

HOUSE OF COMMONS
ORAL EVIDENCE
TAKEN BEFORE THE
PUBLIC ACCOUNTS COMMITTEE
CUP TRUST AND TAX AVOIDANCE
THURSDAY 7 MARCH 2013
LIN HOMER, DAVID RICHARDSON, WILLIAM
SHAWCROSS and SAM YOUNGER

Evidence heard in Public Questions 1 - 159

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Oral Evidence

Taken before the Public Accounts Committee

on Thursday 7 March 2013

Members present:

Margaret Hodge (Chair)

Mr Richard Bacon

Stephen Barclay

Chris Heaton-Harris

Mr Stewart Jackson

Fiona Mactaggart

Austin Mitchell

Nick Smith

Justin Tomlinson

Amyas Morse, Comptroller and Auditor General, **Gabrielle Cohen**, Assistant Auditor General, National Audit Office, **David Clarke** Director, National Audit Office, and **Marius Gallaher**, Alternate Treasury Officer of Accounts, were in attendance.

Examination of Witnesses

Witnesses: **Lin Homer**, Chief Executive and Permanent Secretary, Her Majesty's Revenue and Customs, **David Richardson**, Director, Specialist Personal Tax, HMRC, **William Shawcross**, Chair, Charity Commission, and **Sam Younger**, Chief Executive, Charity Commission, gave evidence.

Q1 Chair: Thank you, all of you, for attending this morning. What would be really helpful, both to Mr Younger and Mr Shawcross, is keeping answers tight; then we can get through quite a lot. There are a number of issues that we want to explore with you this morning. I don't know which of you wants to take this question, but let us start with the Cup Trust itself. Can you just explain to the Committee, first, why you didn't do anything, and secondly, how an earth you allowed such flagrant abuse to continue?

William Shawcross: The Cup Trust was registered with us in April 2009. The Charity Commission registers organisations as charitable according to their purposes. If their purposes are wholly charitable and in the public benefit then they are charities under English law.

Q2 Chair: The purpose of this organisation was to avoid tax.

William Shawcross: The purpose of this organisation-

Q3 Fiona Mactaggart: I should perhaps declare that I was a Minister who helped to devise it-and I am also a trustee of a number of charities-

Chair: We all are probably.

Fiona Mactaggart: Section 3(2) of the Charities Act states specifically that "it is not to be presumed that a purpose of a particular description is for the public benefit". It is down to you as the Charity Commission to assert and discover whether it is for the public benefit.

William Shawcross: That is absolutely correct, Madam. In April 2009, this organisation came to us to say that they wished to create a charity for the public benefit to give funds to other young people's charities. We had no reason to believe that that was not the case.

Fiona Mactaggart: Have you-

Q4 Chair: Hang on a minute. Sorry, Fiona. I can't believe this. In looking at the charity, let's do the assessment before you gave them charitable status. NT Advisors-no tax-were well known. They were well known to HMRC. It was well known around the whole of the financial services world that their prime business was avoiding tax. In saying that this was a legitimate organisation set up for a charitable purpose, why on earth didn't you ask some questions about the trustees-this is before it was set up-look at their record, talk to your colleagues in HMRC and therefore question whether they should be established as a charity in the first place? Why didn't you do that work? You are the regulator, Mr Shawcross? This is what astounds me. You are the regulator. We rely on you to get this right.

William Shawcross: Yes, and you are quite right to do so. We regulate 160,000 charities in Britain; 25 organisations come to us almost every day to register as new charities.

Q5 Chair: The scary thing is whether this is the tip of an iceberg.

William Shawcross: It is not the tip of an iceberg, Madam.

Q6 Chair: We don't know.

William Shawcross: We are pretty certain that it is not. Lin Homer would be better qualified to answer that than I am. At heart, this is a tax avoidance issue, not a charitable issue. The point is that when they came to register with us-

Q7 Chair: Hang on a minute. This organisation set itself up as a charity. It therefore is regulated by you.

William Shawcross: Absolutely.

Q8 Chair: You have to ensure, when you give it its stamp that it can be a charity, that the trustees are proper persons who are fit to be trustees of a new charity. That is what you failed to do here.

William Shawcross: I am afraid, Madam, I must disagree with you. You may not like what these people do, but tax avoidance is a legal enterprise, as you know.

Q9 Chair: No, it's not. Sorry, but you keep on on this, and it just makes me cross. Tax avoidance is a spectrum.

William Shawcross: Of course, you're right.

Chair: I am going to interrupt on this because it makes me really cross. Lin won't tell us this, but we know that almost every scheme that NT Advisors set up is closed down, because it is found to be unlawful. These guys are involved in unlawful activities. We know that, and the world knows that.

William Shawcross: You may know that, but I do not know that it was known to the commission in April 2009, because I was not there.

Q10 Chair: Why don't you ask some questions?

William Shawcross: I think, in retrospect, we should have asked more questions, and I think the fact that the trustees had an organisation based in the British Virgin Islands¹ should have been a red flag.

Q11 Fiona Mactaggart: Sorry, it is one trustee-it is a private company based in the British Virgin Islands. How many charities have one company as their trustee?

William Shawcross: Quite a lot, actually.²

Q12 Fiona Mactaggart: Why?

William Shawcross: Because it is allowed. It is legal. It is not illegal for them to do so. Going back to your question, the fact that you or I may not like the business that somebody is involved in is not a reason to say that he or she is not fit to be a trustee.

Q13 Chair: No, but it would make you ask questions as to the purpose for which they were establishing the charity. It would make me ask questions, if I were in your shoes. It would make me think, "What on earth are these guys up to?" I would do a much more detailed investigation, rather than what appears to have been done.

William Shawcross: Madam, I think you are absolutely right, because obviously this whole thing is a disaster for the charity sector. It brings the whole charitable sector into question, and it affects public confidence in the sector. It is the commission's job not only to maintain but to increase public confidence in the charitable sector, which is one of the most vital sectors, as you know better than I, in British life. It is very damaging to the sector and very damaging to the commission that this whole thing happened. I regret it very much indeed, as you do.

Q14 Chair: So you accept that you have failed in, I think, doing the due diligence to enable them to set themselves up. Why on earth did you allow the abuse to continue for so long?

William Shawcross: We did not allow the abuse to continue.

Q15 Chair: You did. You did an investigation and decided that you could not do anything about it.

William Shawcross: We set the charity up, and when it was set up in April 2009³, there was no hint that it was going to become involved with a tax avoidance scheme. In March and April 2010, when the tax avoidance scheme came to our attention-about the same time, HMRC issued "Spotlight 9", which stated that tax avoidance schemes had come to their attention that they were going to challenge-we immediately started investigating the Cup Trust. We had to investigate whether it was still, and had always been, a charity existing for charitable purposes under British law, and whether it was working in the public benefit. It said it was giving money to young people's charities, and indeed it did so.

Q16 Chair: How much?

William Shawcross: £55,000

Q17 Chair: Out of how much?

William Shawcross: Out of many millions.4

Q18 Fiona Mactaggart: How did you know that? None of the accounts published on the Charity Commission's website includes such donations. There is one account that said that they planned to give £55,000, but I cannot find an account with any example of them having done so.

William Shawcross: I think we do know that they gave £55,000. 5

Sam Younger: Yes, we do. It became clear during investigation. We are happy that those funds went to charitable purposes.

Q19 Fiona Mactaggart: It is striking, if you look at the documents that they provided to you, the first one—admittedly, it was 265 days late; one would have thought that the commission might have felt tempted to do something about that—said explicitly: "The Trustee will continue to seek income from various sources. However, the Trustee shall also ensure that it is in a position to handle the distribution of grants, pursuant to a revised grants policy, once the gift aid claims are paid by HM Revenue and Customs." It is quite clear that they have said, "When we get the gift aid, we are going to give it away." It is their words to you.

William Shawcross: Madam, £55,000 has already been paid to charitable causes. In the course of our investigation, which we started as soon as the tax avoidance thing came to our attention in the spring of 2010, we looked to see whether this was a proper charity registered under English law. We did not like the tax avoidance scheme, but we operate according to the law. Tax avoidance is not actually our issue; it is much more HMRC's issue.

Q20 Fiona Mactaggart: Public benefit is your issue.

William Shawcross: And they were giving money for public benefit. *[Interruption.]* I know it was not very much money, but the proportion of money that a charity gives away in every year is not for the Charity Commission to determine.

Q21 Austin Mitchell: It was giving away thruppence for every £100 it received in donations. That is ridiculous.

William Shawcross: If you think it is ridiculous, Sir, the law may have to be changed. We are looking with HMRC, with whom we have a very close relationship—

Austin Mitchell: But you didn't mind that it was such a pathetic donation?

Amyas Morse: I understand that the law does need to be changed.

William Shawcross: This is something we are looking at.

Amyas Morse: Forgive me, Chair. I would be interested to hear from the accounting officer as well. I am not a lawyer, but just looking at the legislation, it appears to be clear that there is a requirement that, to be a charity, the organisation has to have exclusive charitable purposes.

William Shawcross: Yes.

Amyas Morse: Now, is it really feasible to describe something that obviously has a primary purpose of generating tax avoidance or tax deductions as having a primary charitable purpose? Is there not any sense of proportion? If the charitable purpose is a by-product of a primary other purpose, can that still be regarded as falling within the legislation? I am just curious to know what you think.

Sam Younger: When it was registered in the first instance, these issues of tax avoidance were not there and were not known, but when we did the investigation, we looked in very great detail into whether this was a charity that came under our jurisdiction and whether it had been right at registration stage that it did, because we could have taken it off the register were it not.

We then asked whether it was a charity with exclusive charitable purposes. The legal advice that we had both internally and clearly externally, because we took independent counsel's advice, was that it remained a charity. There was a major fundraising operation there that was separate, but that was separate from the charitable status. The further questions we asked in our investigation were whether the trustees operating in the best interests of the charity. Again, it was found that we didn't have sufficient evidence to challenge them in terms of putting charitable funds at risk or in terms of private interest. It was on those grounds that we stopped our investigation at that point, pending any decision about gift aid.

Amyas Morse: So, supposing you had found those grounds, or you had been given different advice, or you had different evidence, would it have been feasible for you to have said that you were no longer registering it as a charity?

Sam Younger: If our advice had suggested that we could legitimately challenge them either on jurisdiction or on whether they were really a charity, yes-on the basis that they were a sham charity or not for exclusively charitable purposes, and we could have taken them off the register. On the question of how the trustees behave, if you have once said, "This is a charity," we don't have the option to close it down on those grounds.

Q22 Chair: You should never have authorised them.

Can I just understand something from you? There has been an FOI to try to get the correspondence between yourself and the Cup Trust into the public domain. My understanding is that you have refused to reveal that, although I have to say that, for me, given the public interest in ensuring that there is integrity in the charitable sector, you should release it. You should release it to this Committee.

I have seen a summary of 43 e-mails and letters between yourselves and the trust which, when I looked through them, are more about changing confirmation of meeting dates, attendees and agendas. There are also a whole load of apologies to their lawyers and very little interrogation, which suggests to me that you haven't done anything that is a thorough investigation. If you have, we want to see it because we don't believe you.

William Shawcross: It is very sad, Madam, that you don't believe us. We did do a thorough investigation. It took a long time. Of course, we corresponded with their lawyers, who are one of the most reputable charity lawyers in the country. We listened to what they had to say, as is totally proper in any investigation. We will be publishing a long report very soon on everything that we did. I am sure that that will satisfy all your concerns.

Q23 Chair: I ask you to release that paper. To put it bluntly, if you really want to show that you have cleaned up your act, you ought to release those papers in the public domain for everybody to see in respect of what is obviously an absurd abuse of charitable status by an organisation. I do not mean just your report, but all the documentation, so that we can get some assurance that you are properly carrying out your regulatory functions for which you are paid for out of taxpayers' money.

William Shawcross: I think that we are carrying out those functions properly, but, of course, we will write a very full report.

Q24 Mr Bacon: Will you release the documents?

William Shawcross: I hope that we can release many of the documents.

Q25 Mr Bacon: What might stop you?

William Shawcross: There is the question that we have to treat everybody properly according to law.

Q26 Mr Bacon: Did you hear Mr Green at the very end of the last session?

William Shawcross: No.

Q27 Mr Bacon: He said, "Sunshine is the best disinfectant."

William Shawcross: I totally agree with that.

Q28 Mr Bacon: So, if you could publish all the documents, then you would do so.

William Shawcross: I hope so.⁶

Q29 Chair: And who are the lawyers who are supporting the Cup Trust?

Sam Younger: The company was Bates Wells and Braithwaite previously. Whether they are still at this point-

Q30 Chair: Okay. I have a lot of people who all have lots of questions.

Q31 Chris Heaton-Harris: I have got some very simple questions. When a charity registers with you and you do some checks, what are the sort of checks that you do? What flags up concern?

William Shawcross: I think, as I said before, that the fact that this had a trustee registered in the British Virgin Islands-although that is not illegitimate in any way-might well have flagged up a concern in retrospect, given what has happened. We should obviously have followed that up more closely.

Q32 Chris Heaton-Harris: That is a sole corporate trustee.

William Shawcross: Yes; and in the British Virgin Islands. None the less, the charity was within the jurisdiction of the High Court and therefore came under the Charity Commission. Listen, nothing of this is pleasing to me, or to us. The Charity Commission works extremely hard, with diminishing resources. I have only been there a few months, but I have been very impressed with the dedication of the staff at the Charity Commission, which has been cut back a lot in recent years. Like a lot of organisations they have had to suffer cuts; but we really do try hard to retain public confidence. Investigation is difficult, as you know, and I can assure you that the damage that this is doing to us and the fact that you have seen fit to call us, which I think is absolutely appropriate, is obviously damaging to the commission and the charitable sector. I regret it very much, and we are going to work very closely with HMRC-even more closely.

Q33 Mr Jackson: You are obviously very busy harassing the Plymouth Brethren, and your politically motivated campaign against private education, to focus on the real issue here, which is the propriety and integrity of your own organisation and taxpayer value.

William Shawcross: With great respect, Sir, we are not harassing the Plymouth Brethren.

Mr Jackson: You are. You are spending enormous amounts of money on legal fees on a rather tenuous legal case.

Chris Heaton-Harris: We would rather you spent it chasing these people down than harassing people who are actually doing something with public benefit.

Q34 Fiona Mactaggart: Actually, there is a point that you have made: that the Charity Commission's budget has reduced significantly more than most public sector organisations'. It will be a 30% reduction over five years. It seems to me that the thing that has suffered most, potentially, in that is the investigatory function: that your promoting functions, your goodwill functions, your understanding of trustees, your retaining of the register-things like that-are carrying on. But I am concerned that there has been a failure-the Cup Trust is a classic example-of the investigatory function, which we don't want you to have to use, because we want most people who set up charities to be good people.

William Shawcross: Most of them are.

Fiona Mactaggart: Indeed, most of them are. I don't think anyone thinks the Plymouth Brethren are trying to grab money for themselves; but there are some people, in this case, in this organisation, whose application at the start was laden with clues that it was public tax money that they were using. It said, "When we have claimed gift aid, we will..." There seems to have been a complete failure to get on top of it at the beginning. They then made their first set of accounts 265 days late. One would have thought that, for a set up this size, that was something to look at. Why not?

William Shawcross: Can I answer the last question, and then I think Sam can talk better about the reorganisation of the commission in the face of all the cuts, because he has managed that extremely well.

Q35 Chair: I don't actually want to deal with that, because we are really tight on time. Everybody comes and bleats about cuts.

William Shawcross: I hope-

Q36 Chair: Sorry, Mr Shawcross, but bluntly-I feel this really strongly-I feel that your job is to ensure that with the resources you have you do your best to carry out the legal duties you have, and uttermost in that is ensuring the integrity of the charitable sector, which means identifying and finding those that are abusing the system. And this is not one-we think we know of 50. We think there are 50 organisations that we know of; and this is us completely on the outside, through the NAO, where charities are being used really as tax avoidance mechanisms. Lin won't tell me which ones; neither will David Richardson; so I'm telling you now, if we know that, they know that, why the hell aren't you doing more on just regulating it?

William Shawcross: We are doing a very good job of regulating it. I repeat-

Q37 Chair: Why are there 50?

William Shawcross: This is a terrible, terrible story.

Q38 Chair: Why are there 50?

William Shawcross: I have no reason to believe, Madam Chairman, with great respect, that there are 50 such charities, like the Cup Trust. If we find 49, 48 or 20 other such charities we will investigate them-7

Q39 Chair: How do you know? You only visit 20 a year.

William Shawcross: We have not found any evidence of that, but if we do find it, I promise you that we will investigate it further. This is awful for us. I can assure you that we are more upset about it than you are, because it is very damaging to the commission and to the charitable world in general. The lesson of this is that we will co-operate even more closely with HMRC, which is our most important partner after the police.

Q40 Chair: Mr Shawcross, you are the regulator. It's your job.

William Shawcross: Yes, and we are doing it.

Chair: HMRC is not the regulator. It is your job to know if an organisation that purports to be a charity is actually an organisation that is avoiding tax.

Q41 Chris Heaton-Harris: I just want to see if you recognise this statement: "The trust bought £176 million-worth of Government gilts, which were sold to donors for only £17,000. The donors sold the gilts and donated the equivalent of the proceeds to the trust. Gift Aid of £46.4 million has been claimed on these donations by the trust." Do you recognise that?

William Shawcross: Is that from the Spotlight report from HMRC?

Chair: No, Spotlight is nothing to do with this trust. Again, I know Lin Homer will not tell us.

William Shawcross: Yes, I recognise the figures.

Q42 Chris Heaton-Harris: You recognise the figures. Can you just remind us how much in charitable donations this charity has made?

William Shawcross: £55,000 I believe. If the Gift Aid is accepted by HMRC, the charity will stand to benefit to the tune of £46 million, which makes it quite a substantial charity.

Q43 Fiona Mactaggart: Hah! A charity! I am sorry, but nobody in their right mind could call it a charity. Charity has to be for the public benefit. What you are saying here is that public taxes are stolen by a private company based in the Virgin Islands and then given to other charities. Does that seem like public benefit? Does anyone in their right mind think that that is public benefit? Your primary duty is to make sure that it is for the public benefit.

William Shawcross: Madam, excuse me for contradicting you, but there are two things here. There is the charity and there is the scheme. If the Gift Aid is accepted by HMRC, and that is obviously a very open question, the donors will benefit to an enormous amount, I quite agree, and that may well be reprehensible, but the charity will also benefit to the tune of £46 million. If that happens, we will be very assiduous in ensuring that that £46 million is all spent on charitable purposes.

Q44 Chris Heaton-Harris: Is there a minimum level of resources devoted to charitable aims below which you would say that the charity was not a charity?

William Shawcross: No, that does not come under our regulatory framework. The trustees of a charity are entitled to decide in any given year how much of their resources they spend in that year.

Q45 Chair: I must say it is another issue. I do not know why you are not seeking a change in legislation. Someone can set up a family trust charity-this has been put to me-and put all sorts of expenses through it, so that 50%, 60% or 80% of your income in that charity actually goes on supporting the family with cars, admin support, secretaries-whatever you like. There are instances of that. The fact that you cannot regulate for that is a nonsense. Years ago, if that was the case-I do not know how long you have been there, Mr Younger-you should have sought the necessary amendments to enable you to have the legislative framework. It is such an obvious thing.

William Shawcross: Madam, there has been a very long and detailed and excellent report review of the Charities Act 2006 carried out by Lord Hodgson. He made no suggestion that that should be done, but I take the matter on board and if you want to discuss it further, I will happily do so.

Q46 Chair: Oxfam has 3% go on admin, so 3% is admin and 97% goes out to charity. That is what they should all be at. If they are not, you should smell something that gives you cause for a proper investigation.

William Shawcross: We have done a proper investigation, Madam, and we will be publishing a report very soon, which I hope you will find very satisfactory.

Q47 Justin Tomlinson: That is the point I want to explore. As we see, at the moment, it is 3 pence in every £100. Around this table, we are all understandably saying that that does not seem to be the primary purposes for the good of the people. Is there a reason why a minimum

level-the Chair has just suggested Oxfam's model of 3% on admin-has not been implemented? You have just said that it was not recommended in that report. Why might it cause a problem?

William Shawcross: It would be very hard to say that all charities have to be governed by the same rubric. The point about the charitable sector is that it is wonderfully rich and varied, and always has been since the Statute of Elizabeth in 1601. It is one of the glories of this country. The point about the Charity Commission is that it should be a light regulator because in 99.9% of cases of charities and trustees in this country they are decent organisations run by decent people doing the best for their local communities or whatever, and we don't want to be heavy-handed with them.

Q48 Justin Tomlinson: Let me challenge you on that point. How can you be that sure of that 99.9%, when you are doing just 20 compliance visits? If I heard correctly, is it 25 a day are setting up? So, you are not even keeping up.

William Shawcross: Yes, between 20 and 25 people apply to register every day. It is a wonderful tribute to the charitable instincts of the British people that that should be so. Sam, perhaps you would like to answer.

Sam Younger: I just want to add one thing. The figures are absolutely core, which is one of the reasons that this did not come out in the Hodgson review. the commission's role is about charitable status and obligations under charity law. It is not particularly a standard setter. It is certainly not a licensing body. The whole emphasis of what we have seen coming out of the courts, for example, is that it is not for the commission to interfere as a regulator in the behaviour of trustees. It is for trustees to take those decisions.

There is that very wide point of principle that says it is not for the Charity Commission to interfere in management. The problem would be if you set something that was beginning to go in that direction-if you say there must be a minimum of X% of incoming resources spent on charity in any given year-you are taking the regulator beyond that point of protecting status and protecting under the law into being more of a licensing authority. That is the reason that we have not put it forward, and I don't think others have either.

Q49 Justin Tomlinson: There is a point linked to that. I understand there are finite resources that limit you to the 20 compliance visits a year. When I had my own small business, I had a VAT inspection in the first two years, which is relatively standard practice. I asked the VAT man, "How likely am I to have other inspections in future?" He said, "It is not an exact science but, if you start to stray by having a massive increase in your outgoings or incomings, that is more likely to trigger a visit."

Following on from Mr Jackson's comments about the Plymouth Brethren and others, it seems to me that surely something in the system might have been triggered by that 3p in £100 and said that was an interesting scenario being painted. In terms of getting value for money on the 20 compliance visits it would have been quite likely to be able to find something that will save taxpayers a considerable amount of money.

William Shawcross: That is absolutely correct. When in spring 2010 that came to our attention and nothing had happened in the charity and the scheme before that, we

immediately started our investigation. That was about the same time as HMRC issued their Spotlight, saying they were going to challenge any such scheme.

Q50 Justin Tomlinson: Separating it from that one particular organisation, can you explain the process that determines the 20 compliance visits a year?

Sam Younger: The compliance visits will be based on a risk-assessment. In the area that we conduct our most serious investigations, we also have a number of organisations for a range of reasons that might be under general monitoring. That will be monitoring things that come in to us. The visits will be largely where we think there might be the highest risk in those. There are other triggers.

Q51 Chair: Is 20 enough?

Sam Younger: No, it is not enough. We were able to do more before.

Q52 Chair: It depends where you prioritise your resources, Mr Younger.

Sam Younger: We need to operate within the resources we've got.

Q53 Chair: It depends on where you prioritise your resources.

Sam Younger: Yes, indeed. You asked as an aside. I have been there a little over two years and came in at the point at which we had a major reduction in funding. That is precisely what I have spent two years doing. I am not persuaded necessarily that we have got it absolutely right in every detail but I am pretty confident that we are putting our resources to those areas where they can have most effect.

Q54 Justin Tomlinson: Typically, how much does a visit actually cost?

Sam Younger: The cost is in the staff time to go. It will be worth a day or two, including writing a report on it and so on. It is a question of where that sits in the investigation and monitoring work as a whole that puts a strict limit on it. It is not just compliance visits, we do accounts monitoring, but that is a small sample, some of it risk-based and some random. I would like to be able to do a good deal more but, set against other priorities, can't necessarily do so within the resources available.

Chair: Right.

Q55 Stephen Barclay: Could I address the point about you saying it is down to cuts? The 39th report of this Committee in 2001 said: "We have previously taken evidence from the commission in 1988, 1991 and 1998 and on each occasion we found severe shortcomings in the commission's performance." It goes on to call for you to make "more extensive use of the statutory powers granted by Parliament", so it is not the case that the failure to investigate and enforce against charities is down to the cuts. This is a long-standing issue that has been highlighted by the Committee on four previous occasions. That is the case, isn't it?

William Shawcross: Well, neither of us was there at the time of those reports, so I do not think-

Q56 Stephen Barclay: I didn't say you were there. I said that is what the reports say, so this has been highlighted. Please do not answer different questions to the one put. The Committee has highlighted four times before that the organisation is not using its investigative powers. That was before any cuts.

William Shawcross: Well, the situation has become even more difficult after the cuts. I totally agree with you. We should be able to do more investigation, and if we had more resources, we would do more investigation. It is absolutely crucial to maintaining and increasing public confidence in the charitable sector, which is one of our primary purposes. I wish we had more resources, but we do not. We have to work with what we have got.

Q57 Stephen Barclay: What percentage of your headcount is currently dedicated to investigations?

Sam Younger: About 15% is dedicated to investigations. That is against a background. You could add to that, because, of course, some of the legal people will be supporting investigations, and that is against, for example, 25 people who are full time-less than 10% on registration, and a much higher proportion who are on meeting the incoming demand. One of the other things to remember is that the commission has a huge amount of obligation in terms of consents and permissions for charities, which is actually the vast majority of the work that comes in. 8

Q58 Stephen Barclay: Okay. Well, let's look at how effective you are being. The National Fraud Authority in March 2012 estimated that fraud in the charitable sector is at £1.1 billion. How many trustees have you removed over the past three years?

Sam Younger: I would have to come back to you with that figure, but we can give it to you. 9

Q59 Stephen Barclay: The figures I have in front of me are zero for 2011-12, zero for 2010-11, zero for 2009-10, one in 2008-09, and six in 2007-08. Does that sound familiar to you?

Sam Younger: I can't remember those figures. I know that it is a very small number, and I know that often when we do get into these issues, trustees resign.

Chair: I have to say if you had never removed a trustee you would remember if you removed one.

Q60 Stephen Barclay: This is potentially an area with over £1 billion of fraud. There are three types of charity: big charities that are very well run; smaller charities that are well intentioned, where a relative dies; and there are more than £1 billion worth that is fraud, and I am interested in the third category. Could you tell me, over the past three years, how many trustees you have suspended?

Sam Younger: I haven't got that figure with me either, but I can certainly come back to the Committee with it. 10

Q61 Stephen Barclay: Right. The figure in front of me suggests that it was one in each of the past four years-so in four years, you have suspended four trustees. Does that sound familiar?

Sam Younger: I think it is a very small number, yes.

Q62 Stephen Barclay: Okay. How many bank accounts did you freeze last year?

Sam Younger: Again, I have not got these figures to hand, so I am not going to try and make them up. 11

Q63 Stephen Barclay: Right. These are germane to how effective you are. I cannot understand how you can run a regulatory body and not know what your enforcement is doing. It is the very essence of what a regulator should do. The figure I have before me is two, and yet, 10 years ago, one of the Committee's specific criticisms was that you were not using the powers you have. If the Committee will indulge me, I will quote from one of the Committee members at that time-the current Chancellor, George Osborne. He said: "So you sit round, have a cup of tea with trustees, you are satisfied with what they have said and you do not carry out a proper rigorous investigation." So that was the Chancellor's view 10 years ago.

What I cannot see, in an area with over £1 billion of fraud, is what enforcement you are doing. We have looked at the specific case of the Cup Trust, which is a scandal, but I am interested in the £1 billion-plus of fraud. Could you tell me how you, as the leader of this organisation, assess the effectiveness of your enforcement?

William Shawcross: I have said, sir, that we would like to be able to enforce much more widely. With great respect, I think the £1 billion worth of fraud that you mentioned includes- perhaps it is the major part of it-fraud against charities rather than committed by trustees.

Q64 Stephen Barclay: So what do you estimate the fraud to be?

William Shawcross: I do not have an estimation for that.

Sam Younger: The estimated figure that we have-we do not have any reason to dissent from what the NFA came up with, though they have another figure coming up fairly soon. We are very active with them and with many other organisations to promote awareness of fraud in the sector. I think there are a number of areas where action has been taken. These are things that do not come out specifically as Commission action, but we are deeply involved. We are not a criminal investigation body-that is for the police to do-but-

Q65 Stephen Barclay: No, no. You have statutory inquiries for fewer than 1% of the cases you actually look at. In the figures given to me, you have about 1,252 assessment cases and only 12 statutory inquiries were opened. This is dysfunctional.

Sam Younger: We have approximately 70 statutory inquiries open at any one time.

Q66 Stephen Barclay: Yes, but that is running over several years. You closed nine and opened 12 in the last year, so we take an annual figure of 12, which is less than 1%.

Sam Younger: Less than 1% of-

Q67 Stephen Barclay: The actual cases that you opened and you were assessing. You opened over 1,200, but you actually only had statutory inquiries on 12. This Committee said more than a decade ago that you were not using the powers open to you. In reply to the earlier

questions, you said, "Well, actually, we don't have the powers in that area. There is no minimum as to what should go into charitable activities." In some areas you do not have the powers but seem to be as mute as a eunuch on saying anything about it, and in terms of the powers you have, you are like the Garfield of the quango world. You are not actually doing anything. You are not removing or suspending trustees, you are not freezing their bank accounts and you have only launched 12 new statutory inquiries. What the hell is going on?

Mr Bacon: Too busy chasing the Plymouth Brethren.

Sam Younger: The Plymouth Brethren-

Chair: No, please don't let's go there. Let's concentrate on the issue.

Sam Younger: As I said, we have looked to deploy our resources as best we can in the context of the resources we have available. We have changed our system to get better triage through, so that we get the most serious things going to investigation. We have the capacity at the moment to carry out 70 statutory inquiries at any one time. My feeling, as the accounting officer responsible for the management, is that in terms of the totality of our responsibility, that is a proportionate use of resources.

In fairness, there are many cases where the figures you quoted are not by any means the whole story of our actions. So you have got-

Q68 Stephen Barclay: But you cannot give me any other figures.

Sam Younger: No, I know, but-

Q69 Mr Bacon: If Fiona does not mind, I want to give you some figures. Mr Barclay quoted from the 2001 report. It was published in October 2001, and we then took evidence on it. By the way, Mr Shawcross, are you familiar with this report published by the National Audit Office, "Giving Confidently: The Role of the Charity Commission in Regulating Charities", of 25 October 2001?

William Shawcross: No, sir.

Q70 Mr Bacon: Are you, Mr Younger?

Sam Younger: No.

Q71 Mr Bacon: Well, that is quite revealing. Mr Barclay quoted that it was the fourth time that the Committee had looked at it on the basis of evidence from the NAO. Let me read a sentence from later on in the 2001 report: "In 1998, the Committee of Public Accounts expressed concern that the commission was not devoting enough attention to investigation work. Since then, the number of formal inquiries it has carried out into charities has declined from 272 in 1997-98 to 212 in 2000-01. However, the proportion of inquiries resulting in substantiated weaknesses increased from 76 per cent to 90 per cent."

This is a scratched record, Mr Shawcross. It has been going on for a very long time, and the only thing you appear to be able to say is "We could do more if we had more resources."

There is not a single body in the public sector that would not give that answer. It is just not good enough.

William Shawcross: Well, it is the truth.

Q72 Mr Bacon: This has been a problem for 25 years, and nobody has addressed it, have they?

William Shawcross: I think that is not true. My predecessors obviously addressed it; I am sure that they took on board the criticisms of this Committee.

Q73 Mr Bacon: You didn't even know about this report. This is a very good report. How is it that we know about it and you do not?

William Shawcross: Because it is your report, sir.

Mr Bacon: No, it was the National Audit Office's report.

William Shawcross: I beg your pardon. Well, I should know about it, I quite agree with you. I will make it my business to read it immediately. Thank you very much.

Amyas Morse: We will do another one shortly.

Chair: We will come to that at the end. Fiona.

Q74 Fiona Mactaggart: I understand that you are short of resources to investigate. The striking thing about those figures is that most of them were before gift aid was introduced. Gift aid is clearly a risk to abuse.

William Shawcross: Absolutely.

Fiona Mactaggart: You talk about triage, Mr Younger, and it seems that your systems do not sufficiently triage it. For example, the Cup Trust has not produced an account for last year because its income was under £5,000 or whatever; it was under your barrier. If, in a particular year, income is less, you ask very sappy questions. I run charities, so I am kind of in favour of occasionally sappy questions, but if you look at the sappy questions that they have to answer on their summary information return-list your aims; who benefits; the charity strategy; its objectives; and so on-they do not, for example, ask them to list their biggest grants, which is important in these grant-giving charities. I can see that there is a different approach with a charity that organises activities-kids doing things or whatever-but grant-giving charities, where they are taking money from people to give money away, are a particular category.

I do not share the view of all my fellow members that there should be a de minimis percentage to be given away, because I can understand that a university or something might be trying to raise an endowment fund. But over time, you would expect them to give away a very substantial proportion of their income at least, if not all their assets. I do not think that your triage system helps the beginning of investigation. If you do not have enough money for investigators, why haven't you improved that?

William Shawcross: In the case of the Cup Trust, we began the investigation in the spring of 2010, as soon as we became aware of the scheme. The Cup Trust has given a small amount of money, I agree-£55,000-in grants to other charities.

Fiona Mactaggart: They say.

William Shawcross: We have confirmed that those grants were given to legitimate, bona fide charities. The last accounts that we have are up to March 2012. No gift aid claim was listed in those accounts.¹²

Sam Younger: May I add one thing? I think you make one good point in terms of what we ask of charities in their annual returns, and that is constantly under review. For example, coming in, in the annual returns that are just coming up, is a box that says, "Do you claim or have you claimed gift aid?" There are a number of areas where we can develop in terms of giving ourselves signals that can then pull things out.

Q75 Fiona Mactaggart: My point is that you ought to have by now.

I want to turn to Ms Homer about gift aid. If I look at the Cup Trust's published accounts, they seem to have received something like £97,000 in gift aid earlier on. Am I right about that?

Lin Homer: Chair, you have said it for me: we do not come here to talk about individual taxpayers.

Fiona Mactaggart: I understand that, but this is in their published accounts.

Lin Homer: We still do not talk about individual taxpayers. What I can say is that, in publishing the spotlight in 2010, we were talking about a scheme that was being marketed-

Q76 Chair: You were talking about Montpelier, Lin. You are not talking about this scheme. As I understand it, the Cup Trust changed how they established themselves to have regard to your spotlight in closing down Montpelier.

Lin Homer: We were talking about a scheme that was being marketed as Project 2010. We are now naming schemes, as you know.

Q77 Chair: So was it Montpelier?

Lin Homer: I know it as Project 2010, not as either of the names you have given me.

Q78 Chair: But it wasn't Cup Trust. You were not closing down Cup Trust, because Cup Trust, astoundingly, managed two years without you closing them down.

Lin Homer: If I can describe what we have done without reference to any individual taxpayers, what we have done is to signal that we will not regard as valid gift aid claims under schemes of this nature. We have not paid gift aid under schemes of this nature.

Q79 Chair: We are always in difficulties. My understanding, Lin, is that Cup Trust had regard to your spotlight of 2010, when they set up the things. You cannot answer that. Therefore, it is the usual catch-up.

William Shawcross: Madam, excuse the interruption. I think Cup Trust was set up in spring 2009 and the spotlight was in 2010.

Q80 Chair: Can you tell us whether it is Cup Trust that led to your spotlight publication in 2010?

Lin Homer: What I can tell you is the scheme that was marketed as "Project 2010" was the one that was described. If-

Q81 Chair: Who was behind it? Was it this guy Matthew Jenner?

Lin Homer: We do not name individuals until and unless we prosecute them. You know that. I can say that we have not, we believe-I am always happy to have other information-seen a scheme of this nature that is successful and has led to gift aid being paid.

Chair: But they did. I was just going to say there were two years-

Q82 Fiona Mactaggart: Their March 2010 return to the Charity Commission asked them, "What were your charity's three main fund raising activities in the year and how much did each generate and cost?" Their fundraising activity was, "raising funds through gift aid." The income generated was £97,590. The cost of that activity was £97,451.

Lin Homer: We are always happy to investigate, but on the big sums being described in our spotlight, of circular activity involving tens and hundreds of millions, we are clear that does not work and we are clear that we will not regard those as eligible for gift aid.

Chair: Are you aware of the 50 charities that are currently-

Lin Homer: I was going to say, in terms of our own work, we do something like 5,000 interventions a year in this area-the area of charities-many of which are very standard. They about simply correcting errors. About 300 involve fraud, however. We have had about eight declarations under DOTAS, which I think would be the same area that you are describing, so I think it would be well worth you sharing with us any additional information you have available.

Q83 Fiona Mactaggart: On the issue of fraud, can I ask whether you tell Mr Younger?

Lin Homer: Yes, of course we do. We have a statutory gateway. You know that when we have a statutory gateway, we can share. We share information well and rapidly, probably on a weekly or daily basis, and we have six-monthly strategic meetings. In a number of areas, we do joint investigations, so we put our investigators alongside the Charity Commission.

Q84 Chair: Do you ever pursue the individuals? You can pursue the charitable trust-I understand that-but there are a whole load of individuals who have used gift-

Lin Homer: Yes, we do pursue them.

Chair: You do pursue the individuals.

Lin Homer: We have done four prosecutions in recent times.

Q85 Chair: Four prosecutions of whom? Can you tell us that?

Lin Homer: Yes, I can name names, because they are all out there.

Chair: Please do.

Lin Homer: An individual-I am sorry, I do not have the name of the individual-who fraudulently claimed through a charity known as the Church of Grace Ministries was imprisoned for two years. A Mr Fishwick was imprisoned for 20 months after hijacking a real charity. As Mr Shawcross says, sometimes the charities are the victims as opposed to the shells. A Mr Methuen embezzled from the Amblecote Christian Centre and received five years. The Vantis scheme was a con both on individuals and a charity that led to two individuals being jailed for four years and 18 months. All the facts on those have been made public. Under the new arrangements that I think we have discussed with you, when we see schemes, we will name schemes. We will try to signal very clearly to the public, when we believe that there is something going on, whether or not it is charitable or that it is not going to work. We think that that is our responsibility in this space.

Q86 Fiona Mactaggart: My concern is that I think the latest cases, for example, on charitable benefit-the private schools one and so on-have led you to say that you are going to introduce new information on public benefit by the end of 2012 or spring 2013, which I think we are well into, and it has not come out. I think that if you look at those cases, it says that it is a case by case matter that has to be decided by the Charity Commission. What I cannot understand is the kind of passivity of the Charity Commission, which seems to say that if the words in someone's aims and objectives look as though they ought to be charitable, it is a charity. Whereas, it seems to me that if you look at the Act, it is down to you to take a decision about whether it actually is. My sense is that the Charity Commission is failing to fulfil its duty under section 3-I think, but I would have to look it up-of the Act.

William Shawcross: Are you talking about the case of independent schools, or are we going back to the Cup Trust?

Q87 Fiona Mactaggart: No, I am talking about the independent schools case, in which the judge said these cases need to be decided individually. I think that applies to all charities; he was not saying, "if it is a school". He said it depends on the facts of the individual case. It seems to me that the Commission's approach fails to actually look at the facts of the individual case, as they have done with the Cup Trust.

Sam Younger: May I say, I do not think that is fair. As the chairman said, we have 20 to 25 applications coming in for our registration every working day of the year. Those are sifted according to the resource pot into categories including green risk, where we think the charitable purposes are clear and the area of public benefit is clear-those tend to go through-then there is amber, where we need more information, and red. Quite often with the amber and the red cases, we land up in the end not allowing registration, more often actually than a formal refusal for registration.

This links to some of the questions we have about due diligence. In the end, because of the numbers of questions and the persistence of the questions the applicant goes away, for whatever reason. One of the things we are already in discussion about with HMRC and others is how we can approve the intelligence that leads us to ask those questions. At the end of the day there may be occasions where the reasons for which we could exclude people—for example by saying that we do not think they are someone who could be a trustee—are very limited in law. We can deter people who are applying for the wrong reasons by asking probing questions, and that is something that we are certainly looking to pursue with HMRC.

Amyas Morse: Does that mean you might get some input from HMRC? As we have heard, it has considerable analytic capabilities. So you might use them before you gave approval? Are you thinking of that as part of the approval process?

Sam Younger: Yes.

William Shawcross: If necessary and if there was any reason to do that, yes.

Sam Younger: With trustees, and looking at the nature of trustees, there is a very limited list. It includes those who are bankrupts, people with unspent convictions or who have IVAs—

Chair: Tax avoiders might not be a bad category. They are costing the public purse money. Austin?

Q88 Austin Mitchell: A specific question first. Do the charities that have received grants from the trust have any connection with the people running the trust?

William Shawcross: Not to my knowledge, but we can give you a list of those charities if you would like. Are you talking about the grants of £55,000 given by the Cup Trust? We can give you those. There is no evidence of that whatsoever. As far as we can determine they are bona fide charities acting in the interests and for the public benefit of young people. That is what makes the whole thing so complicated. There is probably a terrible scheme which is trying to defraud the taxpayer, as you say, though we have to be careful because HMRC has not passed a public judgment on this as yet. There is also a tiny charity that, when it was registered, appeared to us to be only registered for the public benefit of young people. It has given £55,000, which I quite agree is a tiny proportion of the money that has flowed through it. But that is the truth of the matter. There are two entities here.

Q89 Austin Mitchell: Okay. Referring to what was said earlier about the PAC investigations, our report in 1998 said "Although increased resources have been devoted to investigations, we are concerned that still only 8% of the Commission's staff are dedicated to investigation work. We expect the Commission to review this allocation urgently." What happened as a result of that? Why were we still prolonging the soft shoe shuffle of investigations in 2010?

Sam Younger: As I said, about 20% of our staff are directly-13

Q90 Austin Mitchell: Of a diminished staff.

Q91 Stephen Barclay: It is less people.

Sam Younger: We have less people. But as a percentage of staff capacity-

Q92 Austin Mitchell: So you admit that it is less?

Sam Younger: In absolute terms I think that is probably true, and has to be, when you have a big staff cut. We are half the size we were five years ago.

Austin Mitchell: You have my sympathy there.

William Shawcross: I would like to take this opportunity to say to members of the Committee that if you want to give us more resources, or persuade Parliament that we should have more resources, we would be very happy if you did so.

Q93 Chair: To be honest, Mr Shawcross, we are in tough times. Everybody is having a tough time.

William Shawcross: I know. Exactly, Madam.

Q94 Chair: It is your job. If you can't do it, don't do it. But it is your job, within the more constrained resources, to assure the whole of Britain that we have a charitable sector in which we can have confidence. That is your job.

William Shawcross: I absolutely agree with you.

Austin Mitchell: We are not there to dole out public money; we are there to investigate the spending of it.

Mr Bacon: The fact is that you were rubbish at it even when you had loads of money years ago.

William Shawcross: You are absolutely correct, Madam-that is our job, and I think that we do it extremely well. And as I have said before, since I arrived at the commission in October last year, I have been very impressed by the diligence, the integrity and the application of the staff. It is a very good staff, working under very difficult circumstances.

Q95 Austin Mitchell: Okay-so much for the panegyric. Now you said, Mr Shawcross, that the investigation began in 2010, "as soon as we became aware of it". How did you become aware of it?

William Shawcross: We became aware from both private and public sources that the Cup Trust, which we knew only as a small charity dedicated for the public benefit to young people's causes-

Q96 Chair: A small charity raised more than the RSPB.

William Shawcross: Not at that stage, Madam. When it was set up in March-April 2010, it was set up with a very small amount of money. As I have said, and you have said with derision, it gave only £55,000 to charitable causes-a tiny proportion of the money that flowed through it-but £55,000 is quite a lot of money compared with most charities in Britain.

Anyway, I am sorry, Sir, what was the question again?

Q97 Fiona Mactaggart: It did not give £55,000 until the end of the financial year in 2011. Let's be clear about that.

William Shawcross: That's true.

Q98 Austin Mitchell: What made you aware of the problem, so that you investigated it in 2010?

William Shawcross: We became aware from private and from public sources that there was a problem with the Cup Trust, and we immediately began looking at it. We looked at it for a very long time. As we have already said, we took our own legal soundings on it, and counsels have been in. We didn't like it; it was horrible. We would like to have closed it down, because of the tax systems.

Q99 Austin Mitchell: If it was only devoting thruppence of every 100 quid it raised to a charitable purpose, I am sorry that you should like it at all.

William Shawcross: I am not defending the Cup Trust. I think one of the things we should have done when we completed the investigation in 2012 was to have made a public statement saying that we do not like schemes of this sort, rather as HMRC had done, and that was a mistake. We should have done that. If there are any other cases like this that come to our attention, we will, I think, in the future be more public with our concerns.

Q100 Austin Mitchell: I am delighted to hear it, but you said also that you became aware of it through private and public sources. Was one of those sources HMRC? Did HMRC tell you, "Here is a racket. Here is a con"?

William Shawcross: As you know, Sir, it is a criminal offence for me to say what we discuss with HMRC. However, they did issue their "Spotlight".

Q101 Chair: No, it's not. You can say whether HMRC was one of your sources.

William Shawcross: HMRC issued its "Spotlight"- "Spotlight 9", I think-on 29 March 2010, which of course alerted us to the concerns.

Q102 Austin Mitchell: Did HMRC alert the Charity Commission to this particular scam?

William Shawcross: I wasn't with the Charity Commission at that time, but the "Spotlight" obviously drew our attention to such matters.

Q103 Austin Mitchell: Well, that was addressed to Lin Homer.

Lin Homer: Yes, as I said earlier, "Spotlight 9" describes a circular movement of money through a charity designed simply to generate gift aid. We publicised that to signal not only to the Charity Commission but to potential donors that we did not regard it as legitimate. It is very clear. If we published it again today, we would attach the scheme's name-we know this scheme in disclosure terms as Project 2010-and we did that precisely to signal that we thought it was not a scheme that worked. So we said, in terms, "We do not accept that the

charity is entitled to repayment of tax or that gift aid relief is due to the individual." In HMRC's view, a gift has not been made to the charity, as it is no better off than before entering the arrangements. Therefore, gift aid is not due. It is a very clear note.

Q104 Austin Mitchell: It is a message; but in principle, would HMRC be able to stop payments to organisations like the Cup Trust? Could you stop it?

Lin Homer: We can refuse gift aid in circumstances where we are not satisfied that the scheme works.

Q105 Fiona Mactaggart: In those circumstances, do you also refuse gift aid to high-rate taxpayers who have made claims of this kind?

Lin Homer: Of course-both ends.

Q106 Fiona Mactaggart: As far as you know, were all the high-rate taxpayers who were part of this circular scam refused gift aid on their individual tax returns?

Lin Homer: As I said earlier, we are clear that we have not paid out either end of gift aid in relation to a scheme of this shape. I have to say, "Yet," because you know that claims can linger and come out much later. But, as far as we are aware, we have not yet, either intentionally or unintentionally, recognised a scheme of this sort.

Q107 Austin Mitchell: I have one more question yet. Mr Shawcross made the point, and I agree with him, that you need more resources to deal with this kind of issue. Why cannot HMRC do the investigation for them? Why are not you investigating these kinds of cons more vigorously and reporting directly to the Charities Commission?

Lin Homer: We do 5,000 interventions a year-

Q108 Austin Mitchell: Should not you be the investigators?

Lin Homer: We are investigating. I mentioned 300 fraud investigations a year. The simple point to make here is that if we take action that prevents the scheme working, that does not of itself de-register a charity.

We work closely together and of course we investigate. We had to do investigation to publish "Spotlight". We will do subsequent investigation in similar schemes-approximately 300 a year-and of the four I quoted to you, the judges comments in one absolutely back up what you are saying. I am afraid I may not be able instantly to turn to it, but in terms the judge said this is a high net worth fiddle, just designed to steal money from the taxpayer and the individuals. And that scheme failed.

As with all marketed avoidance, as I said to you in the previous hearing, we can stop schemes. We cannot necessarily stop people asserting that their schemes will work, although if people were sensible enough to look at the evidence, they rarely do.

Q109 Austin Mitchell: That is a rare virtue. Are you well staffed enough to investigate-

Chair: I am not going to get an answer to that, because that is off the point. Let's go to Steve, then the Comptroller and Auditor General.

Q110 Stephen Barclay: Can I clarify a quick point following earlier questions? You suggested, Mr Younger, that you did not read the NAO's and the PAC's reports, that the lack of enforcement was done to the cuts, and that you did not recognise the figures on enforcement that I quoted. Is it reasonable to assume that the figures on your own website are correct?

Sam Younger: Yes. I did not also say-I said that I recognised them, but could not attest to those specific figures. But I know it is the low numbers you were quoting.

Q111 Stephen Barclay: Okay. Just for the record, could I say that the figures I was quoting were all taken from your website? It is under annex 6, on the use of commission powers, which sets out that the powers were not used, which was the key concern raised by earlier Public Accounts Committees. That annex is headlined "Back on track". *[Laughter.]*

Sam Younger: Yes.

Q112 Stephen Barclay: It was not a joke. It may be regarded as a joke, and beyond parody, but why are you saying that your use of commission powers are back on track when your own table underneath shows the trend going in totally the wrong way?

Sam Younger: Well, "Back on track" is a description of what our enforcement work and all our investigation work is about. One of the points about charities is that we do not take charities off the register; we put them back on track. That is what we are looking to do. That is what our aim is. Anything that is a prosecution-for example, a crime-is a matter for the police. We pick up and do the things that are required for the charity to be working properly. That is why it is called "Back on track". Our annual report on all our investigations and enforcement activity is called "Back on track". That is why that general thing is there.

I take your point that it looks a low figure. I would put my hand on my heart and say that I know that our people look hard at whether the use of those powers is the appropriate thing to do in a particular circumstance. If it is, they will do it. When it is not, they won't.

Q113 Stephen Barclay: I do not understand how we, as a Committee, can change from what clearly has not worked with the previous hearings. Previous hearings have looked at this and said, "It's not working" and recommendations have been made. One can only assume they have been ignored. So there does not seem much point our making a fifth set of recommendations, because potentially that is repeating the same behaviour.

How do we, as a Committee, change to support you, other than Mr Shawcross's desire for us to give you more money, even though the performance was poor when you had money? How do we ensure that this time-the fifth time-something might be different?

Sam Younger: I would not want to say that what the Committee recommended was ignored by my predecessors. I am sure it was not. I think it was the case that, through the early 2000s, there was a significant increase in the amount of investigation. Now, I would say that we have an appropriate-I am very aware of the importance of investigations-

Q114 Stephen Barclay: No, there is a continual downwards trend down. You can measure it from '98 and it is continually down. There is no spike in the middle when it suddenly shot up.

Sam Younger: But I do not think that the use of those particular powers is necessarily an adequate measure in itself of the value of the enforcement.

Q115 Chair: What powers have you used?

Sam Younger: We use a lot of powers in terms of putting in interim managers when we fear that things are going wrong-

Q116 Stephen Barclay: Sorry, again, appoint additional trustees 2011-12: zero; 2010-11: zero; 2009-10: one; 2008-09: one; 2007-08: three.

William Shawcross: It is quite difficult to remove trustees for legal reasons, and perhaps I ought to look more closely at whether we need a change in the law on that matter. You are highlighting very serious issues and I am very glad that you have done so as the Cup Trust, as I said at the beginning, is damaging to the charitable sector and it is damaging to us because we are there to defend the charitable sector. But I am concerned that this hearing may give the public the impression that the charitable world is full of rogues and monsters that we fail to control. That would not be true of either the sector or ourselves; it is not like that. There are a few bad people-

Q117 Stephen Barclay: Mr Shawcross, I made clear in my own comments that there are some big, very well-run charities, and lots of small charities that are set up with the best of reasons-generally for a loved family member who has died-but there is also an underbelly of fraudulent charities. What there seems to be is a systemic failure, of which the Cup Trust is the most symbolic. But the point that comes out of the hearing is that that is not an isolated case. Actually, there is systemic failure, because for 15 years your enforcement has repeatedly ignored warnings from the National Audit Office and this Committee, and your own report shows that your performance has got worse year on year. Mr Younger, you are leading this organisation, so I am asking, regardless of looking backwards, how do we make it better moving forward?

William Shawcross: We would like to co-operate with you fully in the years ahead. As Sam Younger said, we certainly would not ignore-ever-any recommendations from any parliamentary Committee or from Parliament itself.

Stephen Barclay: You didn't even read them.

Q118 Mr Bacon: You didn't even know about them.

William Shawcross: That is true. I will read it very promptly, I assure you.

Q119 Chair: Let us move on. As the Comptroller and Auditor General said, we have questions about whether you are fit for purpose, particularly around your activities as a regulator. He has very kindly agreed to do a study and on the back of that we will do a much wider study. Amyas wants to come in, but I have got a whole lot of questions that I then want to ask.

Amyas Morse: Very quickly. As I looked into the detail of the Cup Trust, it surprised me that it was possible for the legal advice to say that there was not anything that you can do. Some of the elements in it are quite surprising: this involved trustees borrowing money, buying gilts or stocks, selling them at an undervalue and receiving a sum of money back. Taking each of these as individual transactions, some are quite evidently for artificial purposes; if a trustee disposes of a trust asset at an undervalue, you would not normally regard that as a satisfactory state of affairs.

William Shawcross: No.

Amyas Morse: The adviser has obviously looked at the thing as a whole, so what seems odd to me is that trustees can do anything like this-carrying out intromissions which are quite clearly not for charitable purposes-but you do not have the power to do anything about it. Is that your interpretation of your authority at the moment? I am trying to make sure that I understand it, because when I looked into the detail of this, I was really intrigued just how bizarrely artificial it is and how extremely circular it is. Setting aside the tax-I am not asking about the tax treatment. Supposing something went wrong halfway through this and the trust became insolvent or something like that and you showed that the trustees had made intromissions where they sold assets at an undervalue. You can't strike at that in any way?

William Shawcross: I completely share your astonishment at it. I was not there when we set up the inquiry, which was as soon as this came to our attention, but I imagine that the team was equally astonished and thought that there must be something illegal or improper about it. What we discovered-as you say, it is incredibly complicated-is that, despite all these extraordinary shenanigans and this movement of money, it had been very cleverly devised so that the Cup Trust's assets with charitable purposes were protected at every moment. I am sure that my colleagues were very disappointed when they were told by their in-house lawyers and by counsel, "Look. These charitable assets have not been affected. The trustees have not run away with the money. You cannot close it down." That is the law.

Q120 Chair: Can I ask a few questions around tax avoidance? Do you know how many trusts' charities are set up in known tax havens? How many trustees are in tax havens?

William Shawcross: I don't know that number, but we will get it for you.

Q121 Chair: Have you any information that there is some in the public domain? How many trusts are fully established in tax havens?¹⁵

Sam Younger: I could not answer that.

Q122 Chair: Do you know?

Lin Homer: We don't think we know, but we will have a look.

Q123 Chair: You have no idea. Okay.

There are lots of conversations between the two of you-HMRC and the commission-and the other thing that I want to know is whether they are all about tax avoidance. Are they primarily about tax avoidance?

Lin Homer: I brought David because he heads this unit. I should let him speak.

David Richardson: We have conversations around a range of things, but primarily about whether a charity is a charity or not.

Chair: So that is about tax avoidance.

David Richardson: Obviously, the first step is that the Charity Commission registers a charity. If we have evidence to suggest that it actually was not a charity and it was not carrying out charitable purposes, we would inform the Charity Commission about that.

Q124 Chair: Do you get to see the applications before they are authorised? Do you vet them?

David Richardson: No. They go to the Charity Commission first and they will come to us saying that they have registered with the commission. We have some supplementary tests that we apply on top of that, in particular since 2010 when legislation gave us a fit-and-proper-person test. Just because something is registered with the Charity Commission does not mean that we will accept it on to our books as we will look at whether there is a fit and proper person, which will mean checking against all our records of the trustees and the managers, looking at the bank accounts to see-

Q125 Chair: Why do you not check with these guys before you give them authority?

David Richardson: So we have a secondary test and we will inform the Charity Commission if that suggests that there is a problem in terms of them being registered as a charity.

Amyas Morse: Is it not fit and proper as a trustee?

David Richardson: It is the managers of the trust-

Amyas Morse: If they were not fit and proper, would that have the result of striking down the charity or would it simply say that they had to have other managers?

David Richardson: It is managers, which could be trustees or directors or anybody else who could have financial control.

Q126 Chair: You may find, dare one say it, Mr Jenner not to be a fit and proper person to be a trustee of the Cup Trust-I do not expect you to answer that-but, by the time you have made that judgment, they have already agreed him to be a trustee of a charity.

David Richardson: It would have got through that first stage. That is right.

Chair: It is a hopeless system.

David Richardson: Our primary role is to police the tax relief. The strategy that we have adopted is, first of all, to try not to get them on to our system, which is why we have the fit-and-proper-person test in addition to the Charity Commission. If they do get into our system, we rigorously check claims. All claims that come to us are checked. We then risk assess on that and check them further, which includes the donors as well as the charity itself.

Q127 Chair: We will have to look it. Once the charity has been established, there are all these legal constraints on you taking action, so it is totally beholden on you to do the checks before you authorise a charity.

William Shawcross: Of course.

Chair: If you've got hundreds of charities located in places like the British Virgin Islands, Jersey, Guernsey, Bermuda or goodness knows where else, I would have thought that would immediately ring a bell.

William Shawcross: I have already said that the fact that it was registered in the British Virgin Islands should have rung a bell or raised a flag. There are many reputable charities that do great work in the public benefit and interest that are registered abroad in such places as you mentioned. If they come under our jurisdiction, which this one and all of those ones do, registration in a tax haven is not a reason, in itself, for disallowing them.

If I may repeat, the fact that you or I do not particularly like a person, or his or her background, does not mean to say that they cannot set up a charity.

Q128 Chair: It is not a question of liking; it is a question of what they have done. It is not a question of who they are.

William Shawcross: If they have a criminal record they cannot set up a charity.

Q129 Chair: It is not a criminal record; they are aggressive tax-avoiders. Year after year their new schemes are closed down. We have these boutique companies in front of us and they operate in a way where they have a scheme, they wait for it to be closed down, and then they bring in another one.

William Shawcross: I am not defending that; it is appalling.

Q130 Chair: What is so frustrating to those of us like Fiona-and all of us round the table-is to see a legitimate tax relief being exploited by people whose only interest is greed and making more money.

William Shawcross: It is much more frustrating for us, I can assure you.

Q131 Chair: Well, you have got to do the bloody checks, Mr Shawcross. You have got to do the checks. Do you verify the financial information submitted in annual accounts and returns so that you can detect bogus figures?

William Shawcross: We do not check every return. We couldn't possibly; there are 160,000 charities registered in this country.

Q132 Fiona Mactaggart: How many hundreds who are reporting on charity accounts actually use their responsibility to report to you? How many reports have happened in the last year?

Sam Younger: Sorry?

Q133 Fiona Mactaggart: In the charity sector, if an accountant who is auditing a charity's books discovers something that they think is improper, they have a duty to report that to you. I wonder how many ever have.

Sam Younger: That is a good question. We will send you those figures.16

Q134 Chair: What proportion of annual accounts and annual returns do you verify to ensure that you can see whether there are bogus figures?

Sam Younger: It is a very small percentage. I would say maybe 2% that we look at specifically.17

Q135 Chair: Of the financial information, you look at 2%?

Sam Younger: Yes. There are 50,000 accounts that come in. We do a small amount of random checking-

Q136 Chair: How much? That is what we want to know.

Sam Younger: To be honest, I don't have the figure in my mind, but I can give you that very easily.

Q137 Chair: You need to deliver all these notes that you are promising us within a week please. Do you screen for low-level charitable spend as a proportion of total spend?

Sam Younger: That is one of the things that we look at as a risk factor.

Q138 Chair: Why didn't you pick it up on this one?

Sam Younger: Well, we don't pick it up at registration stage because expenditure has often not happened at that stage, but that is one of things the accountants are looking at. Indeed, in the light of this they will be looking to see whether there are other ones with a very big difference, and then those are the ones that we pursue.

William Shawcross: As soon as the scheme became active in the spring of 2010, we picked it up.

Q139 Chair: But you didn't do anything about it.

William Shawcross: We did, madam, with great respect.

Q140 Chair: Well, you didn't; you didn't close it down.

William Shawcross: We took legal advice, as I have said before, and we were told that there were no grounds for its closure.

Chair: I don't know how wicked you have got to be to be closed down by you. It's ridiculous.

Q141 Fiona Mactaggart: So what does section 3(2) of the Charities Act mean? That you are not to assume that something that is written as public benefit is public benefit? What does that mean?

William Shawcross: Unfortunately, this was a very clever scheme and they were given public benefit through their grants to young people. There was also this scheme that came some time after the registration of the charity in 2010, which-when we became aware, and when HMRC became aware of it-we looked at after the "Spotlight 9".

Q142 Fiona Mactaggart: Apparently section 3(2) of the Act says:

"it is not to be presumed that a purpose of a particular description is for the public benefit".

It seems to me that the Charity Commission presumes that if the words say that it is for public benefit, then it is, and that is directly contrary to paragraph 3(2) of the Act.

William Shawcross: I do not think that that is quite correct because we register according to the law. If an organisation has wholly charitable purposes, we have to register it for the public benefit.

Q143 Fiona Mactaggart: No you don't.

William Shawcross: Well, in the light of what you say I will, of course, look at it again.

Q144 Stephen Barclay: Can I just clarify that when you said about the legal advice, was that legal advice that you independently commissioned, or that you received from the Cup Trust?

William Shawcross: Of course not, it was nothing to do with the Cup Trust.

Q145 Stephen Barclay: You may express outrage, but there must have if you had incessantly-

William Shawcross: I am not expressing outrage, I am expressing surprise.

Q146 Chair: Can I just ask about other powers, as there are some other things that have been raised? Misleading an investigation is an offence. Have you ever used that power? It can carry a two-year custodial sentence.

Sam Younger: I think we have, but again I would come back to-18

Q147 Chair: I'm told that you have never referred anybody for prosecution.

William Shawcross: We will check that.19 Lying to the commission and producing false information is certainly a custodial offence.

Q148 Chair: I am told that you have never referred anyone for prosecution. Restitution of funds is hardly ever sought. Is that true?

Sam Younger: Restitution of funds by the commission would very rarely be sought-20

Q149 Chair: Why?

Sam Younger: Because most of the restitution that happens is done by the trustees who are put in place, sometimes replacing others. That is where the onus is; it is for the charity, and we will support them in that. The commission would only look for restitution proceedings-

Q150 Chair: But it is-Fiona will correct me-another power. The other thing is that you always, apparently, go for express permission of trustees before you look at documents. Is that true?

Sam Younger: No, we can require documents.

Q151 Chair: But do you?

Sam Younger: No.

Q152 Chair: Ever? Do you get documents without express permission of-

Sam Younger: Yes indeed.

Q153 Chair: Can you give us the number you have done in the last year on that? You never look at electronic records, databases, e-mails and spreadsheets, is that true?

Sam Younger: Yes.²¹

William Shawcross: In any investigation we have those powers and use them.

Q154 Chair: Site investigations rarely last more than a day. Is that true?

Sam Younger: Two days, perhaps? I don't know. I would have to check with our investigations people whether they have a longer continuous engagement on site, but I would suspect not.²²

Q155 Stephen Barclay: But it is potentially 20 visits?

Sam Younger: That is 20 visits which are specific monitoring visits, as opposed to part of an investigation.

Q156 Stephen Barclay: So could we then in the note get the breakdown between the compliance visits, the investigative visits and those within that subset that were then within the statutory powers, because that is one of the distinctions made in the previous report, and how many days FTE that equates to over the last year?

Sam Younger: Yes.²³

Q157 Chair: Is it true that you have no mechanism to check bank accounts so that you can check whether funds are hived off to other banks?

Sam Younger: We have access to bank accounts, yes.

Q158 Chair: No, but if they hive them off to other bank accounts? You rely on the trustees declaring the bank that is used, and there is no mechanism for checking if funds are hived off into other bank accounts.

Sam Younger: I do not think that is correct when we are involved in a statutory investigation, but I will check that.²⁴

Q159 Chair: Okay. Could you do a note on that as well? There is more, but given the time- we are grateful to you for coming. You can see that we are pretty appalled-I think-about whether or not you have the right regulatory regime to give the public confidence that charitable trusts are properly regulated by you. We look forward to you coming back, on the back of a report that the Comptroller and Auditor General is going to do on this issue. Thank you.

William Shawcross: We look forward to it also. I assure you that the regulation of the charitable sector, the honesty of the sector and public confidence in the sector are absolutely crucial. We are perfectly aware of that.

Chair: I think we can agree on that.

[1] Note by witness: the corporate trustee is an organisation registered in the BVI

[2] Note by witness : Our records show there are 6569 charities with a corporate trustee, but not necessarily as sole trustee. Many corporate trustees are charities, some are public bodies such as local authorities, not just companies. Some charities have both corporate trustees and individual trustees.

[3] Note by witness : The charity was established by trust deed in March 2009 and registered by the Commission in April 2009

[4] Note by witness : Due to the high level of expenditure by the charity , the charity did not have more than £139,000 at any one time to apply for charitable purposes.

[5] Note by witness : Six charities were awarded a total of £55,000 grants in the financial year ending March 2011 of which £36,500 were paid to four charities in the financial year ending March 2012. The remaining amount of £18,500 was paid to two charities in the financial year ending March 2013 .

[6] Note by witness : It is the Commission's intention to publish a full report into its investigation into The Cup Trust which will be made available to the Committee.

[7] Note by witness : The Commission has checked with HMRC and the NAO and they do not recognise the figure of 50 organisations, but the Commission would welcome any evidence or information the Committee has on other charities they are aware of where there are concerns .

[8] Note by witness : Full formal statutory inquiries and regulatory compliance cases are called 'investigations' and dealt with by Investigations and Enforcement , which make up

10% of our staff complement. Our structure is designed so that there is a certain amount of flexibility in how staff time is allocated, between non-compliance in charities and authorisations and permissions work that we have to undertake to allow charities to continue their work. In total, approximately 17% of our workforce time across the Commission is spent dealing with non-compliance issues in charities, intelligence gathering and charity monitoring, whether in First Contact, Operational teams, or Investigations and Enforcement. Most of the serious concerns about charities that require Commission intervention are dealt with by its Operational teams and not referred to as investigations.

[9] Note by witness : During 2011-12, the Commission used its powers on 188 occasions in total. It appointed 11 trustees and suspended 1 trustee. It did not appoint any interim managers or remove any trustees.

[10] Note by witness : See footnote 9

[10]

[11] Note by witness : The Commission put controls on charity accounts in 2011-12 on 5 occasions.

[11]

[11]

[12] Note by witness : See footnote 5

[13] Note by witness : As per footnote 8

[13]

[14] Note by witness : The charity was established by a trust deed in March 2009 and registered by the Commission in April 2009.

[15] Note by witness : Only charities established in England and Wales come under the Commission's jurisdiction. Charities are required to provide the Commission with the addresses of all its trustees, but these can lawfully include people resident outside England and Wales. Based on searches of current data the Commission holds, 195 charities registered in England and Wales have one or more trustee with a private address in Jersey or Guernsey. 2 have trustees with private addresses in the British Virgin Islands and 27 have a trustee in Bermuda.

[16] Note by witness : Independent Examiners and Auditors do have protection under whistleblowing regulations. So far this financial year, we have received 44 reports from independent examiners, auditors and accountants.

[17] Note by witness : The Commission makes it clear to charities that it actively monitors accounts, including random and targeted sampling of accounts. Scrutinising accounts is also an integral part of all our casework, so whilst resources have never allowed for scrutinising all accounts, sampling is risk-based. In 2011/12 the Commission monitored 3485 sets of

accounts, amounting to 4.3% of the 81,000 plus charities on the register. The total income of charities we monitored accounts for is £1.8 billion .

[17]

[18] Note by witness : The Commission is not a prosecuting authority but refers suspected criminal activity to the police . Its Investigations lead to successful convictions. The police hold figures on prosecutions. For example, in July 2012 Tyrone Pooley , a former charity trustee of the charity Fund for the Blind and Partially Sighted (now removed from our register) was convicted of theft charges and one of supplying false/misleading information to the Commission as a result of our referral to the police.

[19] Note by witness : See footnote 18

[20] Note by witness : In 17 of our current live investigations , the Commission is taking active steps to seek recovery of charity funds; supporting the police under The Proceeds of Crime Act to do so, by making trustees take steps to recover it themselves by litigation or otherwise, by ensuring an Interim Manager or Liquidator takes legal proceedings to recover the money, or, as in four live cases, considering bringing restitution proceedings ourselves .

[21] Note by witness : The Commission used its powers to direct trustees or others – such as banks – to furnish us with information or documents on 97 occasions.

[22] Note by witness : We do not keep specific records on length of visits though some can last several days. See footnote 23 for more details.

[23] Note by witness : In 2011-12, regarding regulatory and compliance visits, as part of investigations we conducted 18 compliance visits, four occasions where we required trustees or others to attend Commission offices and 6 books and records inspections. This year to date , 2012 /13, again as part of on-going investigations, we conducted 15 visits, twelve occasions where we have required trustees to attend at Commission offices and 8 books and records inspections.

[24] Note by witness : If there is evidence to suggest that charity monies may have been ‘misappropriated’ from the charity’s bank account to another bank account or there are ‘mixed funds’, the Commission can and has used either s52 or s47 power in the Charities Act to follow the monies . The Commission has the power under s52 of the Charities Act to require any person to provide it with any information, including charities’ bank accounts, in that person’s possession which relates to any charity.

[24]