

## Law Commission consultation - technical issues in charity law

The Law Commission paper starts from the proposition that ‘charities currently face unnecessary administrative and financial burdens because of inefficient and unduly complex law.’ Whilst those involved in charities come across cases where this is undoubtedly the case, an element of caution is appropriate.

In some cases, the clarity of regulation can be beneficial as it can ease the administrative and financial burden and general risk to charitable organisations. Some of the proposed relaxations remove clear statutory guidance with the effect that, if implemented, they will throw charity trustees back on their own judgement in exercising their duties.

In theory this may seem commendable, but most trustees are unpaid volunteers, with limited access to training and limited time to spend on acquiring the skills required to discharge the very high level of performance that the law requires of them, and may benefit from the certainty provided by a clear statutory code. However, there is a job to be done in clearing out unnecessary and unworkable rules and the exercise is to be welcomed in principle.

We have in this, and other [updates](#), noted the tougher stance taken by the Charity Commission, seeing it shift away from its previous focus on advisory and support functions towards its ‘regulatory’ functions in such a manner as might appear to present an authoritarian profile, rather than purely to address real wrongs. We have observed the controversy over the Lobbying Act and its effect on charities and more recently, the introduction of the Protection of Charities Bill.

The intensification of regulatory activity may in large be a consequence of the negative publicity generated by the activities of registered charities. We have seen the use of nominally charitable vehicles for tax avoidance (the Cup Trust case, for example, relating to Gift Aid, and the Public Safety Charitable Trust and Kenya Aid cases relating to business rates). However, rather than increasing confidence in charities there is the danger that an increased focus on regulation will simply give credence to the incorrect perception that wrongdoing amongst charities is the rule, rather than an occasional exception.

If the government (whoever may be elected) genuinely wishes to invigorate and enthuse the sector and to encourage charitable giving and volunteering, they will have to address more than just technical issues. There is a real need to demonstrate that they intend to support the sector, rather than beat it into submission.

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