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Lord Hodgson of Astley Abbotts
House of Lords
London SW1A 0PW

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Dear Lord Hodgson,

I write to set out progress in considering the recommendations of your Review of the Charities Act 2006 - *Trusted and Independent; Giving Charity Back to Charities.* I start by re-iterating my thanks for what is a thorough and detailed report. Your review and report were welcomed by our partners in the charity sector, and it is to your credit that you managed to navigate through a broad landscape of charity law and regulation including some contentious and complex issues in a way that drew admiration, even where partners might not have agreed with some of your final recommendations. I am very grateful for that, and I am also grateful to those organisations and individuals who have provided such helpful contributions both during your review and afterwards.

I am mindful that the Public Administration Select Committee is undertaking its own inquiry into the Charities Act 2006 and the regulation of charities, and I would like to be able to take its report into account, publication of which is anticipated early next year, before we publish a full response to each of your report's recommendations, and set out the next steps. So this letter represents an interim response, detailing some areas where we will press ahead, identifying a small number of recommendations that we will not be taking forward, and setting out several areas that will need further work before we can reach a conclusion.

Many of your recommendations were not directed at Government, but were for the Charity Commission or for charities or their representative bodies. The Charity Commission has told me that it warmly welcomes your report, and that many of your recommendations for Commission action are ones with which it would not only agree but which it is already implementing.

"Traffic light" summary of our interim response

At the launch of your report I said that we would want to focus on measures that will make it easier to set up and run a charity, or will boost public trust and confidence. That remains the case. I also invited key partners of the Office for Civil Society to let me have their views on the report and rate each recommendation with a 'traffic light' system.

To give an indication of the broad thrust of our response, I have adopted the same "traffic light" system that I asked our civil society strategic partners to use. This works as follows: "Green" where we broadly accept recommendations (although there may be specific points that we do not accept or would offer an alternative), "Amber" where more work needs to be done before we can either accept or reject particular recommendations, and "Red" where we propose not to accept recommendations. The remainder of my letter sets out some further detail on each of these broad areas. Detail on each specific recommendation will follow in the full Government response, as will our proposals for implementation.

Recommendations relating to the definition of charity and public benefit	Green
Remuneration of trustees	Red
Role, form and functions of the Charity Commission	Green
Charity Commission fee-charging	Amber
Registration and other thresholds	Amber
Transparency	Green
De-regulatory proposals	Green
Charity Tribunal	Green / Amber
Social Investment	Green / Amber
Fundraising self-regulation	Green
Charity Collections in public places	Green

Principles

We welcome and support the principles you identified as underpinning your report, and your acknowledgement that in some cases there will be trade-offs to be made between competing principles.

Definition of Charity and public benefit

There has been much debate in recent years about the definition of charity, and in particular the public benefit requirement. The recent cases before the Tribunal relating to fee-charging schools, benevolent charities, and most recently the Charity Commission's decision not to register a Brethren trust, have all attracted the attention of the media, the public and Parliament.

We note that most were not in favour of re-opening the statutory definition of charity in the responses you received during your review, and that continues to be the prevailing view we have received in feedback from partners and others since then. However some in the sector would like to see a partial definition of public benefit considered along similar lines to the definition in Scotland.

We agree with you that the statutory list of headings of purposes capable of being charitable should not change. It encompasses all purposes that were capable of being charitable before the Charities Act 2006, and continues the flexibility to allow the Charity Commission and courts to recognise new purposes as capable of being charitable by analogy to existing purposes.

We also think that it is right that all charities should be able to demonstrate their public benefit in return for charitable status; as you put it, charity is a privilege not a right. The removal of any presumption of public benefit has ensured that all charities, regardless of their purposes, are in the same position of having to show their public benefit.

We look to the Tribunals and Courts to quickly provide legal clarity where questions arise, as has been the case in relation to fee-charging charitable schools and benevolent charities, and is now the case in relation to a particular religious group.

We are inclined to agree with you that a statutory definition of public benefit would not be desirable. In fact we do not think it would be possible to condense several hundred years of case law into a straightforward statutory definition that could encapsulate the meaning of public benefit in a way that would work for the many different types, shapes and sizes of charities, and that would enable the law to continue to evolve in future. It is little surprise that the Charity Commission's statutory guidance on public benefit, which is itself an attempt to distil the principles of public benefit derived from case law into several dozen pages of guidance, has proved a difficult challenge. Whilst much of the Charity Commission's public benefit guidance has been confirmed by the Tribunal, some parts have needed to change following successful legal challenge. Some people have suggested we pursue a part-definition of public benefit, but we are not sure that this would provide much additional clarity over the existing case law and the Charity Commission's guidance, without risking unintended consequences.

Trustee remuneration

As you acknowledged in your report, this is a contentious topic, and the recommendation that would allow large charities to choose to pay their trustees for their trustee role has attracted much debate amongst charities and their representative bodies.

There is a reasonable argument in favour of placing greater reliance on charity trustees to make the right decisions in the interests of their charities, and that we should remove barriers that hold them back from doing so, provided we include the right safeguards and degree of transparency. However the feedback received from the vast majority of charities and their representatives has not been in favour of de-regulation in this particular case. The strongest arguments against are that the voluntary nature of charity trusteeship is a defining feature of the charity sector that could be undermined by a move towards more routine payment of trustees, and that there is no strong evidence that paying trustees would result in more effective governance.

Charities that wish to pay their trustees for acting as such can already make a case to do so and seek approval from the Charity Commission. The Charity Commission has said that applications of this sort are infrequent. We therefore consider that, for the time-being at least, and until there is stronger evidence that would support an easing of the general presumption against trustee remuneration, we should retain the status quo, but monitor the number of applications the Charity Commission receives and the number it grants or refuses. If, over time, there is perceived to be a particular problem with this approach then we can revisit it.

The role of the Charity Commission

We agree that the Charity Commission should remain as a non-Ministerial Department, independent of Ministerial control in its regulation of charities, and that changes are not needed to its objectives, functions and duties in statute. We agree that the Charity Commission should focus on its core regulatory responsibilities – something that the Commission itself had already recognised and accepted in its Strategic Plan, published in December 2011, and which it has been implementing over the last year.

We are not convinced of the value of changing the Charity Commission's name. Public awareness of the Charity Commission, and the register of charities, is improving, and changing its name could undermine this as well as being a costly process.

As part of its strategy the Charity Commission is already exploring whether there are parts of its work that could be more effectively carried out by partners such as umbrella bodies. The Charity Commission admits that this work is at an early stage and it is likely to be some time before any umbrella body partnership reaches this point.

Charity Commission - charging

The recommendations on the Charity Commission charging fees will require further exploration before we can provide a full response. Along with the Charity Commission and HM Treasury we will need to undertake further work to develop the evidence base on the need and potential for charging and the impact this would have on charities and on the Charity Commission. Given the challenge of the current economic climate for many charities, it is not something that we would propose lightly, but equally we cannot rule it out at this stage.

Registration requirements and differentiation of charities by size

The proposal to raise the mandatory registration threshold from £5,000 income to £25,000 income has received mixed feedback from charity sector partners, and we will need to consider this in more detail before we can respond fully.

Much feedback, particularly from those representing small charities, has been against raising the registration threshold, although there may have been some misunderstanding of how your recommendations worked as a package. We recognise that if your proposals were to be implemented as a package, then the Charity Commission would have to register any charity that wanted to register voluntarily, so small charities would not be deprived of the benefits of registered charity status, and those already on the register would remain there unless they wished to de-register.

We understand that the Charity Commission has some concerns about raising the threshold for registration as this could result in a large number of charities that would not be registered, but for which the Charity Commission would still be responsible for regulating. In addition, the voluntary nature of registration for charities with an income of under £25,000 could result in unpredictable workflows for the Charity Commission, and cause some difficulties to grant funders who often rely on the publicly available information on the register of charities.

We will need to carefully consider the impacts on public trust and confidence of any increase in the registration threshold, as well as the impacts on the Charity Commission and HMRC. Existing evidence suggests that the public would prefer to see more, or even all, charities registered.

We do not believe that unregistered charities should have to state that they are “unregistered” as such a requirement would be unenforceable. It should already be clear to the public which charities are unregistered due to the lack of a registered charity number.

We will work with the Charity Commission and HMRC to explore the potential for requiring charities that register with HMRC for tax exemptions and reliefs to also be required to register with the Charity Commission. We will also ask the Charity Commission and HMRC to consider whether any changes could be made that would reduce duplication in registration processes. However we need to recognise that any potential benefits would need to be considered against the costs of making changes to IT and other systems at a time of public spending restraint.

Transparency

We support your recommendations on improving transparency, although any changes would need to be carefully thought through and care taken not to add to the regulation that charities face. The Charity Commission has also said that it strongly supports the report's emphasis on transparency, which echoes its own strategy. It has already undertaken a consultation on the information it requires from charities and how this might develop in future. We will work closely with the Charity Commission to consider the specific recommendations in the context of the Charity Commission's information strategy and in light of responses to its consultation.

For example, we welcome the Charity Commission's continued work (with others) to simplify the Charities SORP.

We recognise that the Charity Commission lacks a proportionate range of sanctions for dealing with late filing of information, and we will work with the Charity Commission and other stakeholders to consider whether other more proportionate sanctions could be developed.

De-regulation and technical changes

We welcome the review's focus on de-regulation wherever possible, but providing it does not risk damage to public trust and confidence in charities. There are a range of proposals that would promote charities' self-reliance, giving charities new freedoms to make decisions without the need to seek Charity Commission approval. We support these in principle, and note that the Charity Commission itself made a number of such proposals as part of its own strategic review. Not only will these measures give charities more freedoms, but they will reduce demand on the Charity Commission enabling it to better prioritise its limited resources. These measures include charity merger rules and processes, with specific reference to known issues around legacy donations, and the rules regulating charity land disposals.

We welcome the Law Commission's decision to undertake a charity project that will consider a range of these matters and is due to begin in March 2013. Our full response will set out our view on each of these proposed measures, and detail those recommendations that the Law Commission will consider in its charity project.

Complaints, appeals and redress

We will need to give some further consideration to your recommendations for the Tribunal. In principle we support the rationalisation of the appeal rights in Schedule 6 to the Charities Act 2011, provided it can be done in a way that does not expose the Charity Commission to challenge where it decides not to intervene in a charity in line with its risk and proportionality framework.

We welcome your recommendation not to establish a new charities ombudsman or extend the remit of an existing ombudsman to consider complaints about charities' services. Where charities provide public services under contract they are often

covered by an existing ombudsman and in the current financial climate creating a new ombudsman would represent an additional cost for charities or the taxpayer, neither of which is attractive without a compelling need. We support your recommendation that charities should have their own internal complaints procedures.

Social Investment

The development of a social investment market is in its early stages, but the UK is well placed to become a leader in this new and emerging field, and we are already attracting interest from around the world. The Government is supporting the development of the Social Investment market, and is taking forward a range of initiatives to do so. Recent Government amendments to Financial Services Bill, and commitments made during its passage, recognise the importance of social investment, and we are using the Red Tape Challenge to consider a range of policy options to break down barriers to growing the market.

Mixed purpose investment is already an option for charities, as the Charity Commission's well-regarded recent guidance on investment for charities (CC14) makes clear. As part of the Government's response to the *Kay Review of UK Equity Markets and Long-Term Decision Making*, we will seek clarification of whether the law allows for any differentiation of investment duties to reflect the different nature of particular classes of trustees, and in particular, whether investment duties allow charity trustees to take any account of social benefits that relate to their charity's purpose as well as financial benefit. It is too early to say whether a specific power for charity trustees to make social investments would be the right answer, but the clarification of existing legal duties will enable us to give this recommendation the detailed consideration it warrants.

It may not be possible to re-word the private benefit requirement in relation to social investment to "necessary and proportionate", as that wording reflects the underlying law relating to public benefit and any change could have implications that would go well beyond social investment, in fact to the heart of charity.

Fundraising self-regulation

We support your recommendations to strengthen the self-regulation of fundraising. I am pleased to see that the Institute of Fundraising (IOF), the Fundraising Standards Board (FRSB), and the Public Fundraising Regulatory Association (PFRA) have made a good start to rationalise the confusing regulatory landscape. They have been working together, and with other partners to ensure a clear division of responsibilities, including that the FRSB should be the sole public facing complaints handling body. The FRSB has also announced that from next summer it will begin light touch compliance audits of its members, moving away from reliance solely on self-certification, and further strengthening the self-regulatory regime in line with your recommendations.

In November, the IOF launched its new single Code of Fundraising Practice. Whilst still authoritative, it is a much shorter and simpler Code that will be more accessible to the thousands of fundraising charities that wanted to sign up to follow best practice, but were put off by the complexity and sheer length of the old codes.

The first meeting of the Steering Committee to drive forward further progress in strengthening self-regulation will take place in January, but we welcome the leadership and ownership of this recommendation demonstrated by the fundraising community and the early progress that has been made.

Charitable collections in public places

One of the Report's recommendations that attracted most public attention related to stronger regulation of "chuggers" (face to face direct debit fundraisers). Whilst local authorities currently license cash collections on the street, chuggers can operate unlicensed. We support your recommendation that stronger self-regulation should be the first resort in relation to chuggers, before statutory regulation is considered.

We welcome the agreement that has been developed by the PFRA and Local Government Association (LGA), and published this week. This supports the use of voluntary site agreements by local authorities as a mechanism for managing the volume and frequency of face to face fundraising, and includes best practice requirements and conditions. The PFRA has already over 50 voluntary site agreements in place, and more are under negotiation. Evidence from local authorities that have adopted voluntary site agreements is that the extent of fundraising activity is well controlled, standards improve, the level of complaints is significantly reduced, and swift action is taken to respond to complaints.

With regard to the National Exemption Order (NEO) scheme that enables national charities with a good track record to undertake house to house collections without local licences, there may have been some misunderstanding of your recommendation. Several NEO holders, and representative bodies in the fundraising sector have been very concerned that removing the scheme would create a new and very significant regulatory burden both for them and for local licensing authorities. That would clearly be at odds with your desire to reduce the regulatory burden. We took your recommendation to mean that an alternative system for NEO holders should be developed in consultation with charities, local authorities and others, before any changes are made to the existing regime. We do not want to implement a new scheme for NEO holders that would be more burdensome either for them or for local authorities, but at the same time we do want a mechanism that will ensure that local authorities are aware of NEO collections that are taking place in their areas.

For the longer term we will need to consider what changes could be made to the legislation to provide a system of licensing that works for charities and local authorities.

I recognise that this letter only spells out a direction of travel, and does not attempt to conclusively respond to all of the recommendations of your report. I hope that you will accept this as an interim response given the breadth and detail of the recommendations in your report, and the fact that we would like to consider the report of the Public Administration Select Committee's inquiry before we respond formally.

I am copying this letter to Bernard Jenkin MP, Chairman of the Public Administration Select Committee, William Shawcross and Sam Younger at the Charity Commission, and to partners of the Office for Civil Society who contributed feedback on the review recommendations.

NICK HURD