

MY ROLE AS INDEPENDENT COMPLAINTS REVIEWER FOR THE CHARITY COMMISSION: LOOKING BACK AT MY YEARS IN OFFICE

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In January 2000, the Independent Complaints Review service for the Charity Commission was established to look into complaints about the Charity Commission made by users of its service, including members of the public and charities. As an experienced independent reviewer, I was asked to undertake the pilot project for the new scheme, following which the Commission would evaluate its effect on complaint settlement and its value in terms of recognising areas for improvement. At the end of the pilot scheme, the Commission took the decision to introduce the scheme as a permanent feature of its response to complaints. I was appointed as the first Independent Complaints Reviewer (ICR) and was proud to hold that office for over 10 years.

My role was to investigate specific complaints which the Commission had been unable to resolve itself and to reach a decision about whether or not they were justified. Where appropriate, I was able to make recommendations aimed both at putting matters right for the complainant and at improving the quality of the Commission's service in the future. The Commission agreed to act upon my recommendations. It is never easy for an organisation to open itself up to independent scrutiny, and, by setting up the scheme, the Commission was voluntarily taking a significant step towards meeting the high expectations that people rightly have of all public bodies. My terms of reference underlined my independence and gave me the power of recommendation, but did not seek to replace the statutory authority of the Parliamentary and Health Service Ombudsman who remained the final avenue of complaint.

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People turned to my office because they wanted someone who had no axe to grind to give an unbiased but informed view of problems that they had encountered. From the start, I was determined that people could be confident that the independent review process would be both thorough and robust in its approach to this task. Alongside the introduction of the independent review scheme, the Charity Commission conducted a review of its internal complaints procedures, so that it offered a more structured response to complaints than in the past. Very soon, complaints were being recognised more effectively and dealt with more efficiently internally, with the result that more were being settled without the need for external referral.

In the first year, I received 43 complaint referrals; a significant number, but this represents a tiny percentage of the many people and organisations that the Commission deals with annually. This rate of referral remained fairly steady during my early years in office, decreasing latterly as the Commission became more proficient at responding to complaints about its service. However, complaints that were referred to me often concerned extremely contentious matters. Complainants were always upset and often devastated as a consequence of the Commission's actions or inaction. For some, this had been regarded as a personal tragedy, for example, following their removal as trustees or the closure of a charity. As a past trustee myself, it was clear to me from the start that people who devote themselves to charitable endeavours are strongly committed to those causes and when they feel that things have gone wrong or that they have been dealt with badly, they feel the injustice of the situation particularly deeply. As a result, the Commission found it difficult and sometimes impossible to settle disputes.

Whilst some complaints involved complex legal and procedural issues, others were the result simply of poor communication and a failure to explain the Commission's role clearly enough. In my first public annual report, I said:²

In general, my impression is that members of the public do not understand the nature of the Commission's work, its regulatory role and the extent of its remit. There is, of course, a duty on all public services to inform the public about their rights and to explain the statutory framework within which the service is provided in clear and plain language. If this is not clearly explained to people at the outset of their dealings with the Commission, in some cases it can raise unrealistic expectations of what the Commission can do to help resolve their individual problems.

This core finding helped the Commission to rethink its approach to communication and public information. It was particularly encouraging that the Commission was

² Independent Complaints Reviewer to the Charity Commission – Annual Report January 2001

keen to learn from the independent review process and to use the information derived from complaints to inform management decisions. Today, the Commission provides trustees and the public with a vast amount of information, much of it electronic, to explain its role and how it goes about its work. In an environment of financial constraints, it is more important than ever that people understand the limitations of the Commission's role and do not expect it to sort every problem that arises in charities.

The lesson from the complaints I was reviewing was how important it was for the regulator to act in proportionate and consistent ways. Too often in the early days I saw extreme action taken by the Commission, in response to what seemed to be fairly minor infringements, and many complainants justifiably reported a heavy-handed approach. Once again, the Commission was prepared to take this lesson on board and, encouraged by the Principles of Better Regulation, it introduced a proportionate and risk based approach to its work, which has served it well over the years. As a result, the numbers of complaints of this kind reduced and instead people started to raise concerns that the Commission no longer actively responded to every cry for help.

In a later annual report I noted that:³

The Charity Commission is a regulatory body with wide and far-reaching powers; but it cannot necessarily use these powers on every occasion when it is asked to do so, nor would it be right if it did. A regulator must be free to exercise an appropriate degree of discretion in deciding when to exercise regulatory powers. If not, regulation may become restriction. Although the Commission may be able to offer help or advice, it is not necessarily able to resolve complaints about charities or to provide redress for the individuals who make them. In general, the Commission cannot interfere in the administration of a charity and can only invoke its regulatory powers in specific circumstances, where there are clear and persuasive grounds for doing so.

Whilst complainants often had a jaded view of the Commission, my experience was that Commission staff usually tried to do a good job, and serve the sector well. This was not always easy. On occasion, Commission staff had to cope with people who were unreasonable in their demands, discourteous to the point of rudeness, or personally abusive. This behaviour is always unacceptable and, on occasion, I found it necessary to say so in my reports. I recommended that staff needed the 'protection' of clear policies, to guide them in how to deal with such situations with fairness and consistency, whilst ensuring that the 'substance' of any

³ Independent Complaints Reviewer to the Charity Commission – Annual Report November 2001.

complaint was properly considered. Again, the Commission accepted this advice and today it has clear and fair engagement policies in place.

Throughout my term as ICR, there were many times when the Commission felt that my decisions were weighted in favour of complainants, and many times when complainants felt that I was biased in favour of the Commission. This is the nature of independent review. One can do no more than look at each case on its own merits and provide as fair a judgement as possible. In the end, it is the independent view from an 'informed' outsider that makes the process worthwhile. Over the years, the Commission became far less defensive and there was a greater willingness to accept that it is not always right. For my part, I tried to bring an impartial and balanced perspective to my role. Inevitably, there can be a tendency for Reviewers to become rather cynical, as everyone they deal with is unhappy with the service that they have received. However, I always kept in mind that the vast majority of people and charities believe, with justification, that the Charity Commission delivers excellent service and value for the charitable sector and for the public.

In my experience as ICR, the Commission made great efforts to change old-fashioned staff attitudes, which tended to regard complaints in a negative way, to seeing them as an essential element of customer feedback, providing valuable management information. The value of complaints lies in the information that they provide for organisations which are prepared to take a constructively critical look at the way in which they deliver services. This requires a willingness to support the two-way flow of information arising from all customer feedback, including complaints, between staff and management. In my view, the Commission's attempts to change organisational culture in this regard have been largely successful.

No matter the subject of the complaint, there is always something to learn about process and attitudes, whether it be about unnecessary delay, keeping promises, explaining decisions better, responding to whistleblowers effectively or the many other issues that crossed my desk. In many cases, people who turned to me appeared to have justifiable complaints about particular charities, if not about the Charity Commission itself. As the Commission has no authority to intervene in personal disputes with or within charities, unless matters can be settled through informal methods, such as conciliation or mediation, the only recourse that people have is to the courts, where potential costs act as a strong disincentive. As one complainant wrote to me: 'The wrong could only be redressed in the High Court. No ordinary person could afford that sort of money to obtain justice.' In response, in my annual report that year I wrote:⁴

⁴ Independent Complaints Reviewer to the Charity Commission - Annual Report 2004-2005.

In a society where the distinction between public and voluntary services is becoming blurred and where, to a greater or lesser extent, charities touch all of our lives, the lack of any alternative and more informal system for resolving such disputes is regrettable.

It was clear to me as ICR that often people with complaints about individual charities effectively had nowhere but the Commission to turn to for help. I came to the view which I retain today, that the charitable sector, which continues to grow in size and importance, requires an ‘ombudsman’ to settle complaints and to help charities learn from the problems that arise in order to avoid similar pitfalls. I have no doubt that the public interest would be well served by such a development.

An important sector development that I greatly welcomed was the establishment of the Charity Tribunal under the Charities Act 2006, which was transferred to the First-tier Tribunal (Charity) in 2009 following reforms of the Tribunal system by the Tribunals, Courts and Enforcement Act 2007. This meant that for the first time, people unhappy with regulatory decisions no longer had to face the expense of judicial review or other court process, and could seek justice through what was intended to be the more informal route of the Tribunal. Surprisingly applications to the Tribunal have remained low in number and, perhaps disappointingly, it has not been seen by applicants or the Commission as the informal and cost effective process that it was intended to be.

Moreover, the restrictions on the Tribunal’s authority mean that it cannot address the bulk of Commission ‘decisions’ which are taken every day in response to concerns raised against charities. Many complaints about the Commission relate to its perceived lack of responsiveness to allegations against charities. As most ‘decisions’ not to take action are operational rather than statutory, they cannot be challenged through the Tribunal. Instead, they move through the complaints process. Complaint review can be a second-best option for those who are really hoping for a change of decision, which cannot be achieved through an examination of whether standards of service were met. Working with the President of the Tribunal, Alison McKenna, we established protocols between the Tribunal and the ICR Office recognising our mutual interest in ensuring that people with concerns about the Commission’s service or its statutory decisions are helped to take matters forward in the most appropriate way. However, neither the Tribunal nor the ICR can address complaints about charities.

The challenge for the Commission is always to balance the need to take action against the worst performing charities, with the sector’s view that it should be less demanding of smaller charities than larger ones. In my experience, it is often in the smaller charities that problems arise which give the Commission its most

difficult regulatory dilemmas. What should the Commission do when a charity is being torn apart by internal strife and jealousies, when all should be focused on the well-being of the charity and its beneficiaries? What steps should it take when trustees have simply failed to understand and act in accordance with the responsibilities that they carry for good governance and accountability? Every situation differs, but, clearly, any action that the Commission does take will be unwelcome to some and not go far enough for others.

As ICR the challenge for me was how to resolve complaints that were routed in concerns about charities and, for this reason, had no real solution within the Commission's procedures. Explanations of proportionality carry little weight as an argument with people who are convinced of the seriousness of the situation and who feel that a charity is being let off the hook. Even so, the Commission spends a great deal of time and resource advising that it is neither a complaint-handling organisation nor a mediation service.

Commenting on this situation I noted:⁵

One way that the Commission can help people take their complaints about charities forward in the right way is by encouraging charities themselves to buy in to the concept and importance of well structured internal complaints processes.

The Commission's 2006 report, 'Cause for Complaint?'⁶ demonstrated that commitment to this area of good practice is far from universal. In fact, it showed that 70% of charities had no complaints procedure, 79% did not think that they needed one and, of particular concern to me as ICR, a worrying 77% of small and medium sized charities thought that it was the Commission's job to deal with complaints for them. It was apparent from this survey that the whole area of complaints and citizen redress was widely misunderstood and undervalued within the sector. Regrettably this remains the case today.

In recent years, the charitable sector has grown and altered substantially. Today, encouraged by Government, charities have an important role to play in the provision of public services, and there is a clear appetite for more. Given this, the Commission's Chair, Dame Suzi Leather, has noted:⁷

Lines of accountability and redress must not be ignored. With almost 40% of charities delivering services lacking any complaints procedure, and with some authorities arguing that they are not responsible for services they

5 Independent Complaints Reviewer to the Charity Commission - Annual Report 2005-2006.

6 Charity Commission, Cause for Complaint, RS11, May 2006.

7 NCVO 2007 Annual Conference Keynote Speech - Dame Suzi Leather, 21 February 2007.

contract to charities, there is a risk that vulnerable users could be left to fall between the cracks.

I wholly endorse this view and, looking to the future, I hope to see greater engagement with the sector to put this right.

As I left office last year, the effects of the Charities Act 2006 were still being realised by the Commission and the sector. The ‘public benefit’ test will continue to challenge charities as the Commission exercises its statutory responsibilities in this area. No doubt this and other new areas of complaint will arise. In my view, the Commission is now far better able to respond to concerns and complaints than when the ICR scheme was set up. Its internal complaint handling and review processes have continued to improve. Its responses to complainants are usually courteous and informative and considerable effort is put into trying to resolve complaints. My hope is that my years in office have left a lasting lesson that good complaint handling is an important part of customer service and an essential part of organisational learning.