

Charity Commission: sheep dog turned wolf?

Updates on the Charity Commission's website indicate that increasing numbers of investigations are being launched by the Commission. This is an indication that the Charity Commission's strategy is changing and that it is eager to demonstrate publicly that it is an effective regulator. This has real implications for charities dealing with the Commission and may mean that an enquiry by a charity about a difficult issue becomes the subject of a very public report on the Commission's website.

The Commission has been under pressure from recent criticism in Parliament, and the National Audit Office. Both have stated that it 'does not do enough to identify and tackle abuse of charitable status' and 'is too passive in pursuing its objectives' of increasing public trust and confidence in charities.

This followed criticism of its handling of the widely publicised "Cup Trust" case. The Cup Trust was registered as a charity despite the risk of it having a sole corporate trustee based in the British Virgin Islands. It claimed gift aid on payments from participants in what was basically a tax avoidance scheme. Only a very small proportion of money received in donations found its way to charitable causes.

The Commission was criticised both for registering the charity and for not formally monitoring the trust until February 2013. The Commission relied on the trust's assurances in response to the concerns it raised, rather than launching a statutory enquiry.

This criticism, and more particularly the public perception of it, has apparently stung the Commission at many levels.

In December 2013 the Commission published an article stating the number of times it had used its powers and the number of compliance cases opened. The Commission launched a new Operations function monitoring team, and made its information sharing agreement with HMRC more specific. This agreement implied a more targets-based approach centred on the number of investigations that were instigated.

Our overall impression is that the Commission has toughened its approach to the use of statutory powers. The implication from the Commission's website appeared to be that this approach was a good thing in principle, focusing therefore perhaps more on the procedure rather than any desirable outcomes for the sector.

Our contact with Commission staff seems to provide evidence of this policy shift in practice. It appears that the Commission is in certain areas, (such as effective counter-terrorism steps), looking for someone to make an example of.

In addition, those who fail to file accounts are named and shamed.

In some cases the Commission's desire to demonstrate the effectiveness of a proactive policy can have potentially damaging effects. For example, you would have to read four paragraphs into an article entitled "Investigation into grant-making charity", that names the

charity before discovering that in fact the Commission concluded that the arrangements under investigation benefited the charity.

Whilst the need for an effective regulator should not be in doubt, this assertive approach may have adverse consequences for the sector. The Commission has in the past been regarded as a friend by charities, providing guidance, advice and support. Cuts have meant that advice and support are now much less available. If the Commission is principally going to be a policeman, it should consider the principles of fairness that apply to good policing. Those “policed” by the Commission will need to exercise care regarding what they do or do not say during any investigation.

If the function of the Commission is now to focus on regulation rather than support, charities are going to need to think more carefully about sharing difficulties with the Commission in the absence of a clear legal requirement to do so (such as reporting a “serious incident”). Charities are nowadays less likely to obtain any useful assistance as in the past and there could be significant damage to the charity’s reputation if an investigation was to follow. The existence of reporting requirements makes it all the more necessary for charities to tick the procedural boxes with regard to all their procedures, and to have ready documentary evidence of good governance practice in case they are called to account.

Charities may take comfort from the words of the current chair of the Commission, who states that ‘We as the regulator do not want to challenge the independence of charities, or put people off serving as trustees’. He states that those who have criticised the Commission’s investigatory work ‘seem to expect us to mistrust trustees as a matter of principle’, a notion he finds ‘abhorrent’ given that most are committed unpaid volunteers. He also notes that ‘a charity regulator cannot be effective if it steps in only when problems have already occurred. We must help trustees do a good job in the first place’.

However, if this is a matter of how the Commission’s position is perceived by the public, the Commission may have to work harder on its presentation. The Commission chair’s policy statements are likely to be measured against the practical reality.

Peter Clarke (a Charity Commission board member), recently stated in *Third Sector* magazine, ‘The Commission is there to support the sector in its regulatory role, but it’s not a question of blind support’. However, charities should also be aware of the external pressure upon the regulator and the danger that it could seek to make examples of charities in order to show that it is doing its job.

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