

25 July 2018

Rt Hon Baroness Stowell of Beeston MBE
Chair
Charity Commission for England and Wales
102 Petty France
London
SW1H 9AJ

Dear Baroness Tina Stowell,

Charging Charities

I write to you as a Trustee of the Directory of Social Change (DSC). As I am sure you are aware, DSC is a long-standing and engaged supporter of the Charity Commission and its critical role for the sector and the public.

We understand you are wisely taking some time to get a handle on the complex issues around charging charities in some way, to pay for some of the work of the Charity Commission ("the Commission"). Helen Stephenson has repeated recently that she wants to have that conversation with the sector, so we assume that the subject remains live. I have been asked to express the charity's reservations about this.

DSC has consistently argued that it has been a short-sighted, counter-productive policy to slash the Commission's budget in recent years. We also strongly espouse the importance of a genuinely independent regulator - independent of the Government of the day, and independent of the sector, championing the long-term public interest in a healthy charity sector without fear or favour. We know how important it is to secure not just more funds, but more predictable funds, for the Commission.

Until your arrival, the leading policy idea for consultation was said to be a levy on larger charities to raise about £7 million per year, but we assume other models of charging may also be on the table.

DSC is opposed to the idea of charging charities for regulation, or indeed any other services provided by the Commission to the sector. Of course, we understand the extreme pressures the Commission is under, not least that the budget is dependent on regular public expenditure negotiations with a Government Department and HM Treasury.

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However, we do not believe that removing the burden from the Exchequer and putting it more onto charities (and by proxy, on charitable donors) is the best course of action or the right one in principle.

So far, the options around charging can be broadly divided into three types, which we examine in turn. First, charging all or most kinds of charities some form of levy, eg on a sliding scale; second, charging this only to some (probably larger) charities; and third, charging for particular services or based on processes (i.e. submitting reports and accounts, or registration). There are advantages and disadvantages with each approach.

1. Charging all or most charities a levy

This approach is the only one that could yield most of the Commission's budget. So it could substantially improve the quantum and predictability of funding and largely eliminate financial dependence on the Government of the day. If done on a sliding scale, it could be roughly proportionate and more affordable for smaller organisations. However, there would also be significant downsides:

- There would be a perception of dependence on the sector, which could undermine the status of the Commission as acting independently of charities in the public interest. If charities pay the piper, how many people will trust the piper to call the tune independently in the longer run?
- The mechanisms of collecting and chasing fees, and bringing defaulters to book, and deciding what to do about charities that have more than one regulator, constitute a formidable administrative nightmare – which might be disproportionate to the revenue raised.
- It would be a massive change in the bargain that, with all party support in Parliament for many decades, has governed the relationship between charities and the wider public (including donors and volunteers).
- It is a duty of Trustees to ensure that the charitable funds entrusted to them should be spent in the best possible way to support their charitable objects - not the Charity Commission's regulatory mission. People give not to charity in general but to particular charitable causes.

2. Charging only some (likely larger) charities a levy

The advantages of this approach would be that it might reduce potential opposition from a majority of the sector, which is comprised predominantly of small and micro charities, many if not most of which would very likely be unable or unwilling to pay a levy. The burden would fall on those with the greatest income. However, this too has significant disadvantages, namely:

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- It would be arbitrary and unfair that donors to larger charities would wind up subsidising the regulation for everyone else. Plus, where would the dividing line be set, and who would decide whether and why this was just or fair? If the levy is a flat rate, why should larger charities with widely different incomes pay the same amount while others pay nothing at all?
- It does not deal with the problem of dependence on Government for most of the Commission's budget.
- If only larger charities must pay a levy, paying as it were for the privilege of being a charity whose reputation benefits from regulation, and effectively subsidising the good regulation of smaller charities, those charities could reasonably expect a bigger say in the Commission's strategic priorities, or governance. This could threaten the perception, and reality, of the regulator's independence.
- Even a limited levy on the larger charities would be the thin end of the wedge, leading to progressive atrophy of public expenditure on charity regulation. Once the principle is accepted that charities should pay towards their regulation, the walls are breached. Why not then, in a couple of years, a bit more? Then more again? "Assurances" to the contrary would be inherently unreliable in the long run.
- The Commission has previously mooted the argument that a levy could pay for the "softer" part of the Commission's role, whereas public expenditure should pay for investigation and compliance. This is a flawed narrative – that the "real" or "essential" work of the Commission is to be a policeman whereas positive, preventive work to make compliance work less necessary is a soft luxury. DSC maintains that good regulation integrates preventive, positive and reactive work as an interrelated whole. We are really pleased to note that you and Helen now seem to be leading in this spirit.

3. Charging for specific services or regulatory processes

This option has theoretical advantages over a levy. Trustees and donors might have fewer objections in principle to paying for a service relevant to their own cause and charity than for services which benefit other unrelated charities and causes. Those who need the service would pay for it. However, even with this there remain big problems, because:

- There are problems of principle. The charity sector is accustomed to a bargain with society where services from the Commission are available free at the point of need. Similarly, trustees are volunteers who do not derive personal profit from the charity's work. Changing that bargain is no small thing.

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- This option does not deal with continuing dependence on Government for most of the Commission's funding.
- There could be undesirable deterrent effects. If I have to pay for such and such a product or service, perhaps I think can do without – when actually I do need it? This could drive poorer compliance from those charities that need it most. Enabling regulation could well be unintentionally weakened.
- There could be perceived injustice where charities that are as good as gold must pay for certain services whereas charities that behave badly and cause damage to the sector wind up paying nothing towards the untold hours of Commission work that they cause.
- Similarly to the sliding scale levy options, designing and enforcing the system of services and payments would introduce major administration and transaction costs. How would a fair distinction be made between what is to be paid for by a charity and what can be funded from the public purse because Parliament wishes to encourage a healthy charity sector?

So, all of these options come with serious downsides.

4. Further points to consider around introducing a levy or charges

- Most if not all these options would require legislation, which would be highly contentious. Is it worth fighting this battle outside and inside Parliament, even if space could ever be found in the legislative programme? Given the major difficulties, how likely is it that a “conversation” will be productive?
- We are not starting from a blank sheet of paper. We are starting with a bargain stretching back into the nineteenth century where the regulation of charities is beneficial to society and a proper call on the public purse. Diverting time and energy into debating levies or charges simply weakens the case to be made in Parliament and Government for proper recognition of the importance of the Commission's role, via Exchequer spending.
- We know that many regulated bodies in other spheres pay towards their regulation – but rather than using this as an argument for introducing charges, the Charity Commission should instead explain why the charity sector is distinct. It does not operate for profit and is to a large degree supported by public donations. It is long established policy to encourage volunteering and donations to advance charitable causes for the good of society. It would strengthen your case for funding from the Exchequer if you reiterated this important distinctive point about the charity sector both within government and publicly – and you can be assured of DSC's vocal support in this.

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- Please do not put too much weight on the recent finding of your report on public trust, to the effect that most donors would not mind a fraction of their donation going to the Commission. It all depends on the question you ask. What response do you think you would have got to this question: “Would you be happy for a small part of your donation to your favourite cause to pay for regulation by the Charity Commission, which previously has always been paid for in full by the Government?”

5. What we should be debating instead of the various options around charging charities

In conclusion, we believe this whole issue needs to be rethought from fundamental principles. Namely, how can we achieve a sufficient level of predictable funding to support the Charity Commission’s vital work, in a way that enhances rather than risks its independence, and which is fair to charities (and their distinctive role in society) and the donating public? Unfortunately, none of the options presented above provide a good answer to that question.

The answer, in our view, must involve considering how the Commission’s budget is debated and decided within government, and Parliament’s participation in the process, rather than what kind of charges we should or shouldn’t have.

The Charity Commission is not accountable to a Minister or a government department but to Parliament, for very good reasons. It must of course account for spending public money, but its remit and regulatory priorities shouldn’t effectively be set by the Government of the day or cramped via insufficient spending settlements. We should explore ways of giving Parliament more of a binding say in how the budget is set – for example by giving a Committee the power to propose or veto the Commission’s spending settlement. In the meantime, the focus on building the case for more satisfactory Exchequer funding should be maintained, rather than dissipated in debating improbable alternatives involving charging or levies.

Thank you for considering these points as you ponder the best way forward. As always, DSC is transparent in its contributions to public debate, and we will publish our letter and any response from you on our website – in good faith and in the spirit of openness.

Yours sincerely,



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