



14 January 2011

Our ref: ICAEW Rep 04/11

Sam Younger
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Charity Commission
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By email: strategicreview@charitycommission.gsi.gov.uk

Dear Sam

CONSULTATION ON THE CHARITY COMMISSION'S STRATEGIC REVIEW

ICAEW is pleased to respond to your request for comments on the Charity Commission's strategic review consultation.

Please contact me or Anne Davis (anne.davis@icaew.com) should you wish to discuss any of the points raised in the attached response.

Yours sincerely

Michael Izza
Chief Executive



ICAEW REPRESENTATION

CHARITY COMMISSION CONSULTATION ON ITS STRATEGIC REVIEW

Memorandum of comment submitted in January 2011 by ICAEW, in response to the Charity Commission's *Consultation on its Strategic Review* issued in November 2010.

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the Charity Commission's *Consultation of its strategic review*.

WHO WE ARE

2. ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 136,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
3. Our membership includes numerous audit committee chairs, finance directors and members involved in investment management activities as well as auditors. Members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. We ensure these skills are constantly developed, recognised and valued.
4. The ICAEW Charities Sub-Committee is responsible for co-coordinating the technical considerations of the charity sector with respect to Chartered Accountants working within or for charities. Its membership represents the interests of practitioners, their clients and Chartered Accountants employed in financial roles within charities.

COMMENTS

5. As requested, this response focuses on the role of the Charity Commission, taking into account the key risks which will affect the charity sector over the next five years. We also consider the role of the Charity Commission as regulator and advisor and suggest possible areas for income generation/cutting costs.
6. We believe that a strong and effective regulator is needed in the charity sector to ensure that there is significant public trust and confidence in the sector. The charity sector makes up approximately 8% GDP and is vital for supporting and providing services to individuals and communities as well as supporting government initiatives such as the Big Society. Over the next five years, the sector will face significant risks which will need to be carefully managed and mitigated. These risks largely stem from decreasing funding and a reduction in potential sources of income. As a result of these financial pressures, we believe that there is an increased risk of fraud, money laundering and tax abuse in the sector, which if not properly managed and curtailed, is likely to undermine public confidence.
7. If the public perceive that regulatory requirements of charities are not being monitored and enforced, this could lead to a significant loss in confidence and trust in the sector which will take a long time to be restored. The above factors suggest the need for a strong, independent regulator. The Charity Commission fits this description and is well placed to continue this vital role going forward.
8. The Charity Commission is responsible for registering charities and regulation. The latter involves setting clear standards and guidance and monitoring and enforcing adherence to these standards and guidance. Such an approach is intended to encourage trustees to comply with their legal and regulatory obligations, ensure charities are run for the public benefit and identify serious failures and mismanagement of charitable resources. It also enhances the accountability of charities to their donors, beneficiaries and the public.

9. The Charity Commission should retain responsibilities for the above regulatory functions because it is important that these functions be performed by an independent and objective organisation. However, giving the financial challenge faced by the Charity Commission, its approach will have to change in certain areas.
10. The future of the Charity Commission will be shaped by its requirement to meet its statutory objectives and the implementation of significant financial savings in order to reduce the government deficit. When assessing your future approach and function, the following is worth considering:
 - whether desired objectives can be achieved by other alternatives
 - cost of regulation to charities and taxpayers
 - the future role of regulation in maximising the value for money
 - whether responsibility for regulation can be transferred elsewhere

Annual returns

11. We recognise that any income generation suggestions contained in the response would need new regulatory powers to enable the Charity Commission to make charges of this kind. In addition, the Treasury rules would need to be changed so that the Commission itself gained the benefit of the charges made.
12. Assuming this might be possible, the Commission may want to consider charging:
 - 12.1. a small filing fees for annual returns, say £20; and
 - 12.2. penalty fines for late filing of returns similar to those charged by the Registrar of Companies.

Setting guidance standards and guidance

13. When setting standards and guidance, it is important the Charity Commission consider the costs and benefits associated with any future standards and guidance in advance of starting the drafting process. While we are normally supportive of the Charity Commission's standards and guidance, on rare occasions, the length and complexity of the guidance is excessive. For example, the compliance toolkit of guidance, *Protecting Charities from Harm*, aimed at charities and their trustees is very lengthy and far too detailed, even as a reference document.
14. We also suggest that at times, it may be appropriate for the Charity Commission to collaborate with other organisations to draft guidance or consider endorsing existing standards and guidance prepared by other organisations might save significant costs, time and resources.
15. There are certain functions which are undertaken by the Charity Commission which could be outsourced to other organisations. For example, the Charity Commission, together with other Charity regulators, is responsible for issuing the Statement of Recommended Practice (SORP) for charities. It may be appropriate for a consortium of relevant umbrella bodies in the charity sector to be recognised by the Accounting Standards Board for this purpose. However, such a consortium would need funding to take on this role.
16. We believe that there are opportunities for the Charity Commission to increase income in order to avoid cutting costs and a reduction in provision of services. The Charity Commission might like to consider charging a small annual fee for each charity on the register (pro-rata to size) to cover the cost of preparing guidance and publications. Alternatively, the Charity Commission could charge a nominal amount for downloading publications from the Charity Commission website.

Monitoring and enforcing standards and guidance

17. The Charity Commission evaluates complaints and other evidence which causes concern regarding misconduct of individuals or mismanagement of the charity's resources. We believe

18. We suspect that a large number of complaints received by the Charity Commission relate to misunderstandings or disagreements rather than being evidence of serious failures by charities. A significant amount of time and resources may be spent investigating such complaints. In such circumstances, the Charity Commission could outsource the initial assessment of complaints and investigation to other organisations which have expertise in this area and can offer services such as mediation or arbitration to resolve these misunderstandings or disagreements.

Other regulatory activities

19. Some of the activities that we believe the Charity Commission could decrease are as follows:

- **Developing best practice guidance.** Toolkits such as the one referred to in paragraph 13 could be interpreted as additional regulation rather than best practice guidance, thus increasing compliance costs. There are other trusted sources of best practice guidance which the Charity Commission could review and endorse.
- **Surveys and data collection activities.** The Charity Commission currently undertakes a number of surveys which could be reduced and/or outsourced to trusted partners. If the surveys did not relate to the statutory objectives of the Charity Commission, the information could be made available to individuals for a small fee.
- **Advisory activities.** Currently the Charity Commission provides advice to trustees of charities on a range of matters. Whilst this is a vital role where trustees are seeking statutory directions (for example, under s.29 of the 1993 Act), much of the informal advice sought from the Commission is not an essential function of a regulator. Nevertheless, the Commission must not retreat into being a pure regulator with no concern for the wider health of the sector. The Commission must continue to fulfil its statutory purposes as enacted in the 2006 Act, including the duty to promote confidence in charities. This means using resources as effectively as possible to ensure charities as a whole are well run. In particular, the provision of appropriate publications and advice on issues of charity law and regulation is vital to ensure most charities are run properly and hence to minimise the need for expensive regulatory interventions. If the Charity Commission decides to continue to provide these services, perhaps it should consider charging users for providing such advice on a proportionate basis

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