



The Home Office & HM Treasury's Review of
Safeguards to Protect the Charitable Sector (England
and Wales) from Terrorist Abuse

The Charity Commission's Response to the Consultation

August 2007

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1. The Charity Commission

1.1 The Charity Commission is established by law as the independent regulator and registrar for charities in England and Wales. Our aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and the public's confidence and trust in them.

1.2 The Commission's objectives, contained in the Charities Act 2006, are to:

- increase public trust and confidence in charities;
- promote awareness and understanding of public benefit;
- promote trustees' compliance with the law in their control and management of charities;
- promote the effective use of charitable resources; and
- enhance the accountability of charities to donors, beneficiaries and the general public.

1.3 The Commission is a non-ministerial government department that operates independently. The Charities Act 2006 specifically prohibits the exercise of any Commission function being subject to the direction or control of any Minister or any other government department. We are the regulator for over 190,000 registered charities. There are also about 100,000 other unregistered charities which are subject to differing degrees of regulation and/or support from the Commission. Further information on our role, responsibilities and how the Commission goes about its work is available on the Commission's website at www.charitycommission.gov.uk

1.4 The Commission is a risk-based and proportionate regulator. This means that we engage with charities in a way which will make most difference to them and those who benefit from them. Any regulatory action we take will be evidence based and proportionate, fair and reasonable, taking account of the issue, the risk involved to the charity and its beneficiaries and the capacity of the charity to comply.

1.5 As a modern regulator, the Commission sees it as vital that its approach emphasises providing support and guidance and promoting best practice as well as ensuring that charities comply with their legal obligations. We aim to encourage and support charities to improve their performance by working in partnership with charities and with umbrella groups, to help define and facilitate best practice and share this knowledge widely. We put an emphasis on enabling charities to maximise their impact and on encouraging innovation, effectiveness and collaborative working across the sector.

2. The charity sector

2.1 England and Wales have benefited from a strong and vibrant charity sector for hundreds of years. The importance and contribution of this sector was rightly emphasised in the Review. Charities exist to create a better society and operate for a vast range of purposes in many different ways. The 190,000 charities registered with the Commission have an annual income of over £40 billion and assets of a further £70 billion, over 600,000 paid staff and 925,000 trustee positions. The charitable sector is diverse and ranges from local village halls to national arts organisations to international disaster relief charities. Each of these organisations is united by a

commitment to voluntary action and a desire to make the world a better place. Legitimate charities provide mechanisms for constructive debate and social action to build a strong civil society. This is an important protection against extremism. We welcome the Home Office's acknowledgement of the contribution charities make to society and the national economy, as well as their wider impact around the world which addresses many underlying causes of disaffection that may lead people to turn to extremism or terrorism.

- 2.2 The sector's impact is not just domestic. International charities often work in areas of high risk, where the need can be greatest. Charities can often get to the hard-to-reach places and communities that governments cannot. They work to empower local people to improve the accountability of their own governments; they deliver essential services in spite of extreme and adverse conditions; and their knowledge of local issues is often better informed than that of public or private bodies because of their closeness to local people and issues.
- 2.3 The Commission recognises the importance of a healthy, accountable and independent sector overseas. The Commission's International Programme¹ has an important, continuing role to help create this by supporting the development of effective local regulation.
- 2.4 Great humanitarian need frequently occurs where there is conflict or where it is thought terrorist groups, or those connected with them, operate. This is a difficult and complex challenge for charities, the Commission and government. How the Commission regulates in this area is both important and sensitive. As the response below makes clear, we will continue to work in a way that enables legitimate charitable activity to continue.

3. The Commission's response to the review

- 3.1. The Commission welcomes this consultation by the Home Office and HM Treasury on the government's Review of Safeguards to Protect the Charitable Sector (England and Wales) from Terrorist Abuse, and the opportunity to comment formally on the recommendations. The Commission submitted formal evidence to the HM Treasury and Home Office Review team, which also obtained and listened to our views while drafting the Review document.
- 3.2 Several core aspects of the Commission's existing approach to regulation provide an important context to our response. The Commission will continue to:
- take a balanced approach which is evidence- and risk-based, targeted and proportionate;
 - work in partnership and collaboration with government and the charity sector itself; and
 - maintain its strategic and operational independence in line with its statutory remit.

¹ The International Programme is largely funded by the Foreign and Commonwealth Office's Global Opportunities Fund.

Key elements of our response on safeguarding the sector from terrorist abuse

- Actual instances of terrorist involvement and abuse of charities are extremely small in number but are completely unacceptable;
- the way we tackle the risk of terrorist abuse of charities falls squarely within our existing approach to regulation;
- we are uniquely placed to deal with abuse where it does occur, collaborate with other regulators and agencies and other parts of government and support trustees to protect their charities;
- when allegations of terrorist involvement or links with charities arise, we deal with them as a matter of priority. We will deal proactively, robustly, effectively and swiftly when we have evidence or serious suspicions of terrorist abuse involving charities;
- effective regulation involves putting a strong emphasis on giving support and guidance to charities to prevent problems and abuse occurring in the first place;
- we believe that the most effective way for the sector to minimise its exposure to the risk of terrorist abuse is through implementing strong governance arrangements, financial management and partner management. Charities which implement good general risk management policies and procedures will be better safeguarded against a range of potential misuses; and
- it is the responsibility of charity trustees to safeguard their charity from terrorist abuse. We will support them to do this, and will not prevent charities from carrying out legitimate and vital humanitarian and other work, within the law.

The scale and nature of the threat

3.3 Terrorism is a serious and continuing threat both to UK society and internationally; a fact that has been underlined by recent events in London and Glasgow. This threat applies to the charity sector as much as any other sector.

3.4 We have always been vigilant about the risk of potential links between charities and terrorist organisations and people connected to them. Our assessment is that charities can be vulnerable for a number of reasons. Charities:

- enjoy high levels of public trust because of their voluntary and altruistic nature;
- reach into all parts of society and are diverse in nature. Because of this reach, large numbers of people come into close contact with charities, including those who may abuse them, through their services, the use of their property and through their trustees and volunteers;
- have a global presence, often in conflict areas, or in areas with little infrastructure, and frequently move money, goods and people to these areas;
- often have complex global financial operations dealing with multiple donors and currencies. They can operate cash-intensively, either in the collection or disbursement of funds, and may deal in cash and alternative remittance systems where no formal banking infrastructure exists;

- can pass funds to other organisations based overseas rather than deliver their services directly;
- are subject to different and, in some cases, weaker levels of regulation in different parts of the world;
- are often engines for social change that attract people committed to making change happen; and
- are powerful vehicles for bringing people together for a common purpose and collective action, and may inadvertently provide a ready made social network and platform of legitimacy for terrorists or terrorist sentiments.

3.5 For all these reasons, terrorists may seek to exploit and corrupt charities for their own purposes.

3.6 We also recognise that all parts of the UK economy, particularly the financial sector, are tightening their safeguards and strengthening their defences against terrorist abuse. As avenues for terrorists to exploit in these sectors are closed off, there is an increasing risk of attention focusing on others, including the charity sector, as vehicles for terrorists to exploit. This increases the sector's vulnerability. There is a clear need for the Commission to support charities in continuing work to step up their vigilance, risk assessment and management practices, particularly for charities working internationally in high-risk areas of the world.

3.7 The true scale of charitable funds being diverted for terrorist purposes, charity links with terrorist activities and other abuse is not known but, as the Review acknowledges, "actual instances of abuse have proven very rare". Our own experience indicates that the number of cases in which there is evidence to prove charities have been involved in directly, indirectly or unwittingly supporting terrorist activity is very small. However, such abuse is completely unacceptable, and the impact of even one proven case involving a charity is potentially significant for public trust and confidence in charity.

3.8 The Commission's investigative and compliance work has been effective in this area when instances have arisen. The Review gives some examples of this. Our effective intervention in the case of the high profile North London Central Mosque Trust (Finsbury Park Mosque) disrupted and dealt with the misuse of the charity for political ends and for promoting support for terrorist acts. Our action at an early stage, and before the police prosecution eliminated the abuse, enabled the trustees to put the charity's governance back on a strong footing and protect its assets and activities. We also intervened effectively to secure the assets of the Tamils Rehabilitation Organisation (TRO) where our investigation revealed that the trustees had little, if any, control over money that was sent to Sri Lanka for relief work. Further investigation concluded that the charity's representatives had liaised with the Liberation Tigers of Tamil Eelam (a proscribed organisation under the Terrorism Act 2000) to make decisions about where funds should be applied.

3.9 The Commission's current experience in operational compliance work is that:

- dealing with allegations of and concerns about charity links with terrorism is an increasing area of work. This is likely to continue to be the case in the future;

- our compliance function currently has 121 open cases dealing with all types of serious problems in charities. 40 of these are formal statutory inquiries, with 7 of these inquiries involving allegations of charity links with terrorism; and
- we are also assessing and actively monitoring an increasing number of allegations of links between charities and terrorism.

3.10 The Review suggests that the low number of reports of suspected terrorist financing from charities under the Terrorism Act 2000 derives from a lack of awareness about the scope and relevance of the legislation. It goes on to cite some evidence of 'direct or indirect links' between terrorist networks and charities and/or individuals associated with charities. The Commission agrees there is a need to raise awareness of charities' reporting obligations and this will be taken into account when reviewing our relevant guidance for the sector.

3.11 More work needs to be done by government and the Commission to better understand the nature and scale of the threat to charities. Furthermore, work should be carried out to identify the most significant and vulnerable links between charities, the charitable sector generally and terrorism to assist charities in protecting themselves from abuse. The Commission, in partnership with the sector and other government agencies, will seek to provide further clarity on this – through analysis of our casework experience and by seeking out expert knowledge within the sector and from the counter-terrorism community. We will reassess our strategies as we become better-informed about the nature of the threat and the risk to charities.

The need for a proportionate and evidence-based approach

3.12 There are two central risks to public trust and confidence in charity in this area. Firstly, failing to demonstrate an effective response to abuse and the threat of terrorist abuse and, secondly, failing to ensure that regulatory responses are proportionate and evidence-based in relation to both the nature and the scale of the threat.

3.13 It is important that the Commission and government work hard to ensure one of the consequences of taking greater steps to prevent the risk of abuse is not to stop legitimate charities, operating within the law, from undertaking valuable work. This could harm international aid in areas of high risk and would have a negative impact on genuine beneficiaries. Great humanitarian need often exists in the same places where there is conflict or where it is thought terrorist groups, or those connected with them, operate. It would be completely undesirable, as an unintended consequence of a counter-terrorist strategy, to make it impossible for certain legitimate overseas aid charities to be involved in providing aid, or make it impossible for any charity to provide aid in particular parts of the world. This is a difficult and complex challenge for charities, the Commission and government.

3.14 We recognise that many charities face particularly challenging dilemmas when operating in specific areas of the world. Political and legal contexts can complicate matters and organisations that are considered to be terrorist, or linked to terrorists, can exercise significant influence or control. The north and east of Sri Lanka and the occupied Palestinian territories are two such examples. This is further complicated by the differing stances taken by members of the international community to certain organisations, who often impose varying conditions on the aid they provide to these areas. Charities need assistance to see how they can overcome the practical difficulties they face in carrying out their work in these areas, while ensuring they comply with the law and do not support terrorism directly or indirectly. We will

continue to work with government and the sector to clarify how humanitarian aid can continue in such areas while remaining within the law.

- 3.15 We must also be alert to the unintended consequence that a higher burden of regulation may encourage money to be donated to unregistered organisations or to others overseas and therefore beyond the regulatory scope of the Commission.
- 3.16 We aim to regulate in a way which effectively addresses abuse and risk while minimising the regulatory burden and, as far as possible, enabling the flow of funds for legitimate charitable activity. Where there is evidence of terrorist abuse we will act swiftly, decisively and robustly, based on the evidence and targeting the core of the abuse. Where possible we will ensure that legitimate charitable activity can continue both during an investigation and afterwards. Regulatory action inhibiting the flow of funds must be justified by evidence that this is an appropriate step to take.
- 3.17 We note the risk model of organisations at risk of being abused by terrorists at paragraph 2.10 of the Review and agree that, while these may be potential risk factors, they will combine and vary according to the activities that charities undertake and the environments in which they operate. Further analysis of possible risk factors is crucial and will form part of our future risk-profiling work. It is our experience across all of our compliance work that a key risk factor is poor governance and administration and a lack of risk management measures within charities. High standards of governance and accountability strengthen a charity from a range of potential abuses and make the organisation less vulnerable as a target for abuse.
- 3.18 The model highlights as a risk factor organisations that are “closely aligned to particular religious or cultural movements”. In paragraph 2.9 the Review refers to “close links with groups that promote an extremist ideology”. Care needs to be taken to ensure that, in highlighting this as a risk factor, damage is not done to the credibility of the whole of the faith-based charity sector or parts of it, and to recognise that the vast majority of these charities undertake legitimate and essential work.

The Commission’s role and approach

- 3.19 We are uniquely placed to contribute to protecting charities from abuse from terrorism, and to strengthening safeguards to minimise the risk they face from terrorist abuse. We have a role to play in complementing the work of law enforcement agencies who deal with the criminal aspects of this abuse. We are well placed to liaise with them, other regulators and agencies and with other parts of government, and to support trustees themselves to protect their charities from abuse. This unique position is primarily a result of our:
- independent regulatory role and oversight of the charity sector;
 - broad and unique knowledge of the sector, its diversity and the way it operates;
 - access to protective and remedial powers which can be applied in sophisticated and precise ways to disrupt abuse, protect charity assets and beneficiaries whilst also enabling legitimate activity to continue; and
 - hard-earned credibility and the trust and confidence placed in us by the sector and the general public.

- 3.20 The way we tackle the terrorist threat to charities fits within our existing general approach to regulation. We act robustly, swiftly and decisively where deliberate wrongdoing, criminality and serious abuse, including terrorist abuse, takes place. Effective regulation places a strong emphasis on giving support and guidance to charities, helping to identify best practice - in partnership with the sector - and making charities aware of the standards to which they should aspire. This prevents problems arising in the first place and reduces the need for us to intervene later.
- 3.21 The effectiveness of our approach depends on striking the right balance between the provision of advice and guidance and, where necessary, intervention based on proportionality and evidence. The majority of our resources are channelled into our advice and enabling services to charities and our policy work which have a central role in promoting, informing and supporting the development of high standards of governance, transparency and accountability in charities. We also provide clear guidance on legal requirements and best practice as well as signposting to other sources of advice and guidance provided by sub-sector groups and other parts of government.
- 3.22 The Commission can make a particularly important contribution to tackling the terrorist threat to charities through an emphasis on prevention. We believe that we will have the greatest impact on minimising the sector's exposure to the risk of terrorist abuse by encouraging and supporting the development in charities of robust, accountable and transparent governance, strong financial management and good general risk management policies and procedures. We aim to build a greater awareness of the risks charities face from terrorism and promote the steps that should be taken to minimise the risks and lead to the prevention and early detection of terrorist abuse. We will promote a keen awareness of risks and responsibilities and the knowledge by charity trustees of what to do if and when suspicions are aroused. We will expect all charities to effectively manage risk and strengthen safeguards against all abuse, including abuse by terrorists.
- 3.23 The Commission is committed to supporting work to develop effective strategies and procedures for preventing and dealing with the risks of terrorist abuse of charities. We recognise that many charities, including those working overseas in high risk areas, already have good standards in place to minimise the risks from terrorist abuse and a great deal of experience in working in complex operating environments. We enjoy a good working relationship with the sector and aim to further develop this partnership to build on existing safeguards and facilitate the identification and sharing of existing best practice. Improving the spread of good ideas within the sector will be a key strand of our work.
- 3.24 The Commission believes firmly that its success as the civil regulator of charities is largely based on the respect and trust placed in it by the public and charities themselves. The value of this trust cannot be over-estimated; it is one of the most effective regulatory advantages we rely on.
- 3.25 We will provide updated and enhanced compliance and best practice advice and guidance, along with risk and trend analyses, informed by the knowledge and practical experience of the sector. This will act as a toolkit for both the sector and for government to better understand how terrorism-related issues in the sector might be most effectively approached. A key element of this will include developing a common-sense and practical approach to a 'know your beneficiary principle'. Our existing guidance needs to be reviewed to more specifically deal with these risks including our Operational Guidance on *Charities and Terrorism* (OG96) and our guidance on *Charities Working Internationally*.

- 3.26 As well as ensuring charities know about their legal obligations, adding value to charities' work and enhancing public understanding will be important drivers for the Commission when producing new or revised guidance. We will continue to make a distinction between what charities 'must' do according to legal requirements and what they 'should' do to meet common standards of good practice. We recognise the importance of being clear about this distinction in any guidance we produce.
- 3.27 The Commission is committed to working in partnership to coordinate more effectively with other regulators and law enforcement agencies in the UK and internationally in order to prevent and disrupt terrorist finance abuse. We can help ensure other agencies better understand the sector when they are investigating abuse connected with it. We can also use our knowledge of the charitable sector to provide information and analysis of trends and the risks facing the sector, and complementing knowledge and analysis carried out by the sector itself in relation to the terrorist threat.
- 3.28 The Commission is developing its counter-terrorism strategy which will present publicly our existing overall approach and set out what our plans are for the future. We intend to consult with the sector and the public on this later this year. The strategy builds on our existing work and expertise in this area and applies our overarching regulatory principles as well as our risk and proportionality framework for compliance work. As the review recognises, the inherent risk of terrorist exploitation does not apply equally across the sector and a 'one size fits all' approach is not appropriate or proportionate. We concur with this view, and our strategy and approach will reflect this.

The Commission's compliance work and the risk and proportionality framework

- 3.29 Charities must comply with the law. When trustees act reasonably and honestly we respond flexibly and will take this into account in deciding whether to take regulatory action against trustees, and in assessing how to support trustees to put the charity back on a secure footing. Deliberate wrongdoing, criminality and serious abuse, including terrorist abuse, will be dealt with rigorously and decisively. An effective compliance and enforcement function in the Commission is, therefore, of vital importance.
- 3.30 The Commission's Compliance and Support function is responsible for the delivery of our 'compliance objective' involving regulatory work with charities where their assets, services or beneficiaries are at serious risk of abuse or damage. Its function is to identify and investigate apparent misconduct or mismanagement in the administration of charities and take remedial or protective action as necessary.
- 3.31 As part of a risk-based and proportionate approach to regulation, we have developed a risk and proportionality framework for our compliance work. This ensures that our decisions and actions are appropriate and consistent, and that our resources are targeted where we can have the greatest impact. Our approach recognises that we cannot eliminate or seek to control all risks as a regulator. We do not have the capacity to do so. It would also place an unacceptable regulatory burden on charities and would stifle the innovation and adaptability that characterises the sector. Our approach allows us to deliver effective, timely, proportionate and targeted regulation. It ensures that our intervention is appropriate, and that it properly reflects the seriousness of the problem and the potential impact of failing to regulate it. In addition, it allows us to identify, at an early stage, charities that may be facing

problems and provide them with support or advice to mitigate or avoid those problems – moving from reactive to proactive casework. We will take an evidence-based approach based on continuous evaluation and research into how serious problems arise in charities, where the current risks lie, and emerging trends and changes to those risks.

3.32 When assessing whether to engage, the Commission uses an approach which is based on levels of tolerance and identifies a number of “zero-tolerance” issues. When we have concerns that such issues have or may arise in a charity, they receive immediate attention in the Compliance and Support function due to the risks they pose to the public, beneficiaries and the integrity and reputation of charities. Using our risk and proportionality framework we rapidly assess the most appropriate and proportionate course of action to take. This is based on the particular circumstances, the seriousness and scale of the problem and the available evidence. In the context of our response to the Review, the relevant “zero-tolerance” issues are:

- connections to proscribed organisations;
- charity links to or support for terrorism, financial or otherwise;
- misuse of charity to foster criminal extremism;
- fraud and money laundering; and
- sham charities.

3.33 We are currently in the process of developing our approach and will be publishing a discussion paper on our risk and proportionality framework for compliance later on in the year to enable us to obtain feedback from charities and the public on our approach.

3.34 When charities, or those connected with them, have committed a criminal offence this is a matter for law enforcement agencies and we will refer suspicions of criminal activities, including terrorism, to them as appropriate. This is in line with our general approach to issues of criminality within, or associated with, charities.

4. Response to recommendations for the Commission

4.1 The consultation paper makes a number of recommendations about the approach the Commission should take to the prevention of terrorist abuse of charity, which will inform the Commission’s counter-terrorism strategy:

Strategy and Objectives

“The Charity Commission should publish its strategic and operational objective to identify and minimise the risk of terrorist exploitation of charities.”

4.2 Our overarching objective for the Commission’s counter-terrorism strategy is:

“We will provide proportionate, balanced and effective regulation of the charitable sector to enable it to strengthen its safeguards and defences against terrorist or other serious criminal abuse, and so increase public trust and confidence in charity”.

4.3 The strategy will set out our operational objectives for identifying and minimising the risk of terrorist exploitation of charities. In summary, the strategy will have a four-strand approach which will reflect a balance between support and guidance,

prevention and compliance. We will continue to build and strengthen our compliance work and develop expertise in this area. We will, in particular, consolidate our working relationships with other regulators and law enforcement agencies while maintaining our independence. In addition, we will seek to proactively monitor this high-risk area with an eye to early intervention. We will put great emphasis on preventative work, seeking to support and build best practice in support and partnership with the sector. The four strands are:

Awareness: we will work in close co-operation with the sector to build on charities' existing safeguards to minimise the risk of terrorist abuse. We aim to build a shared understanding of the risks and vulnerabilities faced by charities from the terrorist threat, and the challenges posed to them in operating in difficult and complex environments in the UK and overseas. We aim to facilitate the unlocking and sharing of best practice to effectively disrupt those that seek to exploit charities for terrorist purposes. We will provide updated best practice advice and guidance which is informed by, and complements, charities' substantial practical experience and knowledge, and promote this widely across the sector through outreach work. Ensuring charities understand their legal obligations, adding value to charities' work and enhancing public understanding will be important principles for this aspect of our work.

Oversight: we will take a more proactive approach to analysing trends and profiling risks and vulnerabilities in the sector in relation to the threat from terrorism. We will monitor the sector in areas we recognise as high risk in order to identify, at an early stage, those charities that may be facing problems, so that we can alert them to the risks and provide them with advice and support.

Co-operation: in addition to maintaining close links with the charity sector, we will work with other government regulators and law enforcement agencies by formalising protocols and strengthening operational arrangements.

Intervention: we will deal proactively, robustly, effectively and swiftly when we have evidence or serious suspicions of terrorist abuse involving charities;

"It should have a business strategy that directs activities and resources to deliver this objective."

- 4.4 The Commission welcomes the additional £1 million funding contribution from HM Treasury for 2007-08 to do this. In addition to this, we have committed to redirect a significant level of our existing resource to supplement our awareness and outreach work, as well as developing our compliance function and the specialised staff and infrastructure that is required for casework involving possible or alleged links to terrorism in charities. We have already started work to strengthen our capacity in these areas. The Commission understands that in future years the additional £1 million per annum will be built into our funding baseline.

"It should have benchmark indicators of success, on which it reports regularly."

- 4.5 Benchmark indicators of success need to be set in the wider context of the Commission's statutory objectives. We will develop operational performance indicators for each strand of our counter-terrorism strategy. Such measures may include, for example: **Awareness:** effective engagement with the sector to develop a 'toolkit' building on existing sector safeguards and best practice, and production of

value-added and up-to-date Commission advice and guidance. **Oversight:** provision of updates of strategic assessments of the threats in relation to particular risk factors; proportion of cases under pro-active monitoring that lead to detection of abuse. **Co-operation:** timely exchange of relevant information, and operating protocols and agreements in place with other regulators and agencies. **Intervention:** appropriate use of our protective powers; appropriate referral of cases to other agencies; the amount of charity funds protected or redirected by Commission action. We will not measure success in terms of increased numbers of investigations, as this can be misleading.

Risk-based diligence and assurance

The proposed “*risk based approach should be supported by the government and the Charity Commission through:*

- *practical guidance on evaluating risk and forestalling abuse;*
- *ongoing and informed feedback to the sector on charity-linked terrorist finance threats worldwide; and*
- *risk based assurance work (including, where appropriate, on-site visits) to verify the proper end use of funds”.*

4.6 We welcome the recognition given in the Review to the proposed risk-based approach to the importance of support across government, and the shared responsibility between regulators and government agencies, as well as the sector itself. It is not sufficient for the Commission to act alone. Other parts of government have a crucial role in liaising with us to provide valuable knowledge in relation to terrorist finance threats, in order that practical guidance on evaluating risk and strengthening safeguards for the sector can be developed.

4.7 We will produce periodic bulletins to provide key, up-to-date information so that different types of charities are made aware of their potential vulnerabilities and are better placed to identify and minimise potential risks. These will be informed by our casework experience, the outcomes of research and analysis and by information from other regulators and agencies where appropriate.

4.8 We believe there is significant value in developing a common-sense and practical approach to a ‘know your beneficiary’ principle. For example, undertaking checks that are appropriate and reasonable in the circumstances; including for an overseas partner organisation in receipt of a charity’s funds to carry out development work, or verifying that funds and charitable activities are reaching the intended beneficiaries. We will develop recommendations and guidance for trustees and for public information in this area in collaboration with the sector and other parts of government. One strand in this will be encouraging charities to share information and best practice with each other and a drive to increase the transparency of charity operations.

4.9 We agree that on-site visits will be appropriate in certain circumstances as part of an effective risk-base assurance regime; we already carry out such visits from time to time, including on occasion overseas. However, it is the responsibility of charity trustees to implement adequate monitoring systems and risk assessment and management procedures to ensure the proper end-use of funds for which they are, and will continue to be, held accountable. Others will also have a role in supporting

trustees in carrying out these responsibilities, such as internal and external auditors and grant-funding bodies. Factors when deciding that a compliance visit may be appropriate include: the range of our jurisdiction in another country, the likelihood of our action achieving a beneficial outcome, the feasibility of verifying the proper end use of funds, and the health and safety and level of risk faced by our staff. The Commission is currently undertaking a project to review and revise our approach to on-site visits overseas, in collaboration with the sector, other parts of government and with expertise from specialist legal and financial organisations.

Proactive investigation and disruption

“The Charity Commission should develop its investigative capacity and the appropriate co-ordination with counter-terrorist agencies to help ensure that possible instances of terrorist finance in the sector are identified and investigated proactively, in line with the Commission’s independent risk-assessment procedures.”

- 4.10 Our investigative work is now stronger as a result of changes brought about by our Strategic Review in 2005. For example, inquiries are now reserved for the most serious cases of abuse and misconduct. We accept that in relation to the investigation of terrorist abuse further attention is needed to strengthen our capacity for handling the high level of complexity and sensitivity that these cases involve. The Commission also has at its disposal a wide range of powers and a good reputation for their effective and proportionate use. We have already started to provide appropriate training to investigation officers as part of our wider training and development plan.
- 4.11 We recognise it is crucial to work in partnership with other regulators and law enforcement agencies on terrorist-related and other issues.
- 4.12 We are also improving our risk analysis and issue handling procedures with respect to terrorism and other ‘zero tolerance’ issues.
- 4.13 We intend to increase our capacity to carry out more proactive oversight of problem areas. The results of future work to accurately define the true nature and scale of the risk will help inform our proactive work.
- 4.14 Specifically, we will:
- increase our capacity to deal with work involving terrorist abuse, including establishing a specialist team of staff, trained and skilled to deal with these kinds of cases; and
 - create a new proactive monitoring function, with an intelligence-led capability, to actively monitor charities where there is a significant risk of serious non-compliance or abuse, including terrorist abuse.

“Both the Commission and the counter-terrorist agencies are operationally independent. Effective working relationships between them are therefore essential. Protocols to encourage this co-ordination, and their success, should be kept under review.”

- 4.15 Agreed. We are committed to further developing appropriate coordination with counter-terrorist agencies. Work has been underway for some time to improve our liaison and contact, through developing clear and mutually beneficial operating protocols and agreements with individual agencies for strategic and practical coordination and the effective exchange of information. These clarify and set the

framework within which the Commission liaises and works in partnership with another agency.

“The Charity Commission and other relevant bodies should deploy the independent powers available to them proactively, as an integral part of efforts in the UK to choke off funds to terrorists. The Commission and other relevant bodies should co-ordinate activity to ensure maximum disruptive effect against terrorist finance threats”.

4.16 The purposes for which the Commission may deploy its powers are clearly and precisely defined in the Charities Act 1993, as amended by the Charities Act 2006. These do not refer to the prevention or disruption of terrorism or terrorist finance explicitly, but to abuse generally. Obviously, we consider evidence of terrorist abuse to be justification for using these powers.

4.17 The charitable sector may have concerns about the impact of the Commission using its investigative and remedial powers in ways which are not proportionate or do not reflect the nature and scale of the risk of abuse. The Commission’s investigatory powers are designed to protect charitable funds from the risk of misapplication or from being subject to mismanagement. These powers will be used in an appropriate and proportionate manner on the basis of evidence, in situations where doing so would disrupt direct terrorist financing or support for terrorist networks. It is important that the decisions of the Commission continue to be open and transparent, based on evidence, and that adequate opportunity is given for challenge in the courts (and in due course the Charity Tribunal).

5. What the Commission will do

5.1 The Commission will consult further on its counter-terrorism strategy in the near future. The strategy will present our existing overall approach and set out our plans. The additional funding of £1 million secured from HM Treasury, together with the Commission’s redirected compliance resource, will allow us to:

- increase our capacity to deal with work involving terrorist abuse by developing a pool of counter-terrorism expertise with specialist, trained and skilled staff, to deal with these kinds of cases;
- create a new intelligence led proactive monitoring function with the capability to proactively monitor areas of the sector where there is a significant risk of serious non-compliance or abuse, including terrorist abuse;
- profile risk areas and analyse trends and disseminate information on risk;
- produce up-to-date best practice guidance in collaboration with the sector;
- run an outreach programme in the sector to raise awareness of risks, legal requirements and good practice guidance and advice;
- train staff in specialist financial investigation and other relevant skills; and
- improve the security of our own infrastructure to ensure we are able to link into the rest of government in this area.

6. Responses to specific consultation questions

Overall policy

Do you agree that a risk-based and proportionate approach involving all stakeholders is the best way to counter the threat of terrorist abuse of charities?

- 6.1 Yes. For the Commission, a risk based and proportionate approach means engaging with charities in a way, including intervention, which will make most difference to them and those who benefit from them. Any actions taken should be appropriate and proportionate, fair and reasonable, taking account of the issue, evidence, the risk of harm involved to the charity and its beneficiaries and the capacity of the charity to comply. We will act with impartiality, fairness, independence and honesty.
- 6.2 Such an approach needs to be developed in partnership with the Commission, UK and overseas regulators and charities. More work is needed as to the nature and scale of the risks, and an appropriate risk framework (as indicated above) needs to be devised. This will be a key strand of the work that the Commission will undertake, using our expertise in charity regulation and the way in which charities work, to build a risk framework that is adaptable for different kinds of charity, working in different ways, in different situations.

Are there measures that the Government could take in addition to the recommendations presented here that would help to safeguard public and donor confidence in the integrity of the sector?

- 6.3 We urge government to reinforce its belief that the majority of charities undertake legitimate charitable work that makes a real difference to society, and to avoid casting suspicion on charities generally, or all charities within particular groups of charities. Many are already proactive in ensuring that their funds are not abused. Government should continue to work with the Commission to encourage the take-up of the principles of good regulation of charities internationally, and promote international minimum standards for charity regulation.

Policy recommendations

How should charities assess their exposure to the risk of terrorist exploitation?

- 6.4 The key areas where the risk of exposure has been identified are in:
- governance and leadership;
 - financial control;
 - partnerships; and
 - delivery to beneficiaries.
- 6.5 An appropriate and proportionate risk assessment framework, based on and linking with existing good practice, needs to be developed and disseminated amongst charities. The Commission will work with the sector and other regulators to develop such a framework and promote and encourage its use as good practice.

What information and tools would assist charities to do this?

- 6.6 There is a need for charities to identify, share and disseminate good practice, particularly for international operations. The Commission is committed to encouraging and facilitating such information sharing.

Is there a need for a more explicit 'due diligence' obligation on the charity sector requiring appropriate controls to be put in place by charities for the purposes of detecting and forestalling abuse by terrorists? If so, what is the best mechanism for delivering this change?

- 6.7 Charity trustees are already under a legal obligation to discharge their duty of care, act in the best interests of the charity and act prudently as part of their general legal duties. In exercising their powers in accordance with these duties, charity trustees must use charitable funds and assets reasonably and only in furtherance of the charity's purposes, and avoid undertaking activities that might place the charity's endowment, funds, assets or reputation at undue risk. They must use reasonable skill and care in their work as trustees, using their personal skills and experience. This includes acting with due diligence in the receipt and expenditure of funds to ensure that these are not at risk from abuse by terrorists or others operating illegally. Trustees should consider seeking external professional advice on all matters where there may be material risk to the charity.
- 6.8 An additional, blanket legal obligation, specific to terrorism, that applies only to charities should only be considered if appropriate and proportionate to the level of risk (which is currently not clear). Moreover, given the wide variety of legal forms charities can take, any additional obligation focused on charities because of their status runs the risk of creating a complex matrix of obligations that would be difficult to interpret and administer, adding a further regulatory burden. Charities are subject to the provisions of the anti-terrorist legislation. In addition to the obligations that flow from this legislation, charities should implement procedures and controls that are proportionate to the level of risk they face in respect of the threat from terrorism. The Commission and sector umbrella bodies should ensure that information on good practice and minimum standards for appropriate controls are widely disseminated. The Commission should highlight to charities that failure to implement these appropriate controls may be regarded as evidence of misconduct or mismanagement in cases of serious abuse.

What form should 'know your beneficiary' checks take?

- 6.9 Charities work in a diverse range of situations with a diverse range of beneficiaries. In some cases, aid will be delivered through local partner organisations whose credentials, processes and systems can be evaluated. In other cases, aid will be delivered direct to communities or individuals. Further work needs to be done in developing such checks. Our view is that there should be a principle, or principles, that are sufficiently flexible and practical to be applied in any circumstances.

Should the proposals for 'know your beneficiary' checks be turned into a standardised requirement across the sector? If so, what is the best way to do this?

- 6.10 As noted above, it is difficult to see how there can be a standardised approach. However, a risk-based approach with a standardised minimum, whether in the form of a checklist or a set of principles, might be feasible and is worthy of further serious consideration. As mentioned above, charity trustees are already under a legal obligation to discharge their duty of care, act in the best interests of the charity and act prudently as part of their general legal duties. In exercising their powers in

accordance with these duties, charity trustees must only use charitable funds and assets in furtherance of the charity's purposes and therefore should take appropriate steps to ensure they know their beneficiaries. Any additional burden in terms of monitoring or reporting must be proportionate and clearly capable of being effective.

Given the diversity of the sector, what is the best way to raise awareness of its obligations under the Terrorism Act 2000 and financial sanctions legislation?

- 6.11 The Commission and sector umbrella bodies and leaders will have a key role in disseminating this information alongside guidance on good practice. We will consult with the sector and develop specific guidance on the relevant aspects of the legislation.

How can existing best practice in the sector be identified and promulgated in terms of a) risk assessment, and b) proportionate controls, systems and processes to reduce exposure to particular risks?

- 6.12 The Commission will work in partnership with charitable sector bodies to identify and share best practice, and to develop updated guidance based on the principles of this good practice. Charities themselves should share their own best practice procedures where possible so that other charities can learn from existing good practice to develop their own procedures.

What form should feedback to the sector on relevant terrorist threats take?

- 6.13 Increasingly, charities are widely able to access internet-based guidance. If counter-terrorist agencies published this information the Commission will signpost it from its own website as part of the collaborative strategy. Equally, relevant Commission guidance could be signposted on counter-terrorist agencies' websites.

7. Conclusion

- 7.1 The Commission welcomes this timely consultation. We will continue to contribute to the Government's development of its approach to safeguarding the charitable sector from the threat of terrorist abuse. The Commission has a key role to play in this, but the effective disruption of abuse, as well as safeguarding the sector from the risks and threat of abuse, will be a three-way partnership between the government, the sector and the Commission. Our position as independent regulator of charities brings a unique and essential perspective to these issues.

- 7.2 In particular we would welcome the opportunity to discuss further how the policy recommendations in the consultation paper, and the issues that it raises, can be developed and taken forward in partnership with the charitable sector.

8. Further information

For further information please contact:

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