

# The Three Pillars of Independence

## A toolkit for testing the independence of the Charity Commission

### Background

The Charity Commission's objectivity is fundamental to how its legally binding decisions are perceived by charities and for its overall legitimacy with the sector it regulates. Charity trustees must have confidence they will be treated in an impartial manner, free from covert or overt political bias. This is especially important for charitable causes or activities which may be unpopular with certain political parties, elements of the press, or sections of the public.

This is also why the Charity Commission is a non-ministerial department, accountable to Parliament, not a government department or Minister. It is bound to report and listen to politicians in Parliament, but it must be independent of party politics and the Government of the day. People with political affiliations are not excluded from being on the board, but there is an expectation that the Chair and the board will operate in a visibly politically neutral fashion.

Of course the Commission must be independent of the charity sector too – otherwise it might lose the confidence of the public and Parliament.

### How to know if the Commission is acting independently

The Chair and the other members of the board have a duty to ensure effective, independent, proportionate, and impartial regulation of the charity sector.

Independence in this context means being free from control and/or inappropriate influences from organisations or citizens outside of its remit. This is fundamental to the way the Charity Commission explains, interprets and implements charity law, and to charities' faith in its decision-making.

How can we measure this in practice? In our view there are three key things to consider, we call these:

#### The Three Pillars of Independence:

- 1 Independent of Party Politics
- 2 Independent of Populism
- 3 Independent of the Press



# How can we monitor whether the Commission is acting independently?



## 1 Independent of Party Politics

### Explanation

Party politics can often be described as partisan, that means: *'strongly supporting a person, principle, or political party, often without considering or judging the matter very carefully'*.\*

An official announcement, for example of regulation or guidance, strategic priorities and positions on sector developments must therefore be seen to be independent of party politics, policies or positions.

### Why does this matter?

The charity sector is a huge mix of people, ideals, opinions, causes, and activities. Its constituents are politically diverse.

The Charity Commission must be obviously and credibly above party political decisions in order to fairly regulate and inform this sector.

The Commission must be independent of the Government of the day and where necessary resist pressure from Ministers. The 'non-ministerial' bit needs to be reality, not just a theory honoured in the breach.

### Questions to ask

- Does the official announcement of the board, and the Commission overall, reflect the law or a party opinion?
- Is the announcement about the existing law or a long-term regulatory priority or does it appear to be a short-term, knee-jerk reaction to a political debate?
- Are they based on the expertise of Charity Commission staff or do they appear to reflect the personal or political views of board members?
- Are they supported by robust evidence, or do they appear to mirror political rhetoric or ideology?
- Is the board or its members openly supporting the position or policies of a particular party?
- Is the board relying on party members or other political allies (e.g. party-aligned think tanks or press) to inform a policy position or decision of importance to the work of the Commission and the charity sector as a whole?



## 2 Independent of Populism

### Explanation

Populism describes:

*'Political ideas and activities that are intended to get the support of ordinary people by giving them what they want.'*\*\*

Populism can also be:

*'Critical of political representation and anything that mediates the relation between the people and their government.'*\*\*

Perception is:

*'A belief or opinion, often held by many people and based on how things seem.'*\*\*\*

### Why does this matter?

The Commission needs to base its interventions and regulation on evidence and charity law.

It interprets Public Benefit, but this is derived from law, not popular perception – or 'what the people want'.

In terms of 'the people' this includes the charity sector too – the Commission's decisions can't be merely derived from 'what the charity sector wants'.

Just because many people agree on something does not make it true or correct. The Commission should not indulge badly informed narratives, but must respond to public debate with facts.

## Questions to ask

- Does the Commission's board react to scandals affecting the sector with due regard to evidence, legal basis and practical reality or in a way that gives the impression of satisfying popular 'demands' for change?
- Are significant decisions made having properly consulted charities and other key stakeholders or do they appear to be based on an interpretation of 'what the public wants or expects'?
- Does the board base decisions on available evidence, which it then articulates to the public or does it appear to be a response to misinformed influencers or opinion formers?
- Does the announcement consider wider, unanticipated impacts on charities or do they seem overly punitive not furthering the Public Benefit?





## 3 Independent of Press

### Explanation

Having a free press means:

*'newspapers, magazines, and television and radio stations can freely express opinions, even if these are critical of the government and other organisations'. \**

Of course, the press is free to express critical opinions about the work of the Charity Commission and its board. It is also right that a free press is able to scrutinise what charities do.

### Why does this matter?

The Commission has a responsibility to effectively communicate decisions to the public via the press. In part, this helps reassure the public that the charitable sector is well regulated.

It is right that the board takes into account issues of public interest raised by the press. However, the Commission must regulate and act independently of press influence.

## Questions to ask

- Does it appear that the Commission has reacted according to facts or evidence or does it seem to have jumped on the bandwagon in reaction to a negative story about the sector or a charity?
- Has this led to those issues being prioritised or resourced above other pressing issues affecting many more charities or their beneficiaries?
- Do board members work within the Commission's media and public affairs team or have they sought press influence autonomously?
- Do board members deal with the press to share the Commission's carefully formed view or do they appear to have used the press as a vehicle to promote personal opinions about the sector or issues that affect the sector?
- Are press statements by board members or the Commission backed up by clear evidence and examples?

# Appendix I

## What is the Charity Commission?

The Charity Commission is the regulator of charities in England and Wales. It is an independent, non-ministerial government department accountable to Parliament. It has five statutory objectives (public confidence, public benefit, compliance, charitable resources, and accountability), and its functions, powers and duties are laid out in the Charities Act 2011 as amended by the Charities (Protection and Social Investment) Act 2016. The Commission has a 'quasi-judicial' function in that it makes legally binding rulings that charity trustees must comply with. The Commission fulfils its statutory objectives by focussing on a set of strategic priorities.\*

## How is the Charity Commission run?

The Charity Commission has a Chief Executive who is responsible for the day-to-day and operational management. Its non-executive board is ultimately responsible for all that the Commission does. This includes the Commission's overall performance and that of its management team, its values, integrity and reputation, fulfilling its statutory objectives and use of legal powers, business direction and strategy, as well as governance standards and delivery against plans.

The Charity Commission's Chair leads this non-executive board in all its activities. The Chair is selected through a public appointments process where a government Minister has the final say on who is selected. The Chair has responsibility for the work of the board and the general 'direction of travel' for the Commission as a whole.\*\*



\* <https://www.gov.uk/government/organisations/charity-commission/about>

\*\* <https://publicappointments.cabinetoffice.gov.uk/appointment/charity-commission-chair/>

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