

Food for thought

Jay Kennedy explains why the Charities Act Review is like splitting hairs on top of a starving elephant

Legal eagles, charity law anoraks and policy bods like me have been poring over the details of the consultation on the Charities Act 2006 since it was launched by Lord Hodgson in February. This was the main topic of debate at the joint Directory of Social Change (DSC) / Bates Wells Braithwaite (BWB) Charity Law Conference, held in May.

Covering a breadth of charity law and regulation – all in a relatively short space of time – the review has proved to be something of a grab bag, especially considering the complexity and obscurity of many of the issues.

The thirteen public consultation documents ran to nearly 100 pages in total, and comprised around as many questions. Everything from state of the universe issues like “do we need a new definition of charity?” to obscure questions about how charities dispose of land was thrown into the mix. Formal calls for evidence were accompanied by regional consultation events, meetings organised by Lord Hodgson’s team and some pretty badly designed online surveys.

Stephen Lloyd, the senior partner at BWB who assisted Lord Hodgson with the review, pointed out that the world has changed a lot since 2006 – the economy has tanked, our government has changed, austerity is the buzzword and social media is rapidly becoming mainstream rather than a geeky experiment. A review seemed prescient in the light of such significant social change.

Elephant in the room

More directly germane to the topic of the day was the slashing of the Charity Commission’s budget in the spending review – set to decline by around 30 per cent between 2010 and 2015. This elephant in the room runs through (or runs over) all the subsequent legal hair-splitting. Even if we can identify and agree what needs to change – a hard enough task in



itself – what chance is there that it can be implemented?

After all, a number of things from the 2006 Act still haven’t been fully implemented by the Commission – and this was before the cuts were announced – like completing the registration of exempt and excepted charities, the licensing scheme for public charitable collections and allowing voluntary registration for charities with an income below £5,000. Other elements like the charitable incorporated organisation are essentially ready to be introduced but, more than five years on, still await final sign-off by Parliament.

Then there’s the whole saga of public benefit. Millions have been spent on the question of whether the Charity Commission’s guidance was legally fit for purpose when it came to assessing the public benefit of fee-paying charities like public schools. At the conference, BWB’s Rosamund McCarthy argued that while charities and the legal community had been hoping for resolution and certainty from the Upper Tribunal decision last year, the final verdict “raised as many questions as it answered”.

Given the breadth and depth of the issues, DSC focused its response on key questions of interest to us, such as whether it should be easier to pay trustees – which we have always steadfastly opposed. Our stance was reinforced by the vast majority of raised hands in a straw poll during the afternoon panel debate.

Old chestnuts

Stephen Lloyd of BWB also revealed some apparently as yet unpublished polling data

during the discussion. A poll commissioned by the review found that 52 per cent of the public felt there were “too many charities” – another old chestnut which has always been a bugbear for DSC. We believe the more charities the better, and DSC’s chief executive Debra Allcock Tyler duly weighed in by deconstructing the survey question as biased and leading. Again, our view was broadly supported by the majority of delegates in another straw poll. The question, surely, isn’t whether there are too many charities but whether the need in our society is well served by the number we have? After all, nobody ever says “there are too many small businesses”.

Lord Hodgson and his team are currently digesting the responses, and he is expected to produce his report in July. But what’s the longer game? Some of these matters may be resolved with guidance or statutory instruments, but the big questions – such as some kind of definition of public benefit – are likely to require proper legislation. The unusually sparse Queen’s Speech certainly contains no draft Charities Bill.

Rosie Chapman revealed that the Law Commission is expected to launch its own consultation in 2013, and suggested the possibility of another Charities Act following on from that, perhaps in 2015. Or could the Small Donations Bill – which reforms Gift Aid rules on small donations – be amended to include some further bits and pieces?

Such is the pace of change in the world of charity law. And actually, perhaps that is a good thing. The law is like an elephant – it doesn’t usually move quickly, it remembers everything and it lives a long, long time. Now if only we can find the food to keep it fit and healthy...



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