

House of Commons
Welsh Affairs Committee

**THE CHILDREN'S
SOCIETY IN WALES:
RESPONSES FROM THE
GOVERNMENT AND THE CHARITY
COMMISSION**
**to the First Report of the Committee of
Session 2001-2002**

Fourth Report
of Session 2001–02

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Fourth Report
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*Report, together with Proceedings
of the Committee and Appendices*

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The Welsh Affairs Committee

The Welsh Affairs Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Office of the Secretary of State for Wales (including relations with the National Assembly for Wales).

Current Membership

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Mr Martin Caton MP (*Labour, Gower*)
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Ms Julie Morgan MP (*Labour, Cardiff North*)
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The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No. 152. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/commons/selcom/welhome.htm. A list of Reports of the Committee in the present Parliament is at the back of this volume.

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FOURTH REPORT

The Welsh Affairs Committee has agreed to the following Report:

THE CHILDREN'S SOCIETY IN WALES: RESPONSES FROM THE GOVERNMENT AND THE CHARITY COMMISSION TO THE FIRST REPORT OF THE COMMITTEE OF SESSION 2001-2002

1. The Welsh Affairs Committee published its First Report of Session 2001–02, *The Children's Society in Wales* (HC 525), on 15 February 2002. We received the Government's response on 19 April 2002; it is published as Appendix 1 to this Report. A separate response to the Report was received from the Charity Commission on 26 June 2002, and is published as Appendix 2 to this Report.

2. We recognise that the Charity Commission has taken time and trouble in order to produce a full response to the points we raised in our February Report. We also welcome the Commission's acceptance that the trustees' performance was far from perfect:

- it describes the process by which the trustees took steps to inform themselves as having had "shortcomings"¹
- it characterises the widespread criticism of trustees' handling of consultation as "understandable" and notes that "the possibility cannot be excluded that consultation of statutory funders might have generated "rescue" funding opportunities"²
- the Society "cannot be said to have managed its financial circumstances as successfully in some respects as could, and arguably should, have been the case".³

The Commission has concluded that "the Society's handling of the issues fell short of good practice and has advised the Society accordingly".⁴ It has decided not to open a formal inquiry "as the enquiries that it has pursued in connection with the Committee's report have already been of comparable depth and thoroughness", but it will "continue to monitor the Society's financial management and planning, and maintain contact with it as necessary on the other lessons of the case".⁵

3. **We are dissatisfied with the Charity Commission's response.** We well appreciate that as the statutory regulator the Commission does not have the discretion to comment on or overrule decisions validly taken by trustees; and that the response deals primarily with an assessment as to how the courts would regard the decision taken to close the Society's work in Wales, were it to be subject to legal challenge. **The explicit criticisms made by the Charity Commission are in our view unduly lenient. The inquiry the Commission carried out—and their response confirms that it was an inquiry in all but name—confirms the principal criticisms we made in our February Report. The Church of England Children's Society has now been found by the Charity Commission to have performed badly, and the criticisms we made in our February 2002 Report have been fully substantiated.**

¹ Page 15

² Page 9

³ Page 17

⁴ Page 8

⁵ Page 10

4. We remain particularly concerned over one issue: the extent to which the trustees were justified at taking into account the costs of the Welsh Language Programme in reaching their decision. The Charity Commission's covering letter states—

“Given the financial situation and the options being considered (a partial or a total reduction of services/presence in Wales as part of a wider programme of cuts), it is unlikely that the courts would have found it unreasonable in legal terms for the charity to take into account the costs of the Welsh Language Programme, and of fundraising in relation to fundraising returns in Wales.”⁶

The fuller legal opinion annexed to the Commission's response adds the rider “provided that they were not treated disproportionately to the other factors in its overall financial position”.⁷ The courts would consider whether it was perverse or irrational of the trustees to have taken Welsh Language Programme costs into account: not whether it was inappropriate to have done so. There would of course also be detrimental effects in Wales and elsewhere were it to be accepted as appropriate for trustees to take into account the costs of fundraising in particular areas in relation to returns when deciding on future levels of service provision in that area.

5. We have no reason to quarrel with the Charity Commission's assessment of the likely view a court would take: but we do take strong exception to the state of the law thus revealed. Any company or body is thus free to discriminate against the provision of services in Wales, pleading the allegedly burdensome costs of Welsh language requirements. It is hard to imagine a court accepting a similar plea in relation to the costs of complying with health and safety or non-discrimination legislation. **There is in our view a strong case for legislation to provide that those charged with management of charities (or any other comparable bodies) should be explicitly prohibited in coming to decisions from taking into account the costs arising from compliance with statutory obligations, such as those arising under the Welsh Language Act.**

⁶ Page 9

⁷ Page 12

APPENDICES

APPENDIX 1

GOVERNMENT RESPONSE TO THE FIRST REPORT OF THE COMMITTEE OF SESSION 2001–02, ON THE CHILDREN'S SOCIETY IN WALES (HC 525)

1. **It is proper for the Trustees, rather than the Society's professional management, to take major policy and strategic decisions such as the one in question. It is right that in doing so they should take account of advice from management. That does not mean that the management bear no responsibility at all for the decisions, especially in a case where, according to the two Trustees who gave evidence to us, they have given the Board a strong steer towards a particular course of action. We are concerned that a situation has arisen in which, for various reasons, neither the Chair of the Board of Trustees, nor the Chief Executive of the Society feels able to acknowledge responsibility for, or mount a robust defence of, such a controversial decision.**

The Government notes the Committee's views. Decisions as to when and where a charity operates are for the trustees of the charity to make. Trustees are charged with acting in the best interests of their charity. Provided they are acting within the law, it is not for Government to substitute its judgement for that of the trustees in operational matters.

2. **It is important that the Charity's Trustees are able to fulfil their duties fully from the outset, carefully scrutinising proposals which emanate from the Society's management and making informed decisions about the Society's future. To this end we believe the Society should consider providing a comprehensive programme of training and induction for new Trustees.**

The Government notes the Committee's views. The Government acknowledges the very valuable role played by trustees of charities. Government recognises the voluntary nature of the important work they undertake. Without their input, charities would not be able to provide the wide range of services they do. Government shares the Committee's view that, as a matter of good practice trustees of charities should be suitably equipped for the tasks they undertake and that they should receive appropriate training and induction. The Charity Commission has recently published a report on Trustee Recruitment Selection and Induction which underlines the importance of induction and what the Commission would like to see as best practice.

3. **We commend the Assembly for its swift response to the situation and we are pleased that negotiations over the future of the Children's Society 's services in Wales are making progress. We call on the Government to monitor further developments closely with a view to offering assistance which it might reasonable give.**

The Government is pleased to note the Assembly's implementation of a new task force. Provision of services in Wales is a matter for the Assembly.

4. **It is important that charities and other organisations providing services in partnership with government at all levels understand the new political geography of the UK, post-devolution.**

The Government concurs with this.

5. **Following the Children's Society's decision, we believe that a code of practice which voluntary bodies operating in more than one country of the UK could choose to adopt would be a welcome development. A public commitment from voluntary bodies to consult properly before withdrawing from, or significantly reducing services in, Wales (or any other constituent part of the UK) would help to remove some of the uncertainty surrounding the work of the voluntary sector in Wales which has arisen in the aftermath of the Children's Society's decision. We urge the Government to support such a code of practice and to consider whether its adoption should be a condition of bodies receiving funding from the UK Government.**

In England, a framework already exists for relations between Government and the voluntary and community sector. It is set out in the Compact, a memorandum concerning relations between Government and the sector. It is not a legally binding document but one which derives its authority from its endorsement from Government and the sector through its consultation process. The Compact is underpinned by various codes of Good Practice, including one on funding. The Compact sets out the key principles and undertakings which should underpin relations between Government and the sector.

One of the most important undertakings which the Government has given is to recognise and support the independence of the sector, including its right within the law, irrespective of any funding relationship that might exist, to determine and manage its own affairs. The Government is committed to honouring that undertaking. The Compact does also contain an undertaking from the sector to involve users, wherever possible, in the development and management of activities and services. That undertaking is repeated in the Code of Practice on Funding. Neither the Compact nor the Code, however, at present makes funding on the sector's acceptance of a requirement to consult with users.

As part of the Home Office's ongoing work on developing the Compact consideration could be given to the Committee's proposal to attach conditions concerning mandatory consultation to any offer of Government funding. Any proposal for change would have to be considered by and agreed with the Sector's Compact Working Group.

6. **Despite the publicity that has surrounded the decision to withdraw from Wales, it is reasonable to assume that many people will continue to believe that the Society, which has worked in Wales for 113 years, will continue to be active in that country. People in Wales who wish to support a children's charity must not be given the false impression that, by donating to the Children's Society, they will be supporting continuing work with children locally in Wales. The Children's Society must therefore take pains to ensure that neither the content nor the placement of any of its advertising, or of any other publicity or public statements issued by or on behalf of the Society, gives the false impression that it will continue to work in Wales.**

The Government notes the Committee's views

7. **We will send a copy of the Report to the Charity Commissions so that they may consider what action, if any, it would be appropriate for them to take in view of our findings.**

The Charity Commission has received a copy of the Committee's Report. The Commission contacted the Society for further information and their response. The Commission is currently considering which of their concerns falls within its jurisdiction and are evaluating the information the charity and the Report have provided. When the Commission have completed their evaluation they will tell the

Committee whether they have found any of the concerns to be substantiated and what, if any, further action they will take.

18 April 2002

APPENDIX 2

THE CHILDREN'S SOCIETY IN WALES RESPONSE TO THE FIRST REPORT OF THE COMMITTEE OF SESSION 2001-02, ON THE CHILDREN'S SOCIETY IN WALES (HC 525)

Introduction

The Committee considered in its First Report of Session 2001—2002 the decision in October 2001 of the Board of Trustees of the Church of England Children's Society ("the Society") to close its work in Wales with effect from July 2002. In paragraph 38 it referred to a number of aspects of the case which it believed might merit investigation by the Charity Commission. I am writing to inform the Committee of the outcome of the Commission's examination of those matters.

Powers and Functions

The Charity Commission is the statutory regulator of charities in England and Wales. Its general function, set out in section 1(3) of the Charities Act 1993, is to promote the effective use of charity resources by encouraging the development of better methods of administration, by giving charity trustees information or advice and by investigating and checking abuses. It has powers under section 18 of the Act to intervene in charities where there has been mismanagement or misconduct or where necessary to secure a proper application of charity assets (that is, "proper" in law and within the terms of the charity's governing document). These powers are designed for circumstances where drastic action is needed to protect the charity. They enable the Commission to suspend or remove trustees or officers, appoint additional trustees, freeze financial transactions, appoint temporary managers (Receivers and Managers) in the place of the trustees, and impose new schemes of administration.

An essential feature of charitable status is that charities are independent, with very wide freedom to take decisions, provided that they do so properly within the charity's constitution and wider charity law. This has important implications for the Commission's regulatory stance. While the Commission may intervene in decisions on grounds of propriety and compliance with legal requirements, the independence of charities means that it does not have discretion to overrule on merits decisions which have been validly taken by the trustees. (Reflecting this principle, section 1(4) of the Act provides that the Commission does not have power to act in the administration of a charity.)

Working Methods

Accordingly, the Commission approached the matters referred to it by the Committee by considering whether the decisions taken by the trustees of the Society would be likely to be regarded by the courts as improperly taken, as inconsistent with the requirements of the Society's governing document or of wider law. At the same time, it considered whether there had been departures from good practice which, while falling short of material impropriety, might call for comment or advice, either to the Society or to charities generally. In this process the Commission obtained and reviewed large amounts of original documentation and sought further information and comment from the Society, which co-operated throughout. The results of the analysis are set out in the Annex.

Findings

While the Commission understands the extremely strong feelings that the trustees' decision aroused, its conclusion is that it was a decision which they were entitled to reach in the interests of the charity within the scope of the relevant legal framework. While the process contained shortcomings, these were not so material that the courts would be likely to rule that the decision was invalidated.

In coming to this conclusion, the Commission implies no view on the relative merits of the decision that the Society took and of the other options that were before the trustees. The decision is one for the Society's governing body to account for and to justify to stakeholders and the public in their capacity as independent charity trustees.

The Commission has also concluded that, in certain other respects, the Society's handling of the issues fell short of good practice, and has advised the Society accordingly. The main issues concerned are the Society's monitoring and management of its financial planning between 1997 and 2001, and the extremely limited consultation it undertook prior to taking and announcing the decision to withdraw from Wales.

Following are comments on points a—f in paragraph 38 of the Committee's report. The references are to paragraphs in the Annex.

(a). Financial forecasting

- Given that the charity was already in deficit in 1997, it may seem excessive that in 1998 plans were made to spend a further £12m of the charity's reserves to develop new work. However, this was in line with the charity's reserves policy at the time, as it involved using excess reserves in expectations of future increased income. (*II 3.i, p8*)
- With hindsight it is clear that the hoped-for returns from fundraising investments were not being realised, or were too delayed for the growth in expenditure to be sustainable, given the ongoing drain on reserves. It could be argued that the charity continued to budget on an overly optimistic basis for too long, and that the decisions in July 2000 and October 2001 to make substantial cuts to expenditure were overdue. Had they made the decision sooner, they would have had more time for consultation and handover, or for identifying other options (although it is not possible to be definite about what these might have been). (*II 3.ii p8*)
- Given the inherent risk in forward planning on the basis of ambitious projected income growth, it would have been a matter of good practice, and good financial management, to have contingency plans in place should income not reach certain levels in certain timescales. Had clear contingency plans been in place, allowing for regular retrenchments in the growth of certain new streams of activity, or the planned closures of other projects to enable the growth elsewhere to proceed, then the charity could have avoided being in the situation of making such difficult decisions on the basis of financial imperatives. (*II 3.iii p8*)

(b). Absence of justification**(c). Contrary to established policies of the Charity****(e). Inaccurate and incomplete information**

- While another body of trustees might have made a different decision, given the (clearly very serious) financial situation of the charity, it is unlikely that the courts would conclude that the decision was one which no reasonable body of trustees could have taken. (*I 2.5 p3*)
- The courts would be unlikely to find that the trustees had taken their decision invalidly by placing reliance on irrelevant, or excluding relevant, matters. The documents show that, in legal terms, the trustees informed themselves broadly adequately for the purposes of making their decision. (*I 4.2 p3; I 6.8 p6 & I Conclusion 4 p6*)
- Given the financial situation and the options being considered (a partial or a total reduction of services/presence in Wales as part of a wider programme of cuts), it is unlikely that the courts would have found it unreasonable in legal terms for the charity to take into account the costs of the Welsh Language programme, and of fundraising in relation to fundraising returns in Wales. (*I 4.2 p3*)
- One particular point of accuracy commented on by the Committee was the duration of contracts in Wales, on which the information provided to the trustees subsequently proved to be inaccurate. This was clearly unfortunate, although the correct information was subsequently provided at the meeting in December 2001 at which the trustees reviewed and upheld their decision. The Committee dealt in some detail with this and other aspects of the briefing of trustees for the October 2001 meeting at its own meeting on 18 December. (*I 6.7 p6*)

(d). No consultation of any kind within or outside the Society prior to the decision

- The documents show that the trustees carried out a measure of internal consultation, but they did not consult managers in Wales, the charity's own Welsh Advisory Group or any interested parties externally other than the Church in Wales. The charity found itself under acute time and financial pressure to reach a decision, and in the absence of any explicit or implicit legal requirement for more extensive consultation, the courts would be unlikely to find that the failure to carry it out invalidated the trustees' decision. However, the trustees' handling of this aspect of the matter has fallen short of best practice, and exposed them to understandable criticism for the following reasons:
 - the public presentation of the decision as a *fait accompli* had the effect of excluding valid Welsh interests, including its own Welsh Advisory Group, Welsh Assembly Members and Welsh MPs, from the opportunity to be consulted on matters of clear and significant interest to beneficiaries and the Principality;
 - it would not be realistic to suppose that consultation could have avoided altogether the adverse reaction from opinion formers that followed the decision, but its absence was bound positively to alienate them, with some avoidable detriment to the wider interests of the charity;
 - the possibility cannot be excluded that consultation of statutory funders might have generated "rescue" funding opportunities (although this should not be overstated in the light of evidence that such funders' budgets were under strong pressure at the material time). (*I Conclusion 5 p7 and I 5.5 p 4*)

(f). Amount of the Society's reserves to be made available to a successor body or bodies

- The Charity Commission's powers do not enable it to apportion the Society's reserves between it and a successor body or bodies, or to intervene in negotiations to that end. It has been pleased to learn, however, that agreement has been reached to enable the bulk of the Society's former projects in Wales to continue, and notes that this has involved the use of just under £1million of the Society's reserves and some £200, 000 made available by the Welsh Assembly. It warmly welcomes the initiatives by the Assembly's Minister for Health and Social Services, the Archbishop of Wales and the Society's staff in Wales which made this outcome possible, along with the Society's work in partnership with the parties concerned.

Conclusion: further steps.

Having evaluated the evidence, the Commission has decided not to open a formal inquiry into the Society under section 8 of the Act, as the enquiries that it has pursued in connection with the Committee's report have already been of comparable depth and thoroughness. It has concluded that it would not be desirable to take formal action under section 18 of the Act, as the powers available there do not appear apt to the current needs and interests of the charity and its beneficiaries and former beneficiaries. The Commission will, however, continue to monitor the Society's financial management and planning, and maintain contact with it as necessary on the other lessons of the case. *(III 1, 3 & 4 p9).*

I am copying this letter and attachment to the Chair and Chief Executive of the Church of England Children's Society.

John Stoker
Chief Charity Commissioner
26 June 2000

Annex

Church of England Children's Society

Consideration of recommendations in Welsh Affairs Committee Report, regarding the decision of the Church of England Children's Society to withdraw from Wales.

Background

On 19th October 2001 the Board of Trustees of the Church of England Children's Society ("the Children's Society") decided to close the Children's Society's work in Wales with effect from July 2002. The decision was announced on 6th November 2001.

Representatives of the Children's Society gave evidence to the Welsh Affairs Committee on 18th December 2001, and the report of this session was published on 15th February 2002.

The report contained recommendations, particularly in paragraph 38, highlighting various concerns the committee has with regard to the actions of the Children's Society, which they believe merit investigation by the Charity Commission. The concerns relate primarily to the decision of the Children's Society to cease working in Wales. The Commission has carefully considered the matters referred to it by the WAC. This has involved examining a large amount of documentation in order to address the following issues:

- I. Was the decision properly taken?
- II. Was there financial mismanagement?
- III. Is any further intervention by the Commission required?

I. Was the decision properly taken?

Analysis

Charity trustees in the exercise of their discretion are required to act within the objects and powers of the charity and to act reasonably, that is to say not perversely or irrationally. They must act in good faith, adequately inform themselves of the matters under consideration and take into account only relevant and not irrelevant factors. The courts would apply a number of guiding principles in deciding whether trustees' discretion had been properly exercised.

1. Was the decision within the powers of the trustees to make?⁸

- 1.1. The Children's Society's primary objects are stated in clause 3 of its Memorandum of Association:

"to care for and support children and young persons in need, whether material, physical, mental, emotional, or spiritual, and to promote their physical, mental, emotional and spiritual development (whether through their families or the community or otherwise howsoever) in accordance with the principles of the Church of England that they may grow to full maturity as individuals and members of society"

- 1.2. **While merits are a separate issue, the absence of any geographical reference in these objects means that a decision not to operate in Wales does not fall outside the legal powers of the trustees.**

2. Was the decision made by the trustees one which a reasonable body of trustees could have made (i.e. was the decision perverse or irrational)?⁹

- 2.1. Charity trustees are required to act in the interests of the charity and its beneficiaries, both present and future, in carrying out the charity's objects. It is the trustees' responsibility in the management and administration of charitable facilities and services to ensure that due and proper attention is paid to the interests of these beneficiaries and effective delivery of these facilities and services in the long term interests of the charity.
- 2.2. The charity had very serious financial issues to consider. It had already attempted in July 2000 to address these by means of cuts of £2m from March 2001 (£50,000 from Wales). By the time of the Board meeting of 19th October 2001, however, the information available to the trustees left them with no option but to take further remedial action. To do nothing would have entailed risk of severe and uncontrolled curtailment of activities, or even of insolvency, for which the Commission would have held the trustees accountable.

⁸ re Hastings-Bass *infra*

⁹ Lee v Showmen's Guild of Great Britain *infra*, Scott v National Trust *infra*

- 2.3. The charity's records show that the Board meeting considered a full range of options, including some which did not cut operations in Wales, or which reduced them short of closure.
- 2.4. The Board concluded that, owing to the scale of reductions necessary, an impact on the Welsh operations could not be avoided. They further concluded, on advice in the documentation provided to them by officers, that to reduce activities in Wales short of closure and carry the remaining necessary savings on the rest of the charity's operations would have reduced the operations in Wales to ineffective levels, and affected the rest of the charity's work, coming on top of the existing cuts, to the extent that it would not be feasible.
- 2.5. While another body of trustees might have made a different decision, given the very serious financial situation of the charity it is unlikely that the courts would conclude that the decision was one which no reasonable body of trustees could have taken.**
- 2.6. In addition to the financial considerations, the records show that the trustees considered a wide range of other factors, including the likely reaction of its and the Church of England's Welsh supporters, and of members of the Welsh Assembly and UK Parliament. This further information is discussed further below.
- 3. Did the trustees act in good faith?¹⁰**
- 3.1. The record and the documentation scrutinised by the Commission contain nothing to suggest that it was not made in good faith.**
- 4. Did the trustees take into consideration any factors which it was not proper for them to take into account?¹¹**
- 4.1. The Welsh Affairs Committee Report criticises the trustees for taking into account the costs of the Welsh Language Programme, as well as the lack of voluntary income from the Welsh constituency (paras 13 - 16). It also criticises the decision as running contrary to the WLP and Welsh Advisory Committee policies of the charity (para 38(c)).
- 4.2. Given the financial situation and the options being considered (including a partial or a total reduction of services/presence in Wales as part of a wider programme of cuts), it is unlikely that the Court would have found it unreasonable for the charity to take into account the costs of the Welsh Language programme, and of fundraising in relation to fundraising returns in Wales, provided that they were not treated disproportionately to the other factors in its overall financial position.**
- 5. Did the trustees fail to take into consideration any factors which they should have taken into account?¹²**

¹⁰ *re Hastings-Bass* *infra*, *Armitage v Nurse* *infra*

¹¹ *Mettoy Pension Trustees v Evans* *infra* and *Dundee General Hospitals Board of Management v Walker and another* *infra*

¹² *Mettoy Pension Trustees v Evans* *infra* and *Dundee General Hospitals Board of Management v Walker and another* *infra*

- 5.1. The Committee raises a concern that "there was no consultation of any kind either within or outside the Society prior to the decision being taken" (para 38(d)).
- 5.2. Consultation within the charity was clearly essential if the trustees were to take a properly informed decision. The documents show that they did consult internally to the extent that the framework for the Children and Young People's division (CYP) and the Fundraising Strategy were presented to the General Purposes, Social Work, Fundraising and Finance Committees. Discussion also took place with the MSF union on behalf of staff affected, and a paper from the union was presented at the 19th October trustee meeting. The views of key senior managers in the CYP responsible for delivering other project closures and the new focus of programme work in England were touched on by the CYP leader Penny Dean in documentation considered at the October Trustee meeting.
- 5.3. It is, however, correct to say that there was no consultation with managers in Wales, and no external consultation at all, save for discussions, via his nominee on the trustee body, with the Archbishop of Wales (a letter from the Archbishop himself was presented at the 19th October trustee meeting).
- 5.4. **It is undeniable that the charity found itself under acute time and financial pressure to reach a decision, and, in the absence of any explicit or implicit legal requirement to consult further than they did, the courts would be unlikely to find that a failure to do so invalidated the trustees' decision. However, the significant criticism that the Committee and others have made of their handling of this aspect of the matter is understandable.**
- 5.5. **There are a number of reasons for this:**
 - **the public presentation of the decision as a *fait accompli* had the effect of excluding valid Welsh interests, including its own Welsh Advisory Group, Welsh Assembly Members and Welsh MPs, from the opportunity to comment on matters of clear and significant interest to beneficiaries and the Principality;**
 - **it would not be realistic to suppose that consultation could have avoided altogether the adverse reaction from opinion formers that followed the decision, but its absence was bound positively to alienate them, with some avoidable detriment to the wider interests of the charity;**
 - **the possibility cannot be excluded that consultation of statutory funders might have generated "rescue" funding opportunities (although funders' budgets were under strong pressure at the material time).**
6. **Did the trustees adequately inform themselves in order to make the decision in question?**¹³
 - 6.1. Para 38(e) of the Welsh Affairs Committee report raises the concern of the Committee that the trustees did not adequately inform themselves (or were not given accurate information by management).
 - 6.2. The Commission considered the adequacy of information available to the trustees in 3 areas:

¹³ *R v Charity Commissioners ex parte Baldwin* *infra*, *Scott v National Trust* *infra*

- Strategy

How did the decision fit in with the programme of work planned/focus of the charity?

- Resources

What was the financial situation of the charity? Were there sufficient resources for planned activities? If not, either expenditure or activities needed reducing in line with the overall strategy of the charity, or further income needed to be found to finance activities.

- Reputation

What were the likely reputational consequences of making the decision/not making the decision?

6.3. The information provided to the Trustees at their meeting of 19th October 2001 was as follows:

- a) An overview of Re-alignment savings and transformation
- b) Re-alignment and transformation plan presenting costed options
- c) Proposal for re-alignment and transformation from the Children and Young People's Division
- d) Summary of fundraising strategy Oct 2001 - March 2004
- e) Financial strategy 2001/02 to 2004/05 and aspirations 2005/06 to 2006/07
- f) Letter of 12th October 2001 from Most Revd Dr Rowan Williams, Archbishop of Wales and Bishop of Monmouth
- g) Representations to the Council by MSF TCS Branch

6.4. These papers covered the charity's strategy with regard to Children and Young People, the programmes and services the charity wanted to focus on delivering, emphasis on influencing at governmental level, and critical mass necessary to justify support costs.

6.5. The Fundraising and Financial Strategy documents give full and detailed information on the charity's current situation, desired situation, and plans for achieving financial stability within a reasonable time frame, including examinations of worst case scenarios. One potentially weak area relates to the amount of non-voluntary funding, and whether there are options for increasing income in this area. However, the Society subsequently told us that non-voluntary funding options were considered, but were not seen as offering sufficient or viable long-term solutions to the issues faced.

6.6. The papers discussed reputation in relation to credibility as a service provider, with reference to quality and quantity of services deliverable under the options being considered. They considered possible implications for the charity's reputation as an employer. They also show that publicity and handling, and the impact of the decision on supporters and the Church in Wales, staff and Assembly members were

all highlighted and put to the trustees for consideration. A wide range of further material was considered by the trustees at a meeting on 14 December, when they revisited and confirmed their decision in the light of reactions to its announcement.

- 6.7. One particular point of accuracy commented on by the Committee was the duration of contracts in Wales, on which the information provided to the trustees subsequently proved to be inaccurate. This was clearly unfortunate, although the correct information was subsequently provided at the meeting in December 2001 at which the trustees reviewed and upheld their decision. The Committee dealt in some detail with this and other aspects of the briefing of trustees for the October 2001 meeting at its own meeting on 18 December.
- 6.8. It appears that the trustees did take broadly adequate steps to inform themselves in order to make the decision. While there were shortcomings in the process, it is unlikely that the courts would regard them as sufficiently material to invalidate the Trustees' decision.

Conclusions:

1. While merits are a separate issue, the absence of any geographical reference in the charity's Memorandum and Articles means that a decision not to operate in Wales does not fall outside the legal powers of the trustees.
2. While another body of trustees might have made a different decision, given the (clearly very serious) financial situation of the charity, it is unlikely that the courts would conclude that the decision was one which no reasonable body of trustees could have taken.
3. The record contains nothing to suggest that the decision was made otherwise than in good faith.
4. Having considered the process followed by the trustees, there is no evidence to suggest that it was impaired to the extent of invalidating the decision by any failure on the trustees' part to take into account relevant and to exclude irrelevant material, or by not fully informing themselves as to the matters under consideration. There were shortcomings in the process, but the trustees informed themselves sufficiently to comply with legal requirements.
5. The documents show that the trustees carried out a measure of internal consultation, but they did not consult managers in Wales, the charity's own Welsh Advisory Group or any interested parties externally other than the Church in Wales. The charity found itself under acute time and financial pressure to reach a decision, and, in the absence of any explicit or implicit legal requirement for more extensive consultation, the courts would be unlikely to find that a failure to do so invalidated the trustees' decision. However, the criticism to which trustees' handling of this aspect of the matter has exposed them is understandable for the reasons set out in full in section 5 above.

II. Was there Financial Mismanagement?

Evidence considered:

- Annual Reports and Accounts for the years 1998 to 2001

- Report of Welsh Affairs Committee
- Response by Children's Society of 6th March
- Extracts from Minutes of Council and Finance Committee 1997 - 2000

Background

Over the period 1997 - 2001, the charity planned for higher levels of expenditure connected with an expansion of activities and increased investment in fundraising, with calls on reserves as a means of covering any disparity between income growth and higher planned budgets. In the event, while income did rise, it did not keep pace with increased expenditure, leading to a deficit which eroded the charity's reserves.

	1997/8	1998/9	1999/00	2000/01
	£000	£000	£000	£000
Income	29,148	29,611	30,520	38,221
Expenditure	27,301	32,701	38,400	43,763

Analysis

1. Neither planning for growth in expenditure on the basis of planned increases in expenditure, nor the use of reserves to cover variances occurring in practice, is intrinsically unreasonable for charity trustees. Risk is involved, but this is acceptable provided that the risk is monitored and managed. Planning budgets wholly on the basis of achieved, historic income levels involves the converse risk that levels of activity in support of beneficiaries may be lower than reasonably achievable.
2. The levels of income growth planned for by the charity were not out of line in these respects with the practice of a number of comparable charities. It was reasonable, also, for the charity to anticipate some increase in income as a return on the increased investment it was making in fundraising. The charity has realised increased returns in fundraising as a result of some of these investments, although a number of factors contributed to lower growth than budgeted for, including increased competition in the fundraising market coinciding with a general fall in the value and yield of many investments.
3. It is clear from the documentation that the financial position of the charity was kept under close review. The trustees showed that they were if necessary prepared to retrench, while continuing for as long as possible to allow time for fundraising initiatives to produce results. This approach was combined with a consistent aim to return to surplus, while maintaining at least a minimum level of reserves in accordance with an agreed reserves policy. However:
 - i. Given that the charity was already in deficit in 1997, it may seem excessive that in 1998 plans were made to spend a further £12m of the charity's reserves to develop new work. This was nevertheless in line with the charity's reserves policy at the time, using excess reserves in expectations of future increased income.
 - ii. With hindsight it is clear that the hoped-for returns from fundraising

investments were not being realised, or were too delayed for the growth in expenditure to be sustainable, given the ongoing drain on reserves. It could be argued that the charity continued to budget on an overly optimistic basis for too long, and that the decisions in July 2000 and October 2001 to make substantial cuts to expenditure were overdue. Had they made the decision sooner, they would have had more time for consultation and handover, or for identifying other options (although it is not possible to be definite about what these might have been).

iii. Given the inherent risk in forward planning on the basis of ambitious projected income growth, it would be a matter of good practice, and good financial management, to have contingency plans in place should income not reach certain levels in certain timescales. Had clear contingency plans been in place, allowing for regular retrenchments in the growth of certain new streams of activity, or the planned closures of other projects to enable the growth elsewhere to proceed, then the charity could have avoided being in the situation of making such difficult decisions on the basis of financial imperatives.

Conclusion

The charity's approach to financial planning was not intrinsically unreasonable, and active steps were taken to monitor and respond to risk. With hindsight, however, the Society cannot be said to have managed its financial circumstances as successfully in some respects as could, and arguably should, have been the case.

III Is there any cause for further involvement by the Charity Commission?

1. Having evaluated the evidence, the Commission has decided not to open a formal inquiry into the Society under section 8 of the Act, as the enquiries that it has pursued in connection with the Committee's report have already been of comparable depth and thoroughness. The trustees have co-operated with the Commission's enquiries.
2. The Commission's view is that there were shortcomings, both (with hindsight) in some aspects of financial management between 1997 and 2001, and in the handling and announcement of the decision to withdraw from Wales.
3. The Commission has given its views to the Society on the lessons to learn from this case, and will maintain contact with the trustees about them.
4. No breaches of trust or charity law have been involved in the shortcomings mentioned above. In the circumstances, the Commission's formal statutory powers to intervene to protect the charity and its assets, for example by suspending or removing trustees, are not appropriate to the case. The issues involved, though highly controversial, are ones which fall within both the discretion of independent charity trustees to take, and their responsibility to publicly justify.
5. The Commission believes that there are lessons from the case which are of wider relevance to charities, and will take a suitable opportunity to give general guidance on these.

PROCEEDINGS OF THE COMMITTEE RELATING TO THE REPORT

THURSDAY 4 JULY 2002

Members present:

Mr Martyn Jones, in the Chair

Mr Martin Caton
Dr Hywel Francis
Julie Morgan
Adam Price
Mr Mark Prisk

Chris Ruane
Mr Bill Wiggin
Mrs Betty Williams
Mr Roger Williams

The Committee deliberated.

Draft Report [The Children's Society in Wales: Responses from the Government and the Charity Commission] proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 5 read and agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

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

Two papers were ordered to be appended to the Report.

Ordered, That the Appendices to the Report be reported to the House—(*The Chairman.*)

[Adjourned till Monday 15 July at 1.30 pm in Cardiff]

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PARLIAMENT 2001—**

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Third Special Report: Response of the National Assembly for Wales to the Third Report of Session 1999–2000, *Social Exclusion in Wales*, (HC 604)

First Report: *The Children's Society in Wales* (HC 525)

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