

Chair's speech to the Charity Law Association Annual Conference 2020

This is my first address before an audience of mainly lawyers since my appointment as Chair of the Charity Commission in 2018.

And I'm delighted to be here.

Of course, when I accepted the invitation, none of us were expecting the event to happen under these circumstances.

I would certainly far prefer to be meeting you in person.

But I would like to thank the CLA for keeping the show on the road, as it were, and for making these arrangements, allowing us to connect, if not quite in the way we would like.

The upheaval we've seen since March has been shocking.

Household name charities announcing job losses by the thousands alongside the closure of services is worrying. And I pay tribute to everyone having to deal with these challenges. Charities large and small. They are serious and they are urgent.

As the months have gone on, clear themes are emerging for charities, and those working with and advising the sector.

On the one hand, we have seen, again, how deep the roots of charitable endeavour reach into communities across this country.

Many of us have been moved by the speed and commitment of people – friends and strangers alike – to connect and help the vulnerable in their communities.

Only last weekend, for example, 45,000 people from across the UK and around the world signed up to run or walk the distance of the London Marathon on a route of their own choosing, and in line with COVID restrictions.

So far, their combined efforts have raised over £16m pounds for charity.

While there is hope to be drawn from events since March, recent months have demonstrated how reliant many charitable institutions are on the continuous support of people from all backgrounds and all walks of life.

This reminds us that if charities are to retain that support and remain as the leading vehicles of social and public good in a post-pandemic world – the sector, and the Commission, must work together to meet public expectations of what charity really means.

This is not just about meeting legal requirements. But about how charities

pursue their objects and promote their cause; how they behave – towards donors, beneficiaries, their staff and volunteers, and all who come into contact with them.

And about the evidence charities provide for the difference they make.

These perfectly reasonable expectations of those whose support charities rely on, are also shared and understood by the majority of trustees.

Indeed, the evidence shows that trustees feel more strongly than the public that the way a charity goes about meeting its purpose is as important as whether it fulfils that purpose or not.

And they say they have a clear understanding about how public expectations ought to shape the way charities go about doing what they do. All of that is good.

My concern is that too big a proportion of trustees believe that, when people feel their expectations have not been met, it is because they haven't understood the complexities of running a charity.

That position needs to change if charities are to retain people's confidence. Before seeking any kind of hearing, charities need first to understand public expectations, take them seriously, and show they are by trying to meet them.

This is important, because the key challenge facing the sector into the future, is that the public support it relies upon cannot be taken for granted.

So today I want to talk about how all of us working with charities – including your own profession – can address this challenge and make the charity sector more resilient.

How we can learn from the COVID crisis and make Charity an even stronger force for good. It is not just charities that need to change for the sector as a whole to maximise the benefit it offers society and to meet public expectations.

When I launched the Charity Commission's new strategy two years ago, I made it clear that the Commission needed to change and be better in order to serve the public better.

Last year, the first full year of our 5-year plan, we set ourselves the aim of getting the basics right.

We will always strive to improve on our general standards of service, but in the 12 months to April this year, we made significant progress:

- clearing case working backlogs
- turning-around poor response rates from our contact centre and investing in it further to improve the service people receive from us on the phone
- improving our approach to dealing with reports of serious incidents, and to working with whistle-blowers

We have now published operational service standards so our users know what to expect and can hold us to account. And we will report against them each year.

We are also changing how we do our work – driven by our clear strategic purpose of maximising the benefit of charity by upholding its good name.

We recently relaunched the online Register of charities. It now includes more information about each charity than ever before – so that people can find what they want to know before choosing where to lend their support.

This greater transparency is about increasing the accountability of the sector.

And, as we are able to release yet more data via the Register, a clearer and more detailed picture will be possible of charity provision across England and Wales – including where there are gaps in supply.

One of our key priorities in this our second year, is making it easier, simpler, for trustees to do the right thing, and to interact with us.

It's why we're investing in digital services to support trustees better.

And it's why we're working on our guidance, making sure it becomes more accessible and more targeted. I'm grateful for the involvement of the CLA Executive Committee in this work.

We need to break down bureaucracy where it neither serves the public or charities, and that's especially so in our casework.

It is essential that we arrive at clear regulatory outcomes in an efficient manner – so that we as the regulator meet public expectations in the actions we take, when charities themselves have failed to do so.

As I set out at the Commission's Annual Public Meeting last week, our powers, notably in relation to the Register, need to reflect the reality of charitable endeavour in our society.

The lockdown reminded us how much of what people recognise as charity happens outside of formal charitable institutions.

In other words, to most people charity is more about standards and less about structures. And there have been some great charitable standard-bearers emerge from nowhere in the last few months and make a massive difference in their local communities.

Our Register needs to be easily accessible to people who represent the best of us. Whether it's channelling their endeavours into existing charities, or setting-up new charities – perhaps in those areas which have been neglected in the past.

The recommendation around, what he calls probationary registration, made by the Member of Parliament Danny Kruger in his report on civil society last month, warrants serious consideration for that reason alone.

Formalised charity must not be the preserve of those who have the means to navigate the legal framework.

It must be accessible to people who can bring a different perspective, experience, worldview, background – and by the way that diversity would also bring other benefits to the sector.

In parallel with being more open, the Commission also needs to be better able to remove charities from the Register when things go seriously wrong, especially when a charity is delivering little public benefit. Clearly, we need to safeguard charity assets. But in such circumstances the public interest is rarely served by us intervening intensively in a failing charity. Yet that's often what the law directs us to do.

The public associates registered status with more than simply meeting a legal test. They expect it to offer a level of assurance about the organisation's behaviour, its efficiency and its effectiveness.

As regulator, we need a Register which better meets these expectations and one which allows us to uphold the reputation of the status on which all charities rely.

As our plans in these areas develop, and you start to consider and comment on the detail of our proposals as they emerge, I would urge the legal profession to work with us to help to ensure that the sector is stronger and more resilient.

Which brings me to the role of charity lawyers in helping charities meet public expectations so that all your clients retain the support they need to survive and thrive.

Being alive to the meaning and purpose of charity in the public mind is not just important in the context of debates about the legal framework.

I also urge you to consider it important in your day-to-day work advising individual charities, including on their interaction with the Commission, and any challenges they decide to make to our decisions.

Now, just to be clear, the Commission will always operate within its legal framework – in line with our statutory objectives and duties and properly using the powers which Parliament has given us.

It is possible for us to get something wrong. And of course, it's necessary that charities can test and challenge the Commission's decisions, including in the tribunal and the Courts. And if we do get it wrong, we must and will say so.

But the Commission has changed the way we meet our statutory objectives. We are driven by our purpose and the public we serve. In other words, we regulate for a reason – and that is to ensure that charity delivers full benefit to society, which requires its good name to be upheld and public expectations to be met.

Likewise, we expect trustees who do challenge the Commission's regulatory decisions, to be motivated by the aims their charity pursues. Trustees have legal duties to protect their charity and promote its purposes. But they have a moral responsibility to demonstrate attitudes and behaviour that serve the longer-term interests of their cause, and the public good. If they fail to do so, they don't just risk their own reputation, they risk bringing Charity as a whole into disrepute.

I have seen action, including litigation, that seems motivated by, or part of, a wider, aggressive response to the Commission's legitimate regulatory scrutiny.

Where trustees choose repeatedly to challenge our casework, rather than working constructively to help us discover the truth, and form judgements about how best to resolve a problem in the best interest of the charity's purpose.

And I have seen challenges that seem less motivated by the best interests of the charity's purpose and beneficiaries, and more about shielding individuals from accountability to protect their personal reputations. They certainly demonstrate no sense of a collective responsibility for upholding the standards associated with registered charity status and therefore put at risk the reputation upon which all of your clients rely. Such cases may be relatively few and far between. But they are damaging.

We will always defend our legitimate regulatory scrutiny and the decisions we take to serve the public interest.

We have a strong track record in doing so.

But we should also acknowledge the inevitable resource – the cost in money and time – such cases absorb for all parties.

For the charities involved, we're talking of course about charitable funds that could be helping beneficiaries.

And for the Commission, public funds that we could be using to improve services for the majority of trustees who want to do the right thing.

So my ask of charity lawyers, of the CLA and its members is this:

When advising charity clients, including in the context of Commission case work, help trustees focus on the bigger picture. Think also of how you can help them fulfil their purpose in all senses and in a way that inspires trust and confidence. Of course, you must serve your clients as the well-credentialed advisers on the technicalities of the law that you are, but I urge you also to offer, where you can, wise counsel on the surrounding context too.

I must add that, where you are already doing this, thank you and please keep doing so.

Do please help trustees recognise that the letter of the law sets out the

minimum standard they must meet.

It does not fully serve as a bar against which to measure whether or not they are doing the right thing.

Make sure that they understand their moral obligation to maintaining the reputation of Charity. The status which they rely on to attract vital public support.

Ensuring that Charity thrives into the future requires everyone involved to play their part well. Lawyers included.

These are tough times for charities, and for the society in which we all live.

Now more than ever, the public benefit from charitable endeavour is a powerful force for good – which we can't afford to lose.

So let's all be clear what's at stake.

Understand the challenge.

And meet it.

Thank you.