



## Charity Commission for England and Wales response to “*Stronger Charities for a Stronger Society*”, report of Session 2016-17 of the House of Lords Select Committee on Charities

January 2018

The Commission is grateful for their Lordships’ time in preparing and publishing this report. Charities are a vital part of the fabric of our society and we are pleased that the Committee has considered how the sector might best flourish. We are in no doubt that effective regulation and enablement, in line with our statutory objectives, is a vital part of that.

The Charity Commission is constituted as a small non-ministerial department. We are responsible for the regulation of over 167,000 registered charities in England and Wales. The charity sector has a total annual income of £74.8bn and gross assets of £265bn. The sector continues to grow in size and complexity and the Commission strives to respond to these changes.

The Commission has made significant steps towards becoming a robust, effective, risk-based regulator over the past five years and we are proud that this had been recognised across government, parliament and the sector. In their 2017 Progress Report, the National Audit Office have recognised the progress the Commission has made on the transformation of our systems, processes, approach and attitude, and our moves to becoming a truly digital regulator.

We know that there is still work to do to continue on our programme of change and transformation. The NAO stresses that a sustainable funding model will be crucial to the Commission’s continuing transformation, and we agree. Nonetheless, we are pleased with the progress we have made to date and would like to pay tribute to the Commission’s hard-working and dedicated staff team for making this possible.

William Shawcross  
Chairman

Helen Stephenson  
Chief Executive



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## **Recommendation 6**

*We agree that there should be a time limit for individuals to serve as trustees, along with a maximum term of office, and we endorse the proposed inclusion of such time limits in the revised Governance Code. We recommend that the materials and draft articles of association provided by the Charity Commission include a suggestion of time limits. (Paragraph 113)*

*The Commission accepts this recommendation in part*

The Commission is sympathetic to the principle of this recommendation. The Commission endorses the recommended good practice set out in the Charity Governance Code that there should be a time limit of 9 years on trustee tenure. However, charities must develop their own policies in line with the requirements of their governing documents. The Commission will look to review our draft articles of association to better reflect the Charity Governance Code, when time allows.

The Commission understands that there may be many reasons why particular charities might be unable to follow this good practice. It believes that a mandatory time limit on trusteeship does not take these into account and would therefore be unworkable. The inclusion of time limits must be proportionate to the risk and creating an arbitrary mandatory limit does not take into account the risks associated with individual charities.

In all cases charities should assess the risks, and implement appropriate policies which they can explain and justify. Charities should be transparent about the length of time that trustees have served and we would support disclosure in the annual report as recommended (voluntarily) in the Code.

Consideration of time limits is just one aspect of a wider approach to board recruitment that charities need to adopt. Another key aspect is diversity; diversity of characteristics, background, and diversity of thinking. The Commission would encourage trustees to consider the Charity Governance Code principle on Board Effectiveness with regards to board diversity.



## **Recommendation 7**

*We acknowledge the challenges that the Charity Commission faces in securing a diverse board, however the regulator cannot expect to hold the sector to a higher standard than it is able to achieve itself. We recommend that the Commission is mindful of the example it sets to the sector and that when filling future vacancies it explicitly seeks to recruit individuals with a range of skills, charity experiences and demographic characteristics, such as age, gender, ethnicity and geography. We expect to see the results of this approach in the next set of board appointments. (Paragraph 119)*

*This recommendation is for DCMS*

The Department for Digital, Culture, Media and Sport is responsible for all Charity Commission Board appointments. We will continue to work with the Department to ensure we can attract and recruit candidates with the broadest range of expertise, skills and backgrounds.



### **Recommendation 31**

*We recommend that the Charity Commission, as part of its emphasis on enabling regulation, considers what support and guidance it can offer to charities seeking to merge, and provides signposts to help that may exist elsewhere. The Commission should take a positive approach to assisting charities that choose to merge and assist in removing any barriers that may exist, notably with regard to liabilities such as pension arrangements. (Paragraph 345)*

*The Commission accepts this recommendation*

The Commission’s role in facilitating mergers focuses on the legal and constitutional aspects. We currently provide guidance for charities considering mergers, including a toolkit of good practice advice to help trustees through the process of merging - from considering the initial decision through to evaluation and information about the typical issues which trustees need to think about. The toolkit enables charities to decide whether or not they need assistance from the Commission and where they should consider taking professional advice. Other sources of information and help are signposted. On pension schemes, specialist advice should be taken from the pension provider and other relevant professional advisers.

The Commission recommends that trustees regularly review their effectiveness as a charity, and ask a number of questions around their ongoing operations. Such questions should include the possibility of merging with another charity, as well as changing or ending specific activities, or winding up altogether. The Commission encourages trustees to have these conversations in its document ‘15 questions trustees should ask’. However, ultimately, these are decisions for the trustees to take.

The Commission is currently looking at changes it should make to its guidance to support the financial resilience of charities and will consider whether further advice on mergers is needed.

The Commission is currently limited as to the advice and support we can provide to charities. Our current funding model and the increase in demand for the Commission’s services has forced us to prioritise our core regulatory work over and above enablement work. The Commission would consider what further work we could do in this area, if and when we are able to secure additional sector funding.



## **Recommendation 32**

*We recommend that the Charity Commission include options for time-limited structures in the model governing documents that they produce for charities, as such clauses would prompt new charities to consider their lifespan from their inception. (Paragraph 352)*

*The Commission does not accept this recommendation.*

The legal position on time limits in charity structures will vary between the different legal forms. For example, the Commission believes that it would be possible to create time-limited trusts, but it is not clear that it is necessarily possible to do this with all other structures, at least not without difficulty.

Under the current legal framework, it is for the founders of charities, not the Commission, to consider the terms of their establishment, and for the trustees to consider how they are to operate in furtherance of their purposes over time. A change in this position would require legislation, which is not within the Commission’s gift.

Substantively amending our model governing documents would have considerable resource implications for the Commission, and may not be the best way to achieve the Committee’s suggested aim.

In its pre-registration guidance (CC21), the Commission encourages those applying to register a charity to consider if there is an existing charity with whom they can partner in order to achieve their objectives.

Furthermore, in its document ‘15 questions trustees should ask’, the Commission recommends that trustees regularly review their charity’s effectiveness, including whether the charity should consider merging or winding up. This document has been flagged as a key resource by the sector and the Commission has worked to promote it to support good governance.



## **Recommendation 40**

*Charity staff and trustees who have concerns with regard to their charities should be encouraged to report them to the Charity Commission where appropriate. We recommend that the Commission makes clear that those charities which are proactive in reporting issues to them will be supported to help put things right. (Paragraph 511)*

*The Commission accepts this recommendation.*

Following a consultation in early 2017, the Commission has improved its guidance on reporting serious incidents (*‘Trustees’ reporting responsibilities*), to help charities report appropriate matters as soon as possible after they occur. The updated copy of this guidance was published on 22 September 2017.

By reporting a serious incident, charity trustees demonstrate that they have identified a risk to the charity and that the trustees are taking appropriate action to deal with it, now and in the future. This is very important because protecting the assets, reputation and beneficiaries of the charity are essential trustee responsibilities.

Timely reporting allows the Commission to identify problems in charities at an early stage, and where appropriate, to provide regulatory advice and guidance to trustees to ensure they meet their legal duties. In more serious cases, where charities’ assets, reputation, services or beneficiaries have been harmed, or are at significant risk, the Commission may need to intervene by using its temporary or protective powers in order to safeguard charity assets and put it back on track.

The potential for reputational damage can also be lessened if trustees can show that they handled the incident well; this will also allow the Commission, if asked by the media, Parliament or the public, to state that the trustees handled the situation responsibly in reporting it to us.

Trustees should always put appropriate safeguards in place and take reasonable steps to ensure their charity is not exposed to undue risk. Otherwise it can be vulnerable to fraud, theft or other kinds of abuse, and trustees may be in breach of their duties.

Serious incident reporting helps the Commission to gauge the volume and impact of incidents within charities and to understand the risks facing the sector as a whole. This insight will inform the Commission’s approach as regulator and may lead it to issue timely advice, guidance or alerts to warn other charities of identified risks and how to manage them.

The Commission’s Risk Framework explains how it assess risk and when it may become involved in charities.



## **Recommendation 41**

*We recommend that the Charity Commission makes clear how a charge would benefit charities and strengthen the sector overall. To achieve such clarity, the Commission must be transparent from the outset as to how additional revenue from charities would be spent, and what services would be delivered or enhanced in return. The Commission must set out how it envisages its supporting and enabling role developing or expanding if a charge for registration was introduced. (Paragraph 533)*

*The Commission accepts this recommendation*

The charity sector is large, diverse and complex, and plays an increasingly vital role in our society, performing functions that are crucial to the well-being of individuals and communities in the UK and around the world.

Yet the Commission recognises that charities’ centrality to British life also presents a risk: charities are run by trustees who are volunteers and whose skills, experiences and capabilities vary. There are important legal duties and responsibilities that trustees need to be equipped to meet, as well as a myriad of emerging risks, such as around cyber and technology enabled fraud.

It is vital therefore that the Commission, as regulator, has the resources it needs to support trustees to ‘get it right’ and prevent problems before they arise, as well as working to tackle abuse and mismanagement when it occurs. All charities will benefit from additional support; trustees will be supported with better decision-making, and it will be easier for charities to do business with us.

However, a step-change in our support to charities is simply not possible with our current funding settlement. Only with additional funding are we able to provide better, more proactive support to trustees in line with our statutory functions.

The NAO, in their 2017 Progress Report, stresses that a sustainable funding model will be crucial to the Commission’s continuing transformation and suggests a public consultation may be required to agree a shared position between government, the regulator and the sector as to the level and source of longer term funding.

Likewise, the Members of this Committee recognise the importance of good governance in charities and our role in helping to promote trusteeship and trustee training, provide more support for new trustees, encourage better accountability and transparency by charities, and assist them when grappling with difficult issues, such as mergers.

The Commission believes that ultimately, the sector as a whole will benefit from additional services, as better support for charities will contribute to maintaining and increasing public trust and confidence. At a time when public finances are tight, and along with practice from other regulators, the Commission believes it is fair that the charities make a modest contribution to a system that benefits them.

The Commission has been clear that additional funding from the sector would be spent on our enablement work and would not replace Treasury funding for our compliance functions. We would continue to bid for Treasury funding to fund the rest of our legal, regulatory compliance and enforcement work.

The Commission hopes to be able to consult on both the type of enabling services the sector would like to see provided by the Commission, and the method and model for sector contributions shortly. Should we do so, we would want to propose the sort of functions and benefits the sector could receive, and would look to charities to respond and shape this offer.