

The End of Charity?

Valedictory Lecture – 9 December 2015

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From 1 January 2016, Gareth Morgan will become an Emeritus Professor of Sheffield Hallam University – his email address gareth.morgan@shu.ac.uk should continue unchanged. He will continue to tweet from time to time as [@gmorganshu](https://twitter.com/gmorganshu). However, most of his time will be devoted to professional work (outside the University) with charities and their advisers through The Kubernesis Partnership LLP – see www.kubernesis.uk.

Leadership of the inter-disciplinary SHU Centre for Voluntary Sector Research www.shu.ac.uk/cvsr continues under Dr Tracey Coule (Academic Leader) and Chris Dayson (Centre Manager). Contact: cvsrenquiries@shu.ac.uk

The MSc in Charity Resource Management in Sheffield Business School is no longer admitting new students, but the course will continue for several years in support of existing students – the new course leader from January 2016 is Dr Christine Gilligan c.k.gilligan@shu.ac.uk

THE END OF CHARITY?

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1. Introduction

- 1.1 Some of you were here in this lecture theatre in April 2008 when I had the privilege of giving my inaugural professorial lecture which was entitled *The Spirit of Charity*.¹
- 1.2 At that time things were looking vibrant for the charity sector. Politicians of all parties were keen to work with charities in many ways. Charities were growing much faster than the rest of the economy – to a large extent this was due to public services being transferred to charities, but also due to increased personal giving to charity following a period of economic growth.
- 1.3 The need for modernisation of charity regulation had been accepted, and following a long gestation, some of the central provisions of the Charities Act 2006 had been commenced just a couple of days before I spoke, including a new statutory definition of charity – the first for over 400 years.² During the course of that lecture I mentioned some eight reasons why I felt the spirit of charity was alive and well in the early 21st century.
- 1.4 Since then one or two other lectures have been delivered with similar titles – in particular, the Charity Commission has had occasional guest lectures at its Annual Public Meetings and in 2014 the Oxford historian Dr Frank Prochaska spoke on *The State of Charity*³ exploring changing perspectives of charity from Victorians to the present day.
- 1.5 But now I stand before you seeking to grapple with a much more worrying title: my subject for tonight is *The End of Charity?* As you can see, the title includes a questionmark and I will be exploring that question from a number of perspectives. But drawing in part on some of the research in which I have been involved since 2008, I hope to persuade you that ‘charity’ – at least in the structured sense of charitable organisations – faces an extraordinary combination of threats at this time. I will be arguing that unless these threats are successfully addressed (which will be no means be easy) we really will face – at least in England and Wales – an end to ‘charity’ in the sense we have known it for most of my life.

2. My role in all this

- 2.1 But before going further, I should perhaps say something about *my own end*. As you are aware, I am due to retire at the end of this month, so this lecture marks the end of my tenure as *Professor of Charity Studies* here at Sheffield Hallam University.
- 2.2 Nevertheless, I would like to make one thing very clear. The end of one slightly maverick charity professor is no reason to suggest that charity as a whole will suffer, and it is certainly not a precursor to any ‘end of charity’ more generally (as in the title of this lecture). On the contrary, I know that I am sometimes critical of the behaviour of individual charities, or, more frequently, critical of the framework of charity regulation more generally. So the end of my academic role could perhaps allow bodies like the Charity Commission to breathe a sigh of

¹ See Morgan (2008a).

² The new definition of charity (which applies purely in England and Wales) took effect from 1 April 2008 under provisions in the Charities Act 2006 which amended the Charities Act 1993. These provisions have subsequently been consolidated in ss.1-5 of the Charities Act 2011.

³ I didn’t necessarily agree with all that Prochaska (2014) said regarding charity today, but his historical analysis led to some very interesting observations – for example he quoted the great Victorian charity pioneer Josephine Butler as saying that legislative programmes are masculine and charity feminine – and he suggested that “What we are witnessing today, as charity becomes more corporate and bureaucratic, is its masculinization.”

relief, and maybe give them just a little more time to get on with the crucial work they undertake – which could ultimately be to the advantage of charities!

3. Charitable status in England and Wales: an update

- 3.1 But I now want to turn specifically to the issues raised by the title of this lecture: the threats now faced by charities in the UK and specifically in England and Wales.
- 3.2 A year ago, when I was asked to give evidence to the Joint Parliamentary Committee examining the *Draft Protection of Charities Bill* I spoke of a ‘crisis in charity regulation’⁴ – an issue that was picked up several times by the Committee in its Report.⁵ At the time, I highlighted three major issues which, I argued, were leading to a fundamental breakdown in the system of charity regulation in England and Wales. I suggested that a few extra powers for the Charity Commission as proposed in the Draft Bill would do little to address the problem.
- 3.3 However, in the 12 months since then, I consider the situation has got worse in several respects. Tonight, I want to mention some *eight separate factors* which, taken together, amount to an assault on the role of charities in today’s society that I suggest far exceeds anything else that has hit the charity sector in my lifetime. Unless these are addressed, I genuinely believe we could soon see an end to charitable status in the sense that we know it.
- 3.4 But before going into the detail of my concerns, it may help to recap a few basic principles.
- 3.5 First, I would stress that not all organisations in the third sector are charities. In my teaching I often use this diagram [Figure 1].

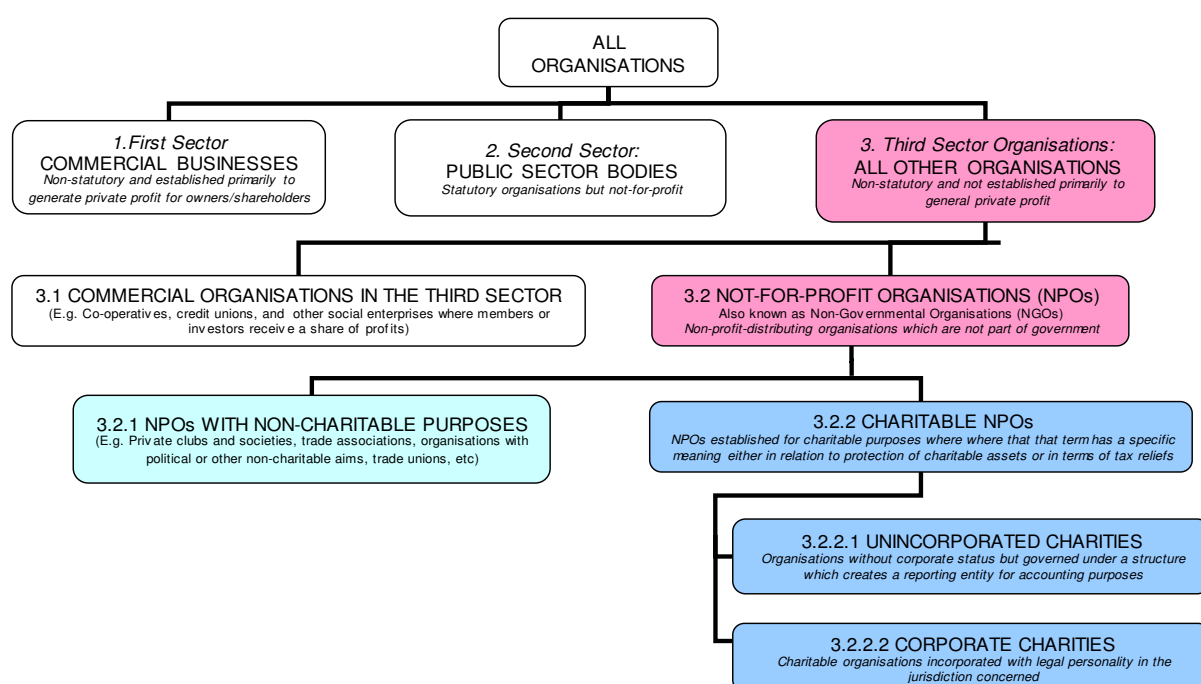


Figure 1: Non-Profit Organisations (NPOs) compared to other sectors⁶

- 3.6 It’s conventional to define the third sector in terms in terms of organisations that are not part of the ‘first sector’ of entities established primarily for private profit, nor are they part of a ‘second sector’ of bodies that are fundamentally part of the state or the ‘public sector’. (I

⁴ The evidence presented (written and oral) appears in: Joint Committee on the Draft Protection of Charities Bill Committee (2015b pp 300-306). I appeared alongside Professor Debra Morris of the University of Liverpool.

⁵ Joint Committee on the Draft Protection of Charities Bill Committee (2015a). The Committee makes 15 specific references to points made in the evidence given by Debra Morris and/or myself (Morgan & Morris 2015).

⁶ Adapted from Morgan (2013b, p36).

recognise that this simplistic division of organisations into three sectors raises many problems and is often criticised by scholars in this field,⁷ but I still feel it is helpful as a starting point.)

- 3.7 We cannot just equate the third sector with non-profit organisations, because many non-charitable social enterprises and co-operatives would be seen as part of the third sector in the sense that they are trading for a social purpose, but they often allow at least a proportion of their profits to be distributed to employees or investors.⁸ But even amongst organisations which are clearly established on a non-profit-distributing basis, and which are self-governing (rather than part of the public sector) many have non-charitable aims – for example political parties, trade unions and private clubs.
- 3.8 So the term ‘charity’ in the sense of a particular type of organisation, refers to a sub-category of NPOs within the wider third sector. A charity is a body that is established for exclusively charitable purposes. The definition is based not on a certain structure, but on the organisation’s purpose – the reason for its existence – as expressed in the aims or objects in its constitution or any other kind of governing document.
- 3.9 However, there are important differences in the definition of charity between jurisdictions. In the UK, charity law is devolved, which means we have three slightly different systems in England and Wales, Scotland, and Northern Ireland. A new framework for charity regulation has also taken effect recently in the Republic of Ireland and in several other countries with systems of charity law.
- 3.10 These jurisdictional differences affect the legal definition of charity, the structures available for charities, and the powers of the charity regulator.⁹
- 3.11 In England and Wales the main provisions of charity law are now set out in the Charities Act 2011¹⁰ which covers issues such as: the definition of charity, the functions and powers of the Charity Commission, the requirements for charity registration, the framework for charity accounting and reporting, rules on disposals of charity property, and certain provisions related to the legal form of a charity. The Act also specifies the status of the Charity Tribunal which can hear appeals against certain Charity Commission decisions.¹¹ (We held recently heard some mock Charity Tribunal cases here in the University, with students on the charity MSc representing the parties in the Law Department’s Moot Court and with a distinguished charity lawyer¹² as the Tribunal Judge.)
- 3.12 But the Act does not impose any specific structure on an organisation in order to be a charity: possible structures include a charitable trust, an association, a charitable company, and the new structure of which I have been a strong advocate:¹³ the charitable incorporated organisation (CIO).
- 3.13 The English definition of ‘charity’ in the 2011 Act¹⁴ is relatively simple, even though a huge amount has been written on its interpretation by many distinguished legal academics researching in this area¹⁵ and in reviews by Parliament itself¹⁶ and I have also written on this

⁷ See, for example, Anheier (2014) for extensive discussion of definitional issues.

⁸ Their work is explored in depth by my colleague Rory Ridley-Duff: see, in particular, Ridley-Duff & Bull (2015).

⁹ A good deal of my own research – sometimes with colleagues – has been in exploration of these differences across the UK and the problems they create. See, in particular Breen, Ford & Morgan (2009) and Morgan (2015a); also there is some discussion of these jurisdictional issues in Morgan (2010, 2011a, 2011b, 2012).

¹⁰ The Charities Act 2011 is a helpful consolidation Act which brought together several previous pieces of legislation and restated some existing provisions in much clearer language.

¹¹ The formal name of the Charity Tribunal is now the *First-Tier Tribunal (Charity)*. For assessment of the Tribunal, see Morris (2010).

¹² Alice Faure Walker of BWB LLP, co-author of one of the leading books on the new Charities Acts (Blake & Faure-Walker, 2015).

¹³ See Morgan (2013b).

¹⁴ Charities Act 2011, ss.1-2.

¹⁵ See, for example, Garton (2009); McGregor-Lowndes & O'Halloran (2010); Phillips and Smith (2011); and Harding et al (2014).

¹⁶ See PASC (2013).

myself as a social scientist.¹⁷ The definition has also been tested by two very important cases heard in 2011 and 2012 in the Upper Tribunal¹⁸ which led to revised guidance from the Charity Commission themselves.¹⁹

- 3.14 However, in summary, an organisation established in England and Wales *is a charity* if it meets two requirements:
- (a) it must be established exclusively for purposes that fall within one or more of the 13 headings in the Act;²⁰ and
 - (b) those purposes must be for the public benefit.²¹
- 3.15 The 13 headings include the traditional categories such as the relief of poverty, the advancement of education and the advancement of religion, as well as newer headings such as the advancement of human rights, amateur sport or animal welfare.
- 3.16 However, the second aspect – that a charitable purpose must be “for the public benefit” – has generated unbelievable amounts of debate in recent years.²² But it does not mean that a charity has to generate benefits to the public in the sense that the Government would look for to justify public expenditure. Essentially there are two aspects to the public benefit requirement, and if these are both satisfied the requirement is met.²³
- Firstly the purpose, even if it appears in the list of 13 headings, must be beneficial in its own right – so, for example, it would not be seen as beneficial to the public to advance education in the arts of criminal behaviour, as with Fagan’s famous school for pickpockets.
 - Secondly, carrying out the purpose must lead to benefits for a reasonably wide class of people – in other words it must benefit at least a section of the public rather than a few exclusive individuals. Any barriers to benefiting – for example if you can only attend the charity’s events if you buy tickets – mustn’t be such that poor people are excluded, or have no more than a token chance to benefit.
- 3.17 It also follows from the public benefit requirement that a charity cannot exist primarily to benefit those who run it. So in most cases charity trustees – those who sit on the board of a charity – must be unpaid.
- 3.18 So we see that charitable status is not therefore some kind of optional badge – rather an organisation either is or is not a charity. If it is a charity – as determined by its purposes – then it gains all the benefits of charitable status including the reputational and tax benefits, such as ability to reclaim tax on donations made under gift aid. But if it is a charity it also becomes subject to all the regulatory framework of charity law, under the Charity Commission in the case of England and Wales.
- 3.19 It is also important to stress that these principles apply to charities of all sizes, whether we are talking about multi-million pound household names such as Oxfam or the NSPCC, or about a small local playgroup run entirely by volunteers whose annual income is only a few hundred pounds.²⁴
- 3.20 Scholars take various positions on the reasons for regulation of charities and similar organisations.²⁵ Some would suggest that third sector or civil society organisations should be

¹⁷ Morgan (2012).

¹⁸ *Independent Schools Council v Charity Commission* and others [2011] UKUT 421 (TCC): Decisions 13 Oct 2011 and 2 Dec 2011; *HM Attorney General v Charity Commission* and others - Upper Tribunal (Tax and Chancery) case FTC/84/2011: Decision 20 Feb 2012.

¹⁹ The Commission’s main statutory guidance is now in publications PB1/PB2 (Charity Commission 2013a & 2013b).

²⁰ Charities Act 2011, s.3.

²¹ Charities Act 2011, s.4.

²² The difficulties arise because the Charities Act 2006 definition (now in the 2011 Act) did nothing to specify what the term ‘public benefit’ actually means, so the definition continues to hinge on centuries of case law.

²³ This is only a very brief summary of a highly contested issue.

²⁴ On the practical impact of the public benefit requirements, see Morgan, Baker, Harris & Moran (2013).

²⁵ In particular Garton (2009); Phillips & Smith (2011); and Harding et al (2014) as mentioned above (n.15).

entirely free of specific regulation and allowed to flourish as they wish (provided they do not contravene the general laws of the land). After all, freedom of association is recognised as a fundamental human right.²⁶

- 3.21 But I do not believe that a system of charity regulation interferes with fundamental rights – rather, I believe that because of the special status we accord to charities, they need protection. If charitable status is important, then charity regulation is important – otherwise there is a risk of charitable status being abused. I suggest there are three main reasons for an effective system of charity regulation.
- (a) First, we need regulation to protect charitable gifts, charitable property – it is very difficult for charity donors to take personal action to ensure their gifts are not abused, and impossible in the case of legacy gifts when the donor is not longer alive. After all, a gift to charity is not like a commercial transaction where the person making the payment is getting something in return: the donor is making a gift on trust. Much of the worthwhile things that charities do – for the public benefit – would be impossible if donors lack confidence that funds will actually be used for the intended charitable purposes.
 - (b) Secondly, society recognises the special role of charities by allowing them various tax reliefs – I have mentioned gift aid, but also concessions on capital gains tax, inheritance tax, business rates, and a few concessions linked to VAT. In return for these concessions, charities have an accountability to society as a whole. Regulation is needed to prevent those with non-charitable aims from masquerading as charities.
 - (c) Thirdly, there is a reputational benefit that goes with charitable status. Charities are organisations that do something good or worthwhile in society – that is the essence of public benefit. On the whole the public has a high level of trust in charities (although the public trust has taken a recent bashing²⁷ for reasons I will mention). Any charity acting disreputably has a damaging effect on charities as a whole. Part of the task of charity regulation is to ensure that charities as a whole keep to the values and principles for which they are established.

The task of charity regulators in addressing all these issues in relation to the hundreds of thousands of charities in the UK is thus immense.

- 3.22 In recent years I have worked closely with all four charity regulators²⁸ in Britain and Ireland.²⁹ So, whilst some of what I am saying will be critical, I would like to put on record my respect for the staff of all four regulators.³⁰ Although I still believe there is a massive crisis in charity regulation, you will see, that my criticisms are levelled more at Government, or on occasion, at individual charities, rather than at the regulators.

²⁶ Article 11 of the European Convention on Human Rights and in many similar codes worldwide.

²⁷ For discussion, see Saxton (2015).

²⁸ The regulators and the relevant primary legislation in each jurisdiction are as follows:

- (a) the Charity Commission for England and Wales (CCEW) – operating under the Charities Act 2011;
- (b) the Office of the Scottish Charity Regulator (OSCR) – operating under the Charities and Trustee Investment (Scotland) Act 2005;
- (c) the Charity Commission for Northern Ireland (CCNI) – operating under the Charities Act (Northern Ireland) 2008, as amended by the Charities Act (Northern Ireland) 2013; and
- (d) the Charities Regulation Authority (CRA) in the Republic of Ireland – operating under the Charities Act 2009.

²⁹ Much of this has been through informal working parties, but as a University we have also won tenders for two specific research projects for the Charity Commission for England and Wales. See Morgan & Fletcher (2011); Baker, Harris, Moran & Morgan (2012) for the reports of these studies. (Note that in the second of these, SHU was in a supporting role; the lead partner was the Institute for Voluntary Action Research (IVAR).)

³⁰ They have been incredibly courteous in all my academic dealings with them and in some cases they have kindly contributed to events. In particular I would mention two key events hosted at SHU: (a) A conference in January 2010 entitled: *The Future of Charity Accounting: SORP, GAAP and IFRS* and (b) a small symposium in November 2014 as part of the ESRC Festival of Social Science entitled: *Charity accounting and regulation – where next?*

4. The threats to charitable status at the present time

- 4.1 So, from this background, I now turn to the real concerns I have around the state of charity, and, in particular, around the regulation of charities at the present time. As I mentioned, I have grouped my concerns under eight headings. I will focus on England and Wales, which is where I feel the greatest threats exist.

A. RESOURCING OF THE CHARITY COMMISSION

- 4.2 It will not surprise many of you that my first concern is the drastic under-resourcing of the Charity Commission. It is nonsense, in my view, for society to put charities on a pedestal, to give them special tax concessions, and then not to give the Commission a proper level of resources to do its job.
- 4.3 Everything that we expect of charities can only happen if there are effective systems in place:
- for the registration of new charities;
 - for charities to file their annual reports and accounts – the key means by which they demonstrate accountability – with clear sanctions applied if they do not do so;
 - for charities which, by law, need the Commission’s consent to do certain things to be able to get those consents;
 - for people to be able to get answers to queries (if they clearly fall within the Commission’s regulatory field);
 - for the Commission to produce clear, readily available guidance documents to help those running charities get things rights; and
 - for those who report misbehaviour by charities or by individual trustees to feel their complaints and concerns are taken seriously.

Moreover, all of the these need to happen without undue delay.

- 4.4 When I spoke positively in 2008 about *the spirit of charity*, I did include a caveat: “provided the Charity Commission is given the necessary resources”.³¹ However, since then, the Commission’s budget has fallen by a staggering 48% in real terms.³² It has cut huge numbers of staff and had to abandon large areas of its work. Although it has received a modest one-off injection of funds this year it is only for specific capital projects linked to the Government’s anti-extremism and abuse agenda³³ – about which I will say more in a moment.³⁴
- 4.5 In my experience, these cuts are having a devastating effect on the Commission’s ability to deliver on the key activities I mentioned which are fundamental to an effective system of charity regulation. I accept that the Commission is not there to provide general helplines on how to run a charity, but communicating with them on basic issues that need their approval is getting harder and harder. They do not publicise their phone number (which is only open for limited hours) and nearly everything has to be submitted through poorly designed web forms, the contents of which sometimes get lost with no response. Sanctions against charities which do not file their accounts are generally only used after two successive years of non-submissions, and even then only to those over £200,000 income.³⁵ When you apply to register a new charity you are advised that it could be eight weeks before any response from the registration team, and I have experience of an application which took two and a half years before a

³¹ Morgan (2008, para 8.3).

³² Between 2007-08 and 2013-14, with the number of registered charities remaining reasonably static, the Commission’s annual budget fell by 40 per cent in real terms to £22.7m with a further reduction to £20.4 million in 2015-16, amounting to a 48 per cent in real terms since 2007-08 (*ibid.*) (National Audit Office 2013a, para 1.12)

³³ Prime Minister’s Office (2014).

³⁴ In the recent 2015 Autumn Statement, the Chancellor announced that the Commission’s resources will be frozen in cash terms for the rest of this Parliament, rather than cut further, but NCVO estimates that this will still mean a further 8.5% cut in real terms (Cooney 2015).

³⁵ Charity Commission (2015a).

decision was reached. Their website, which was reasonably clear and effective, is now absorbed into the ether of the gov.uk site, with the result that finding a specific piece of Charity Commission guidance is almost impossible unless you know the exact title or the CC-reference number to put into a search engine.

- 4.6 But, and this is an important but, I am not saying on their tight budget I could do much better. Twice in recent years I have set exam questions on our charity MSc inviting students to imagine they have recently been appointed to the Charity Commission's board, and asking them to indicate their priorities. Yet, despite the fact that these students are immersed in the charity sector and constantly dealing with the Commission, no students at all attempted those questions!³⁶
- 4.7 As a result, I have come to the conclusion, that charities must be prepared to pay something towards the costs of their own regulation,³⁷ so long as this is clearly *additional* to the Treasury funding, not a replacement, and so long as there is some kind of graduated scale so that smaller charities pay much less than large ones.³⁸
- 4.8 However, this is a hotly contested issue in the sector, and a number of charity umbrella bodies wrote to the Chancellor only last month, vehemently opposed to any kind of charging by the Commission.³⁹ They argue that "the cost of regulation would have to be taken directly from money that would otherwise go to delivering public benefit."⁴⁰
- 4.9 Either way, there is no quick solution as any form of charging as a condition of remaining on the register of charities would need a change in primary legislation⁴¹ – and then we have to decide what happens to those who refuse to pay.⁴²
- 4.10 So, with Government unwilling to fund an effective Charity Commission and problems in getting funding from the sector itself, there is no easy way forward. But unless this is addressed I suggest it will lead to charitable status becoming nonsensical – in other words, it could mean: *the end of charity*.

B. CONSTANT CRITICISM OF THE CHARITY COMMISSION

- 4.11 However, quite apart from the funding issues, I am concerned that the Charity Commission itself is increasingly becoming used as the focus of criticism for everything that is wrong about charities. A decade or so ago, my sense was that the Commission was held in pretty high regard by most people involved in the charity sector, and for the most part its role was also well-respected by MPs and the Government.

³⁶ Of course, I would love to see a Charity Commission which was properly funded by the Treasury to offer top class support and regulation of the sector, but I have to accept that the current Prime Minister and Chancellor were elected on an agenda of cutting public spending, and from their point of view the Charity Commission is just one of many bureaucratic public sector bodies where spending needs to be cut.

³⁷ It is not unusual in other sectors that regulated bodies have to pay an annual fee to the regulatory body. This was recommended by Lord Hodgson's (2012) review of the working of the Charities Act 2006 and the Commission itself has now started to make the case for charging (Charity Commission 2014).

³⁸ There are also complications such as the fact that some charities are holding important charitable assets such as buildings but have no income whatsoever from which to pay such fees, so it would almost certainly be necessary to exempt charities with incomes below a certain level.

³⁹ NAVCA, Charity Finance Group & Small Charities Coalition (2015).

⁴⁰ However, I would argue that costs such as getting a charity's annual accounts audited or independently examined (Morgan 2005 & 2011a) also come out of charitable income, which most people would accept as reasonable expenditure in terms of ensuring charities are accountable.

⁴¹ The Charities Act 2011 s.19 does allow for the possibility of charges for some services, but not an annual registration fee. But even if this were used – for example to create a fee when applying to register a charity or when seek to amend a governing document – any amounts received would go to the Consolidated Fund (the Exchequer) rather than to the Commission itself, but the Commission would have to bear the administrative costs of payment collection.

⁴² We cannot penalise a charity by taking away its charitable status, as that would leave existing charitable gifts unprotected by charity law unless there were some form of legislation, as in Scotland under s.19 of Charities and Trustee Investment (Scotland) Act 2005, allowing ongoing regulation of charitable property held by a non-charitable organisation. But this would be quite expensive to enforce.

- 4.12 More recently, however, some parts of the media have become very hostile to the Commission⁴³ and this hyper-critical attitude has also been adopted by a significant part of the Westminster establishment. To keep track of the problem, the Commission itself has been investing a good chunk of its limited income into researching levels of public confidence in its work.⁴⁴
- 4.13 But the Charity Commission is not part of Government – its functions are performed on behalf of the Crown.⁴⁵ I'm encouraged that the Commission has recently done an internal governance review, which restates this principle.⁴⁶
- 4.14 It is, of course right that Parliament should sometimes look into the work of the Charity Commission – after all it is answerable direct to Parliament⁴⁷ rather than to individual Ministers.⁴⁸ But in the last couple of years, I feel this answerability has been excessive. In the year 2013-14, there were no less than three major reports on the Commission by Parliamentary committees⁴⁹ and two further reports by the National Audit Office⁵⁰ – each which must have taken massive time for the senior staff of the Commission, diverting them from their operational work.
- 4.15 Some of these reports contained helpful suggestions as to how the Commission could improve its effectiveness, but others seemed to use language which had no sympathy for an organisation that was reeling from huge cuts. For example in 2013, the Public Accounts Committee said bluntly: "The Commission has not regulated the charity sector effectively. ... We have little confidence in the Commission's ability to put right its problems and failings."⁵¹ Although a subsequent NAO report said the Commission had made good progress,⁵² the damage was done.
- 4.16 Since then the Commission's Chair and senior staff have appeared before Parliamentary Committees on numerous occasions.⁵³ Each time they have faced hostile questioning which has been widely reported in the media. Increasingly, leaders in the charity sector are also raising major criticisms, and whilst I am fully with them if they are calling for a more effective regulator, I am concerned if they are inadvertently undermining the Charity Commission.⁵⁴

⁴³ This criticism arose at least partly because of disagreements over the Commission's approach to the near-impossible task it was given by Parliament to issue guidance on the public benefit requirement, especially in the thorny area of fee-charging charities such as independent schools (although there are many other types of charities that make charges for their work).

⁴⁴ See Populus (2015) for the most recent report at the time of writing.

⁴⁵ The Charities Act 2011 (s.13) specifically says: "In the exercise of its functions the Commission is not subject to the direction or control of any Minister ... or of another government department".

⁴⁶ Charity Commission (2015c).

⁴⁷ Charities Act 2011, Sch 1 para.11.

⁴⁸ However, the Commission still has to go through the Cabinet Office for appointment of board members, for agreement of its budget, and for any updates to charity law and regulations, and it is subject to many rules and policies that apply to the civil service as a whole. So the Commission is, in practice, operating much more at the whim of Government than I would wish.

⁴⁹ PASC (2013); PAC (2013 & 2014).

⁵⁰ National Audit Office (2013a & 2013b).

⁵¹ PAC (2013, p.6).

⁵² National Audit Office (2015).

⁵³ These include appearances in relation to the Draft Protection of Charities Bill (which was reasonable as the Commission had requested the legislation) but also in relation to the scandals that emerged this year about charity fundraising (even though they have little power to regulate fundraising) or the collapse of the charity Kids Company (which is very hard to see as a matter for the Commission itself, given that it cannot generally interfere in the running of individual charities).

⁵⁴ The concept of independent charity commissioners whose role is to investigate charitable abuses goes back more than 400 years, and the Charity Commissioners for England and Wales have been a permanent body since 1853. In recent years, many other countries have introduced systems of charity or non-profit regulation modelled closely on the English framework. This is far better, in my view, than countries where the regulation of charities comes under the tax authorities, which means that the focus is regulating tax concessions rather than on ensuring charities remain focused on their objects and the needs of their beneficiaries. When public funds are tight, it is very easy to see an independent charity regulator as an unnecessary quango. Several countries which established independent bodies equivalent to the Charity Commission have subsequently subsumed their functions into government departments, notably New Zealand and it appears that Australia is taking a similar path.

- 4.17 So I suggest the excessive criticism of the Commission needs to stop, and those – like myself – who sometimes complain about its ways of working must make clear that we are not criticising its fundamental role as the guardian of all that is charitable in our society. The sector needs to stand up clearly and enthusiastically for the Commission’s role and encourage parliamentarians to do the same. Otherwise we will see so many charities going astray that the whole notion of charity will become meaningless – it would mean: *the end of charity*.

C. A REGISTER OF CHARITIES WHICH OMITTS VAST SWATHES OF CHARITIES

- 4.18 One of the most obvious features of any system of charity regulation is a clear public register of charities. Anyone should be able to go to the register and see whether or not an organisation is a charity.
- 4.19 But due to an extraordinary legal framework – partly as a combination of history, and partly due to the resourcing issues I have mentioned – many charities in England and Wales do not have to register with the Commission. So, the Register of Charities omits vast swathes of charities which are either exempted or excepted from registration.⁵⁵ (This is unlike the systems in Scotland and Northern Ireland where charity registration is effectively compulsory, and an organisation cannot claim to be ‘a charity’ without being registered.⁵⁶)
- 4.20 *Exempt charities* include bodies such as academy schools and universities, or major national museums, which are meant to be regulated for their charitable status by bodies other than the Charity Commission. But I do not think charity regulation is very high on the agenda of Nicky Morgan, for example, the Secretary of State for Education, who is Principal Regulator⁵⁷ of huge numbers of educational charities.
- 4.21 *Excepted charities* on the other hand are theoretically subject to the Charity Commission, but because they are not required to register the Commission does not in most cases even know they exist and can only take action if someone contact them with a complaint – which rarely happens because not many people realise the Commission has any authority if an organisation isn’t on the Register.⁵⁸
- 4.22 The Commission estimates that there are around 90,000 excepted and exempt charities in England and Wales – which is more than half as many again as the number of registered charities.⁵⁹ (But it has no real means of knowing: the figures could well be higher.)
- 4.23 One of the big reforms introduced by the Charities Act 2006 was a process requiring excepted charities become registered with the Commission. But so far this has only been implemented for the largest ones, those over £100,000 income. The idea was that the limit would gradually come down, so that in time they would all have to register. But this has just not happened: it doesn’t need primary legislation, just an Order from the Minister for Civil Society.⁶⁰ But this would mean more work for the Charity Commission, and the Government seems happier to leave charities off the register – in effect completely unregulated – rather than support the Commission to do its job.
- 4.24 Many excepted charities are churches or religious organisations connected to the main Christian denominations – it seems extraordinary given the Government’s equalities agenda that charities are excepted from registration simply because of their faith basis. I have found that compliance

⁵⁵ Charities Act 2011, s30(2).

⁵⁶ See Charities & Trustees Investment (Scotland) Act 2005, s.13 and Charities Act (Northern Ireland) 2008, s.16(2). In Northern Ireland, existing charities are registering over a period of years.

⁵⁷ Charities Act 2011, ss.25-28.

⁵⁸ Excepted charities are not required to submit annual returns and whilst they are meant to produce accounts on the same basis as registered charities they do not have to file them, so there is no regulator monitoring them. There may be some monitoring of excepted charity accounts by umbrella bodies – for example some Church of England dioceses monitor the accounts of Parochial Church Councils (PCCs) in the diocese – but this is non-statutory and a diocese has little power to sanction a PCC in the way the Charity Commission could act.

⁵⁹ See Joint Committee on the Draft Protection of Charities Bill (2015a, para.39), which reports Charity Commission estimates of 14,000 exempt charities and 75,000 excepted charities.

⁶⁰ Charities Act 2011, s.32

and understanding of charity law is generally much weaker in the church sector than amongst registered charities,⁶¹ yet many of these are claiming substantial tax refunds under gift aid.

- 4.25 Moreover, most of the exceptions from registration were recently extended to 2021!⁶² I find this scandalous!
- 4.26 But even beyond those charities which are legitimately exempt or excepted, there are many organisations which should by law be registered with the Commission⁶³ but which have omitted to do so, and it is extremely rare for such organisations to face any sanctions.
- 4.27 I raised these issues last year when giving evidence to the parliamentary committee examining the Draft Protection of Charities Bill. My concerns seemed to resonate with the Committee and two full pages of the Committee's Report are devoted to the issue of excepted and exempt charities and they urged the Government to take action.⁶⁴ But in its response, the Government refused any immediate action and simply agreed that this should be considered "in any substantial future review of charity law".⁶⁵
- 4.28 This is a disaster. Without a complete Register of Charities, we can never have an effective system of charity regulation. Scotland and Northern Ireland have realised this makes no sense. But in England and Wales, if organisations can continue indefinitely without Charity Commission oversight it makes the Register of Charities fundamentally ineffective, and unless that is remedied I think we are only a step away from: *the end of charity*.

D. FAILURE TO IMPLEMENT EXISTING LEGISLATION

- 4.29 Beyond the specifics of the charity register, I am concerned at a massive reluctance by the Minister for Civil Society to implement many straightforward and uncontroversial changes to charity regulation – many of which are *already* on the statute book and simply need secondary legislation to implement.⁶⁶
- 4.30 I will give two examples. The first relates to CIOs (charitable incorporated organisations). Ministers have repeatedly said that they want to make it easier for people to set up and run charities, and the CIO structure is incredibly helpful in that respect.⁶⁷ If a charity is formed as a CIO it has limited liability and corporate status subject only to one legal framework – that of charity law – and only one regulator – the Charity Commission. Before CIOs, most charities could only achieve these protections by forming a charitable company which has complex overlaps of charity law and company law.⁶⁸
- 4.31 Although CIOs in England and Wales have only been available since 2013, they now account for more than 50% of all charity registrations. But it took *six years* from the enactment of CIOs in the Charities Act 2006 for the Minister to make the regulations allowing CIOs to be registered.⁶⁹

⁶¹ Morgan (2009a & 2009b).

⁶² Charities (Exception from Registration) (Amendment) Regulations 2014 (SI 2014/242).

⁶³ I.e. Organisations with charitable aims, more than £5K annual income and not falling within the definition of excepted or exempt charities. Some of these even describe themselves as charities, but unless they claim the title 'registered charity' they are not committing an offence under charity law in England and Wales.

⁶⁴ Joint Committee on the Draft Protection of Charities Bill (2015a, paras.38-44).

⁶⁵ Cabinet Office (2015, para.3).

⁶⁶ In my November 2014 evidence in Parliament I said: "Despite the perceived political importance of charities under both the current and previous governments, the charity law team in the Cabinet Office appears to be even more under-resourced than the Commission. The result seems to be that resource can be found for a Protection of Charities Bill because of a perceived link to the anti-terrorist agenda but not for implementation of much more straightforward issues that would be immensely beneficial." (Joint Committee on Draft Protection of Charities Bill (2015b, p.301-2).

⁶⁷ Other countries have offered specific legal structures for nonprofits for much longer: see Cordery, Fowler & Morgan (forthcoming 2016).

⁶⁸ Morgan (2013b, pp.54-64).

⁶⁹ The main regulations for CIOs are the Charitable Incorporated Organisations (General) Regulations 2012 (SI 2012/312) which came into effect on 2 January 2013. However, draft regulations has been issued for consultation as early as 2008.

- 4.32 However, the existing regulations only allow for registration of new CIOs: if an existing charity wishes to become a CIO the trustees have to form a CIO and then transfer the assets and activities of the existing charity.⁷⁰ But in the case of charitable companies, the Charities Act has an incredibly simple process allowing it to convert *directly* to become a CIO – without all the legal complications of transferring staff, assets and so on.⁷¹
- 4.33 It would be an obvious deregulatory measure to implement the regulations allowing such conversions, but the Cabinet Office has chosen to prioritise other agendas. In the meantime, many smaller charitable companies continue to be burdened with dual regulation.
- 4.34 Yet – and you may will find this hard to believe – *an even more serious* lack of proper regulations applies to the charity accounting framework. Central to charity accountability in the UK is the requirement for charities to publish annual reports and accounts, which in most cases must follow the standard known as the Charities SORP.⁷² When the SORP framework began in the mid-1990s it created challenges, but it led to vast improvements in charity financial management.⁷³
- 4.35 Since the Charities Act 1993, SORPs have been issued in 1995, 2000, 2005, and now two new versions effective for financial years starting from 1 January 2015.⁷⁴ The strength of the SORP is that it is not just a recommended framework: in many respects it is mandatory (except for the very smallest charities⁷⁵) because of the detailed accounting regulations made under the Charities Acts.
- 4.36 But despite a huge investment of resources over the last eight years to develop the 2015 SORPs,⁷⁶ including massive staff time from the Charity Commission and OSCR, the Cabinet Office has *still* not made the simple change to the charity accounting regulations to bring the 2015 SORPs into effect. So many charities will get to year ends at 31 December 2015 with the regulations still referring to SORP 2005.⁷⁷
- 4.37 The Charity Commission has suggested that charities could get round this by using the principle of a ‘true and fair override’.⁷⁸ But I find it incredible that the Commission themselves are suggesting charities ignore explicit charity regulations because of a higher principle!
- 4.38 I stress this problem of regulations not being made is very much specific to England and Wales – in Scotland and Northern Ireland the relevant regulations are generally made quite promptly. In Scotland, conversion of charitable companies to SCIOs has been possible since 2012,⁷⁹ and the Scottish charity accounting regulations were updated for the 2015 SORPs in late 2014.⁸⁰

⁷⁰ For details of the process, see Morgan (2013b, chapter 9).

⁷¹ Charities Act 2011, ss.228-234; see Morgan (2013b, chapter 10).

⁷² Statement of Recommended Practice on Accounting and Reporting by Charities. The SORP is the primary standard for charity accounting in the UK, and is in effect compulsory for many charities – either by virtue of regulations under the Charities Act 2011 s.123(1), or, in the case of charitable companies, because of the requirements of company law for company accounts to give a ‘true and fair view’ taking account of relevant standards. At present, most charity accounts are prepared under SORP 2005 (Charity Commission 2005), but now SORPs are taken effect for financial years beginning on or after 1 January 2015 (Charity Commission & OSCR 2014a & 2014b).

⁷³ Much of my own research has been concerned with implementation of the framework for charity accounting and reporting and the support of those making it happen (Morgan 1999; 2005; 2008b; 2009a; 2009b; 2010; 2011a; 2011b; 2013a; Morgan & Fletcher 2011; 2013).

⁷⁴ Charity Commission & OSCR (2014a & 2014b).

⁷⁵ Non-company charities up to £250K income can opt out of the SORP requirements and simply prepare receipts and payments accounts under s.133 – see Morgan (2008b).

⁷⁶ The Charity Commission together with OSCR is the *SORP-making body*, but the development of new SORPs falls to a wider *SORP Committee*. This is co-chaired by the Commission and OSCR, but includes many external members with expertise in charity accounting.

⁷⁷ The Charities (Accounts and Reports) Regulations 2008 (SI 2008/629) regs. 2 and 8(5).

⁷⁸ Charity Commission (2015b, para.8).

⁷⁹ The start date of conversion of charitable companies to SCIOs was set at 1 January 2012 under the Charities and Trustee Investment (Scotland) Act 2005 Commencement No 5 Order 2011 (SSI 2011/20). For further discussion, see Morgan (2013b, pp243 & 268-71) and Morgan (2015a).

⁸⁰ The Charities Accounts (Scotland) Amendment (No. 2) Regulations 2014 (SSI 2014/335).

- 4.39 But if the Cabinet Office cannot find the time and resources to prepare uncontroversial statutory instruments that are essential to the effective functioning of charities, this is not just an inconvenience. Before long, it can only lead to a breakdown of respect for charity law and ultimately to: *the end of charity*.

E. OVERPAID STAFF

- 4.40 However, the accountability of charities is about much more than just regulation.⁸¹ I would like to mention two issues which are under the control of charities themselves which have damaged charity accountability in the eyes of the public.
- 4.41 The first relates to the paid staff. Any kind of staff remuneration in a charity usually leads to a measure of private benefit rather than public benefit.⁸² But whilst the payment of trustees is problematic and can only be agreed in exceptional circumstances, payment of other staff is generally seen as reasonable in the sense that the private benefit is incidental and justifiable in relation to the wider public benefit, provided the salaries are reasonable in relation to the work undertaken.
- 4.42 However, not everyone sees it that way: surveys show that quite a lot of the public think charities should be run entirely by volunteers – nearly a third of people think that even chief executives should be unpaid if they work for a charity.⁸³
- 4.43 Nevertheless, a protection against excessive salaries is built into the disclosures required under the Charities SORP:⁸⁴ most charities must identify any salaries over £60,000 in their accounts, broken down by £10K bands.⁸⁵ So the salary of the highest paid person – normally the chief executive – is readily available if it is over £60K.⁸⁶
- 4.44 In summer 2013 the Telegraph ran a number of reports about what it saw as high pay in the charity sector – initially they highlighted about 30 chief executives paid over £100,000 in leading overseas aid charities.⁸⁷ To people familiar with salaries in other large organisations with thousands of staff, most of the salaries did not seem excessive. But they went on to highlight some salaries of over £300,000 in the wider charity sector, and even two cases in private healthcare charities with salaries approaching £1M.
- 4.45 It was clear to many people that something inappropriate was happening if charitable funds were being used to pay people at this level, even if charities concerned were funded by fees rather than donations.⁸⁸
- 4.46 A number of seminars and reports followed, including a high-level inquiry established by NCVO,⁸⁹ but it was clear that charity trustees have the authority to set salaries, and the only real recommendation was that charities' annual reports should disclose the policies by which senior salaries are set.

⁸¹ I am particularly grateful for the opportunity in recent years to write on issues of charity accountability together with international co-authors – Louise Crawford (University of Dundee), Carolyn Cordery (Victoria University of Wellington, New Zealand), Oonagh Breen (University College Dublin, Ireland), Janet Mack (QUT Brisbane, Australia) and here at SHU with Neil Fletcher – see: Morgan & Fletcher (2013); Crawford, Morgan, Cordery & Breen (2014 & 2015); Crawford, Morgan & Cordery (2014); Mack, Morgan, Breen & Cordery (2015).

⁸² Except in the case of charities providing therapeutic work where the workers may also be the beneficiaries.

⁸³ White (2014).

⁸⁴ Statement of Recommended Practice on Accounting and Reporting by Charities. See n.72 above.

⁸⁵ So the accounts will show the numbers of staff (if any) whose total remuneration falls between £60K and £70K, numbers between £70K and £80K, and so on.

⁸⁶ The precise salaries are not usually given, but they are disclosed within a £10K band.

⁸⁷ See Hope (2013) – this includes links to related articles.

⁸⁸ Although in theory the Charity Commission could take action to intervene in a charity with inappropriate levels of private benefit, under the Charities Act 2011, s.76(1)&(2) and although the Act specifically mentions the issue of inappropriate remuneration, the circumstances would generally have to amount to 'misconduct or mismanagement' such that charitable property was at risk.

⁸⁹ NCVO (2014).

- 4.47 So the issue has not really gone away, and to my view it remains a cause for concern – not just in the case of senior staff, but for consultants, sub-contractors and all kinds of people receiving payment to support the work of charities.⁹⁰ I suggest that universities, as charities, also need to look carefully at this issue:⁹¹ I will say no more on this tonight, but you may want to look at my Blog.⁹²
- 4.48 In charities of all sizes, many trustees have not, in my experience grasped the fact that the charity exists for the sake of the beneficiaries, not the staff. If this view prevails in the long term, the real purpose of the charity can be totally subverted, and the result is: *the end of charity*.

F. FUNDRAISING ABUSES

- 4.49 The other issue to mention under charities' own control is the relationships between charities and their donors, or prospective donors, and some of the wider issues of fundraising practices.
- 4.50 You will no doubt be familiar with the huge scandal that emerged earlier this year when it was suggested that excessive requests for charitable donations had led to the suicide of the volunteer charity collector, Olive Cooke.⁹³ Although there were other factors, it was clear that many elderly and vulnerable people like her have been subjected to requests for charitable donations both by post and by telephone which they found excessive and hard to deal with. Particular concerns emerged around the practices of some of the telephone fundraising agencies working under contract for major charities. The Daily Mail ran an investigation using an undercover reporter at one such agency which was later reported in detail to a Parliamentary committee.⁹⁴
- 4.51 This led to a furore in the media and in Parliament. It was clear that the existing system of self-regulation of fundraising overseen by the Fundraising Standards Board was not sufficient to deal with the level of concerns raised. The Minister for Civil Society felt compelled to act. Once again NCVO stepped in, with the Minister appointing NCVO's Chief Executive, Sir Stuart Etherington, to chair a short inquiry and recommend a solution.
- 4.52 The Etherington report,⁹⁵ delivered in record time, recommended replacement of the FRSB by a new *Fundraising Regulator* with a much larger budget, funded by a levy on all charities whose fundraising expenditure was more than £100,000 per year. Even though it does not yet exist as a constituted body, and even though some of the recommendations are controversial – particular the proposal for a 'Fundraising Preference Service'⁹⁶ – the Minister has appointed a Chair (Lord Grade) and a chief executive is expected to be in post by Christmas 2015.⁹⁷

⁹⁰ There are also numerous cases of charities overpaying staff who are completely ineffective, or in some cases on long term compassionate leave (but equally there are many charities where staff are grossly underpaid and exploited).

⁹¹ I suggest the university sector has escaped quite lightly in this scrutiny, because, as mentioned, most English universities are exempt charities, and they do not therefore appear in analyses based on registered charities. But universities exist for public benefit in the same way as other charities, and they have plenty of high-paid staff. Moreover, university accounts only have to disclose salaries over £100,000, rather than £60,000 as for other charities, as they are generally prepared under the Further and Higher Education SORP, rather than the Charities SORP.

⁹² See forthcoming post: *Am I an overpaid charity worker?* at <https://blogs.shu.ac.uk/charityprof>

⁹³ See, for example, BBC (2015). Mrs Cooke was widely described as a "poppy seller" but since the normal poppies issued by the Royal British Legion are offered simply as a token of thanks for a donation (rather than sold) the term is incorrect.

⁹⁴ PASC (2015). The agency which was the focus of the investigation, GoGen, is no longer in business.

⁹⁵ Etherington, S., Leigh, Pitkeathley & Wallace (2015).

⁹⁶ The Etherington report proposes a 'Fundraising Preference Service' that would allow people to opt out of all charity fundraising messages. This has proved controversial, on numerous practical grounds, especially the risk that someone who was annoyed with one particular charity might opt out of communications from all charities. It has been suggested this will seriously damage a huge range of legitimate fundraising and that ultimately beneficiaries will suffer. Some have suggested it could even inhibit charities from providing information to their beneficiaries if the communications made any mention of the charity's need for support. But a working party has just been established to consider how it would work in practice, and my perception is that a sensible way forward will emerge.

⁹⁷ Speech of Lord Grade at the 'Fundraising Summit' 4 December 2015.

- 4.53 Although I think the Etherington recommendations broadly make sense, I have some concerns as to whether this can continue to work as a self-regulatory system.⁹⁸
- 4.54 The message from all this is that if charities allow inappropriate forms of fundraising they will damage not only their own reputation, but also the sector as a whole. The issues raised by this scandal have already dented public confidence in charities.⁹⁹ In my view, local charities could suffer at least as much as large national organisations if, for example, someone opts out of all charity communications.
- 4.55 If charities lose the ability to invite new people to give, they will gradually run out of resources as existing supporters disappear.¹⁰⁰ Ultimately if the concerns raised by these issues are not addressed, it will mean: *the end of charity*.

G. COUNTER-TERRORISM AND CHARITY REGULATION

- 4.56 Since 2001, the agenda of counter-terrorism has become a major focus of governments throughout the world, and in recent years this has started to have a major impact on the charity and not-for-profit sector. Most democratic countries are signed up to the international Financial Action Task Force. One of its recommendations states that non-profit organisations are “particularly vulnerable”¹⁰¹ to abuse for the financing of terrorism and calls on countries to take action to prevent their misuse.
- 4.57 Now, I fully recognise the difficulties faced by charities working on the ground in countries with high levels of terrorist activity, and the possibility that funds intended for humanitarian work could be diverted. But I think the idea that charities are being formed primarily to finance terrorism is absurd. Let’s suppose you live in Yorkshire and wanted to raise funds to support a terrorist group (which has happened) – would you really want to form a registered charity, publishing accounts every year which have to be subject to independent examination even if you only raise £25,000, and submit the names and addresses of all your donors to HMRC in order to claim gift aid? I don’t think so.
- 4.58 Nevertheless, the Charity Commission has been giving increased focus to this and at least one of its board members was appointed specifically for expertise in counter-terrorism.¹⁰² Moreover, as I mentioned, it seems the additional financial resources which the Commission so desperately needs, even for some one-off capital projects, could only be gained through linkage to the anti-terrorism agenda.¹⁰³
- 4.59 Now, you might expect me to be showing great excitement in this lecture as we are once again in the throes of new charity legislation passing through Parliament. The Draft Bill on which I gave evidence last year is now the Charities (Protection and Social Investment Bill) and had its second reading in the Commons last week.¹⁰⁴ The rationale for the Bill is that it will plug

⁹⁸ I am surprised at the Minister’s reluctance to use powers which are already on the statute book in the Charities Act 2006 (s.69) to allow the regulation of fundraising more generally.

⁹⁹ See Saxton (2015).

¹⁰⁰ There are a few exceptions to this – in particular charities with substantial endowments sufficient to support their ongoing work. Also, any charity should have a clear reserves policy so that a sudden loss of funding does not lead to immediate closure (Charity Commission 2010; Morgan 2014, pp53-4).

¹⁰¹ FATF (2012) recommendation 8 is headed *Non-profit organisations* and states:

“Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

(a) by terrorist organisations posing as legitimate entities;
 (b) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
 (c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.”

¹⁰² Peter Clarke - formerly Deputy Assistant Commissioner in the Metropolitan Police Service where he was Head of the Anti-Terrorist Branch and National Co-ordinator of Terrorist Investigations, appointed to the Charity Commission Board in 2013 (Cabinet Office 2013) although he is about to step down.

¹⁰³ See: Prime Minister’s Office (2014).

¹⁰⁴ On 3 December 2015, though the Commons chamber was very thinly attended.

certain holes in the powers of the Charity Commission to enable them to deal more effectively with certain kinds of abuse, especially terrorist abuse.

- 4.60 But in my evidence, I suggested that the Bill does no more than “tinkering round the edges” of charity regulation,¹⁰⁵ and that there are much bigger issues to address, such as those I have mentioned tonight. This Bill, which will only affect a tiny minority of charities, has taken priority over straightforward new regulations, as I have mentioned, that would expedite matters for thousands of normal law-abiding charities.
- 4.61 Moreover, because of the huge sanctions faced by banks if they allow certain overseas financial transactions to be made without appropriate checks, many are simply “de-risking” and closing accounts. The result is that charities working in some of the most needy areas of the world are finding that they cannot even operate bank accounts in the UK.¹⁰⁶
- 4.62 A number of academics have written about the insidious way in which this agenda is affecting the regulation of non-profits in many countries.¹⁰⁷ Needless to say, there are widespread suggestions that Muslim charities are being particularly affected.¹⁰⁸
- 4.63 I do not suggest that these issues should be ignored, but we need a sense of proportion. If the work of charities becomes so limited by this agenda that they cannot function effectively, it means that terrorists have won, and for the rest of society it means: *the end of charity*.

H. CHARITABLE STATUS AND GLOBALISATION

- 4.64 My final area of concern is a more general one: the issue of globalisation.
- 4.65 As I said at the start, the whole concept of ‘charity’ as a legal concept, with the associated definitions of charitable purposes, charitable status, and charity commissioners is rooted in centuries of English law, which differs from the approach in many other countries.¹⁰⁹ For example, whilst most of our partners in the European Union offer special recognition to non-profit foundations and associations including certain tax reliefs, very few use the term ‘charity’ (or a direct translation of that term) in their legal systems.¹¹⁰ Until relatively recently this has not been a major issue, because the concept of charity is so strongly rooted in the UK.¹¹¹
- 4.66 But globalisation affects all sectors, and the not-for-profit sector cannot be left behind. I do wonder, however, whether the search for common global frameworks for nonprofits could inadvertently lead to watering down the unique status of charities in the UK?¹¹²
- 4.67 But I cannot blame others for this, because in 2013/14 we took on a high-profile research project to examine the case for common international standards for financial reporting for nonprofit organisations worldwide.¹¹³ With the support of partners, we ran an online survey

¹⁰⁵ Joint Committee on Draft Protection of Charities Bill (2015b, p.300).

¹⁰⁶ Shillito (2015).

¹⁰⁷ See, in particular, Dunn (2008) and Sidel (2009). Sidel asks: “Have we gone too far in enacting laws, promulgating regulations and announcing policies that threaten freedom of association, either now or ‘in waiting’ for the future?”

¹⁰⁸ See, for example, Belaon (2014).

¹⁰⁹ For a summary of the legislation for NGOs in a wide range of countries, see, for example, ICNL (2015) and Crawford, Morgan, Cordery & Breen (2014, Appendix A).

¹¹⁰ Ireland is an exception to this, which has a framework of charity law that has many similarities to England – see n.28 above.

¹¹¹ I welcome developments under European law which allow third sector organisations to be established using legal structures recognised throughout the EU, such as the European Cooperative Society (SCE) which is already possible, and the proposed European Foundation (Breen 2013). Whilst such entities can be potentially recognised as charities under UK tax law, they would not be able to appear in the Register of Charities in England and Wales,

¹¹² So, in international research that goes beyond the charity law jurisdictions, academics rarely use the term ‘charities’ – it is usually more helpful to talk about not-for-profit organisations (NPOs) or non-governmental organisations (NGOs) – even though these terms are generally wider than the English definition of charity. For example, most civil law countries do not have our system that NPO board members (equivalent to charity trustees) must generally be unpaid. However, some countries with no legal tradition of charity have adopted systems on nonprofit regulation based closely on English charity law – see ICNL (2015).

¹¹³ The study was on behalf of CCAB. For the final report, see Crawford, Morgan, Cordery & Breen (2014).

which was circulated through the nonprofit community across the globe, and we were delighted to receive over 600 responses, with experience of NPO financial reporting from 179 counties.

- 4.68 My initial expectation was that relatively few respondents would want to see nonprofit organisations taken down a process of international harmonisation of their financial reporting, and we found the response was less than enthusiastic from countries like the UK and Switzerland which already have highly developed systems of charity or nonprofit reporting. But overall, 72% agreed that “it would be useful to have international standards for NPO financial reporting”.¹¹⁴ Support was particularly strong in Africa, where NGOs are often under pressure to follow different forms of reporting for different funders.
- 4.69 Of course it will take considerable time for any such international NPO financial standards to be developed, and then there is the thorny question of whether they would be accepted for reporting under charity law in the UK. But I think there are dangers ahead – for example, fund accounting, which is so central to our understanding of charity accounts in the UK, is seen as much less important in NPO accounting in other countries.
- 4.70 Where this will lead remains an open question, but I suggest caution is needed. If globalisation leads to the loss of the focus on charitable aims and the protections of charity law I fear it will ultimately mean: *the end of charity*.

5. Charitable giving

- 5.1 So, I have sought to assess eight significant issues which I genuinely believe, if not addressed, could lead to the *end of charity* in England and Wales, at least in the sense of effective charitable organisations properly focused on their charitable objects on the basis of sound regulation.
- 5.2 But I do not wish to suggest that it is all doom and gloom for charities at the present time. In particular, I would just like to say a few words about charitable giving.¹¹⁵
- 5.3 Many charities dependent on public sector funding have, of course, seen big reductions in their income as a result of cuts: many have cut back drastically on their work with beneficiaries and some charities have closed altogether.¹¹⁶
- 5.4 But encouragingly, despite the deep recession from 2008, levels of charitable giving by individuals have not fallen very much:¹¹⁷ total reported charitable giving by adults in the UK has held steady at around £10billion/year for most of the last decade.¹¹⁸
- 5.5 Around 44% say they gave to charity in a typical month and the mean monthly donation is now £39 – though this average reflects a small number who give very generously: around £14 a month is more typical.¹¹⁹ But this, too, has remained relatively constant with just a slight dip in the worst years of the recession. In terms of the very largest charitable gifts, worth £1million or more, in 2014 the UK saw the highest ever number of such donations.¹²⁰
- 5.6 So whilst I would always wish to see more given to charity, Britain remains a generous nation.

¹¹⁴ Note that the study was only based on self-selected participants using a snowball sampling approach, so care should be taken in interpretation of the statistics.

¹¹⁵ The resourcing of charities has been major theme in our work at Sheffield Hallam University: the charity masters course in Sheffield Business School is entitled *MSc in Charity Resource Management* and quite a bit of the research undertaken under the auspices of CVSR has been on issue of funding and sustainability of charities in particular fields.

¹¹⁶ See NCVO(2015a).

¹¹⁷ This lack of a major fall in giving is as predicted in Morgan & Breeze (2009).

¹¹⁸ Charities Aid Foundation (2015, p.10). Although this represents a small reduction in real terms, it is much less than the reductions in public sector funding.

¹¹⁹ Charities Aid Foundation (2015, p.12).

¹²⁰ 298 donations of £1m or more were identified as being made in the UK in 2014 - see Breeze (2015).

- 5.7 I did some research myself on charitable giving in my initial years here at SHU,¹²¹ but until recently I had rather put this on one side to focus on charity regulation.
- 5.8 However, some of you may be aware that as well as my interest in charity studies, I also do some work in wine studies – which is also a significant field here in SBS, linked to our work in hospitality, tourism and events. At my inaugural lecture in 2008¹²² I did include one image inviting charitable donations to support research in this area, but it didn't get much response – at least not in financial terms! But more recently, I have had the privilege of co-authoring a text in the field with my SBS colleague, Richard Tresidder.¹²³
- 5.9 So, when I realised I would be retiring this year, I felt it was time to bring together these two areas of my research interests, and I was delighted that my proposal for a paper entitled *The Role of Wine in Charity Fundraising: Towards a Critical Assessment*¹²⁴ was accepted for this year's Voluntary Sector and Volunteering Research Conference: it turns out that wine is mentioned in charities' accounts much more frequently than one might expect!¹²⁵ More than that, I managed to persuade the conference committee to let me use the conference dinner for some experimental research.
- 5.10 So, I asked those at the dinner – they were all well immersed in the charity sector – to imagine that it was a charity fundraising dinner. I gave everyone a donation form for this hypothetical charity to ask them how much they would pledge if this had been a real fundraising dinner for a charity they genuinely cared about.¹²⁶ They had had some ordinary wines earlier in the evening, but just before they were asked to complete the pledge forms, I made a short speech and explaining that each table would receive a special bottle of red Bordeaux to taste. But I randomly selected the tables so that some received a supermarket claret worth less than £5 a bottle, whilst other tables received a St Émilion Grand Cru Classé worth about £35 a bottle. The idea was to see whether the quality of wine affected the level of donation!
- 5.11 Now at this point I must include some provisos, or my statistically-minded colleagues will rightly have me thrown out of the University and stripped of my pension! This was only an attempt to pilot the study – it will need repeating in many other places – only 33 people at the dinner took part in the experiment,¹²⁷ so the sample is far too small to be representative. Also, many factors other than the wine could explain the different levels of donations.
- 5.12 But based purely on this initial experiment, I found some quite big differences when I analysed the pledge forms. Those who had the commercial wine offered pledges averaging £46/person, but those on the special occasion wine offered more than double, with pledges averaging £121. Even if the charity was paying for the wine as a fundraising expense, the difference in donation was certainly enough to justify shelling out on decent wine for the guests!¹²⁸

¹²¹ This included a study looking at how far charities ask people to make sacrifices in other expenditure in order to give more to charity (Morgan 1996) and an exploration of the new gift aid regime that took effect from the year 2000 (Morgan 2000). We also did a study in 2007 looking at the role of voluntary sector funding advisers (Webster, Leman, Morgan & Tinklin 2007).

¹²² Morgan (2008a).

¹²³ The book explores the role of wine in society from the perspective of social anthropology, but within this we include some brief comments on wine in charity fundraising events (Morgan & Tresidder 2015, pp.177, 191).

¹²⁴ See Morgan (2015b). I am pleased to acknowledge the support of students on the 2014 cohort of the SHU MSc in Charity Resource Management who contributed to a focus group reported in the paper.

¹²⁵ David Kane tweet 8 Sept 2015 at <https://twitter.com/kanedr/status/641204165277024256>. Subsequent communication indicated that he had identified 99 instances of wine being mentioned on one of the lines of income across NCVO's sample of 60,000 sets of fully-analysed charity accounts (so this means approx 0.2% of charity accounts explicitly mentioning wine-related income). Many others will have had wine sales within broader headings such as revenue from a café or restaurant.

¹²⁶ The form had the usual options for one off or monthly gifts, and box to tick a gift aid declaration. Figures reported below assume that monthly pledges continued for 12 months, and tax recoverable under gift aid is included in the amounts where the gift aid declaration was ticked.

¹²⁷ There were 40 persons present in total, but several were not drinking any alcohol.

¹²⁸ The difference in price of the two wines was £30 (i.e. £35 – £5). If we assume at a real fundraising dinner that each guest would be served around a third of a bottle of wine, the costs of the event would be an extra £10 per head in serving the more expensive wine. But in the experiment, the difference in the level of donation is £75 per

- 5.13 This created some interest in the media: Third Sector Magazine invited me to write an article about the study and commissioned a special cartoon to go with it!¹²⁹
- 5.14 But if the findings from this experiment are confirmed there is a very important lesson in charity governance, which perhaps I may suggest, could usefully be included in the new edition of the Charity Commission's guidance on trustees' duties in fundraising:¹³⁰ if you spend more on wine you will have more resources to advance your charitable objects!
- 5.15 Of course I need to do much more work in this area. So, perhaps for me personally, I should say that the *end of charity ... is more time on wine!*

6. Charities and public benefit

- 6.1 But I want to end on a more serious note. I have talked about eight real concerns which, I believe, I could lead to *the end of charity* in the sense of a clearly respected charitable status in England and Wales.
- 6.2 Even if the public remain generous in giving, the consequences will be dire if people no longer have confidence in the charitable status of the organisations they support. We may, for example, see many more people seeking to cut out charities and give directly to those they want to support – which, of course, will favour those able to get publicity and exclude others whose needs may be much greater.¹³¹
- 6.3 But I do not believe the *spirit of charity*, about which I spoke in my inaugural lecture¹³² is in any sense dead. In fact, whereas at one time there was a reluctance by some people to use the term 'charity' to describe support and generosity given by one person to another, my sense is that as a society we are becoming more comfortable with that term.
- 6.4 When you arrived, you will have heard a selection of Christmas carols. Many of these contain messages of charity: the cry for "peace on earth" in a conflict zone; Good King Wenceslas who provided sustenance for the poor man gathering winter fuel; and the night-working shepherds who generously gave up one of their flock to feed a family giving birth in an animal shed who were about to find themselves as refugees.
- 6.5 The concept of charity is central to almost all major religions. In my own experience, as a Christian in the Catholic tradition, the term 'charity' is constantly used to remind us of what we are about. Most weeks we pray that God will "be pleased to confirm in faith and charity" his pilgrim Church on earth.¹³³ Pope Benedict devoted an entire encyclical – the last before he stepped down – to theme of *Charity in Truth*. He says that: "Love – charity – is an extraordinary force which leads people to opt for courageous and generous engagement in the field of justice and peace."¹³⁴ He goes on to talk about justice for the poor, care for the environment, ethics in business, and the fundamental doctrine that we are at the service of one another.

head (£121 – £46): if this is confirmed more widely, it would mean a return of 7.5:1 on the additional fundraising expenditure, or conversely the additional fundraising cost is 13% of the additional amount given. This is almost exactly in the line with the 12.4% average proportion of charity expenditure on fundraising (NCVO 2015b).

¹²⁹ Morgan (2015c).

¹³⁰ Charity Commission (2015d).

¹³¹ I am already uneasy about the number of appeals for funds to provide expensive overseas medical treatment for one specific child – these are not charitable appeals, because the beneficiary is one individual, not the public as a whole or a section of the public, so they do not satisfy the public benefit requirement. Likewise there seems to be a rise in people asking for donations to enable them to intervene directly in areas of conflict or disaster rather than working through charities with the relevant specialist expertise.

¹³² Morgan (2008a).

¹³³ Roman Catholic Church *Order of the Mass* (New rite, English edition 2011) Eucharist Prayer III.

¹³⁴ Benedict XVI (2009, para.1).

- 6.6 Whether or not you sympathise with the Christian message, I do not think such notions of charity are pure sentimentality. My experience is that most people at some level share the charitable intentions in these carols.
- 6.7 What inspires and challenges people about the notion of charity is that it is ultimately about making the world a better place. Charity is about putting others first – often people we will never meet, sometimes even future generations not yet living – before the needs of ourselves and our immediate families. It’s about a fundamental obligation to the wider society, providing benefit to the public in the widest sense of that term, and especially to those sections of the public in greatest need.
- 6.8 So we come back to where we started with the legal definition of charity: a charity exists to carry out purposes which are recognised as charitable *for public benefit*.
- 6.9 The title of this lecture contained a questionmark: “The end of charity?” So, what is the end to which all charity is ultimately directed? The answer is very simple: *the end of charity is public benefit*. If that is our focus, both in our fundraising and in our operational work, and if that is can be the focus of charity regulation, then we cannot go astray.

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Note: Major sources used in the lecture are listed here (cited by the Harvard system in the footnotes). However, references to legislation, tweets similar materials are fully cited in the footnotes and are not repeated here.

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About the author



Gareth Morgan was born in 1955 and grew up in outer London. He studied maths, physics and computer science at the University of Cambridge, followed by theology (including religious anthropology and behavioural science) at the University of Bristol.

His first academic appointment was in 1985 at the institution which later became the University of the West of England, Bristol (originally Bristol Polytechnic). During his time there he completed his PhD on issues of communication in churches (supervised by a sociologist of religion); he subsequently extended this to voluntary organisations more generally.^a He served for 8 years at UWE Bristol followed by a short period working full time in the charity sector.

In January 1995 he was appointed to Sheffield Business School (SBS) at Sheffield Hallam University (SHU). From the outset, his work had a particular focus on the charity and voluntary sector, and in 1998 he co-founded an inter-faculty group of voluntary sector researchers which subsequently became the SHU Centre for Voluntary Sector Research (www.shu.ac.uk/cvsr) which he led until recently. In 2005 he became course leader in SBS for a new MSc in Charity Resource Management, which is now on its 10th cohort.

His contract at SHU has never been totally full-time: he has always had at least one day per week devoted to external consultancy work in the charity sector. Through this he has dealt with various charity formations and mergers, independent examination of charity accounts, and charity tax issues. Between 1999-2004 he served as the founding General Secretary of the Association of Charity Independent Examiners. He also provides support to other professional advisers working with charities.

In July 2007 he was awarded a personal chair at SHU as *Professor of Charity Studies* and he presented his inaugural lecture in April 2008.^b

The main focus of his own academic work is in charity regulation and accounting: he is the author of two books in this field^c (published by the leading charity publishers, Directory of Social Change) and he has produced a wide range of charity-related research papers in academic journals. His work in simplifying the audit regime for charities was reflected in an impact case submitted by the University in the 2014 Research Excellence Framework. He was one of just two academics invited to give evidence in Parliament in 2014 to the Joint Committee on the Draft Protection of Charities Bill.

In addition to his work in the charity studies field he is also active in wine studies – food, wine and hospitality studies also being major fields at Sheffield Business School. He is a member of the Association of Wine Educators and, with an SBS colleague, he has recently co-authored a wine studies book published by Routledge.^d

At the end of 2015 he will retire from the University and become an *Emeritus Professor*, having served as an academic for a total of 29 years. He remains active in the charity sector and in policy work in the field of charity regulation.

See page 2 for future contact information and details of those continuing to lead this field at Sheffield Hallam University.

^a Morgan (1995).

^b Morgan (2008a).

^c Morgan (2013b & 2014).

^d Morgan & Tresidder (2015).

