

DIRECTORY OF SOCIAL CHANGE

INFORMATION AND TRAINING FOR THE VOLUNTARY SECTOR

Fifteen recommendations of particular importance in Lord Hodgson's report on the Charities Act 2006

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DSC's response to the recommendations in Lord Hodgson's report

After sifting through all the recommendations, we have outlined fifteen in particular which we think stand out as important, particularly for their potential impact on small charities and the charitable sector as a whole – five recommendations each are organised under the red / yellow / green traffic light 'system' – which is itself imperfect and open to interpretation.

This list is not exhaustive and we reserve the right in future to take a view on any of the other recommendations in the report.

Red Lights – don't proceed with these recommendations

- 1) As we stressed in our original response to the review of the Charities Act 2006, trustees should not be paid for performing their role. We do not believe there is evidence of substantial support within the charitable sector or among the public for changing current regulations. **We completely oppose Lord Hodgson's recommendation that charities with more than £1m income should no longer require approval from the Charity Commission to pay their trustees.** However reimbursement for legitimate trustee expenses is perfectly legitimate and good practice.
- 2) Despite further clarifications since the publication of the report, **we believe Lord Hodgson's proposals to raise the registration threshold to £25,000 and to rebrand those below that as 'small' would be damaging for small charities, especially those starting up. We also think his proposal to require all unregistered charities to rebrand as 'unregistered' will be impossible to implement.** Given the scale of cuts to its budget, the Charity Commission is unlikely to prioritise voluntary registrations below a raised threshold of £25,000, especially when simultaneously mandated to register more excepted charities and the CIOs. Small start-ups, without professional staff or budgets to pay people to badger the Commission would be the ones pushed to the back of the queue. The opportunity to earn a charity number is crucial to fundraising and charity development, especially because many grant making trusts will only give to registered charities.
- 3) **We remain adamantly opposed to charging charities for registration or for the submission of reports and accounts as Lord Hodgson suggests.** This will disproportionately impact small charities and is a disincentive to voluntary action. **We do not believe that Lord Hodgson's proposal to remove Gift Aid for late filing of accounts is a good solution or workable, partly because not all organisations will claim Gift Aid, so it is not a universal sanction.** If substantial revenue were able to be generated from these sources the Government would only be more motivated to reduce the Charity Commission's budget accordingly. These and a number of the other recommendations – for example a greater expectation of membership of the Fundraising Standards Board – will increase costs for charities and would disproportionately affect small charities. In total, these measures represent a shift of financial responsibility for safeguarding the wider public interest in charity from the state to the charitable sector itself, ultimately resulting in a greater burden on charitable donors. This is wrong.
- 4) **We are opposed to further moves towards co-regulation or sub-regulation as Lord Hodgson suggests. It is vital that the Charity Commission remains the clear authority on the register of charities, and the laws and regulations which govern**

charities' activities. Infrastructure bodies can and do provide advice and guidance if properly resourced, but are charities themselves and as such cannot and should not cross the line into regulatory compliance or enforcement. Co/sub-regulation could result in fragmentation of the register of charities, which would be confusing for the public and donors. It would counteract other recommendations, such as the proposal to register more excepted charities, which seem designed to make the register more comprehensive; a main objective of the 2006 Act.

- 5) Lord Hodgson recommends that **Disposals of land and mortgages and other charges over charity land should be deregulated and rely on the charity trustees acting under their duty of care following Charity Commission guidance.** We think this is not in the public interest. Consider that significant public assets are now being turned into charitable assets (for example the canals, leisure trusts) and that this is likely to be more common practice in the future. Deregulating control over those assets could facilitate the eventual privatisation of assets which were previously held for public benefit.

Yellow Lights – caution: further work, debate, consideration is required

- 1) Lord Hodgson recommends that **all information required to be submitted by charities should be combined into a single document for simplicity. The first page of this should be a list of key risk indicators to help the Commission identify a sample of charities for further investigation. The completed list should also be published on the charity's register entry to aid public understanding and exercise of judgment.** The intention of these recommendations isn't clear, nor the precise problem they are meant to solve. The Commission already identifies at-risk charities using a number of indicators and then intervenes accordingly. Is this about publishing that process externally somehow? Designing and implementing such a system in a sensitive way could be practically difficult but also highly problematic for the individual charities concerned, the Charity Commission, and even the Government – and we doubt it would be of much benefit to the public.
- 2) Lord Hodgson says that **the Charity Commission needs to be adequately funded to properly regulate the sector. Some analysis of financial efficiency and requirements needs to be undertaken as reductions in the Charity Commission's budget take place.** The Commission absolutely needs adequate resources to carry out its duties, but this should not come from charging charities. The Government needs to reconsider its financial settlement for the Charity Commission. Efficiency is the wrong focus, because it simply implies cutting costs. If we are to have regulation which works, then effectiveness should be the focus – this might mean increasing costs. Current debates are being driven by how to manage cost reductions first, not by what is 'adequate funding to properly regulate the sector', still less 'what is appropriate regulation of the sector'.
- 3) Lord Hodgson suggests **The Government should introduce a 'right to know' for all charitable trustees i.e. a right to access any information, within the confines of data protection law, held by the charity that they reasonably judge necessary to discharge their duties effectively.** We doubt whether this is necessary or desirable – especially to the extent to justify primary legislation. Is there evidence that significant

numbers of trustees are unable to access information they need to perform their role? Would it be used by unreasonable trustees to demand information from charity management that cannot be reasonably obtained? There is a danger that it would be a license for trustees to get involved in operational details, potentially taking them away from their core role of providing strategic oversight.

- 4) Lord Hodgson suggests that **Trusteeship should normally be limited in a charity's constitution to three terms of no more than three years' service each**. Again we don't think the case has been made of the need for such a proposal. Any further changes would require better evidence of the problem and further debate – there are some incredible charities doing great work which rely on long-serving trustees for their success. Forcing out those trustees based on arbitrary time frames could be damaging. Also, would it be worth the administrative cost and hassle of amending the governing documents of hundreds of thousands of charities? Especially as the Charity Commission might have to sanction those amendments?
- 5) **Lord Hodgson makes a number of recommendations about social investment and amendments to the Trustee Act 2000**. We find it bizarre that something like 10% of the recommendations in this report relate to this issue, which has absolutely no relevance whatsoever to the Charities Act 2006. We doubt whether many of the proposed changes are actually necessary, or would benefit significant numbers of charities. We would question whether some elements are in the broader public interest or the interest of the vast majority of charities – particular the proposal to change the rules on investment of non-functional permanent endowments. Any revision of existing legislation around trustees' duties should be approached with care, and must be based on further consultation and a wide spectrum of involvement, not a narrow set of lobbying interests.

Green Lights – proceed with these recommendations (with some caveats)

- 1) Lord Hodgson recommends that **The processes for registering and organisation with the Charity Commission and for tax relief with HMRC should be joined up into a single process. The Charity Commission and HMRC will need to work together to design and implement such a process**. This sounds great, but how is it going to happen? And how will it be paid for? Who will oversee it and drive it forward? Where will the required political pressure come from to overcome any roadblocks and obstacles? Currently HMRC seems more inclined to duplicate regulation or regulate areas that should be the Commission's territory than cooperate constructively with it.
- 2) A similar recommendation made by Lord Hodgson is that **Work by Companies House and the Charity Commission to create a single reporting system for charitable companies, as recommended in *Unshackling Good Neighbours*, should continue as a matter of urgency. The potential for joint accounting requirements should also be investigated**. Again, a good intention, but one that may likely to prove difficult to achieve without significant financial and administrative investment.
- 3) Lord Hodgson says that **The Charity Commission should work with umbrella bodies and other groups in the sector (e.g. infrastructure organisations) to promote their**

best practice guidance on trustee recruitment. Sounds like a good idea, but does this not happen already?

- 4) Lord Hodgson also proposes that **Individual charities should adopt and publish internal procedures for disputes and complaints. Umbrella bodies are ideally placed to support charities with this by the development of pro-forma procedures and support in their implementation, perhaps even taking on the role of adjudicator for their members.** It is best practice for charities to have complaints procedures in place.
- 5) **The impact of CIOs should be assessed three years after implementation.** This recommendation should be sharpened up. If we are going to implement CIOs there needs to be a concrete plan for doing so – they are part of the 2006 Act which hasn't been implemented, six years on. Surely any review should take into account the number of CIOs which have been set up?