

## CHARITY

# It's time charities paid

Charities are already required to pay all manner of fees to other regulators. Why shouldn't they pay a fee to their own?



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On 14 October 2010, Sky News misreported that the Government intended, when ushering in the age of austerity, to abolish the Charity Commission. Rumours of the commission's death (on the so-called 'bonfire of the quangos') proved exaggerated but there should be no underestimating the extent of the cuts. The commission's funding is being reduced by 33 per cent in real terms over the period 2011/12 to 2014/15.

In the meantime, pressure continues to grow for the commission to do more with less. On 4 June 2013, the Public Accounts Committee published a blistering critique of the commission, some parts of it better informed than others, focusing largely around a perception that the commission is reluctant to use its statutory powers to open inquiries and remove trustees. The commission was quick to point out the constraints under which it was working – and the fact that the majority of its work relates to granting the consents and authorisations which charities are required by law to obtain. But the committee remains unimpressed and is urging the commission to do more.

How, then, is the commission to square the circle of reducing resources on the one hand and cries for greater regulatory engagement on the other? It seems improbable that the Treasury will be prepared to make more funds available any time soon. There is a limited amount that the commission can do to re-allocate its existing resources given the impact of reducing further the resources devoted to granting consents (where waiting times can already be substantial).

The only answer is to make charities pay for their own regulation. Just as a company pays a modest fee (£13) when filing its annual return at Companies House, charities should be required to pay £10 a year when filing their annual return. Larger charities should be asked to pay £500.

There are more than 160,000 charities on the register in England and Wales. More than 10,000 have an annual income in excess of £500,000. The fees suggested could raise £6.5m. If necessary, the very smallest charities (there are about 70,000 with an annual income of less than £10,000) could be excused.

A small charity with even the most basic website is already paying a similar sum each year to keep its domain name registered. Registration with the Information Commissioner's Office starts at £35. Many charities with an income in excess of £25,000 pay a few hundred pounds for an independent examination. Larger charities pay substantial audit fees. Any charity that has ever operated a defined benefit pension scheme is almost certainly meeting

(indirectly) substantial levies imposed by the Pension Protection Fund. Charities are already required to pay all manner of fees to other regulators – why shouldn't they pay a fee to their own?

Lord Hodgson raised the issue in his comprehensive review of the charity sector published in 2012. He made a number of recommendations intended to reduce the burden on the commission in terms of consents. He effectively endorsed its move away from giving specific advice to individual charities. But he recognised that these steps alone did not alleviate the pressure. He floated the possibility of the commission providing a service offering tailored advice charged on a cost-recovery basis. Recognising that there was a cost in collecting fees, and the danger that their imposition could become a race to the bottom (as the Treasury sought to ditch any responsibility to fund the regulator), he suggested the introduction of proportionate fees on registration and the filing of annual returns while the commission considered the practicalities of offering bespoke advice at cost.

The Government's response was equivocal, not wishing to impose further burdens on charities at a time of economic difficulty but not wishing to rule out the option either. Consultation is the order of the day.

In the meantime, trustees have charities to run and the commission has a job to do. Generic guidance remains available from the commission online and trustees are sign-posted to other information sources. But they are otherwise encouraged to seek their own professional advice. The days of getting a free legal opinion from the commission are well and truly over. Even advice pursuant to section 110 of the Charities Act 2011 is a rarity these days.

Anecdotal evidence certainly suggests there has been an increase in firms taking on work for charities in response to the growing need. The area is technical – often embracing questions of property, trust and company law underpinned by the statutory framework specific to charities. The impact of pensions and insolvency law increasingly needs to be considered. But unless and until substantial reform is implemented, the adviser with the requisite skills and experience should expect to be busy for some time to come.



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