of the trustees; and to freeze bank accounts and make orders not to part with property.

Dissolution of a charity is on occasion an appropriate outcome of a section 8 investigation, and takes place in some cases at the Commission’s instance or with its agreement. The Commission has not, however, been able to identify from records or from the recollection of case managers any cases in the past two years where a charity subject to a section 8 inquiry has closed down without the Commission’s agreement or has sought to do so. The Commission would be glad to look into any specific circumstances that may have given rise to Members’ concerns on the point.

Mr John Stoker
Chief Charity Commissioner
Charity Commission

December 2001

APPENDIX 2

Copy of a letter and a memorandum submitted by The Association for Charities

ASSOCIATION SUBMISSION FOR THE COMMITTEE’S MEETING ON 28 NOVEMBER 2001

Thank you for your letter of 25 October indicating the Committee’s willingness to receive submissions on matters under consideration. I now enclose the Association’s submission for the Committee’s meeting on 28 November 2001, and should be grateful if you would circulate it to the Committee Members.

Whilst our submission concentrates chiefly on the NAO report findings on the Commission’s performance in the area of investigations (Report, Part 2), it also relates these to Association evidence from some 20 charities with direct experience of the Commission’s investigatory performance since 1994. Given the need for a brief submission, however, the back-up evidence for Association statements does not accompany the submission: the dossier of such evidence can, however, be made available to the Committee, or any Member,

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[Continued

on request. Our submission also refers to an August 2001 report from the Independent Complaints Reviewer, which is also available, upon request. This report was copied to the writer by a complainant (who is not an Association member) with permission to release it to any interested party.

Association for Charities: A National Association for the Support and Protection of Charity Beneficiaries, Trustees, Volunteers and Donors

POWER WITHOUT EFFECTIVE ACCOUNTABILITY: CHARITY COMMISSION INVESTIGATIONS AND EXERCISE OF JUDICIAL POWERS

1. INTRODUCTION

A welcome for the NAO Report HC 234 and its consideration by the Public Accounts Committee.

1.1 Given the importance to our national life and economy of this major, but generally under-regarded sector, the Association for Charities (AfC) welcomes the National Audit Office (NAO) report on the regulatory role of the Charity Commission (the Commission); and the Public Accounts Committee's (PAC) early consideration of it. The Association also welcomes the opportunity to present this submission to the Committee.

1.2 The Association hopes that the PAC's report, together with that from the Cabinet Office's Performance and Innovation Unit (PIU) expected early next year, will lead the Government and Parliament to undertake the fundamental and much-needed review of the sector; and, in particular, a review of the legal and regulatory framework, and the regulatory role of the Commission.

The Association for Charities

1.3 The PAC may recall that trustees of certain charities made submissions on the last occasion the Committee reported on the NAO's Report, *Charity Commission: Regulation and Support of Charities* (HC2, Session 1997-98). These submissions raised concerns stemming from trustees' experiences of the Commission's exercise of its regulatory powers. One such case was raised at the Committee by a Member, in the private session, as reported in the Committee's Twenty eighth Report of April 1998. That case led to an application for judicial review in the High Court; another led to trustee appeals against Commission Orders which resulted in a landmark judgement and other developments outlined in Section 2 of this submission, and to the formation, in 1999, of the Association for Charities.

1.4 The Association's area of concern, operation and activity is the regulatory framework for the charity and voluntary sector, with particular reference to the regulatory role of the Commission, and the manner in which the Commission has exercised the unparalleled regulatory and judicial powers conferred by the Charities Act 1993.

1.5 The Association is not attached to any political party or any other organisation or body. It is wholly independent, although it seeks to co-operate with other bodies which share its objects and concerns; and it supports the attempts of the present Chief Commissioner to change the culture and improve the performance of the Commission in its regulatory role. It is almost entirely financed by its core membership, who, in the best traditions of the voluntary sector, give generously of their time, expertise and other resources without charge.

1.6 The AfC has, since 1999, received and collated information and evidence from trustees and supporters of some 20 charities. This evidence demonstrates the improper, and on occasion unlawful, exercise of the Commissioners' regulatory powers by Commission officers. Such conduct has led to unnecessary and extensive damage to beneficiaries (both human and animal); to charities; and to trustees who had served with integrity, competence and whole-hearted commitment. [Note: The Association's first video "With Charity for All?" refers to some of the effects of the exercise of the Commission's regulatory powers on four charities.

Layout of the Submission

1.7 Following this brief introduction, the submission is divided into three further sections. Section 2 outlines important developments relating to the Commission's accountability to the Courts; Section 3 deals with the NAO Report's findings (particularly in relation to Part 2 of the NAO Report which is the area of the Association's focus) and relates these to the evidence obtained by the Association from 20 charities; and Section 4 draws the Committee's attention to the lessons the AfC believes may be drawn from the matters outlined in Sections 2 and 3 of the Submission.

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2. DEVELOPMENTS SINCE THE PAC'S 1998 REPORT RELATING TO THE ACCOUNTABILITY OF THE COMMISSION TO THE COURTS

2.1 As the NAO Report notes, the Commission is a non-ministerial Government department accountable to the Courts for its decisions (Report 1.4). In truth, the Commission's regulatory powers "are in their nature judicial powers: they are the sort of powers the Court exercises" [Ref: *The Law and Practice relating to the Charities*—Hubert Picarda QC, 1999]. No Minister, Government, nor even Parliament can at present review the Commission's regulatory decisions: only the High Court (and the Court of Appeal/House of Lords) could do so if they so determine. The Courts provide the only (theoretical) safeguard against any abuse of the Commissioners' regulatory powers.

2.2 Under present arrangements, trustees seeking to appeal against Commission Orders require the Commission's permission to bring appeals; cannot, as trustees, obtain legal aid whatever their circumstances; and the Commission need not appear as a defendant to seek to support or justify their Orders. Any trustee seeking to complain to an MP, Minister, or the Parliamentary Ombudsman about the use of the Commission's judicial powers is informed that these are matters for the High Court alone.

Why in practice the only safeguard against Commission abuse of powers may no longer operate

2.3 In landmark charity law appeals (1999 to 2001) trustees appealed against Commission Orders appointing a Receiver and Manager to make and execute a substantial financial settlement from charity funds which professional advisers to the charity had advised the trustees it would be a breach of their duty of care to do on the available evidence. At a hearing of these appeals, a High Court Judge ruled (on grounds of time and cost) that "it would not be right to spend time investigating what the Charity Commissioners did and what the Charity Commissioners thought and what the Charity Commissioners said." Consequently, the Court determined, "considering what factors influenced the Charity Commissioners, what discussions took place within the Charity Commission, whether the Charity Commissioners were fair, whether they were reasonable, whether they might have done things differently from the way they did could all be avoided". [Note: The appellant trustees, legally advised, and financed by one of their number in their Court appeals designed to protect the charity's assets, had alleged bias and misconduct on the part of Commission officers in the making of such Orders—but Counsel for HM Attorney-General, as defendant, argued that the Court should accept "*prima facie* expect the Commission not to be wrong"]. Prior to the Court's ruling, the then Head of the Home Civil Service had asserted that he would be unable to consider any allegations of misconduct by Commission officers: only the High Court could do so.

2.4 The Association's evidence is that Commission officers, exercising the Commissioner's powers, have acted carelessly, incompetently, with bias and, on occasion, unlawfully. Powers of this nature are not generally available to other UK regulatory bodies without prior reference to the Courts: they were not available to the Commission until the implementation of the Charities Act 1993.

2.5 The Association believes that the landmark Court ruling related above—now case law precedent—may serve to relieve the Commission of the likelihood that any future decision of theirs will be the subject of Court review. In reality this Court ruling, the AfC and leading charity lawyers believe, leaves the Commission effectively unaccountable in the exercise of its regulatory powers. The AfC claims that such a situation is inimical to the public interest; and could well be the subject of concern and possible action by Parliament. The AfC believes that Lord Acton's dictum (1887) "power tends to corrupt and absolute power corrupts absolutely" should serve as an appropriate warning in this situation.

3. THE COMMISSION'S REGULATORY ROLE AND PERFORMANCE: THE NAO REPORT'S FINDINGS, AN INDEPENDENT COMPLAINTS REVIEWER'S REPORT FINDINGS AND THE AFC'S EVIDENCE

3.1 NAO reports by their nature and language do not appear in dramatic form: they record, in measured form and language, the objects of a review, the study methodology, and progress and failings in specific areas. A reader of this report may too readily conclude that there is no cause for particular concern, as did the editor of a leading charity news magazine, who recently commented as follows in her editorial "The Charity Commissioners must be breathing a sigh of relief. The National Audit Office's Report that came out last week has given the Commission a clean bill of health". The AfC suggests that such a reading of the report fails to appreciate the serious defects and deficiencies referred to below.

3.2 The Commission has a multiplicity of roles under present arrangements: registry, supportive, administrative, and investigatory, followed by the exercise, where chosen, of judicial regulatory powers. The AfC welcomes the Commission's progress recorded in three areas by the NAO Report (Report Summary, 1.5).

3.3 Whether a prospective charity achieves Commission registration which will affect its taxation status or whether or not a charity is helpfully and effectively supported by the Commission advice or guidance, is unlikely to cause the degree and kind of damage to beneficiaries which can, and has occurred through the

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exercise of the Commission's judicial powers. Such damage can include, and has included, possible loss of life and livelihood, deterioration of health and a lack of safety. In the area of the AfC's particular concern—investigations work—there is considerable evidence that serious weaknesses remain.

Serious weaknesses in investigations work

3.4 The Association notes that Part 2 of the NAO Report lists a catalogue of substantial defects in the Investigation Division's performance. Eight years after the Commissioners were granted probably the most substantial judicial powers granted to any regulatory agency in the United Kingdom, and four years after trenchant criticisms of the Commission's investigatory performance were made by the PAC, the Commission's performance in this area appears to be inadequate. [Note: the NAO Report records that the only two Treasury Minute responses in which the Commission is recorded as not accepting the PAC's conclusions were a lack of management grip, and the allocation of resources to investigations work (Report, Appendix 2, pages 17–18). If the Commission could not accept that such strictures were justified in those areas, it is perhaps not surprising that serious weaknesses remain.]

3.5 The Commission appears to be completing investigations more quickly (Report, paragraph 2.6), but this may be because, as the Association's evidence demonstrates, they are failing to investigate cases as thoroughly and professionally as they should—possibly in their drive to achieve target completions. The same remarks may be relevant to the reported progress in tackling the backlog of cases (paragraph 2.7). The Association believes that, as the NAO recommends, it could be helpful and good management practice for individual cases to be carefully and properly monitored (paragraph 2.8)—provided such monitoring did not concentrate exclusively on the need to meet target investigation completion dates regardless of the quality of the case officer's performance or the complexity of the case.

3.6 The Commission's failure to consult trustees about important decisions (Report, page 17, final sentence of Commentary) is common to the great majority of the cases known to the Association. Again the AfC notes that the Commission does not review the cumulative time taken to resolve cases, nor their cumulative costs (paragraph 2.9); nor does it systematically review the scope of inquiries before launching an inquiry (paragraph 2.10). Few inquiries include systems checks within charities or detailed financial examinations (paragraph 2.12).

3.7 The Association notes, with some surprise (albeit welcome surprise) that certain other regulatory bodies appear to consider their liaison arrangements with the Commission are working well. The Association's experience is that, in certain cases, the Commission failed to inform the Police and the Inland Revenue, even when requested and reminded by trustees to do so.

3.8 It is clear from the NAO Report (paragraphs 2.16 and 2.17) that the Commission does not always check that charities have successfully carried out agreed actions aimed at remedying weaknesses; nor was it possible always to identify clearly from files what actions a charity was expected to carry out to rectify weaknesses.

The dangers of purely quantitative targets to complete investigations

3.9 The Association draws attention to Appendix 3 of the NAO Report in which the Commission reports performance in 2000–01 against targets they set in relation to three objectives. Leaving aside the question of whether the particular targets set by the Commission under objective 3 were sufficiently taxing, the Association notes that each of the targets on the investigative side are expressed purely in quantitative terms—with no reference whatsoever to quality of performance. The Association claims there is considerable danger that measurements expressed purely in quantitative terms—particularly in the area of investigations completed within certain dates—will be likely, if not virtually certain, to encourage careless, incompetent and inadequate investigations in order to reach or exceed a target of investigations completed. In seeking to meet such quantitative targets, investigations staff are likely to be encouraged to “cut corners” and bring investigations to an end without taking full and careful account of the true needs of beneficiaries and the interests of the charities the Commission should be there to protect. It is the Association's experience, confirmed also by the findings in Part 2 of the NAO Report, and an Independent Complaints Reviewer's recent report (see paragraphs 3.20–3.22 below) that the Investigation Divisions perform very poorly in the critical area of investigation work.

Complaints and Compliments: inadequate measures to determine performance or effectiveness

3.10 The Association notes that no proper complaints procedures (either internal or external) were available to complainants until January 2000—a possibly unique deficit in any governmental regulatory body. The AfC believes that it was no coincidence that, following the landmark charity case outlined earlier in this Submission and the Association's formation, the Commission detected a need for pilot internal and external complaints procedures. The AfC immediately welcomed the introduction of these pilot procedures

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by the present Chief Commissioner, and has made certain proposals to the Commission Board for improvements which the Chief Commissioner has indicated will be taken into account when the Board reviews the pilot schemes before the end of this year.

3.11 From a meeting with the Independent Complaints Reviewer earlier this year, the AfC was surprised to learn that the Commission—of its own volition—has a policy of only keeping certain files on a case for a period of three months. Apparently, in certain cases where the Commission decides (do they have a crystal ball?) that a case may become the subject of complaints, they may keep the files for a longer period. The AfC believes that such a Commission policy is, frankly, unacceptable—as well as being out of line with other Government Departments and Agencies.

3.12 The AfC believes that, for a variety of reasons, the level of complaints and compliments received by the Commission cannot properly be used to measure the efficiency or effectiveness of the manner in which it performs, particularly in its investigatory role. Firstly, as any senior manager or chief executive of a public sector organisation appreciates, many people (possibly the majority?) will not trouble to compliment or complain to a public sector organisation; they may consider it will not make any difference—except to lead to exchanges of correspondence if they were to complain; while others may wish to avoid jeopardising any future contacts with the organisation by complaining.

3.13 Finally, so far as the Commission is concerned, several of those who felt most strongly about the poor performance of the Commission and the damage done to their charities or themselves by Commission actions, have sought to complain. Their complaints, however, have not been recognised or dealt with on a number of grounds—not least that their complaints are out of time. The Commission has written to members of the Association who sought to complain about Commission conduct or performance, saying that “the files are closed” and that no further reply from them will be forthcoming.

3.14 From paragraph 3.19 of the NAO Report, we learn that 22 per cent of the 121 complaints to the Commission in 2000 were upheld: a statistic which may either be considered as an acknowledgement that about a quarter of the complaints were justified, indicating a relatively poor initial performance, or that the Commission’s internal complaints procedure is working satisfactorily, or both. Although the NAO do not seek to relate the number of complaints or compliments to the Commission’s overall performance, the Association is aware that the Commission themselves have in the past sought to do so. During the same period, paragraph 3.20 of the NAO Report indicates that the Independent Complaints Reviewer received 43 complaints, partially upholding one of the eight formally investigated with two of the eight being outside the Reviewer’s terms of reference. The answer to a recent Parliamentary Question seeking information on the numbers of complainants and complaints to the Commission and the Independent Reviewer, with results, from January 2000 to the present, should be available in the House of Commons Library by the date of the Committee’s meeting.

The Use of the Commission’s Statutory Powers

3.15 The NAO Report notes that the Commission’s use of statutory powers has continued to decline (paragraphs 2.14 to 2.15 and Figure 10) despite the Committee’s concerns expressed in 1998. The Association has consistently supported the proper and speedy use of statutory powers by the Commission, once the need for such has been established by thorough and professionally executed investigations. The Association suspects that the proven cases of maladministration or abuse amongst registered charities are likely to under-represent the true position, given:

- the difficulty of obtaining evidence in this area;
- the relative ease with which fraud and abuse may occur in relation to the size, monetary value and fragmentation of the sector;
- the management of such bodies by trustees and governors, who may in many cases lack the necessary time, skill and management expertise required; and
- the opportunities for malfeasance and fraud in this sector allied to the relatively low rates of detection.

Such conditions might reasonably be expected to attract those who might seek to take advantage of such opportunities. The AfC shares the PAC’s expressed concerns in their last report relating to the Commission’s “failure to show more drive in exploiting the opportunities for greater effectiveness which the 1993 legislation provides” (Report, Appendix 2).

3.16 At the same time, the Association has extensive evidence of the Commission’s misuse of statutory powers, particularly in relation to small and medium-sized charities, where the Commission has been too ready to impose its control by statutory means, rather than investigate and remedy the defects reported to them by concerned trustees.

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3.17 The AfC notes that a seeming paradox emerges from their review of several of their case files. On the one hand, the Commission, in these cases, failed to investigate, either at all or properly, the evidence of maladministration drawn to their attention, with consequent costs and losses to the charity in certain cases: on the other hand “whistle-blower” trustees have experienced the full penalties of the apparently arbitrary exercise of Commission judicial powers, without any effective means of appeal or redress.

3.18 A classic case of the Commission’s misuse of statutory powers (one of several) relates to a charity where trustees obtained an injunction to prevent a Receiver and Manager making a financial settlement from charity funds which he had been instructed by Commission Order to execute. The Commission, having additionally appointed new trustees to take on the management of the charity from the trustees appealing against their Order, were later faced with a situation in which the trustees they had appointed, in time also came to oppose the financial settlement the Commission had instructed the Receiver to execute. The result was that the Commission, belatedly, was obliged to support the new trustees in their opposition to the financial settlement; and dismiss the Receiver whom they had appointed, at charity expense, to execute the settlement they sought.

3.19 As a final irony, in the case mentioned above, the claimant of charity funds, whose claims the Commission had sought to meet by the appointment of the Receiver, made use of the Commission’s new internal and external complaints procedures to complain about several aspects of the Commission’s conduct. After securing certain apologies from the Chief Commissioner who had reviewed his complaints, reference was made to the Independent Complaints Reviewer. Of the 12 complaints the Independent Reviewer considered, she partially or fully upheld six.

3.20 In her August 2001 report on that case, the Independent Reviewer reached the following conclusion:

“At the end of the review, I am led to conclude that overall this case was very poorly handled. It has been characterised by changes in approach and direction and the Commission has tried almost every possible intervention in order to achieve a solution to the problems that were being faced. Its active intervention has lasted literally for years and the issue of the loans has still not been resolved. It is difficult to see how this can be a reasonable use of public money.”

In the Association’s view, such a finding could apply to other cases on its files.

3.21 At the conclusion of the same report, the Independent Reviewer made seven recommendations, the first two of which were recommendations that the Commission offered the complainant an apology for the shortcomings identified in that report which were not the subject of an earlier apology following the Chief Commissioner’s review; and a recommendation that the Commission offer a consolatory payment to the complainant, or if they preferred, the recommended sum could be paid directly to a charity of the complainant’s choice. The remaining five recommendations related to failures in the Commission’s handling of the case, with the final recommendation that the Commission use the lessons of that report to inform future practice and procedure.

The need for swift and decisive Commission action to deal effectively with the serious continuing weaknesses in investigations work which have led to the misuse of judicial powers

3.22 The AfC believes that it is now clear from the considerable evidence of the NAO Reports, the Independent Reviewer’s Report from which a quotation appears in paragraph 3.21 above, and from the AfC’s dossier of some 20 cases, the time has now come for swift and decisive Commission action—and before any further unnecessary damage occurs to beneficiaries, charities and trustees. The AfC believes that such management action will need to be taken in relation to the two related areas of inadequate investigatory performance, and the resultant misuse of the Commission’s judicial powers. The extra million pounds noted in the NAO Report to be allocated to investigations work may otherwise be wasted; and used to perpetuate a failing (and failed) area of activity.

3.23 With regard to the continuing investigatory work failures, the AfC considers that a root-and-branch reform will be required. It would be inexcusable were the next NAO report to have to point to investigation failures again—while in the meantime more beneficiaries, charities and trustees were being failed.

3.24 Firstly, it is the AfC’s considered view that the Heads of Investigations in the three Commission offices should be stood down, and replaced by Investigative Service Managers of proven competence, who are used to demanding, and obtaining the highest standards of investigatory performance. Such managers, the AfC believes could be recruited, either on a temporary or permanent basis from established regulatory agencies with a record of investigative competence, including the NAO, the Audit Commission and the Police Service. Such appointments could be expected to secure the requisite improvements in staff training, mentoring, procedural improvements and effective monitoring, to gain full value from the additional £1 million (a 31 per cent increase) proposed for investigatory work.

3.25 Secondly, given the damage to the lives, livelihood, health and safety of those affected by the exercise of such powers, the AfC considers that in every case where the use of such powers is under consideration, the Commission Board should, upon a report, determine what exercise, if any, of its judicial powers would be

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requisite. By this means, the AfC believes, confidence in the integrity of charity, and of the Commission's exercise of its judicial powers will be increased; and the Court's assumptions that it was the Commissioners (and not the Commission officers) who were so acting, would be validated. [Note: the 1993 Act grants judicial powers to the Commissioners.]

3.26 The Association believes that the action proposed to secure investigations of the requisite quality, together with the accountability resulting from the Commission Board's consideration of every proposed use of judicial powers, should serve to protect beneficiaries; encourage the greater and proper use of the Commissioners' statutory powers; and make the most effective, efficient and economical use of the public funds allocated to this function.

4. A FRESH LOOK AT A LEGAL AND REGULATORY FRAMEWORK FOR CHARITIES AND THE VOLUNTARY SECTION

4.1 The NAO Report reviewed issues relating to the economy, efficiency and effectiveness of how the Commission has performed in its present regulatory role. It did not set out to address the more fundamental and wider-ranging issue of what changes might be appropriate to "enable the existing and new not-for-profit organisations to thrive and grow; to encourage the development of new types of organisation; and to ensure public confidence in the sector"—so as to "help to secure a strong, independent and diverse sector, capable both of challenging Government and working with it where appropriate". These are the stated aims of the current PIU review.

4.2 The AfC, together with many other organisations with an interest in the health and development of this sector, will be making a submission to the PIU. It will be neither appropriate nor necessary, in this submission to the PAC, to attempt to cover the same ground as will be covered in the PIU submission.

4.3 At the same time, the AfC welcomes the PIU's recognition that "there are growing public demands for greater openness and accountability". [PIU statement *Modernising the Legal and Regulatory Framework for Charities and the Voluntary Sector—the Case for Further Reform*]. One of the three key objectives of the Commission is "to improve the governance, accountability, efficiency and effectiveness of charities" (NAO Report 1.5). The AfC believes that "Physician heal thyself" (St Luke 4, 23) has a particular force for the Commission. How can the Commission be expected to improve the governance, accountability, efficiency and effectiveness of charities until it puts its "own house" in order by performing effectively and with integrity in its investigatory role and the exercise of its judicial powers?

4.4 The Commission's effective lack of accountability for its decisions—particularly give the decision of the Courts that they would not review Commission conduct or decisions in appeals against Commission Orders—makes it difficult to envisage the likelihood of further trustee appeals, or of the chances of success were any such appeals to be made to the Courts. Given the already formidable obstacles facing any trustee attempting to challenge Commission Orders, the AfC claims that the necessity for appeals to go before the High Court needs to be subject to review and alteration.

4.5 The AfC draws attention to arrangements in force in other fields of regulation: even where regulatory agencies do not have the substantial judicial powers of the Commissioners—and where appellants are not faced with the virtually insuperable obstacles in bringing appeals. The Association questions why it should be necessary for appeals against Commission conduct, decisions and Orders to be dealt with by the High Court alone, when elsewhere appellants can appear before independent tribunals, or seek alternative dispute resolution without reference to the Courts.

4.6 Appeals to an independent tribunal could remove the virtually insuperable obstacles facing an appellant; and achieve an outcome in a greater reduced timeframe, and with greatly reduced costs to all parties. [Note: The present "High Court only" appeals can result, and have resulted in costs of over £200,000 and extend over a period of some four years. While such appeals provide substantial fees for the lawyers representing the parties, it is difficult to see what benefits they provide for charities and trustees.]

4.7 In summary, the AfC believes that the present appeals arrangements are characterised by the following defects. They are:

- *unparalleled*: the Commission possesses relatively greater powers, without recourse to the Courts, than the Police. In no other area of activity known to the Association is it possible for decisions, involving those relating to the life, health and safety of people and animals (in respect of charity beneficiaries), to be made by a small and poorly-performing public service organisation (in the field of investigations). The Commission also acts as prosecutor, judge, jury and executioner in relation to the removal of charity trustees without there being any viable means of appeal against such decisions;
- *unaccountable*: Commission officers and the Commissioners appear to be unaccountable for their decisions—except to the High Court—which has declined to consider either their conduct or the circumstances in which they reached such decisions;

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- *unsatisfactory*: the present arrangements fail to provide any effective safeguard to ensure that the Commission exercises its regulatory powers competently, fairly and in the interests of the charities it regulates;
- *unsuited*: the present arrangements appear unsuited to the proper requirements of a regulatory system; or to the needs of charities, trustees, beneficiaries, volunteers, charity workers and supporters to be served;
- *unlawful* (possibly): under the European Human Rights legislation and the Human Rights Act 1998, it is highly doubtful if a trustee, removed by Commission Order, could obtain a fair and proper hearing from the Commission acting as prosecutor, judge, jury and executioner;
- *uneconomic*: High Court and Court of Appeal hearings against Commission Orders are extremely costly:
 - *to the public purse*: through the preparation for Court appeals by the Commission, Treasury Solicitor and Attorney-General, with the possibility that certain adverse Court costs may be borne by the public purse;
 - *to trustees*: if their appeals against Commission Orders fail and they have all costs awarded against them;
 - *to charities*: if no Receiver is in post and charity funds are used for the appeals; or if Court costs are awarded against the charity;
- *unnecessary*: the present regulatory arrangements are unnecessary because there are other well-established and well-tried methods of regulation and appeal which are far less complicated, less time-consuming and less costly to all concerned.

4.8 The AfC believes that it is possible, desirable and indeed, essential for the present legal and regulatory framework for charities and the voluntary sector to be reviewed; and for a framework to be designed from first principles to avoid the defects and deficiencies of the current arrangements. The AfC trusts that the PIU, the Government and Parliament, with the support of the Committee, will address this issue.

Mr John Weth
Chairman
The Association for Charities

November 2001

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SESSION 2001–02

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