PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CHARITIES (PROTECTION AND SOCIAL INVESTMENT) BILL [*LORDS*]

First Sitting

Tuesday 15 December 2015

(Morning)

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Saturday 19 December 2015

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Fabian Hamilton, † Mrs Anne Main

† Churchill, Jo *(Bury St Edmunds)* (Con)
Haigh, Louise *(Sheffield, Heeley)* (Lab)
† Jenrick, Robert *(Newark)* (Con)
† Johnson, Gareth *(Dartford)* (Con)
† Kyle, Peter *(Hove)* (Lab)
† Lefroy, Jeremy *(Stafford)* (Con)
† McGinn, Conor *(St Helens North)* (Lab)
† Mak, Mr Alan *(Havant)* (Con)
† Morton, Wendy *(Aldridge-Brownhills)* (Con)
† Newton, Sarah *(Truro and Falmouth)* (Con)
† Stevens, Jo *(Cardiff Central)* (Lab)
† Streeting, Wes *(Ilford North)* (Lab)
† Throup, Maggie *(Erewash)* (Con)
† Tugendhat, Tom *(Tonbridge and Malling)* (Con)
† Turley, Anna *(Redcar)* (Lab/Co-op)
† Wilson, Mr Rob *(Minister for Civil Society)*

Marek Kubala, Ben Williams, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 15 December 2015

(Morning)

[Mrs Anne Main *in the Chair*]

Charities (Protection and Social Investment) Bill [*Lords*]

9.25 am

The Chair: Before we begin, I have a few preliminary points. Please switch electronic devices to silent. Tea and coffee are not allowed during sittings. Members may, if they wish, remove jackets during sittings. Today, we will first consider the programme motion on the amendment paper, and then we will consider a motion to enable the reporting of written evidence for publication. In view of the time available, I hope that we can take those matters formally without debate.

Ordered,

That—

(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 15 December) meet—

(a) at 2.00 pm on Tuesday 15 December;

(b) at 4.30 pm and 7.00 pm on Tuesday 5 January;

(c) at 11.30 am and 2.00 pm on Thursday 7 January;

(2) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5 pm on 7 January.—*(Mr Rob Wilson.)*

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—*(Mr Rob Wilson.)*

The Chair: Copies of written evidence that the Committee receives will be made available in the Committee Room. We will now begin line-by-line consideration of the Bill. The selection list for today's sitting is available in the room. It shows how the selected amendments have been grouped together for debate. Amendments grouped together are generally on the same or a similar issue. A Member who has put their name to the lead amendment in a group is called first; other Members are then free to catch my eye to speak on any or all of the amendments within the group. A Member may speak more than once in a single debate.

Please note that decisions on amendments take place not in the order in which they are debated, but in the order in which they appear on the amendment paper. In other words, debate occurs according to the selection and grouping lists, and decisions are taken when we come to the clause that the amendment affects. I hope that explanation is helpful. I will use my discretion to decide whether to allow a separate stand part debate on individual clauses and schedules following the debates on the relevant amendments.

Clause 1

Official warnings by the Commission

Anna Turley (Redcar) (Lab/Co-op): I beg to move amendment 2, in clause 1, page 1, line 16, after "give" insert "at least 14 days".

To require a minimum period of 14 days' notice of a warning.

It is a pleasure to serve under your chairmanship, Mrs Main. Thank you very much for this opportunity. As we stated on Second Reading, we wholeheartedly welcome the Bill and the intention to clarify and support charity law, particularly by introducing greater transparency, greater effectiveness in governance and greater efficiency. The Bill will also give charities a new power to make social investments.

The intention behind clause 1 is to introduce a new official warning for the Charity Commission where it considers that there has been a breach of trust or duty, or other misconduct or mismanagement. Our amendment, which we believe is important, would require a minimum period of 14 days' notice if a warning is issued.

We welcome the clause in principle. We understand that the purpose behind it is to fill a gap for low-level breaches of the statutory provisions of the Charities Act 2011 or of the fiduciary duty where there are low risks for assets and services. The National Audit Office welcomed it and said it will give the Commission

"a stepped approach so that, rather than just having, on the one hand, advice and guidance and then the nuclear option of a statutory inquiry, it gives the Commission something in between".

We welcome the principle of the warning process.

However, we have some concerns about the clause, particularly on the lack of safeguards, which we believe could threaten the independence of charities and fundamentally change the relationship between the Charity Commission and its volunteer trustees. The commission already has a number of powers to deal with regulatory concerns—even low-level concerns. In particular, it can do so by way of operational compliance cases, which it routinely carries out.

Statistics from the Charity Commission show that between 1 April and 30 September 2015 it opened 575 operational compliance cases into registered charities. If the matter is urgent, the commission can already open a statutory inquiry without notice and suspend the trustees, pending the use of additional protective powers. The decision to open a statutory inquiry and the subsequent exercise of protective powers can be appealed to the charity tribunal, known as the first-tier tribunal. There are no plans to change that.

Operational compliance cases are likely to be regarded very differently from the new official warnings, which could have a significant impact on a charity. First, it is likely that the public issuing of an official warning, which is allowed in this version of the Bill, will carry far more stigma than an operational compliance case and could risk damage to a charity's reputation, with a resulting drying up of funding and support.

Secondly, failure to comply with a warning automatically gives rise to a right for the commission to take further, significant protective action in relation to a charity, after opening a statutory inquiry. That is not the case

with an operational compliance case, so this is a fundamental shift in the relationship between charities and the commission.

9.30 am

Peter Kyle (Hove) (Lab): It is a pleasure to serve under your chairmanship, Mrs Main.

The relationship between the regulator and charities is a sophisticated one, and it is important that the Charity Commission plays a supportive role as well as a challenging one. Does my hon. Friend agree that the ability to send a warning notice without notice is a sign of failure in the relationship between the regulator and the charity, rather than one of support or challenge?

Anna Turley: My hon. Friend makes a really important point. The relationship is long standing, sophisticated and complex. It is right that there is an opportunity to give notice of a warning in the Bill. Our issue is that there is no significant timeframe and no notice of the timeframe. I will explain why that is such a critical issue, but my hon. Friend is absolutely right; it is important that there is a nuanced and balanced relationship and opportunities for both sides to state their case in any dispute.

I will now focus on the amendment. The Bill helpfully ensures that before issuing a warning, the commission must give notice of its intention to do so. However, there is no indication in the legislation of timescales for a warning. The briefing from the commission states that

"the Commission has confirmed it will ensure that a reasonable time for representations is given".

It continues:

"The timing is likely to vary for warnings in different cases, depending on how much engagement and warning the charity has had during engagement with them, and there may be times when the timescales might have to be relatively short (if, for example, it relates to a time critical incident)".

It states that operational guidance for its staff will be published. However, this seems very vague and gives total discretion in this situation to the commission. What is a reasonable time? Could that mean a matter of hours or a phone call before a press release is sent out? We know the potential damaging implications for a charity of publicity around the warning.

Jo Stevens (Cardiff Central) (Lab): The problem with the term "reasonable" is that it is subject to interpretation. We can tell from case law and statute that what is reasonable in one circumstance is not reasonable in another. This will create a lack of clarity around the implementation of the Bill. Does my hon. Friend agree that it would be much better to have clarity and specific time limits so that both the Charity Commission and the charities are clear about what the expectation is?

Anna Turley: I totally agree. That is the purpose of the amendment. There is a lack of clarity around "reasonable time". Not only is that pretty indefinite, but it puts the onus back on staff at the Charity Commission, which could place an undue burden on them and leave open to interpretation what the definition of a reasonable time could be. That is why it is important to have a timeframe in the Bill.

Without a timeframe, there might be no opportunity for a charity to prepare a defence or to correct an unconscious mistake, which could be the cause of the warning, or to let trustees know. We might end up in a ridiculous situation in which they could read about a warning for their charity in a newspaper or a sector magazine because, as the Bill is drafted, the Charity Commission can publish the warning. Such a warning, especially if published, could have a substantial impact on a charity's ability to raise funds and might have significant reputational damage.

It may be felt that a prescribed period of notice is not necessary because the Charity Commission will act reasonably and proportionately. I do not doubt that will always be its intention; I know that the Charity Commission does an extremely good job in difficult circumstances, often with many resource pressures. However, recent experience shows that is not always the case. In a recent High Court case involving the commission and the Joseph Rowntree Charitable Trust, the Lord Chief Justice referred to "ludicrous time limits" imposed by the commission. He also said that he could understand why it was felt that the Charity Commission had behaved in an extremely high-handed manner in that case, and suggested that there should have been

"an awful lot more time spent at the beginning talking, as people normally do, and not issuing ultimatums".

There is therefore a real danger that the commission, if allowed scope to use this new power in a disproportionate way, may well do so, however well meaning its intentions.

If the power is intended to be used only for low-level matters, a minimum notice period of 14 days is entirely appropriate. It is not clear why there should be any objection to that. For more serious matters where the Commission is able to take more extensive regulatory action, it will be able to use its other powers without notice. That is the existing situation. The Joint Committee on the Draft Protection of Charities Bill recommended that a reasonable minimum notice period to make representations over a draft warning should be clear in the Bill. That safeguard has not been included and the amendment seeks to rectify that.

Moreover, it was clear, even from the Government's response to the Joint Committee's report, that a recipient should have an opportunity to make representations on a proposed warning and for these to be considered by the commission before the warning is published. There is no minimum notice period, and it is possible that a recipient will not have a meaningful opportunity to make representations. We know that there have been many situations in which advice and support given by the commission can be challenged and are open to interpretation by the charity.

Jo Stevens: A warning could have human rights implications. It might harm a trustee's reputation, for example, or be in breach of his or her rights under article 8, particularly in the absence of a fair trial, as preserved by article 13. Is my hon. Friend concerned that the Bill has implications for human rights?

Anna Turley: I completely agree with my hon. Friend. A later amendment sets out the right of appeal to the charity tribunal, which we think is an important safeguard. Even without that appeal, giving no notice whatsoever

[Anna Turley]

could entail significant risks, particularly with regard to reputational damage, as the Human Rights Act sets out.

Peter Kyle: My hon. Friend is being generous with her time. Trustees of boards of charities are volunteers, and they give up their time very generously. Quite often, boards are cautious in their approach. Does my hon. Friend think that seeing warning notices handed out to other charities might well be a deterrent to people giving up their time and lead to uncertainties over governance arrangements?

Anna Turley: My hon. Friend makes another excellent point. We know how difficult and challenging it can be around the country to get good trustees and to get people to stick with it. Trustees are under a lot of pressure because of regulations and time commitments. There is the risk that the measure will disadvantage trustees and deter them from putting themselves forward. If a warning has been published, the reputational damage could be huge.

The Lord Chief Justice referred to "ludicrous time limits". He also said that he could understand why it was felt that the Charity Commission had behaved in an extremely high-handed manner and that there was a real danger that the Commission, if allowed the scope to use this new power in a disproportionate way, may well do so, however well meaning its intentions.

We are not seeking to remove the power to publish a warning, because we think that it is important. The ability to publish a warning should be there, because of the opportunity it gives to create greater weight behind a warning. However, we think that before that step is taken there should be significant opportunity for a charity to challenge it. That is what our proposed 14 days' notice seeks to do.

The power to publish a warning, the potential impact of which cannot be overstated, means that the public, media and funders will become aware of it. They will not be able to distinguish between a low-level issue that is giving rise to the warning and something that is much more severe. In the court of public opinion, such issues often become conflated. This year we have already seen a huge media furore relating to the charitable sector. Although relevant to only a small number of charities, it has had a substantial and damaging effect on trust in the sector. The publicity could lead to a choking off of donations and the loss of grant funding and corporate sponsorships, leading to closure of services and redundancies.

To give advance notice of 14 days of a warning, as our amendment proposes, would allow a charity to ensure that steps can be taken immediately to remedy a situation, where it is a small administrative error, to explain any extenuating circumstances and to challenge that with the Charity Commission. It would allow the conversations mentioned by the Lord Chief Justice in the High Court case to take place in a supportive and trusting environment.

We believe that there is no reason why there should not be a 14-day notice period ahead of a warning. We hope that the Government will support our amendment.

Mr Alan Mak (Havant) (Con): It is a pleasure, Mrs Main, to serve under your chairmanship. I welcome the Bill and will refer to clause 1, as well as to other provisions.

Charities play a vital role in civil society and local communities across Britain. They care for the sick, feed the hungry, raise money for veterans and protect the natural and built environment. They rely on generous public support and confidence in order to continue their vital work. Deliberate abuse of charities is relatively small, given the size of sector. However, it needs to be tackled robustly to protect public trust and confidence.

The Bill, particularly clause 1, would equip the independent regulator, the Charity Commission, with the tools that it needs to tackle more effectively the types of abuse it faces. That in turn should protect charitable donations and reassure the giving public that charities are well regulated. Clause 1 inserts into the Charities Act 2011 new section 75A, which provides the Commission with a power to issue an official warning to a charity or a charity trustee. That warning may be given where there is a breach of trust or duty by a charity or trustee, or other misconduct or mismanagement in the charity. Breach of duty can also include non-compliance with a commission order or direction. That warning system is similar to powers vested in other regulators, but it is a more reasonable and proportionate way to deal with breaches of the 2011 Act and fiduciary duties or other mismanagement episodes, particularly where the risks and impacts on charitable assets and services are relatively low.

Before I had the privilege of entering this House, I was fortunate to be a trustee of a small but successful children's charity working across the UK. My experience of working with donors, funders and beneficiaries suggests that the new powers in clause 1 will be welcomed by all those in believe in the proper governance and oversight of charities by bolstering public confidence in charities.

The new power is a more proportionate use of the Charity Commission's powers, and a better alternative to a number of other remedial powers such as suspension or removal of trustees, or restitution action against trustees. An example of where the power might be used is where a charity makes unauthorised payments, for example, to a connected company or for the benefit of a particular trustee. In such a case, the size of the sums involved may mean that it is disproportionate to take stronger action but the Commission could issue an official warning on future conduct, as stipulated under clause 1.

Another case might be where the charity's governing documents have been breached. For example, there has been a failure to call elections or annual general meetings, which would compromise the proper functioning of the charity and public faith in the charitable sector. The powers in clause 1 would be a proportionate and effective means of ameliorating that situation.

Peter Kyle: It is a privilege to speak under your chairmanship, Mrs Main. Like the hon. Member for Havant, I have served on charity boards. In fact, I was involved in founding two charities and have seen them grow and thrive. My role included the challenge of recruiting trustees to two charity boards.

I have seen the charitable sector from many different perspectives, including working for almost six years for an umbrella organisation in the sector. I can see from different perspectives the challenges but also the opportunities that the voluntary sector provides to society. It is embedded fully in civil society, and increasingly delivers public services, which are often integrated in the welfare state. That is a fantastic and growing part of our voluntary sector, and we should be proud of it.

The delivery of public services is an aspect of the voluntary sector that does indeed need greater regulation and scrutiny. The public needs to know, since the sector is funded by taxpayers' money, that it is scrutinised accordingly. I therefore welcome many aspects of the Bill.

9.45 am

In my experience, three areas of the voluntary sector have particular strengths, and I stand by them. First, the voluntary sector reaches deep down into excluded communities. Often, because of the relationship that is required with hard-to-reach groups, the state struggles to get to them by itself. Secondly, the voluntary sector has a strong relationship with client groups. Voluntary sector organisations often use staff who come from the client group it works with, which produces a strength in the relationship that other parts of the welfare state often struggle to achieve, so it is significant.

I shall focus on the third area, the voice of the voluntary sector, because it is relevant to the clause that we are discussing. The advocacy role of the voluntary sector is essential. "Speaking truth to power" is how it is often termed, and the sector can do so in an absolutely unencumbered way. The Government, through the gagging law and other regulations, have hindered the ability of the voluntary sector to speak truth to power and to stand up to the Government on behalf of client groups. The clause consolidates the Government's unwillingness to accept challenging voices.

The Minister for Civil Society (Mr Rob Wilson) *indicated dissent.*

Peter Kyle: The Minister is shaking his head. I look forward to his speech and to hearing his views, because he has kindly listened to mine. Trustees are cautious people: they are volunteers and they are not often law experts. They want to make sure that the organisation for which they voluntarily give up their time does not make headlines for the wrong reasons, which means they often become cautious. I cannot see exclusions in the legislation on the application of warning notices.

For example, I hope the Minister will say that tweets and public statements that criticise Government policies will be excluded from the issuing of warning notices. He might not be able to give an example, but if the practice is allowed to continue unhindered, it may well give the impression to boards of trustees that the Government criticise bold and forthright statements that are made by trustees when their client groups are challenged, or public policy is not rolled out in their best interests. We need a very clear and unequivocal statement from the Minister, on the record, that that is not the case and that warning notices will not be used to challenge the advocacy role of charities.

Charitable organisations reach right the way through our society. For example, many academy schools are charitable trusts registered with the Charity Commission. Schools, therefore, might well be issued with warning notices. There are many areas of public service that come under the remit and regulation of the Charity Commission. I am chair of governors of a school which is registered with the Department for Education as an academy school and with the Charity Commission as a charitable trust. Has the Minister looked at these complex registration challenges and regulatory circumstances and made sure that the right exclusions are put in place to reassure trustees that the Government will always protect their interests and their independence?

Several hon. Members *rose—*

The Chair: Before I call Maggie Throup, I have to say that the last two speeches, although I am sure they were very valuable contributions, were about clause 1 more widely than about amendment 2, so we will not have a separate stand part debate on clause 1. If other Members would like to contribute to the wider discussion of clause 1, I suggest they catch my eye now.

Maggie Throup (Erewash) (Con): I am delighted to be able to speak in support of clause 1 of this very important Bill, which strengthens and protects our charities, which play a very important role across our nation. We are stronger for the work that our charities carry out. We would be much poorer as a nation if we did not have our amazing charities and, indeed, I can cite many examples in my own constituency. Millions of people every day rely on charities, and millions of people every day willingly give up their time to volunteer. It is the hundreds of thousands of generous volunteers who really make a difference, and 41% of people reported that they took part in volunteering last year. That is a massive 21 million people across the UK. Trustees play an important role in charities, and in the past I have been a trustee for two different charities. Before being appointed, on both occasions I went through a rigorous selection process that put me under a lot of scrutiny. This is only right, as trustees play an important role. Sadly, we have recently heard some bad news stories about instances in which trustees were not quite as scrupulous as they should have been. That should not happen, as it reflects badly across the whole charitable sector.

The Charity Commission has a wide range of powers, but they need to be strengthened. It is only right that the regulator has the powers that charity users and volunteers expect. Those powers are there to protect the charity, but ultimately they protect charity users, who are likely to be the most vulnerable people in our society. I do not believe that the powers included in the Bill are draconian; they fill a crucial gap. Clause 1 provides an effective way of handling low-level breaches of statutory provisions of the Charities Act 2011. It fills the gap between the existing situation in which the Charity Commission can give advice and guidance and the nuclear option of statutory inquiry. I am sure that every charity will welcome this gap being filled. In effect, it will put a charity on notice, and will help to prevent it from reaching a position where that nuclear option is required without an interim warning.

[Maggie Throup]

Clause 1 lays out very clearly the steps that the Charity Commission will have to take if it needs to issue an official warning to a charity or charity trustee. Such clear steps are important for the Commission, for charities and for trustees. I do not believe that amendment 2 is necessary, because the notice period it contains could work against what the Charity Commission is trying to do and what the Bill is trying to do. A lot of evidence could be destroyed in that notice period. As has been indicated, it would not allow time-sensitive issue or breaches to be handled in an effective way.

Jo Stevens: The hon. Lady has suggested that if notice of a warning was given, evidence would be destroyed. Are there any examples of that happening?

Maggie Throup: I think not only in the charity sector but across the board, evidence can be destroyed or changes made very rapidly, so the provision would begin to undermine the purpose of the Bill, which tries to help charities rather than be too draconian. That is the measure we want to take with this clause.

Robert Jenrick (Newark) (Con): Does my hon. Friend acknowledge that most regulators in other spheres have the power to issue warnings without notice? For example, the Financial Conduct Authority has those powers for precisely the reasons that she has just given.

Maggie Throup: I completely agree with my hon. Friend. That is probably why the measure is in the Bill. It mimics what is happening across the board with other regulators.

Peter Kyle: I am extremely grateful to the hon. Lady for giving way. If a charity has reached the point where its trustees are destroying evidence, does she not agree that it has probably reached the point where a warning notice is not sufficient in the first place?

Maggie Throup: The problem is that if the evidence has been destroyed, no one knows whether it was there. That is the case I want to make. We want to make sure that correct action can be taken in a timely fashion.

Anna Turley: The hon. Lady said that the measure could make the powers of the Charity Commission similar to those of other regulators. However, while many other regulators have the power to issue warning notices, they are often exercisable only in the case of a breach of a statutory requirement. This proposed power goes much further than that. A warning can be given on the strength of

"a breach of trust or duty or other misconduct or mismanagement".

The hon. Lady will agree that that gives the Bill a fairly broad scope. The adverse publicity and possibility of more severe regulatory action that could flow from that would not match what had actually been breached at that stage.

Maggie Throup: I have to disagree with the hon. Lady. Regulatory abuse in charities is of course rare, but it is vital that measures are in place to ensure that the public and, indeed, the many charity volunteers do not lose confidence when it happens.

Clause 1 provides a suitable means of protecting our many charities, small and large, from unscrupulous behaviour. It will maintain the confidence of the public, the many donors and the amazing volunteers, as well as those employed by charities. I am delighted to have been able to speak in support of the clause, which I commend to the Committee.

Wes Streeting (Ilford North) (Lab): It is a pleasure to serve under your chairmanship, Mrs Main. Like many hon. Members who have spoken, I have experience in the voluntary sector. I have been the chief executive of a small national charity, a senior manager in a medium-sized national charity and a trustee of local and national charities. I continue to be a patron of a number of local charities, although I will spare the Committee a list of all of them. I do not think that, as a patron, I will come under the scope of the Bill, but as a trustee I certainly have cause for concern.

As has been said, it is important that the public have confidence in the vibrant voluntary sector throughout the UK. It is worth stating that, considering the professionalism of the work that takes place in the sector as a whole, the public should have that confidence. In a week where there has been some unhelpful and, I would argue, misleading coverage about the quality of charities and the way in which donors' money is spent, it is worth repeating that case, because there is a lot of mischief-making going on. It is important to have in place the right regulatory framework to give the public confidence, but whenever we pass legislation in this place we should ask ourselves what problem we are trying to solve; whether the approach we are considering would be effective; and, most importantly, whether the legislation is proportionate. The measures in clause 1 fail many of those tests.

Tom Tugendhat (Tonbridge and Malling) (Con): The hon. Gentleman rightly raises the question of proportionality. I would merely argue that one must not forget that the charitable sector enjoys a huge benefit from the state; after all, the tax break is a state subsidy. I do not think any of us—certainly not the hon. Gentleman himself—would challenge the importance of that state subsidy, but although it is hugely welcome and important to the sector, it imposes a burden. The charitable sector must account for its actions in exactly the same way as other organisations that receive benefit from the state should do. The clause is one element in ensuring that that happens.

Wes Streeting: I am grateful to the hon. Gentleman for making those points. It is absolutely right that charities benefit, particularly from gift aid. As an avid, although somewhat despondent, viewer of "The X Factor", I notice that the Chancellor has generously waived VAT on the winner's single, which I am sure we will all be rushing to buy.

Peter Kyle: Will my hon. Friend give way?

Wes Streeting: Is my hon. Friend going to rush to buy it?

The Chair: Order. Before the hon. Gentleman intervenes, we are way off the point of the clause. We widened the debate to include clause 1 because many Members

wanted to speak, but "The X Factor" and VAT are far beyond the scope of the debate. If the hon. Member for Hove was going to intervene along those lines, I caution that he might wish to reconsider.

Peter Kyle: My intervention was going to be on regulation in general and its burden on the charitable sector, but I will happily withdraw if the Chair so wishes.

The Chair: Thank you.

Wes Streeting: I apologise, Mrs Main, for the fact that my enthusiasm for cheering the Chancellor went too far.

In response to the intervention by the hon. Member for Tonbridge and Malling, it is worth pointing out that the state also gains a great benefit from charities. As my hon. Friend the Member for Hove said, many voluntary sector organisations deliver public services. I would also argue that the voluntary sector is increasingly picking up the slack and the burden of a lot of public sector cuts by supporting some of the most vulnerable and disadvantaged in society.

Some of the points that have been made about the challenges that should be addressed by regulation are covered by existing powers. If a charity is consistently late in submitting accounts, that is a breach of the 2011 Act, and powers exist to deal with that. If a breach of a charity's governing documents leads to governance problems, that would likely be covered by misconduct and mismanagement provisions, and the Charity Commission could open such an inquiry.

10 am

The Bill widens extensively the scope of such provisions beyond statutory misconduct to quite low-level misconduct that certainly does not include breaches of statutory provisions. To that extent, to pick up the point made by my hon. Friend the Member for Redcar, the official warning power goes far beyond powers available to many other regulators. We have heard about the Electoral Commission's stop notice and the fact that the Care Quality Commission can only issue warning notices in the event of a breach of a statutory provision. The charities that come under the scope of the Bill do not have a right of appeal or any way of challenging decisions, so reputations could be tarnished at the stroke of pen. I also question whether the Charity Commission has sufficient resources to exercise such powers and to handle the wide range of complaints that will arrive at its door, some of which will be legitimate and probably covered by existing legislation, but many of which might be grievances and complaints of a malicious nature. We need to tread carefully.

I have only been a Member of Parliament for seven months, but I have observed that the House of Commons is often guilty of passing legislation in a form that makes it difficult for the courts to apply. This legislation will have a chilling effect on the willingness of volunteers to step forward as trustees of charities. While there are some issues in the voluntary sector, we should be proud of its professionalism, from the smallest local charity to the largest national charity. High-profile examples have caused enormous reputational damage to individuals and particular charities, but to allow that to tarnish the sector's reputation or, even worse, to respond with burdensome and ill-defined legislation would be a mistake.

Wendy Morton (Aldridge-Brownhills) (Con): It is a pleasure not only to serve under your chairmanship, Mrs Main, but to serve on the Committee and to support the Bill, which is both welcome and necessary. I want to speak both about clause 1 and in general support of the Bill.

As has been mentioned, charities do fantastic things across the country, both nationally and locally. We regularly hear of examples of their inspirational work. In my speech on Second Reading, I made reference to the great north run and I am always struck by the general public's generosity and support for charities. I am sure we can all cite good examples from our constituencies of the work of charities and trustees. Small charities play a huge role in our local communities, providing vital services over and above those offered by the public sector. These small organisations, like larger charities, often make a big difference to the lives of individuals and their families.

Trust and confidence are vital in the charity world. Sadly, the high-profile charity crises that make it into the newspapers and on to TV can damage trust in charities. It is therefore important that we do all that we can to maintain and strengthen that trust.

Wes Streeting: The most high-profile case that is on all our minds is of course that of Kids Company. Given the heavy interaction between Kids Company, the civil service and Government Ministers at the highest levels, at what point does the hon. Lady imagine that the Charity Commission might have issued a warning notice if Ministers failed to spot the problem?

Wendy Morton: Kids Company is one of the charities that sadly did make it in to the newspapers and on to our TV screens and it has been debated in the House. It is an example of why the public's trust is so vital. The Bill demonstrates the importance of having an effective charity regulator and strengthening the powers of the Charity Commission to protect charities from abuse. Clause 1 focuses in particular on trusts and trustees and the issue of warnings. That is the right and appropriate thing to do. We will move later to the additional powers to spend and to remove trustees. In doing so, it is important that we recognise that deliberate wrongdoing is rare. It may be unlikely that the new powers are used many times, but let us hope that they are not.

Tom Tugendhat: My hon. Friend is making a powerful case. Does she agree that having the powers on the statute book is part of the persuasion that allows them not to be used?

Wendy Morton: Absolutely. I was about to say that it is important that we have the powers to protect and safeguard charities and their reputations and to maintain the trust of the public, on whose generosity they depend. That also helps trustees, who usually do their job out of the goodness of their hearts, often for a cause that is close to their hearts. They deserve that trust, respect and support.

[Wendy Morton]

It is understandable that the mention of additional powers can raise concerns. It is important to ensure that smaller charities are not disproportionately affected. I do not believe they will be, but that is something to be mindful of. It is equally important to reassure the public that charities are more accountable and, in particular, that large charities are transparent about their fundraising and their activities.

In conclusion, in our drive to maintain and strengthen public trust in charities, we should be mindful that the Bill is helping, not hindering. I therefore support it and hope that clause 1 will stand part of the Bill.

Mr Wilson: It is a great pleasure to serve under your chairmanship, Mrs Main. This is a Bill on which there is a great deal of consensus across the House. I think we all accept that the regulatory powers of the Charity Commission needed to be brought up to date, to support the regulator in tackling cases of abuse in charities.

The Bill has already been through significant scrutiny. The previous Government first published their proposals for public consultation just over two years ago, in December 2013. Those followed criticism of the Charity Commission's powers by the National Audit Office and were based on proposals put forward by the commission itself. There was broad support for the measures from charities, particularly small ones, although some measures received mixed reactions from charities and their representative bodies.

The proposals were refined as a result of consultation and a draft Bill was published in October 2014. The draft Bill was subjected to extensive pre-legislative scrutiny by the Joint Committee on the Draft Protection of Charities Bill, ably chaired by Lord Hope of Craighead, a former deputy president of the Supreme Court. I pay tribute to its detailed scrutiny, which led to a number of improvements and refinements being made. We should also note that the Bill has already been considered in detail in the other place, in a largely collaborative and consensual way. That, too, led to sensible refinements to the Bill. I very much hope that we can continue working together in that spirit of cross-party consensus on most aspects of the Bill for the benefit of the Charity Commission and the public.

Before moving to clause 1 and the amendments on official warnings, I want to make three more general points. First, I repeat what I said on Second Reading: the vast majority of charities are run well by decent, honest people who selflessly want to do good for the benefit of others. When considering these powers, it is important to remind ourselves that they will help to protect public trust and confidence in charities generally and will target only the minority involved in abuse.

Secondly, I want to place on record my thanks to the staff and the leadership at the Charity Commission, who are transforming the commission into a modern, proactive, risk-based regulator and who will use the new powers in a targeted and proportionate way. I was pleased to see that, when the National Audit Office returned to the commission just a few months after publishing its report, it found that it had made "good, early progress" against all its recommendations. That progress is down to the effective leadership and hard work of everyone at the commission.

The third point is an overarching one relating to the Charity Commission's duty to act in line with the principles of better regulation, human rights and equalities duties, some of which have already been raised. These all require the commission to carefully consider a number of factors when exercising its powers. The duty is set out in section 16(4) of the Charities Act 2011:

> "In performing its functions the Commission must, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed)."

The Charity Commission also has a published risk framework that explains this regulatory approach to protecting the public's interest in charity and how it assesses risks and manages its resources. The commission's risk framework sets out the criteria it uses to determine whether it should open a statutory inquiry and where it is likely to use its temporary and/or permanent powers. In assessing regulatory issues that come to its attention by whatever means, the commission needs to be as sure as it can that the facts are correct and that it does not act on a false or unproven premise. It relies on information as evidence in its case work when making decisions.

The commission also has to act fairly and needs to be able to explain its actions to trustees and those directly affected by its decisions when it exercises legal powers. The commission may be called to justify its actions by the first-tier tribunal for charities or by the court. In doing so, the commission needs to show that its action has been taken on the basis that relevant issues have been properly considered. In assessing information and deciding to use it, it is important that the commission acts fairly and consistently in line with the principles set out in its guidance. The commission also considers its decision-making, as it is bound to, in accordance with the relevant statutory duties, namely those relating to the best regulatory practice, proportionality, human rights, the Equality Act 2010 and wider public law considerations.

I will now turn to clause 1 before responding to amendment 2. I will also try to respond to all the issues that hon. Members have raised during the wider debate on clause 1. The clause gives the Charity Commission an important new power to issue an official warning. This is one of the most important new powers in the Bill and is considered to be a normal power in the toolbox of modern regulators. It is already a staple tool of other regulators, such as the Care Quality Commission, the Financial Conduct Authority, the Pensions Regulator and the Solicitors Regulation Authority, to name a few.

An official warning could be issued to a charity trustee or to the charity itself where the Charity Commission considers there to have been a breach of trust or duty or other misconduct or mismanagement. The power would enable the Charity Commission to publish a warning, which it has said it would do in most cases. The commission has also said that it would not publish all warnings. The decision to publish would be in line with its current policy on publishing the announcement of statutory inquiries, which depends on whether publication is in the public interest. The Charity Commission would not publish an official warning if it considered that it would not be in the public interest to do so.

The Charity Commission does not expect to use the power too often. It is hard to put a precise number on it, but the commission estimates that it would be in the dozens of warnings each year, rather than the hundreds. Let me give two examples of when the Charity Commission might consider issuing an official warning—let us remember that these are low-level activities. One example is when a charity is consistently a little late in submitting its accounts. An official warning would remind the trustees of the seriousness of their non-compliance. We recognise that this is already a criminal offence, but it is rarely investigated or prosecuted as such. An official warning would be a much more proportionate response to encourage trustees to rectify the position.

The second example is when a charity makes unauthorised payments to a connected company or payments that benefit a trustee. If the size of the sums involved meant that it would be disproportionate for the Charity Commission to take firmer action, it could issue an official warning on future conduct. As one would expect, the power is subject to a number of important safeguards.

Peter Kyle: On its website, the Charity Commission already highlights in red those charities that submit their accounts late. The commission has said that this has had a significant impact on behaviour in the sector. Is the Minister saying that this is not enough? Can he give the precise number of charities where this is not working and where there will be an impact?

10.15 am

Mr Wilson: Clearly it is not enough, because the Charity Commission has asked for the additional powers. I am sure the Charity Commission would be only too happy to answer the detailed question about the number of affected charities.

I want to return to the safeguards, because there are a number of important safeguards on which we should focus our attention. First, the Charity Commission must give notice of its intention to issue a warning to a charity and its trustees. The notice must specify a number of matters, including the grounds for issuing the warning and any action the Charity Commission considers should be taken by the charity to rectify the breach that has given rise to the warning in the first place.

The notice must specify a period for representations to be made about the proposed warning, and the Charity Commission must take account of any representations before it issues any warning. An official warning could also highlight the likely consequences of any further non-compliance, which would be likely to require a more significant intervention by the regulator, such as the opening of a statutory inquiry and subsequent use of its temporary protective powers or its permanent remedial powers.

Anna Turley: I appreciate the Minister setting out those important safeguards. However, there is little evidence about the timeframe in the Bill, which means that charities have no control over their ability to present their arguments and let their trustees know. We will continue to press on this issue unless the Minister has some analysis of what is a reasonable time.

Mr Wilson: I will come to that exact point in the amendment in a few moments. I hope I can give the hon. Lady some comfort that we are responding to her request.

Let me return to the important safeguards. This measure is the one new regulatory power in the Bill that we and the Charity Commission expect may impact on more charities than any of the other proposed powers. Most of the powers in the Bill are targeted at serious, deliberate abuse of a charity or serious mismanagement putting charity assets or beneficiaries at risk. The official warning power would be used more frequently by the Charity Commission as a more reasonable and proportionate way of dealing with breaches where the risks and impact on charitable assets and services are lower.

The Joint Committee on the draft Bill gave its qualified support to the official warning power, saying:

> "We are however persuaded that in principle it would be useful for the Commission to have at its disposal 'something in between' guidance and the opening of an inquiry".

It qualified its support for the official warning power by recommending that several points be addressed in the Bill. The Government accepted all but one of these. The Joint Committee recommended limiting the scope of a warning to a breach of statutory provision or breach of Commission order or direction.

Jo Stevens: The Joint Committee was satisfied that the issue of a warning did not meet the further safeguard and appeal to a tribunal. It reached that conclusion on the basis that necessary details were added to the Bill. However, those details are not in the Bill. Will the Minister respond to that point?

Mr Wilson: The criteria for issuing an official warning are now clearly stated in the Bill—breach of trust or duty, or other misconduct or mismanagement. These are not as narrow as the criteria recommended by the Joint Committee, but we decided that limiting the warning power to a failure to comply with a limited range of statutory provisions, or order or direction of the Commission, would result in a power that was only half effective at best. Charity law is a mix of statute and case law, and the scope of the warning power needs to reflect that. It would be wrong to limit the warning power to just breaches of statutory provisions or commission orders or directions, as this would limit the regulator to issuing warnings on less than half the legal framework.

I recognise that a breach of duty might not always be completely clearcut, but it is right that the regulator of charities should be able to reach a view on whether a charity's trustees have breached their duties, and should be warned about their conduct. It would be wrong to expect the Charity Commission to have to open a statutory inquiry and consider exercising its more serious compliance powers in cases where charity trustees have breached their duties but not a specific statutory provision.

Anna Turley: The Minister is being extremely generous with his time. Does he agree that there are things that lie between breaking a statutory definition and what we are talking about here, which is quite a low level of concern: a breach of trust or duty, or other misconduct or mismanagement? That is quite broad in scope. Should

[Anna Turley]

there not be further definition—not necessarily in statute, but perhaps from the Charity Commission—to identify the criteria for that?

Mr Wilson: The Charity Commission is always prepared to listen to representations and to consider further guidance, but as I will come on to explain, I do believe there should be further guidance as part of what we are discussing.

Peter Kyle: We are all very grateful to the Minister, who has been generous with his time, for allowing us to probe for more detail. The Joint Committee also recommended a minimum notice period to make representations on a draft warning before it was issued. My hon. Friend the shadow Minister suggested a 14-day period, which seems extremely reasonable. Does the Minister agree?

Mr Wilson: I would like the hon. Gentleman to be a little patient. I know I am going on a bit—these are issues that need a detailed explanation—but I promise I will come to his point and answer all the questions that have been put.

On process, we have set out in proposed new section 75A(5) of the 2011 Act the matters that must, as a minimum, be included in a notice of an official warning. These include the grounds for issuing the warning and action that the Charity Commission considers should be taken to rectify the warning. The Charity Commission must give notice of a warning, set out a period for representations to be made and take account of any representations before issuing or publishing a warning. We consider these changes to significantly improve the official warning power and we were grateful for the Joint Committee's recommendations.

Let me turn now to amendment 2, which seeks to require the commission to give at least 14 days' notice of an official warning in every case. I can see why the hon. Member for Redcar is attracted to that, as it would ensure that trustees had sufficient time in all cases to consider the notice of intention to issue a warning and co-ordinate any representations they might wish to make.

The commission will set out in guidance how it will operate the official warning power. The Charity Commission has said it would give publicity about this and is keen to work with sector representatives on the implementation of the power. That would be done before the statutory warning power is commenced. The guidance will set out the commission's normal approach. The commission has confirmed that it will ensure that a reasonable time for representations is given, as is the case currently when trustees comment on the content of inquiry or operational compliance case reports before publication.

The time period between giving notice and issuing warnings will vary in different cases, depending on the level and extent of previous engagement with the charity, and the subsequent level of compliance. As a starting point, I would expect that to be 14 days, but there may well be cases in which a shorter notice may need to be given.

Let me give some examples of where a shorter period may be appropriate. A charity may have been strongly advised on several occasions, both under compliance visits and in writing, about taking small but repeated amounts of cash overseas to buy supplies for a medical centre, with no audit trail and no evidence of expenditure, when an equally legitimate banking arrangement was in existence, and the centre was a registered facility. A disaster happens in the same area and as a result the demand for the charity's services and funds rises sharply. The commission becomes aware on a Wednesday that a payment is due to be taken in cash overseas by that Friday.

In that context, the Commission would want to issue a warning to the charity regarding its financial practices to minimise the ongoing risk to charity funds. Its warning would set out what the issue was—unacceptable lack of financial controls—and how that could be remedied, such as by using the banking arrangements already in place, considering a branch transfer and also ensuring that receipts are obtained for supplies purchased to satisfy the trustees' duty to account.

A second example is where the commission might become aware of a charity that is conducting fundraising activities—raising money from the public—in an aggressive manner or with poor financial controls. It thereby poses a risk to charity property and public trust and confidence, for example by not collecting in sealed buckets or by depositing money into personal accounts. The commission is then informed that the charity is due to participate in a fundraising event in the next seven days. Currently, in that situation, in order to protect the charity the commission would have to open an inquiry and issue directions, which would take up significant time and resources. An official warning could address the issue at an earlier stage. The commission would need to issue its notice and publish the warning within a seven-day turnaround period.

As a final example, the commission might receive a whistleblowing report providing evidence of a low-level property or asset transfer that the trustees propose to enter into. The information provided by the whistleblower and a meeting with the trustees includes evidence that the proposed property disposition or asset transfer is not being conducted in accordance with the requirements of the Charities Act and their duties as charity trustees. If the transaction proceeds, a breach of trust and loss to the charity will occur. The proposed deadline for entering into the transaction is five working days from the last meeting, and the commission would want to issue a warning about following charity law requirements when engaging in property acquisitions.

In those examples, the issues identified in the charity are limited and specific. Opening an inquiry would be time consuming and in a sense misleading, as it may suggest that there are wider or more serious issues in the charity that need addressing when this is actually not the case. It would be wrong to prevent the commission from issuing an official warning in those circumstances, where an official warning may be the most appropriate and proportionate response to the misconduct or mismanagement in question. It would not be practical for the commission to be limited to a particular timeframe. The commission would always intend to give trustees fair notice, but this period may differ depending on the nature of the case. The commission's guidance will deal

with other matters, including its policy on when official warnings will be archived or removed. Its current policy on inquiry reports is that they are archived after two years.

I hope that I have been able to explain to the Committee how the official warning power will be used by the commission and that hon. Members will agree that it represents an important new tool for the commission in tackling lower-level misconduct and mismanagement. We do not want to create a power that results in more bureaucracy and red tape where it is not needed.

I now want to return to some of the issues raised in the debate, many of which were raised by the hon. Member for Redcar. Let me begin with misconduct and mismanagement and whether there will be guidance on this. The commission's statutory responsibilities allow it to investigate issues that pose a significant risk to charities and to check abuse. Abuse is misconduct or mismanagement in the administration of a charity. The words "misconduct" and "mismanagement" should be interpreted as they are commonly understood. The premise is supported by case law. Misconduct includes any act or failure to act in the administration of the charity which the person committing knew or ought to have known was criminal, unlawful or improper. Mismanagement includes any act or failure to act in the administration of the charity which may result in charitable resources being misused or the people who benefit from the charity being put at risk.

Concerns of abuse are always taken seriously, but the level of the commission's response will be proportionate and determined by the risk factors attached to the specific circumstances of the case as required by the commission's risk framework, which I mentioned in my original comments. The commission's updated CC3 guidance already sets out what types of action could constitute misconduct or mismanagement—I am sure hon. Members will be going away quickly to read that.

Let me turn to operational compliance cases, which are likely to be regarded very differently from official warnings. The Charity Commission already publishes details of some of its operational compliance cases when they give rise to wider lessons for charities. It is difficult to see how publishing an official warning would be any different, or why it would carry more stigma for the charity or trustee concerned. Charities exist for public benefit, so there should be transparency and accountability to the public, who are their ultimate beneficiaries.

The issue was raised of the real danger of the commission being allowed to extend the scope of its powers in a disproportionate way, with reference to the recent high-profile case of the Joseph Rowntree Charitable Trust and Cage. The reference to the JRCT-Cage litigation is a bit misleading in this situation. The court made no finding that the commission acted disproportionately—in fact, the court made no finding at all; the case was settled. Proportionality was not even one of the grounds of the challenge in the case. Furthermore, at the conclusion of the hearing, the Lord Chief Justice expressly stated that, of course, nothing at all that we have done comments in any way whatsoever on the underlying issues. Using the case is therefore a little unfair, if I may say so. It is one out of more than 500 regulatory compliance cases over the first six months of this year, so it is not representative.

10.30 am

The hon. Lady mentioned the compatibility of an official warning with the European convention on human rights. We accept that publication of an official warning could have an adverse impact on the reputation of the person named, but as the Government's human rights memorandum made clear, any interference with ECHR article 8 rights is justified because it is proportionate, prescribed by law and for a legitimate aim, namely the protection of charity assets held for third-party beneficiaries.

Peter Kyle: I am grateful to the Minister for giving way, and I hope that it gives him a chance to catch his breath, because he has been rattling through the issues.

The Minister said that he was addressing serious concerns within the organisation. However, the point about the warnings being issued is that they are low to medium-risk warnings. Does he accept that the public sometimes do not know the difference in the types of warning and see only that a warning has been issued against a charity, and that there might well be big brand repercussions for what is a minor warning.

Mr Wilson: It is important that we do not have a situation in which charities can do no wrong. If charities cross the line, even in a low-level way, it is right that the Charity Commission should proportionately and sensibly be able to issue an official warning. That is why I fully support the principle of such warnings.

Campaigning was mentioned briefly by the hon. Gentleman early on his comments. To be clear, charities may not engage in party political campaigning. Where they undertake any types of campaigning to support their charitable purposes, they must avoid adverse perceptions of their independence and political neutrality. In addition, charities may not embark on campaigning to such an extent that it compromises their legal status as a charity. Charity Commission guidance CC9—I can see Members scrambling for CC9—is clear about what is and is not permitted. It makes it clear that charity law recognises that non-party political campaigning may be a legitimate activity and it sets out the general principles.

As long as charity trustees act within the legal framework, they are permitted to undertake activities that may include statements, lawfully and properly. That is relevant across all media platforms.

Peter Kyle: Those of us who run campaigning charities are very familiar with the regulations to which the Minister refers—

Wes Streeting *indicated assent.*

Peter Kyle: I see my hon. Friend nodding, recalling his days in charities.

The point is that for those in government, it is policy and it is not always party political, but those of us who are familiar with the regulations know that sometimes charities need to speak out absolutely. The Minister's predecessor once said publicly that charities ought to "stick to their knitting". Charities find that kind of statement offensive, and trustees interpret it as an indication that they should not get involved in public campaigns that might impact on Government policy. Will he say

[Peter Kyle]

that charities should do everything beyond knitting, including challenging the Government? It does not have to mean that they are involved in party politics—

The Chair: Order. The hon. Gentleman is making a speech. The Minister may decide not to indulge in discussion of knitting, if it so pleases him.

Mr Wilson: My daughter has just taken up knitting. She is only eight and is doing a fantastic job.

It is clear that party political activity is outside the bounds of what charities should be doing. I think everyone accepts that. Sometimes there is a grey area, and if something is reported to the Charity Commission, it would rule one way or the other. I have stated on many occasions on public platforms that it is right that charities should be able to speak up for their beneficiaries, whether the Government like it or not, and I stick to that principle.

Another issue raised was the risk that adverse publicity could result from the publication of a warning. As I have said, it is important that charities are accountable to donors, beneficiaries and the general public. Since the 2006 Act, one of the commission's statutory objectives has been to enhance that accountability. The argument against the clause is effectively that charities should not have to be accountable for things that they have done wrong. That is not fair to donors, beneficiaries and the general public, and reduces the incentives for charities to make future improvements.

A point was made about whether the commission should be allowed to publish warnings at all. Charities exist for public benefit and depend on public support, so there should be transparency. Official warnings should be published if the regulator considers it necessary to intervene, unless there is good reason not to publish the details of an official warning. Publishing those details also encourages compliance, thereby increasing the efficacy of the power.

Any published details of warnings would have to be removed by the commission after a certain period—as I said earlier, the commission currently archives after two years. There would be an opportunity to make representations about the factual accuracy of a statutory warning before it is published. A process for representations is included in the clause, following the recommendations that came during pre-legislative scrutiny. The commission has said that it will consult on and publish guidance on how it will use the official warning power before the power commences.

The hon. Member for Hove asked about the balance between the Charity Commission as friend versus the Charity Commission as regulator. I think we all agree that the commission needed to improve its regulatory performance on compliance and enforcement—the National Audit Office made that point—but that is not to belittle its other important regulatory functions, such as registration, guidance and permissions. We agree with Stuart Etherington of the National Council for Voluntary Organisations that in the past the commission sometimes blurred the distinction between being the regulator and being a friend of the sector. Getting the balance right is not particularly easy, but I am confident that the commission's current leadership will try. The lack of guidance would create risk for the sector, but the commission's guidance is well regarded and much has been done to simplify it.

The hon. Member for Ilford North briefly mentioned the commission's need for extra resources to do its job. It has said that the powers would help it to undertake its compliance and enforcement work more efficiently, which is one of the reasons why we are introducing them. Gaps and weaknesses in the commission's existing legal powers have occasionally frustrated its efforts to tackle abuse, resulting in delays and wasted costs that the Bill will help to minimise. We are helping the commission to become more efficient and to use its resources better than in the past.

A wider point was made about the amount of money that the Charity Commission receives. Obviously, all parts of Government need to contribute toward efficiency, and that includes the Charity Commission just as much as everyone else. Nevertheless, we recognise the need for targeted additional resources. In October we announced an extra £1 million of funding for 2015-16 and a further £8 million in capital investment between now and March 2017. That will be spent on technology and front-line operations, which will allow the commission to deploy its resources more effectively to prioritise its work.

I am sorry, but I do not support amendment 2. I hope the hon. Member for Redcar will understand that in practice, in the vast majority of cases, the commission will give sufficient notice, which I would expect to be 14 days. That will be set out in guidance that will enable some flexibility for particularly urgent cases. On that basis, I hope that she will not push the amendment to a vote.

Anna Turley: I thank the Minister and everyone who participated in the debate. There is a wealth of experience in this room from within the sector and on the frontline, which does credit to this place and has informed the debate. I echo colleagues' sentiments about charities' fantastic work in local communities, in particular their work with the most deprived in some our most challenged communities. We appreciate the work that trustees do and the value that they provide while giving up so much precious time. In the spirit of working with the Government on the Bill, we hope that it will, through better support and guidance, allow trustees and charities to develop their role and create a better regulatory environment.

I am reassured by everything the Minister has said, but we will continue to want to iron out some issues throughout the Bill's proceedings. While the vast majority of charities abide by the regulations and work incredibly hard to fulfil the criteria, I agree that our attitude cannot be that charities can do no wrong. Equally, our attitude cannot be that charities can do no right. Charities may have felt somewhat beleaguered over the past few months as a result of some media campaigns, so it is important that we send a message that we want to support them in doing the right thing. Some concerns remains, however. The Minister said "proportionate" a lot, and we are putting a lot of trust in the Charity Commission to decide what is proportionate. While I welcome his notification that the commission will set out in guidance the timeframe for issuing warnings, I look forward to seeing the detail.

Wes Streeting: The Opposition's amendment specifies a 14-day window before a warning notice could be issued. Is my hon. Friend aware that several voices in the voluntary sector say that that does not go far enough, but that what she has proposed is a sensible compromise that gives flexibility and fair notice?

Anna Turley: My hon. Friend is absolutely right. We received many representations from the charity sector suggesting that 28 days was the preferred option. We thought that 14 days was sufficient to give people the chance to notify trustees and to take immediate action to challenge concerns. The amendment is fair and I hope that the commission will consider our 14-day proposal as a good timeframe when setting out its guidance, so we look forward to seeing the detail.

I also look forward to exploring some of the Minister's examples of when action must be swift and what steps the commission will take in such circumstances. I am also glad that the sector will be able to contribute during the consultation period. In the light of the safeguard of this being proposed by the commission and the constructive discussion with the Minister, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Anna Turley: I beg to move amendment 1, in clause 1, page 2, line 15, at end insert—

'(2) In Schedule 6 to the Charities Act 2011 (appeals and applications to Tribunal) insert in the appropriate place—

"Decision of the Commission to issue a warning under section 75A to a charity trustee, trustee for a charity or a charity	The persons are— (a) the charity trustees of the charity; and (b) (if a body corporate) the charity itself.	Power to quash the decision and (if appropriate) remit the matter to the Commission."'

The Bill gives the Commission a power to issue an official warning to a charity or trustee where it feels there has been a breach of trust or duty or other misconduct or mismanagement. This amendment ensures the right of a charity to appeal the warning to the Charities Tribunal.

The Bill still does not give sufficient protection to charities facing a warning from the Charity Commission under clause 1. I have obviously listened carefully to the Minister's explanations, but I want to continue to probe some of the remaining lack of clarity.

The amendment is intended to provide a right of appeal to the charity tribunal when a charity feels a warning has been inappropriately or unfairly issued. All that is required for the commission to issue a warning is for it to consider that there has been a breach of trust or duty or some other misconduct or mismanagement. We have had some discussion today about defining that, but it is still a broad description. It is entirely possible for the commission to issue a warning on the strength of a relatively low-level concern about a charity. The word "proportionate" has been used often, and we have talked about the potential for charities to make mistakes, but we must be aware that the commission could also make mistakes. It is important that charities have a right of redress to enable them to take up concerns if they feel that a warning is unfair.

More significantly, it is entirely possible that there may be disagreement between trustees and the commission as to whether there has been a breach of trust or duty, and therefore whether the issuing of a warning is justified, particularly in non-statutory or best practice matters. For example, a letter from the commission's chief executive to the Public Accounts Committee in September 2015 states:

"If trustees cannot justify why they haven't followed good practice, the Commission is likely to treat this as misconduct or mismanagement."

It is therefore important to attach a safeguard to the issuing of a warning, to allow for the essential right of appeal that the amendment would achieve.

10.45 am

Under the Bill as currently drafted, a charity could be given 24 hours' notice and effectively directed to take certain actions, some of which the Minister has specified. For example, it could be forced to cancel an event, sell an investment, change its governance or stop campaigning, fundraising or funding an organisation. Such action could be long-term or continuing, as no time limit or review period is stated.

That situation could affect all charities, for example a charitable independent school where there is a disagreement over school governance or whether the charity provides sufficient public benefit; a charity that funds an organisation that is controversial in the eyes of the media or public, such as one that rehabilitates paedophiles or deals with radicalised teenagers; a charity established by a philanthropist or corporation where there is no improper benefit but there is disagreement concerning its governance, meaning that its trustees view protections to deal with conflicts of interest as being entirely lawful but the commission disagrees; and a charity that reasonably believes it can trade out of financial difficulties and has a rescue plan in place, but for which a statutory warning issued by the Charity Commission immediately freezes all potential sources of funding. Those issues are likely to occur, and we are concerned that they are not covered by the safeguards outlined by the Minister.

The amendment, which would provide recourse to a tribunal, would not only allow for the correction of mistakes should a warning turn out to be unjustified, but have a deterrent effect, which would ensure that the Charity Commission used its powers only when it was confident that it had a strong case. I return to the word "proportionality", which we have heard a lot about. We want to ensure that the commission thinks carefully about proportionality when it makes a decision on a warning. That is all the more important given the powers that the Bill confers on the Charity Commission under proposed new section 75A(5)(b) of the 2011 Act, which states that the notice should set out

"action that the Commission considers should be taken…to rectify the misconduct or mismanagement".

That is a substantial shift in the relationship between the Charity Commission and individual charities and could be a way for the commission to exercise its powers by the back door.

Charity lawyers have told me that they will be forced to advise volunteer trustees in receipt of an official warning that non-compliance will automatically be evidence of misconduct or mismanagement, and that they run the risk of significant regulatory action by the commission. That is not necessarily so in an operational compliance case, since a statutory warning may be issued on the strength of a low-level breach of trust or duty that

relates to a disputed area of best practice, which carries no right of appeal to the charity tribunal. That is a significant concern. As the Bill is drafted, the only way to appeal against a warning will be judicial review, which can be extremely costly and protracted and could have a disproportionate impact on small charities in particular.

Jo Stevens: The Government have been reducing access to judicial review proceedings, which is another reason why this is of particular concern.

Anna Turley: My hon. Friend makes an excellent point. We know that judicial review is pretty much inaccessible without legal assistance, and that cuts to legal aid have had a hugely detrimental impact on people who are trying to access justice.

Robert Jenrick: The hon. Lady is making a good point. Doe she agree that perhaps the best way to tackle that problem is through guidance from the Charity Commission? If the Care Quality Commission issues a warning, there is no formal way to appeal against it, but in the guidelines there is a 10-day period in which representations can be made to the CQC, which happens all the time. Then the CQC, having read the representations and at its discretion, can withdraw its warning.

Anna Turley: The hon. Gentleman makes an excellent comparison, but what happens if, at the end of that representation, the Charity Commission does not agree? Where is the right of redress or recourse after that? Judicial review is too large, bureaucratic and expensive. It is a complex, time and resource-intensive activity that is largely inaccessible without legal assistance. It is widely known as the remedy of last resort for public body decisions when all other avenues of appeal have been exhausted.

There may be a perception among the public that charities should not use their funds to pursue judicial review applications, in particular in the light of some of what we have seen in the media in the last few days about how charities spend their money, which goes against the grain of what we are trying to encourage. It has been said that if it were possible to appeal against a warning, the commission might be reluctant to issue warnings full stop, as there would be a risk that appeal after appeal would gum up the system. This implies an awareness that judicial review is not really a remedy, as it so much more costly, complex and inaccessible than an appeal to the tribunal. In any event, research suggests that of the 103 inquiries opened by the commission between April 2014 and April 2015, no more than 5% were appealed to the tribunal, which is not a significant proportion. If the warning power is meant to be only for low-level issues but could precipitate adverse publicity—we have already discussed that at some length this morning—and the exercising of the commission's protective powers, it is illogical that it should be more difficult to challenge than the exercising of the commission's more extensive regulatory powers, such as the power to remove trustees, which can be challenged in the tribunal.

It is also worth noting that there seems to be confusion over whether the warning power can be used for low-level or medium-level concerns. When the power was first suggested, the Cabinet Office said that it would be for medium-range abuses, for which the commission's protective powers could be used but it is not likely to be proportionate to do so. Yet the explanatory notes to the Bill say that it will be used where the risks are relatively low. There is still a huge lack of clarity about the difference between a medium-range and a low-level concern. The possible implications of a warning, as we know, are harsh for low-level matters, so it is important that charities have a right of redress and recourse to a tribunal. Without it, they might be unable to disprove what could potentially be false allegations. We also want to ensure that the Charity Commission considers warnings extremely seriously before issuing them.

Mr Wilson: I am grateful to the hon. Lady for her explanation of this amendment. I have already explained our thinking behind the official warning power at some length, and I do not intend to repeat it now, the Committee will be relieved to hear. I will try to be brief, but I do want to explain our thinking on why we propose relying on a representations process and judicial review as the means to challenge an official warning, rather than a right of appeal to the tribunal.

To use a footballing analogy, I consider official warnings to be like a yellow card, whereas statutory inquiry and the corrective and remedial powers that follow are more of a red card. It is absolutely right that the commission's protective and remedial powers are subject to rights of appeal to the charity tribunal, but I do not accept that the warning power is in the same category.

Clause 1 provides for the commission to give notice of its intention to issue an official warning and for a period for representations to be made, which the Charity Commission will be obliged to consider before deciding whether to proceed with issuing the official warning. There is then the option of judicial review of the commission's decision. We consider that that is proportionate in the sort of low-level yellow-card cases in which an official warning would be issued. It is exactly the same as the current position when the commission publishes details of its operational compliance case reports into non-inquiry cases that have attracted public interest and highlight important lessons for charity trustees.

The problem the commission currently has is that in between 20% and 30% of those non-inquiry cases, its advice and guidance is simply ignored, or the issues are not rectified in full. We believe that a right to appeal an official warning to the charity tribunal would be disproportionate and could render the power impractical for its intended purpose, which is to enable the commission to respond proportionately to the low-level non-compliance, misconduct or mismanagement that sometimes take place. The commission has told me that the resources required to defend tribunal proceedings would be disproportionate to the issues at stake in official warning cases, rendering the official warning power unusable from the commission's perspective. The last thing I want to do, as I have said, is to give the Charity Commission powers that it cannot use because they are too bureaucratic, and that it could be criticised for failing to exercise several years down the line.

The Joint Committee on the draft Bill looked at the issue in some detail and agreed with us, stating:

"Although we note the arguments by some that the issue of a warning should be subject to appeal to the Tribunal, we see the practical difficulty this would present to the Commission as disproportionate to the benefits of doing so. On the assumption that the Government agrees to our recommendation that the necessary details be added to the face of the Bill, we are satisfied that the issuance of a warning does not need the further safeguard of an appeal beyond the ability to seek judicial review."

It is important to point out that if the Charity Commission sought to escalate matters when an official warning had been ignored, by opening a statutory inquiry, the opening of the statutory inquiry would itself be subject to a right of appeal to the charity tribunal. Similarly, if the commission were to exercise one of its protective or remedial powers, that would also be subject to a right of appeal to the charity tribunal, so there are already two layers of appeal rights when a statutory inquiry is involved. It would seem wrong to add another layer of appeal to the tribunal in the case of an official warning, which could be used to frustrate commission regulatory action.

The Charity Commission has a high success rate on appeal—there were no successful appeals to the tribunal against the commission's decisions to open a statutory inquiry in 2014-15. That shows that the concerns that some have expressed about the commission's decision making are not based on reality. The issue for the commission is the amount of work and time that each tribunal case takes, even when it does not have merit. In 2012-13 appeals were made to the tribunal in five cases, and in 2014-15 appeals were made in 32 cases. The judicial review system is much better set up for setting right genuine wrongs, while discouraging or disposing of cases that are unmeritorious or that have been brought with the calculation that delay through litigation is the best tactic for avoiding robust regulation.

The requirement in clause 16, which I urge members of the Committee to look at if they have time, for a review of the legislation to begin within three years of enactment, will provide a timely opportunity to review the commission's exercise of the official warning power and any judicial reviews of its exercise of that power.

The hon. Member for Redcar made a couple of brief points, one of which was about judicial review being costly and inaccessible. The administrative court judicial review system is much better set up for dealing with the concerns that are expressed—for putting right genuine wrongs, as I have mentioned—because there is a filter system. The tribunal, unlike judicial review, does not have a filter system in which the court's permission to go ahead is sought. Cage is a recent example. The High Court refused permission on two of the three grounds, avoiding the spending of significant amounts of time on complex human rights arguments that were not arguable.

As for costs, a system such as that of the High Court, where costs are usually paid by the loser to the winner, can act as a sensible deterrent, encouraging parties on both sides to act reasonably and in accordance with the overriding objective.

Another question from the hon. Lady was whether the provision amounts to a direction power. The answer is no, it does not. An official warning is not the same as a direction power. The Government agreed with the Joint Committee's recommendation to set out more detail in the Bill about the content of an official warning, including that the commission should specify how a charity should rectify any breach.

In some cases, such as a failure to file accounts, it will be obvious how a breach can be rectified. In others it will be less clear, and it is important for the commission to be able to set out guidance on the actions it considers necessary to remedy a breach. Ultimately, however, it will be for the charity's trustees to decide how they will remedy a breach and then to demonstrate that they have done so effectively. A warning cannot force charities to take a particular course of action.

I think I dealt earlier with why there is no appeal in relation to warnings, so I shall not do that now. I hope that the hon. Lady will be persuaded to withdraw the amendment on the basis of my response.

Anna Turley: I thank the Minister for his thorough and helpful response. Again, we will not press the matter to a vote, but we still have significant concerns. As a football fan I liked the Minister's metaphor about yellow cards, but with a yellow card there is no immediate repercussion other than having to be a bit more careful about the next tackle. For a charity, there are potentially quite damaging repercussions of a warning, particularly given the public notification. There could be an impact on a charity's ability to fundraise, its reputation and its ability to find trustees. Those are wide-ranging implications, and something of such seriousness needs to be able to be challenged.

We still have not come to a conclusion on that point. I take the Minister's point about the lack of error making so far in the Charity Commission's decisions, and I commend it for that, but that is not to say that it will always be perfect. The point about warnings is that they are more low-level, so the likelihood of error is going to be substantially lower. As yet, there is no means of redress, other than judicial review, if a warning has been incorrectly given or if it is subsequently found that the Charity Commission did not abide by due process. Judicial review seems hugely disproportionate, particularly in the case of smaller charities, for what seems like the small issue of a warning. There ought to be proper discussion about different means of redress and a way of allowing a charity to challenge the Charity Commission formally.

We will not press the amendment to a vote, and I appreciate the Minister's point that the Commission will be setting out further information in its guidance. I also welcome the Minister's acknowledgement that the Charity Commission cannot force charities to take a particular course of action on the back of a warning. That is a welcome message to the sector. Of course, people will want to rectify any errors or issues that have led to a warning being given. I am sure many will want to guard their ability to decide the future of their charity and not be directed on how to run it by the Charity Commission. I look forward to seeing more from the Charity Commission on how it intends to ensure that.

We look forward to working through further clarification away from the statute book, but on the basis of the Minister's comments I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: As I said earlier, we will not be having a debate on clause 1 stand part.

Clause 1 ordered to stand part of the Bill.

Clause 2

Investigations and power to suspend

Question proposed, That the clause stand part of the Bill.

Anna Turley: Clause 2 sets out the powers for the Charity Commission to take action where a charity fails to remedy a breach as specified under a warning. Our amendment 3 sought to ensure that where a warning had been challenged through the charity tribunal the charity was not automatically able to take action under clause 2. Given that we withdrew our previous amendment, I decided not to move amendment 3, because it was pursuant on a charity tribunal.

11 am

Mr Wilson: I hope it will help if I briefly explain the purpose of clause 2. As the amendment has not been moved, I will not respond to it.

Clause 2 does two things. Firstly, it puts beyond doubt that failure to comply with an order or direction of the commission, or failure to remedy a breach specified in an official warning, constitutes misconduct or mismanagement. Second, it enables the commission to extend a suspension pending removal by up to one year, subject to a two-year overall limit.

I will deal with extending suspension first. The commission requested the extension to its existing suspension power because in some cases it must await the outcome of a criminal investigation before it can proceed with its regulatory action, and in some cases that can take a significant amount of time. In giving evidence to the Joint Committee on the draft Bill, Detective Chief Superintendent Terri Nicholson highlighted a recent case where a suspension had come "very close" to expiring under the 12-month limit while a criminal trial was ongoing.

I will provide the Committee with two other examples of when the commission may be required to extend a suspension, as envisaged under clause 2. The first is where the commission is notified of serious regulatory concerns in a charity relating to significant governance failures and the failure to account for a large sum of charitable funds. An action for civil recovery is initiated by a debtor to the charity and takes more than one year to settle, during which time the commission is only able to suspend the trustees for up to one year and cannot take further regulatory action that could prejudice the ongoing litigation.

Another example is a trustee of a charity that looks after children being charged with multiple offences against the person, some of which include offences against young people. Due to the complexity of the case, the trial does not take place for 16 months after charge, after which the case is thrown out on procedural default. The commission would not be able to extend suspension of the trustee beyond 12 months as things stand, despite the clear risk the individual may present to the charity's beneficiaries. This provision allows the commission fully to carry out its regulatory role, as it will not be restricted by waiting for the outcome of a prosecution, while the two-year overall cap on a suspension presents an appropriate safeguard.

I now come to the provision that effectively deems misconduct or mismanagement where there is a failure to rectify a breach identified in an official warning. The provision simply makes clear that certain failures will constitute misconduct or mismanagement, which enables the commission to move to open a statutory inquiry and gives it access to temporary protective powers. It will help the commission in escalating cases in which the trustees fail to address the issues, as the commission will no longer need to make the case every time that such failures constitute misconduct or mismanagement.

Where an official warning identifies a breach to be remedied, it will be for the trustees to determine how to remedy that breach. The commission can provide advice and guidance for trustees, but it will be their responsibility to decide how to remedy the breach and to demonstrate that it has been properly remedied. Let me at this point make it clear that simply failing to follow best practice cannot, in itself, constitute misconduct or mismanagement. However, trustees must be able to show that they have properly fulfilled their duties, and demonstrating adherence to best practice will sometimes be the easiest way to do so.

Originally, we did not include the provision deeming misconduct or mismanagement in the draft Bill, but the Joint Committee suggested that it be included, provided we accept its recommended changes to the official warning power—most, but not all of which, we accepted. The Joint Committee also recommended that the commission should not be able to rely on failure to rectify a breach set out in the official warning until the period for appealing against the warning has expired, which was the topic of amendment 3. As that amendment has not been moved, I will finish there.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

Range of conduct to be considered when exercising powers

The Chair: The question is that clause 3 stand part of the Bill. As many are of that opinion say, "Aye".

Hon. Members: Aye.

Mr Wilson: Mrs Main, would it not be sensible for someone to speak on clause 3?

The Chair: I did ask; no one said anything, but we will go back.

Question proposed, That the clause stand part of the Bill.

Mr Wilson: My apologies, Mrs Main. I missed that—it was all too quick for me. I am a bear with a slow brain.

Clause 3 enables the Charity Commission to take account of a person's other relevant conduct outside of the charity under inquiry. The provision will enable the commission to consider whether there is evidence of misconduct or mismanagement in other charities or

conduct outside charities that could undermine public trust and confidence in charities and therefore ought to be taken into consideration before the commission determines how to act.

On the face of it, that appears to be a very broad power, but it is not. There are significant safeguards, which I will set out. First, there must be a statutory inquiry open into charity A of which the person is a trustee or employee and the Charity Commission must be satisfied that there is misconduct or mismanagement linked to that individual in charity A before it can consider any of their conduct outside the charity as a makeweight in its decision-making. Secondly, the commission, when exercising its powers, must provide a statement of reasons under section 86 of the Charities Act 2011, which would set out all the evidence it relied on in making the decision. This would include any evidence from outside the charity, which must, of course, be relevant evidence. Finally, there is a right of appeal to the charity tribunal in relation to the exercise of the commission's compliance and remedial powers, ensuring judicial oversight of the exercise of the relevant power.

The Charity Commission could only take account of conduct that would be relevant to the management or administration of a charity and would have to set out in its statement of reasons, under section 86 of the Charities Act 2011 or under the new official warning power in clause 1, the conduct that it was taking into account in decisions to exercise any compliance powers. The Charity Commission would not be able to take into account any conduct that was not relevant to the management or administration of a charity.

Let me give an example of when the commission would expect to rely on this power in practice. Allegations are made against an individual who is a trustee of charity A about abuse of vulnerable beneficiaries in a charitable care home. The Charity Commission opens a statutory inquiry and determines that there has been misconduct by the trustee. During the course of the commission's inquiry, other regulators provide the commission with evidence of past misconduct that resulted in the individual's employment in a care home being terminated. The commission would be able to take this other evidence into account before making a decision on what action would be proportionate in the circumstances.

As things stand, the commission would be able to give no weight to this other evidence of unacceptable conduct. Another example could involve an individual who is a trustee of two charities, charity X and charity Y. He may have been involved in misconduct in charity X and the commission may have already taken action in relation to charity X. The regulator may then have concerns about similar misconduct taking place in charity Y but, as the law stands, the commission cannot take into account the individual's track record from charity X. This provision would enable the commission to do so.

We made amendments to the Bill in the other place to modernise the language of this provision and others in the Charities Act 2011. These changes were suggested by Lord Hope of Craighead, who chaired the Joint Committee and is a former deputy President of the Supreme Court. He argued, rightly, that there is no place in the 21st century for the term "privy to". It was used in the Bill and the 2011 Charities Act to identify trustees who knew about misconduct or mismanagement but turned a blind eye. We have now replaced the term "privy to" with,

"knew of the conduct and failed to take any reasonable step to prevent it".

That is much better for the understanding of the lay reader of the legislation, which is something we must bear in mind when we consider that trustees are almost all volunteers. This clause makes sensible changes that will help the commission with its compliance casework, and I commend it the Committee.

Anna Turley: I thank the Minister for that thorough and detailed explanation. He will be aware that we have tabled no amendments to this clause because we fully support it. It has been through a great deal of pre-legislative scrutiny and scrutiny in the other place, so we support that the clause stand part of the Bill.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4

Power to remove trustees etc following an inquiry

Question proposed, That the clause stand part of the Bill.

Mr Wilson: Clause 4 basically does two things. First, it amends the existing power in section 79 of the Charities Act 2011 to allow the Charity Commission, in the course of an inquiry, to establish a scheme in relation to a charity. A scheme is a legal document made by the commission which can amend, replace or extend the trusts of a charity. It can set out new objects and purposes for a charity or amend or remove a prohibition or restriction.

Under the current law, the Charity Commission can make a scheme only where there is evidence of misconduct or mismanagement and a need to protect charity property or secure its proper application. Clause 4 would change that so that the Charity Commission can make a scheme where there is either evidence of misconduct or mismanagement or a need to protect charity property or secure its proper application. The commission considers this change to be necessary to enable it to take action in some cases where only one of the limbs can be demonstrated, but where commission action is necessary. Let me give two examples.

11.15 am

A charity may not be operating or carrying out an obvious charitable activity. There may be a defunct website that the Charity Commission cannot close down. There is an inactive charity bank account containing £5,000. The last known trustees are not responding, but are not so unreasonable as to enable the Charity Commission to prove misconduct or mismanagement. Risk to charity property can be demonstrated, but it would be much harder to prove misconduct or mismanagement. The commission would want to protect the charity's remaining money by making a scheme to transfer it to another charity with the same or similar purposes. The only thing that can be done otherwise is

temporarily to freeze bank accounts. In that case, under clause 4 the commission would be able to act under the risk to charity property criteria alone.

Another example might involve suspected fraud in a badly run charity with poor records and no submission of accounts, where there had clearly been misconduct or mismanagement in the charity, but no money left in the charity's bank account. In that case, the commission may need to consider making a scheme on the basis of misconduct or mismanagement alone.

Clause 4 would also make an important change and close a loophole in the law by enabling the commission to continue removal proceedings where an individual resigns in an attempt to avoid regulatory action and disqualification. Let me explain, again by way of an example. In the course of a statutory inquiry, the Charity Commission might identify a trustee's failure to put the interests of the charity first and the fact that the individual had obtained substantial unauthorised financial benefits from the charity. There were clear grounds of mismanagement or misconduct and the commission sought to remove the individual from the charity as a result of that conduct. Removal by the commission also results in disqualification, thus protecting all charities from that individual's future conduct.

The Commission served notice of its intention to remove the trustee as it is required to do by statute, but the trustee resigned before the period of notice expired, which meant the commission was unable to proceed with the removal, which would have resulted in disqualification, or take any further protective action with regard to that individual and charities more generally. Had the commission been able to continue with removal proceedings, despite the resignation, then removal and resultant disqualification would have been effected and the charity sector protected from an individual bent on abuse of charity. There is evidence from recent commission casework that that particular loophole is being exploited by those who would seek to abuse charities.

The clause was widely supported by the witnesses and the Joint Committee during pre-legislative scrutiny. I hope that the Committee will agree that this is a common-sense provision that closes a significant loophole in the law.

Anna Turley: As with the previous clause, we support this measure. We believe it will give the Charity Commission an important power to safeguard the integrity of a charity, particularly its public profile. Misconduct and mismanagement are extremely serious and should be taken extremely seriously. As the Minister identified, the ability to address this loophole has long been missing from the Charity Commission's powers. Representatives of the sector have not raised concerns with us about this proposal. They understand it is an important opportunity for them to protect themselves against misuse and abuse. On that basis, we are happy to support the clause.

Question put and agreed to.

Clause 4 accordingly ordered to stand part of the Bill.

Clause 5

POWER TO REMOVE DISQUALIFIED TRUSTEE

Question proposed, That the clause stand part of the Bill.

Mr Wilson: Clause 5 would insert into the Charities Act 2011 a new section 79A to enable the commission to remove a disqualified charity trustee if they continue to remain in their position once disqualified.

The clause aims to close a loophole in the current legislation. The Charity Commission does deal with cases where a trustee knows that he is disqualified, but that he does not commit a criminal offence unless he "acts" as a trustee and so remains on the charity's books as a trustee, but maintains that he does not "act" as one.

Under the law as it stands, in those circumstances the commission sometimes has to put pressure on disqualified individuals to step down from their trustee position. An example of where that may be necessary is where a trustee is disqualified by virtue of bankruptcy pursuant to section 178 of the Charities Act 2011. However, disqualification does not automatically remove the person from the position of trustee. Similarly, the charity's governing document does not remove the individual either. In those circumstances, the commission or trustee body has to try to secure the resignation of the individual.

Peter Kyle: Will the hon. Gentleman give way?

Mr Wilson: I will finish this paragraph and then give way.

The individual might refuse to co-operate and not resign, which means that the trustees may not be able to operate quorately or appoint new trustees. If the disqualified individual continues to maintain their position, that will open them up to potential criminal and civil liability, but that does not help the charity to move forward. This new power would enable the commission to remove the disqualified trustee in order to allow the charity to continue to function.

Peter Kyle: I apologise for interrupting the Minister mid-flow; I thought he had reached the end of the paragraph. Perhaps those drafting his speeches are putting too much into one sentence.

I agree wholeheartedly with the intentions behind the clause. Will the Minister inform the Committee how frequently it is expected the powers will be used? It strikes me as being a rare occurrence that somebody would be declared bankrupt and yet not voluntarily stand down from a charity. I do not know of any such case.

Mr Wilson: I know that my officials like to pack a lot into my speeches, so they have longer paragraphs. Obviously it is important that we have proportionality. This is the sort of issue that arises dozens of times a year, so it is a regular occurrence and we need to take action to try to control and eradicate it.

Another example might be where a charity trustee is disqualified by virtue of having been convicted of theft. The person refused to resign his position, which was problematic for the charity because it affected their quorum for business and decision-making purposes and there was no power to remove a trustee within the charity's constitution. The trustee board is already at its maximum size and is unable to act further. This new

power would allow the commission to remove the trustee so that the charity can continue to operate quickly and safely.

The commission has estimated that the power would be used dozens of times each year to remove people who were refusing to stand down even when they had been told they were disqualified. This indicates that there is an issue to deal with. It is important to equip the commission with powers to take steps to remove a disqualified trustee from their role quickly and effectively. The new power was welcomed by the Joint Committee on the draft Bill and I commend it to the Committee.

Anna Turley: I thank the Minister for that full and thorough explanation. As trustees of charities—which many members of the Committee are—many of us feel it is important to fulfil our duties fully and with confidence, should a fellow trustee board member not fulfil their duties and be disqualified as a result. The Charity Commission's standards for disqualification are high—it has set the bar at a good level. We wholeheartedly support the clause because we think it is in the best interests of trustees around the country. They want the integrity of their boards protected, and it is important that those who have been disqualified can be removed, because trustees often do not have the ability to do so themselves. The clause gives more powers to the Charity Commission, but we wholeheartedly support them and we know it will use them wisely.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —*(Sarah Newton.)*

11.24 am

Adjourned till this day at Two o'clock.