



From:

DALO LETTER TO COMMUNITIES COMMITTEE

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Dr Janice Thompson
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Dear Janice

CHARITIES BILL – CLAUSE 2 POWER OF COMMISSION TO DELEGATE TO STAFF

I am writing in response to the request received on 24 September 2021 in which queries were raised about Clause 2 following the evidence session of 23 September 2021.

In bringing forward the Charities Bill, the Department, whilst acknowledging the fact that staff make decisions in other parts of the UK and Ireland, has been extremely mindful of the Obiter comments made in the Court of Appeal Judgment, that ‘careful consideration’ should be given as to whether decision making powers should be delegated to staff, rather than being taken by Commissioners.

In responding to the Court judgements therefore, Minister Hargey has sought to take a risk based, proportionate and rights focused approach, with the draft Bill providing for a limited power of delegation. This would be carefully set out in a Scheme of Delegation to be consulted upon and agreed by the Department. This means that the Bill proposes that certain decisions would never be delegated to staff as they have the

potential to have a highly significant impact on individuals such as Trustees and have led to the vast majority of appeals to the Charity Tribunal. For example, Clause 2 stipulates that powers to institute a statutory inquiry and publish any resultant report could never be delegated. Neither could the power to make orders which arise from a statutory inquiry be delegated to staff as these can have an adverse impact on individuals. The Commission reports that such decisions only account for approximately 1.5% of all decisions taken prior to the Court of Appeal Judgment. In addition, it is also proposed that the powers for the Commission to make statutory regulations as set out in the Charities Act (Northern Ireland) 2008 can never be delegated to staff as the Minister believes such a power is more appropriate for the Board or a Committee appointed by the Board to take. No such regulations have been made to date.

It should be noted that Clause 2 does not make it inevitable that all other decisions required of the Commission will be delegated to staff, however, the delegation of registration decisions alone would vastly improve the speed of decision making as this type of decision accounts for the vast majority of decisions made by the Commission.

Separately, the 'Revitalising Trusts Programme' is operated by the Department for Digital, Culture, Media and Sport (DCMS) in England and Wales, with a similar programme being rolled out in Scotland. The Charity Commission for England and Wales works in partnership with UK Community Foundations to contact a charity if it has not spent any money in the past 5 years or has spent less than 30% of its income in the past 5 years. Experts will then discuss with charity trustees their charity's future and can assist those in terminal decline or inactive to either transfer their assets to another charity and close down or change their purposes so that they can work more effectively.

While no such programme currently exists in NI, its merits are obvious and it is anticipated that the Independent Review of Charity Regulation which is just completing will make recommendations in this regard. Should a similar initiative be introduced here the Commission and / or other partners in the community could play an important role in delivery. The Department does not see a direct link between the delegation of some decision making to staff of the Commission and any newly commissioned work on a revitalisation initiative which would be resourced separately.

Yours sincerely



Fionnbarr Dorrian

Departmental Assembly Liaison Officer
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