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Charities Bill

JAY KENNEDY ARGUES THAT THE CHARITIES BILL BEFORE THE HOUSE APPEARS TO CEDE TOO MUCH POWER TO THE REGULATOR

The Charities (Protection and Social Investment) Bill had its second reading in the House of Lords on 10 June. The Bill incorporates much of the previous Draft Protection of Charities Bill, which had been the subject of consultation throughout 2014. Despite this, neither the Charity Commission nor the Government has fully grasped the sector's concerns. A worrying consensus seems to have emerged that charities are mostly happy with it. Although many of the proposed reforms seem reasonable, several could threaten the independence of charities and even some fundamental civil liberties.

Changes to the regime for disqualifying trustees appear to give the commission powers to disqualify virtually anybody from charity trusteeship, for almost any reason. Section 10 of the Bill would allow the commission to disqualify people if it deemed they were 'unfit' to be a trustee and that it would be 'in the public interest'. These criteria work in conjunction with a third nebulous concept, that 'any other past or continuing conduct by the person, whether or not in relation to a charity, is damaging or likely to be damaging to public trust and confidence in charities.'

No matter what the guidance is, or what assurances the commission gives that this will be exercised judiciously, ultimately the interpretation of these concepts could boil down to the opinion of whomever is running the regulator at the time (or worse, whomever in the media or politics is putting pressure on them).

Consider a quasi-hypothetical example. The Charity Commission recently intervened in the Joseph Rowntree Charitable Trust's funding of non-charitable advocacy group Cage, whose director expressed controversial statements about the so-called 'Jihadi John' Mohammed Emwazi. As the media frenzy escalated, the commission demanded JRCT stop funding Cage now and in the future, because continuing threatened to 'damage public trust and confidence in charity'. JRCT reluctantly agreed, claiming it had been subject to 'intense

regulatory pressure'.

If this Bill had been in force, could the commission have disqualified JRCT's trustees, had they resisted the regulator's influence?

The commission has mooted a set of criteria to function around these new powers, but this looks like lipstick on the pig. The problem is one of principle, not a lack of confusing technicalities. Leaving the interpretation of 'damaging', 'unfit', and 'public interest' to the eyes of the beholder-regulator is too subjective. How are trustees (or their lawyers) even to understand the boundaries and rules? Even if we can trust the current commission to be prudent in exercising these powers, what about the commission of 2020 or 2025?

Section 9 of the Bill expands the classes of convictions that would lead to automatic disqualification for trusteeship. It would also prevent people who have been disqualified as trustees from acting as a charity 'officer, agent or employee'. This reappeared in the new Bill after it had originally been ruled out at the first consultation stage. The regulator's argument hinges on their need to deal with a few specific problem cases, but it's a legal sledgehammer to crack a nut. It would appear to circumvent the normal relationship between the commission and trustee boards, getting the regulator involved in determining who can work for a charity. That raises problematic questions about human rights and employment law.

DSC believes that the Charity Commission is hugely important to our sector and the public's trust in it. It does a difficult job which is largely unappreciated and not well understood. This Bill will still give the commission a raft of new powers – but legislators need to look again in particular at Section 10. Charities need to argue strongly that these changes could threaten civil liberties and even the spirit of independent voluntary action.

It's relatively easy to cede powers to regulators and government agencies, but normally quite difficult to reverse the process if those powers are abused. ■



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