

Committee(s):	Date(s):
Social Investment Board	18 September 2015
The City Bridge Trust Committee	23 September 2015
Subject: Charities (Protection and Social Investment) Bill	Public
Report of: Remembrancer	For Information
<p style="text-align: center;">Summary</p> <p>This Report outlines the provisions in the Bill which may be of interest to your Committee. The Bill:</p> <ul style="list-style-type: none"> • proposes greater powers for the Charity Commission to tackle misconduct by charity trustees • gives charities a new power to make social investments 	

Main Report

Background

1. The Bill is in two parts. The first follows a consultation by the previous Government, in December 2013, which included proposals to extend the Charity Commission's powers to tackle abuse in charities.
2. The Bill's second part is likely to be of greater City interest and, following a recent Law Commission consultation, proposes the liberalisation of the rules governing social investments by charities.

Charities

3. The measures follow criticism of the Charity Commission from the House of Commons Public Accounts Committee (PAC) and from the Public Administration Select Committee (PASC). Much of the criticism has been directed at what the PAC called the Commission's "reactive" approach and what the PASC called a "far too vague and aspirational" regulatory approach. In general terms, the Charity Commission agreed with the criticisms of its lack of powers and, as a result, the Bill contains many provisions requested by the Charity Commission.
4. The Bill would give the Charity Commission a power to issue official warnings to any charity or charity trustee if it considered there had been a breach of trust or duty or other misconduct or mismanagement. The Bill clarifies that a trustee's misconduct or mismanagement in the administration of the charity would be established where a person had been responsible for the

misconduct or mismanagement, or that a particular person's conduct had contributed to it or facilitated it. The Bill would enable the Charity Commission, when coming to a decision about a person's misconduct or misbehaviour, to consider any other conduct of that person outside of the charity. The Bill proposes a power to enable the Commission to remove from a charity a person if they remain in a position in a charity once disqualified (at present such a person could remain at a charity so long as he does not act as a trustee).

Charity Commission Powers

5. The Charity Commission has no general power to disqualify a person from being a trustee. At present it may only disqualify after an enquiry. The Bill would give the Charity Commission a more flexible power to disqualify a person in relation to all charities, specified charities or types of charities. The power would be triggered where the person was judged by the Charity Commission to be unfit to be a charity trustee and if an order disqualifying that person was desirable in the public interest. This power would, in the Government's view, help to protect public trust and confidence in charities generally.
6. The Bill would enable the Charity Commission to issue 'official warnings' if it considered that there had been misconduct or a breach of duty. The Government considers that adding this power to the Charity Commission's existing powers would add a 'quick fix' sanction for less serious cases. The proposed power would sit in between the Charity Commission's two existing powers (to issue guidance and to open a full enquiry). In addition, the period for which a trustee may be suspended would be extended from 1 year to 2 years.
7. Whereas the Charity Commission is currently able to remove a trustee only after it has opened an enquiry and has concluded that there was misconduct and a risk to charity property, the Bill proposes greater flexibility for the Charity Commission so that it may remove a trustee after an enquiry where it finds either misconduct *or* a risk to charity property. This proposed power would extend to being able formally to remove a trustee even when that trustee has resigned (for example to avoid removal and disqualification).
8. The Bill proposes a new power for the Charity Commission to order a charity not to pursue a particular action. This power would be available only after the Charity Commission had started an enquiry. A further power, to order trustees to wind up a charity, would be available to the Charity Commission in circumstances where an enquiry had established misconduct or where charity property needed, in the Charity Commission's judgement, protection. The Government has indicated that the winding up power would rarely be used.
9. The range of people who would be automatically disqualified from being a charity trustee is expanded under the Bill. Those with unspent criminal convictions for money laundering, bribery or terrorism offences would be

included. In addition, a person subject to certain civil court decisions would be disqualified from being a trustee – a person found guilty of contempt of court; a person designated under a terrorist asset-freezing order; and a person who has been found by the High Court to have disobeyed a Charity Commission order.

Social Investment by Charities

Background

10. Lord Hodgson of Astley Abbotts' 2012 review of the Charities Act 2006 was a significant milestone in the development of an improved legislative structure of charity governance. While Lord Hodgson's review did not focus on social investment, it did conclude that charity law was "certainly not set up to support" the sector.
11. In 2014 the Law Commission consulted on aspects of charity law as they relate to social investment. The Remembrancer's Office and the Economic Development Office, on behalf of the City Corporation, engaged with the Law Commission's project and commented on the proposals regarding charity trustees' powers to make, and duties when making, social investments.
12. It was widely accepted, and the City was among those that pressed the Law Commission to address this point, that charities refrain from making social investments because they fear they are not allowed to accept a reduction in financial returns in circumstances where an investment would promote a charity's objectives but produce less than commercial financial returns. The City emphasised the need for greater clarity regarding charities' powers to invest in ways that seek to achieve both their charitable purposes and a financial benefit.
13. In its final proposals the Law Commission supported the creation of a new statutory power for charity trustees to make social investments and called for certain aspects of the Charity Commission's guidance on social investment to be improved. The Law Commission recommended that it should be made clear that charity trustees may use their permanent endowment to make social investments, provided they expect the capital value of the endowment to be preserved, and proposed the introduction of statutory duties specific to social investment. The Law Commission's recommendations were welcomed by the sector and subsequently incorporated in the Bill.

The Bill

14. The Bill defines social investment as an investment that is done with a view to both (a) "directly" furthering the charity's purposes and (b) achieving a financial return for the charity. The requirement that an act must be done with a view to "directly" furthering the charity's purposes means that there is likely to be continued debate about the degree of connection required between the act done and the charitable good achieved. The Government has indicated

that a charity's purpose may be "directly" furthered by an investment in a third party, for example if a medical charity buys shares in a medical company.

15. Under the Bill, a charity's funds would not have to be applied with a view to generating a financial profit (whether in the form of income or capital growth), or even to be neutral from a financial perspective, in order for the act to qualify as a social investment. Further, a social investment made under the new arrangements would be regarded as making a financial return if there was some income or growth but where the financial element of the investment decreased in value. In other words, a social investment may be loss-making but an investment that is *expected* to result in a total loss of the relevant funds would not come within the definition of a social investment.
16. The Bill deals slightly differently with social investments made from permanent endowments so that power to make such investments is restricted to instances where charity trustees expect the value of the permanent endowment to be maintained. This means that greater restrictions would apply to social investments from a permanent endowment.
17. The Bill sets out a number of considerations that charity trustees, in relation to investments made after the Act comes into force, should take into account prior to exercising a power to make a social investment. They should consider whether in all the circumstances any advice about the proposed social investment ought to be obtained and take any such advice into account and must satisfy themselves that it is in the interests of the charity to make the social investment. The trustees must from time to time review the charity's social investments.
18. The Bill applies to charities in existence at the time the measure comes into force, as well as in relation to charities established in the future.

Consultation

19. The Comptroller and City Solicitor's office and the City Bridge Trust were consulted in the preparation of this report.

Conclusion

20. The Bill affects the City's interests as a social investor, as a supporter and administrator many charities and as trustee of City Bridge Trust. The most notable measure, the support for charities wishing to make social investments, reflects comments from the City Corporation among others.

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