Transparency of Foundations in the UK

by Nigel Siederer

In 1989, a UK Government Review proposed, for the first time ever, that the law should be used to enforce the transparency of foundations: *"…[R]egulations should require all statements of account to give details of grants made by charities out of their income and property. In particular, they should disclose the names of their institutional beneficiaries, together with the amount of grant paid. Some of the resulting accounts will be lengthy. Nevertheless the Government believe this requirement to be justified in the interests of greater openness."*[1]

The proposal came in the course of a review of the supervision of "charities" in England and Wales. There is no specific law governing foundations in the UK, but general charity law affects nearly all non-profit organisations, including foundations. The main relevant law has been modernised several times over the centuries. It is now the Charities Act 1993, and applies in England and Wales only. The legal position in Scotland (currently under review) is weaker in most respects, and reform in Northern Ireland is long overdue.

The Charity Commission and Foundations

All organisations established for charitable purposes must register with a semi-independent Government body called the Charity Commission. "Charitable purposes" have been recognised since the Statute of Charitable Uses of 1601, which forms the **basis of the charity law** of many anglophone countries. A major modernisation in 1891, amplified by a court decision shortly afterwards, established what are now known as the "four heads of charity": relieving poverty, advancing education, advancing religion, and other purposes which benefit the community.[2]

[Please note: In the above paragraph I changed 'foundation' to 'basis' to avoid any confusion with 'foundation' in the organisational sense – most of our readers are non-native English speakers]

About 190,000 organisations are now registered with the Charity Commission, of which about 8000 are grant-making foundations. The word "foundation" has no strict legal definition, but is used in the UK mainly to refer to grant-making organisations who rely on income from invested endowments. The generic word "trust" is used much more frequently than "foundation". Operating foundations, which carry out research funded by investment income from their own endowment, are less common in the UK than in other countries. A few "foundations" raise funds for their work rather than relying on endowment. Community foundations seek to raise funds specifically for endowment.

Tax Benefits

Broadly, UK citizens are free to form non-profit organisations, including charities and foundations. Such organisations must have a governing body of trustees, usually at least three in number. Charities and foundations are normally exempt from most taxes, the two main exceptions being: most aspects of **Value-Added Tax**, and Corporation Tax on investment income from company dividends. Donations to charities and foundations attract significant tax benefits, with the foundation/charity able to reclaim basic Income and Corporation Tax previously paid by the donor. Donors can also **get** relief from Income Tax on gifts of company shares and from higher rates of tax paid on gifts. Tax law was reformed in 1999 and is now very favourable to the establishment of new foundations. Wider trustee law, covering investment and other financial powers of private and family trusts as well as charities and foundations, was renewed and liberalised in 2000[3].

Transparency Requirements

Important earlier reforms in 1960 and **1992-1993** improved the supervision of charities. The Charities Act 1993 gave effect to the review proposals of 1989. However, detailed rules about accounting and reporting had to await regulations made in 1996[4], which gave legal effect to the transparency requirements set out in a Statement of Recommended Practice (the SORP) published in October 1995[5]. A similar law, not linked to the SORP, had existed in Scotland since 1990[6].

The new law required grant-making charities to publish a list of their main grants to organisations, with an analysis and explanation of their grant-making. The number of grants to be published was at least the largest fifty (or a larger number where necessary to allow the reader to understand the grant-making). There were exceptions for grants to individuals, for any grant valued at less than £1000, or where grants were unimportant in the context of the work of a larger operating charity (i.e. comprising less than 5% of expenditure). Exceptionally, disclosure could be avoided where it might prejudice the furtherance of the purposes of the grant-making or receiving charity. (Such grants had to be disclosed privately to the Charity Commission.) The account of grant-making could be published in a charity's accounts, in notes attached (where other disclosures were also required, for example banded information about the salary levels of senior staff), or in a separate publication of the foundation's own design and choice, such as a grants review. There was a right of public access, in that a copy of the accounts had to be sent to any member of the public who made a formal request **for** one (and paid a reasonable charge).

Changing Practices

UK foundations **used to have** a historical reputation for secrecy. Their first systematic exposure had been achieved by the publication, in 1968 by the independent resource body Charities Aid Foundation, of the *Directory of Grant-Making Trusts* (*DGMT*). Increasingly during the 1970s and 1980s, however, secrecy had become recognised by many within the field as disadvantageous to **the image of foundations**. Although opposed by some, mainly on the argument that philanthropy is best done discreetly, transparency was broadly supported by the membership of the Association of Charitable Foundations, which was formed in 1989. The Association's formation at the same time as the Government's proposals for legal enforcement, though coincidental, reflected a growing parallel mood of modernisation and interest in good practice among the foundations themselves.

The effect of the new law on foundations was positive but low key. Some had always favoured published annual reports (including lists of their grants) and some had been converted to openness more recently. Others, despite their preference for secrecy or perhaps because of a change of manager, recognised that it was better to describe their grant-making voluntarily and accurately, rather than have speculative and incomplete inferences published in the directories. Increased pressure was brought by a rival to the *DGMT*, the *Guide to the Major Trusts* issued in 1989 by a new organisation, the Directory of Social Change. (The *GMT*'s founding Editor, Luke FitzHerbert, became known as a critic of foundation secrecy.)

The Charity Commission, responsible for enforcement of the new requirements, was not in practice an enthusiast for transparency. Its initial proposal, in 1993, had suggested that disclosure of a charity's largest 20 grants would be sufficient to achieve broad transparency. In this it was supported by some professional accountants, but opposed by the Association of Charitable Foundations. There is however no case until at least 1999, where the Commission is known to have enforced the somewhat stronger requirements that were eventually enacted. This is in part because it has not needed to.

Implementing Transparency

From 1996, very many foundations, including previously reluctant ones, began publishing reports and accounts, including lists of grants, for the first time. Commentators complained, but were unable to supply more than a handful of examples of serious breaches of the law[7]. Indeed, analysis of the 1999 *DGMT* showed that 95% of the top 100 foundations and 86% of the full 3500 foundations listed had supplied basic documents to the Charity Commission. In the main volume of the rival *Guide*, full transparency was achieved by the top 30 trusts, who supplied 75% of the grants given by the full 300 foundations listed[8].

The regulations and SORP were reviewed in 1999 and reissued in 2000[9]. Although there was some refining of the requirements – for example, foundations should now explain their grants *policy* – little of substance was changed. Complaints in 2001 have focused mainly on allegations of failure to comply with the details, for example publication of a grants list with no (or inadequate) explanation[10]. The Charity Commission has promised to sharpen its enforcement practice. But the recent history of UK foundations shows that the vast majority accept the principle of transparency and publish details of their grant-making practice. And despite the earlier fears of some, there have been very few complaints of excessive use of the right of public access.

1. Charities: A Framework For The Future, UK Home Office, 1989

2. The Mortmain and Charitable Uses Act 1891, and the judgement of Lord Macnaghten in the Pemsel case, 1891

3. The Trustee Act 2000, which came into force in February 2001

4. The Charities (Accounts and Reports) Regulations 1995

5. The Statement of Recommended Practice (SORP) – Accounting by Charities, Charity Commission, October 1995

6. The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

7. See for example the Foreword by Andrew Phillips and Editorial by David Moncrieff in the *Directory of Grant-Making Trusts* 1999-2000 and the Editorials by Luke FitzHerbert in the 1997-8 and 1999-2000 editions of the *Guide to the Major Trusts* Volume 1.

8. *Trust & Foundation News,* magazine of the Association of Charitable Foundations, Issue 48, March 1999.

9. The Charities (Accounts and Reports) Regulations 2000 and Statement of Recommended Practice (SORP) – Accounting and Reporting by Charities, Charity Commission, October 2000

10. Editorial by Luke FitzHerbert in the 2001-2002 edition of the *Guide to the Major Trusts* Volume 1.

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