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*Dear Bernard*

Thank you for inviting me to appear before the Committee on 3 July and for your kind words to me at the end of the session. I would like to thank you in particular for your generous tribute to our staff, which I assure you was greatly appreciated.

As promised, I am writing with further information about various matters discussed during the session.

#### **Centre for Social Justice**

The Centre for Social Justice initially applied to us to register as a charity in 2006. We considered this application and gave advice but the application was not pursued. The organisation made a second application for registration which we received in November 2011. We are currently considering this. No decision has been made to date and the application has not been rejected.

The applicants recently notified us that the CSJ has experienced a number of changes at senior management and board level. Consequently, the trustees wish to place the application on hold until the new board is briefed on the current position. We have agreed to this and await further contact from them.

#### **Largest charity investigated**

In 2011/12, the charity with the largest income that we investigated was Leonard Cheshire Disability, which had an annual income at the time of £155 million.

## **Costs and justification of public benefit hearings**

I particularly welcome an opportunity to provide further information on the Commission's involvement in litigation on public benefit in the Tribunal and its costs.

As you know, the Independent Schools Council brought judicial review proceedings against the Commission in respect of our public benefit guidance as it affects charitable independent schools. Subsequent to that, the Attorney General issued a reference in the Tribunal to determine the law and deal with certain hypothetical questions on the issue of public benefit in relation to the same matter.

As the two sets of proceedings overlapped to a considerable extent, there was a hearing in the High Court to determine how they should be progressed. It was agreed that there was a serious and important issue of law to be clarified in these proceedings and it was decided that the judicial review case should be transferred to the Upper Tribunal to be heard at the same time as the reference.

No costs order was made at that hearing and it was agreed, insofar as the judicial review was concerned, that both parties should bear their own costs in the Upper Tribunal. On the question of the Attorney General's reference, it is the rule that, save in the most exceptional circumstances, each party in any event will bear its own costs.

So, for clarity, the Commission did not pay any other parties' costs in the litigation. As I stated in my oral evidence, the legal costs on our side were £185,000.

On the more general question of the Commission's involvement in the litigation, as you know we were under a statutory duty to publish, after consultation, public benefit guidance. That is what Parliament decided under the Charities Act 2006, with the full knowledge that the law was complex and that there would be a lack of clarity about how the law was affected by the legislation. This was particularly the case with the removal of the presumption of public benefit from certain classes of charity, including educational charities. Parliament had anticipated that at some point the law would need to be clarified in the Tribunal.

In these circumstances, given the challenge by the ISC and in particular by the Attorney General's reference, the Commission was under a duty to assist the Tribunal in the clarification of the law by its participation in the legal proceedings.

As the Committee will know, although the guidance was held to be wrong with regard to its regulatory emphasis, fundamental aspects of charity law put forward by the Commission and which the Commission had relied upon, namely that a charity cannot be constituted or operate in a way which excludes the poor, were upheld.

In our view, the Commission carried through an important element in public service in assisting the Tribunal to clarify the law and that is our justification for our engagement.

In respect of our internal administrative costs, it is not possible to give a single figure to reflect the various staff activities connected with the hearings. We require our staff who carry out preparation and support work for the Tribunal appeal hearings to work flexibly and, when not working on appeal cases, they have other legal advisory and case duties. This flexible approach, together with the fact we do not operate a charging system for our legal services, means we do not maintain a time recording system.

### **Charitable Incorporated Organisations**

Correspondence between us and the Cabinet Office on the implementation of the Charitable Incorporated Organisation (CIO) is appended to this letter.

I hope this information is useful. It only remains for me to thank the Committee for its work in scrutinising the work of the Commission and helping us focus on our role during my tenure as Chair. It has been a pleasure working with you.

*As matters been raised*



**Dame Suzi Leather**  
Chair