

**The London School of Economics  
and Political Science**

*Accounting for altruism: tracing the transformation of the  
modern-day charity in the United Kingdom*

Rani Suleman

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## Declaration

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## Abstract

This thesis examines the transformation of the modern-day charity as a result of accounting reforms mobilised by accounting standards, practices and actors. It does this by studying (i) the emergence of charity accounting standards, (ii) the notion of public benefit and the ways in which it demarcates charities from other organisations and (iii) the processes through which trustees make sense of their roles and responsibilities.

Attentive to the aspirations, agendas and relationships among key actors and institutions, this thesis studies the conditions which shaped the transformation of UK charities into an accounting entity which were responsible for its activities and performance. These actors include the state, accounting standard setter, charity regulator and the courts. It adopts a qualitative methodological approach, drawing on 40 semi-structured interviews and archival documents to facilitate its examination. The research questions are: ‘how did the emergence of charity accounting standards come to play a central role in building the regulatory capacity of the Charity Commission of England and Wales?’, ‘how has the shifting notion of public benefit reshaped how accounting practices are used to define charities in England and Wales?’, and ‘how do charity trustees make sense of the juxtaposition between the juridical construction of the role and their lived reality?’

The first substantive chapter considers the emergence of charity accounting standards and how evolving notions of accountability came to narrow its focus on financial reporting within the pre-neoliberal and neoliberal era. The second chapter studies how the statutory notion of public benefit came to reside at the heart of how charities are defined. It also explores the negotiations and contestations between the state, regulator, courts and the wider charity sector which led to accounting practices playing a central role in transforming the abstract notion of public benefit into concrete forms of compliance. The third chapter is concerned with the gap between the abstract construction of the role of a charity trustee and their lived reality. It examines how charity trustees make sense of their roles and responsibilities, and manage the complexity and burdens of the role in order to make the role doable.

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**Accounting for altruism: tracing the transformation of the modern-day charity in  
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## **Abbreviations**

AICPA	American Institute of Certified Public Accountants
ASB	Accounting Standards Board
ASC	Accounting Standards Committee (previously known as ASSC)
ASSC	Accounting Standards Steering Committee
CAF	Charities Aid Foundation
CCAB	Consultative Committee of Accounting Bodies
CIPFA	Chartered Institute of Public Finance and Accountancy
DTI	Department of Trade and Industry
ICAEW	Institute of Chartered Accountants in England and Wales
ISC	Independent Schools Council
NCVO	National Council for Voluntary Organisations
NED	Non-executive director
NGO	Non-governmental organisations
NPO	Not-for-profit organisations
SORP	Statement of Recommended Practice
UK	United Kingdom
US	United States

## Chapter 1- Introduction

Charities are viewed as the “eyes, ears and conscience of society” who serve the wider public (House of Lords, 2017, p. 3). Their activities and the state of their overall being are used as a “common proxy for the wellbeing of the UK as a whole” (Hyndman, 2018, p. 248). Over the course of the past-half a century, how charities are governed and managed have become a salient topic of interest. Their activities and administration, particularly in the wake of scandals caused by fraud and financial mismanagement, has attracted considerable public and political scrutiny. Concerns over the impact generated by their activities, fundraising tactics, safeguarding controls, charity executive remuneration and the role of charity trustees continue to dominate the conversation into how charities are governed, particularly in the wake of scandals which included Kid’s Company (poor financial mismanagement) and Save the Children (inadequate controls environment). These concerns, while of social import are also of economic interest as charities are custodians of considerable resources.

According to the law in United Kingdom (UK), a charity is an organisation established for charitable purposes which are for the public benefit, and they must be registered with the charity sector regulator (Charities Act, 2011; MacLennan, 2007). The law binds all charities together through their charitable status. This status is indicative of an organisation’s *charitableness*. It is a way of signalling that the objectives of the organisation are charitable in nature, and that these objectives are for the public benefit in accordance with the law (Charity Commission, 2013e). An organisation’s charity status provides access to considerable benefits. These benefits include legitimacy to attract external funding, protection of assets to ensure they are only used for the public benefit, and significant forms of tax relief (Morgan, 2012; NCVO, 2018).<sup>1</sup>

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<sup>1</sup> According to the UK’s Her Majesty’s Revenue & Customs, the tax relief provided to charities in 2019-2020 was approximately £4 billion (HMRC, 2021).

As of 2018, there are approximately 163,000 charities in the UK (NCVO, 2019a, 2019e).<sup>2</sup> However, not all organisations acting in a charitable manner are required to register as charities, as such, the sector is bigger than the figure reported.<sup>3</sup> The charity sector is home to tiny, small charities largely run by volunteers to large, multi-million-pound national charities which closely resemble for-profit organisations. These are charities active in a myriad of sectors. While the majority of the sector can be found active in the area of social services, charities can be found operating and influencing nearly every area of daily life including banking, arts, law, education, housing, and religion (NCVO, 2019d).

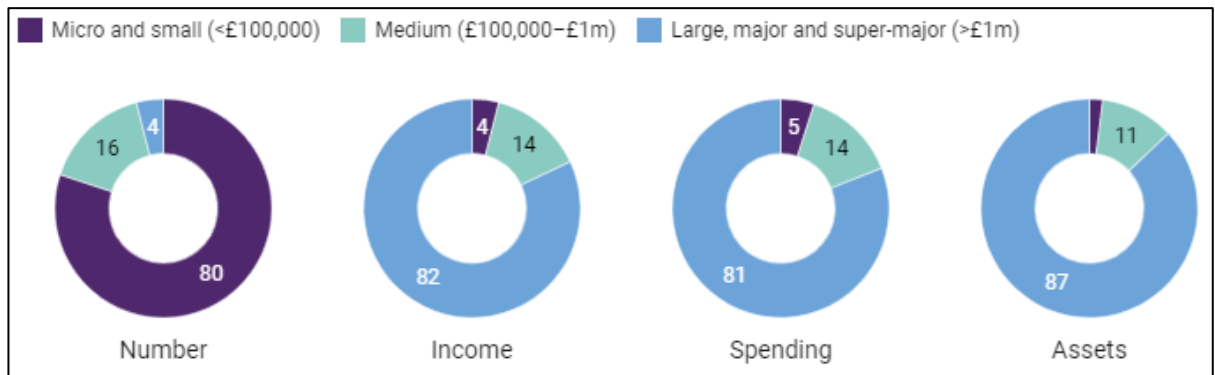
Playing an integral role in society's wellbeing, the charity sector also plays an important economic role. The charity sector in the UK has a combined income of more than £50 billion, representing 0.88% of the UK GDP (NCVO, 2019a, 2019e). A significant portion of this income resides with a small number of large charities where less than 5% of the sector controls approximately 80% of the income and assets. As the sector operates in a not-for-profit manner, charities with the significant share of the income also spend a significant share of the sector's collective resources on charitable objectives. The remaining 20% is spread over the vast majority of charities who range between micro, small and medium<sup>4</sup> (see **Figure 1.1**) (NCVO, 2019b).

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<sup>2</sup> Charities in the UK are granted their charity status by either Charities Commission of England and Wales, the Office of the Scottish Charity Regulator or the Charity Regulator for Northern Ireland.

<sup>3</sup> It should be noted that in the UK, there are three categories of charities: registered, exempt and excepted (Morgan, 2010). Exempt charities are not required to register with the Charity Commission if they are adequately regulated by another public body (i.e., Financial services Authority). Excepted charities (i.e., some religious charities) are not obligated to register with the Charity Commission in accordance with specific rules as set out by the regulator (NCVO, 2021d).

<sup>4</sup> The diversity in their size and scope also varies hugely with 75% of charities in the sector having an income of less than £100,000 (Charity Commission & Frontier Economics, 2019)



**Figure 1.1** – Proportion of organisations by number of charities, income breakdown, assets and spending.<sup>5</sup> Source: (NCVO, 2019a)

The law gives a single, seemingly simple definition of charities. However, in practice, defining a charity has proven to be a challenging task given the heterogeneity present due to the activities and sectors they engage in. Often described as a “loose and baggy monster,”<sup>6</sup> the charity sector defies a universal identity. The strength of the sector has historically been lauded for focusing on local needs and demands of society, however, this very strength makes it challenging to develop and implement changes as charities operating in this manner often defy a “one size fits all.” The characteristics of a charity, which include operating in a not-for-profit manner, multiple stakeholders with varying agendas, hard to define objectives and often working with limited resources, makes it challenging to regulate in a standardised manner. The breadth in size of the organisations further add to the complexity, as regulating a multi-million-pound organisation who have more in common with for-profit organisations requires a different regulatory environment

<sup>5</sup> The National Council for Voluntary Organisations definition for ‘voluntary organisations’ largely includes registered charities, which make up 83% of the population, when examining the sector’s makeup (NCVO, 2019b). This graph’s breakdown of charities with large, major and super-major charities includes charities with income greater than £1 million.

<sup>6</sup> First coined by Kendall and Knapp (1995), “loose and baggy monster” has been used to describe the sector, both by academics and practitioners. The word “loose” seeks to highlight the variety present in the kind of charities active in the sector, and “baggy” is meant to represent the diversity in how charities operate. In a gist, this phrase seeks to highlight the challenges present in describing the sector in a unified, standardised form.

than small, local ‘mom and pop’ charities predominantly led by volunteers (Stanford, 2013). While there are different body of regulations aimed at larger and smaller charities, the diversity in the sector still makes it challenging to regulate the sector in a standardised manner (Charity Governance Code Steering Group, 2019). Furthermore, how charities also finance their activities can vary significantly. Some charities derive their income from government contracts, many sell goods and services and others rely predominantly on the public’s goodwill in the form of donations, both in the form of monetary and non-monetary contributions (NCVO, 2019c). According to academic scholars and practitioners, the absence of a unifying identity has been said to make it challenging to enact and enforce policy reform (Ainsworth, 2013; Myers & Sacks, 2001). The heterogeneity present in the sector makes it challenging to capture the issues and needs of the sector, and makes it harder to control and steer it in a standardised manner.

While there are challenges present in trying to regulate the sector in a standardised manner, the diversity present in the charity sector also makes it an interesting field of site to study. The sector is of particular interest to accounting scholars, as accounting is often relied upon by practitioners and policy makers to exert control over actors through the power of standardisation, a task seemingly made challenging in the charity sector. Within the charity sector, accounting standards and practices have come on to play a significant role in how charities are organised and expected to operate. The sector is expected to draw on and “demonstrate good practice” in the area of management and operations, however, this expectation by government and umbrella organisations is also considered to be a “major stumbling block” as a result of a lack of consensus (Myers & Sacks, 2001, p. 460).

This status emplaces charities in a regulatory web which shapes how they act and how they are governed through rules and regulations (Morgan, 2010). While the sector as a whole remains diverse in terms of size and activities, how they are regulated by the Charity Commission remains fairly homogenous. Within their statutory responsibility lies a responsibility for charities to demonstrate accountability and transparency in order to ensure that work undertaken by them benefits the public (Charity Commission, 2013b).

The regulator's responsibility is to ensure charities comply with the law in order to maintain the public's trust and confidence in the sector (Charity Commission, 2020). Maintaining trust and confidence in charities is considered essential as they play a vital role in maintaining the public's support in the form of donations and non-monetary resources (Charity Commission, 2020). This thesis seeks to examine how notions of accountability and transparency have evolved from the post-war period with the aim of examining the transformation of the modern-day charity in the UK.

This thesis traces the historical transformation of the modern-day charity in the UK between the mid-1940s, the period following the Second World War, and late 2000s. Its examination is concerned with analysing the impact of accounting mechanisms- in the form of standards, systems and practices- on the transformation of charity, and on creating and enhancing the regulatory capacity of the Charity Commission. Accounting researchers studying the history of charity accounting argue that the emergence of a charity accounting regime in the 1980s is largely a result of addressing concerns pertaining to diverse accounting practices and lack of reliable financial information (Connolly & Hyndman, 2000; Hyndman, 1990; Hyndman & McMahon, 2011; Palmer & Vinten, 1998). Left unaddressed, these concerns were thought to increase the risk of fraud and financial mismanagement which would harm public's trust and confidence in the sector. While these were legitimate issues of concerns by the key stakeholders, including the state, this thesis travelled further back in time to argue that different aspirations and interests helped pave the way for a rise in charity accounting to take root.

This thesis responds to the call made by Cornforth to "examine how governance structures and practices change over time and are influenced by external and internal" contextual and historical factors (2012, p. 22). Through an analysis of the socio-political and economic events, this thesis argues that fundamentally, the emergence of accounting mechanisms which govern the charity sector go beyond concerns related to financial management. In the chapters that follow, this study investigates (i) the emergence of charity financial accounting standards and the role they played in reforming the charity

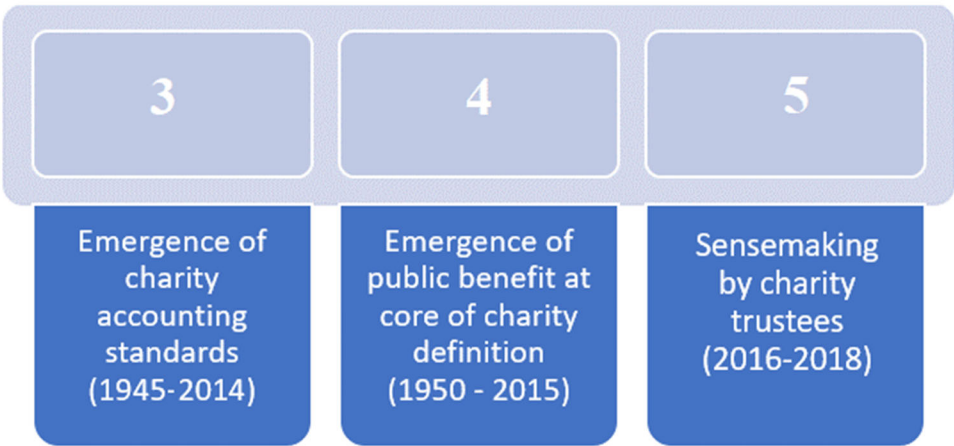


accounting regime, (ii) how charities came to account for their public benefit through accounting practices, and (iii) how charity trustees make sense of a role which is made seemingly impossible to undertake by the law. This study's research agenda is guided by the tradition of studying accounting in its social and institutional context (Miller, 1994). The aims of this research remain attentive to the '*how*' and '*why*' of processes and practices between actors and institutions which have given rise to the regulatory mechanisms and actors that govern the charity sector. Core to this examination required remaining sensitive to the history, particularly during periods of seemingly innocuous, mundane changes preceding periods of significant activity in the political and regulatory spaces. The research question at the heart of this study is:

(I) How have accounting reforms helped transform how a modern-day charity is defined in the United Kingdom?

The above research question is addressed by Chapters 3, 4 and 5, respectively. The chapters each ask a question which flows back into arch of the thesis's focus. Chapter 3 asks, '*How did the emergence of charity accounting standards come to play a central role in building the regulatory capacity of the Charity Commission in England and Wales?*', Chapter 4 asks '*How has the shifting notion of public benefit reshaped how accounting practices are used to define charities in England and Wales through the use of accounting practices?*', and Chapter 5 asks '*How do charity trustees make sense of the juxtaposition between the juridical construction of the role and their lived reality?*' This thesis is organised as follows (see to **Figure 1.2** for a visual representation). Chapters 3 and 4 are largely historical chapters which drawn on an archival document approach. Chapter 3 analyses the historical emergence of charity accounting guidelines which took on a standard-like quality, and argues that the aspirations of a charity accounting regime can be traced to the mid-1940s when the state, seeking to build an awareness of the charity sector's activities, began constructing the boundaries of how to define charities in financial terms. Chapter 4 examines the complex and ambiguous notion of public benefit, and the role accounting practices have placed in helping charities, concretely demonstrate

their public benefit. The study of these historical chapters highlights the interlinks between the two parallel histories and how they intersect and play a role in defining charities through processes of financial reporting and impact measures. Furthermore, these regulatory mechanisms highlight the challenges present in regulating a sector which remains heterogenous in its size, activities and operations. Furthermore, these mechanisms help better examine the abstract construction of the role of a charity trustee. This role is purported to play a critical role in the governance of the charity sector. However, reality does not always conform to expectations. Chapter 5 examines the present-day anxieties and challenges charity trustees face in discharging their fiduciary duties. It examines how the role of the trustee has been constructed and shaped by accounting and regulatory demands, which in policy has created a role impossible to fulfil. Through interviewing current and former charity trustees, this chapter illustrates how trustees aim to make sense of, and fill the gap between the abstract, regulatory construction of the role and their own lived realities. It examines how trustees have made the role feasible to undertake through: accepting the parameters of the role, finding ways to manage the complexity of the job in order to make it doable or rejecting the role.



**Figure 1.2** Overview of the thesis’s substantive chapters, Chapters 3 to 5

The longitudinal range of Chapters 3 and 4 overlaps. In some instances, the same government and non-government reviews and reports were analysed. However, the level

of analysis over actors and institutions, and the implications drawn from the archival materials differ across both chapters. Chapter 5 draws on field interviews and archival materials to understand how trustees make sense of their role, and understand how they fulfil their responsibilities.<sup>7</sup> Despite the different aims of the three chapters, the core chapters are linked. They all provide insight into how accounting reforms have been relied on to build the regulator's regulatory capabilities. Studying the emergence of accounting standards and how the notion of public benefit came to be explicitly tied to how charities were expected to demonstrate their 'charitableness' helps provide a deeper understanding in some of the key facets of the role of the trustee. Through these regulatory reforms, the abstract role of the charity trustee has only been imbued with greater levels of responsibilities, responsibilities which may not always be fulfilled in practice by real trustees. The links between the three substantive chapters were developed through analysing and interpreting the data through an iterative writing process. This process drew heavily on the broader academic discourse and archival sources which helped ground the researcher's understanding in the wider historical context of the period being studied. It is through this process that the concept of regulatory capacity came to play a central role for understanding how the modern charity has transformed.

These changes were part of a broader socio-political agenda which sought to bring disparate charities and other sectors under the state's regulatory control. Accounting practices and standards came to play a key role in allowing state, the regulator and other stakeholders<sup>8</sup> the means by which to exert control and power, and create standardised subjects to regulate. As this thesis will illustrate, the series of events leading to these changes were not as unified in its motivations and objectives, as it might seem. Rather, it was influenced by the broader socio-political aspirations and policies of the Conservative Party. Through analysing the interrelationships between the state, charity regulator,

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<sup>7</sup> Further details of the various methodological approaches can be found in Chapter 2.

<sup>8</sup> According to Rochester (2005), charities are held accountable by a number of stakeholders. These stakeholders can include "beneficiaries, paid and unpaid staff, donors and supporters, government and other funding bodies, the 'community' and the taxpayer" (Rochester, 2005, p. 191).

accounting standard setter and courts, this thesis examines the period between 1945 and 1995 to trace the historical emergence of the charity sector's accounting regime. The period following the fifty-year examination will explore the accounting reforms which have played a critical role in expanding the charity sector's regulatory capacity in order to govern the sector. Through this study, this thesis will illustrate that the transformation charities experienced did not occur suddenly, rather it occurred in small, incremental changes.

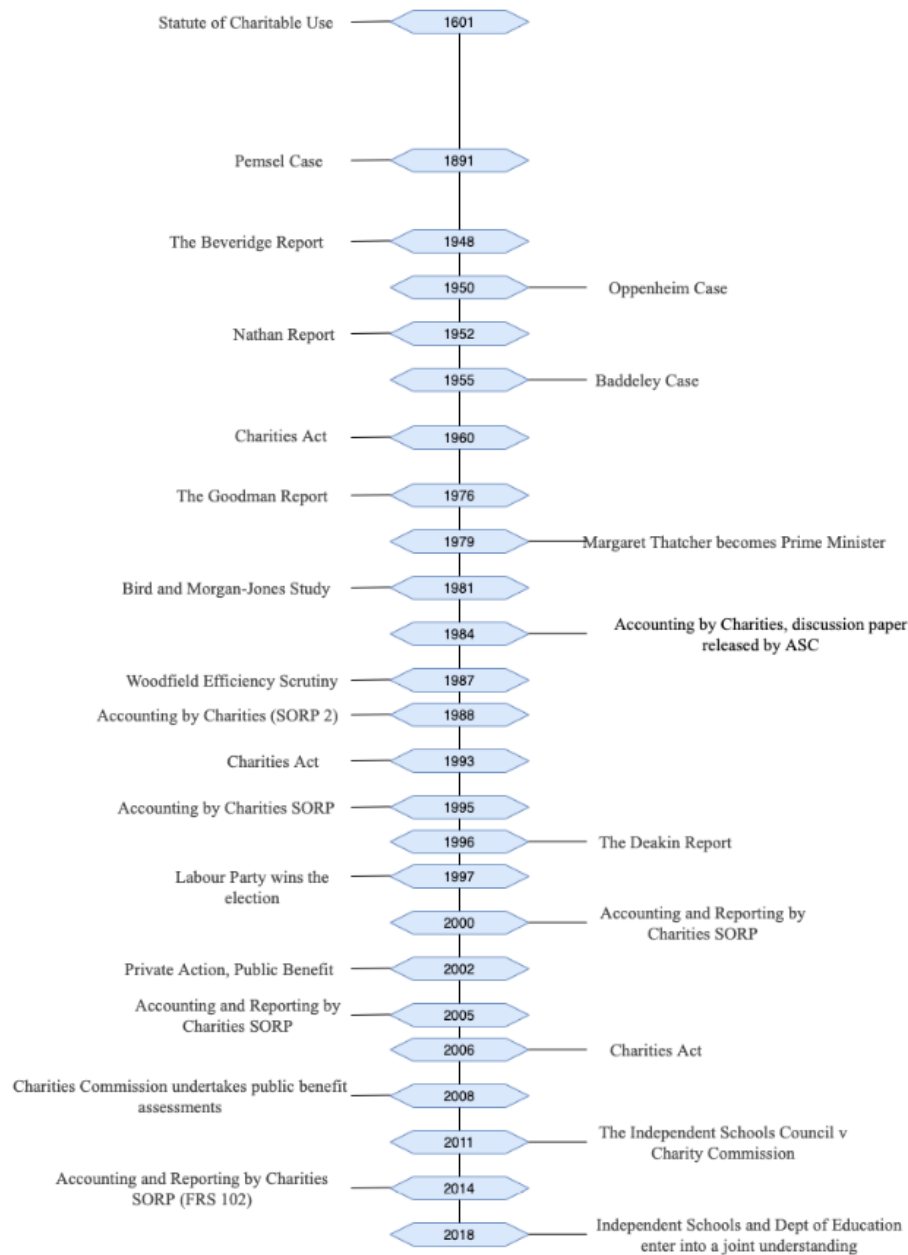
Academic scholars studying the field of charity accounting state that the notions of accountability and transparency remain core to the processes of “good accounting and reporting” in order to maintain trust and confidence in charities (Connolly & Hyndman, 2000; Hyndman, 2018; Hyndman & McMahon, 2010). To hold someone accountable, or be held accountable involves the ‘giving an account’ which is facilitated through modes of communication commonly facilitated through financial accounting reports (Hyndman, 2018). The importance of providing financial reports has been closely linked to maintaining confidence in charities, reducing the likelihood of scandals, making charities attractive to donors and providing support for facilitating sound internal management decisions (Hyndman, 2018). This thesis will demonstrate how practices of external financial reporting, disclosure reporting and internal accounting management reforms have come to shape charities’ financial, strategic and operational activities. These activities bear strong similarities to how the for-profit, commercial sector operates. However, how these activities have come to shape and govern the operations of the charity sector is often taken for granted and remains not well understood.

### 1.1 Thesis summary

As a totality, this thesis is concerned with the relationship between accounting and organisations, specifically charities in England and Wales, and how they have evolved and transformed as a result of shifts in the development of accounting standards, accounting practices and changes to the role of the charity trustee. In chapter 2, this thesis outlines the methodological approach. It employs a multi-method, qualitative research

approach which draws on archival documents and field interviews. As a ‘well-established’ form of primary data collection to support accounting research, interviews will be used as a means of exploring trustees’ perceptions and understanding of their roles and responsibilities (Hall & Messner, 2017).

Archival documents will also be used to build an understanding of the wider social and political influences present in the sector over a period of fifty years. While the history of charity regulation can be traced back to over four hundred years ago, this thesis begins its primary mode of analysis in the period following the Second World War. The aim here is to seek ways to better understand the socio-political discourses between the mid-1940s and mid-1990s, and then use this understanding to examine key events and shifts which occurred between mid-1990s and the late 2000s (refer to **Figure 1.3** for a timeline of key events). As the below timeline shows, the period following the Second World War was a time of regulatory reform for the charity sector. Through adopting an archival approach, themes related to charity financial governance will be explored in order to understand how the charity sector has been shaped by the broader socio-political and economic discourse, and the impact this may have had in shaping charity trustees’ perceptions.



**Figure 1.3** – Timeline of key events examined in the thesis. Source: Researcher

Chapter 3 analyses the historical emergence of charity accounting guidelines, called the charity Statement of Recommended Practice (SORP), and how they came to take on a standard-like quality. Through examining its emergence over a period of fifty-years, this chapter argues that the aspirations of a charity accounting regime can be traced to the mid-1940s when the state, seeking to build an awareness of the charity sector's activities,

began constructing the boundaries of how to define charities in financial terms. This chapter examines how the aspirations and interests of the state, a desire to maintain autonomy by the accounting standard setter, and a desire to build legitimacy by the charity sector's regulator led to the development of the charity accounting guidelines in 1988. It then further examines how the SORP took on a standard-like quality with the passing of the Charity Act in 1993. Within this analysis, Chapter 3 illustrates that contrary to common academic and practitioner belief that charity accounting standards were needed as a way to manage risk of fraud and financial mismanagement, the SORP was used as a way to bring charities under regulatory power and control through accounting reform.

Initially developed as a set of best-practice guidelines, Chapter 3 also seeks to understand how the SORP went on to shape the charity sector's accounting regime. It argues that, external financial reporting reform came to be inextricably linked to the sector's internal financial management reform. That the latter reform occurred in tandem with external reforms in order to facilitate financial reporting by charities. The chapter builds on this argument by exploring the how: adopting accrual accounting impacted a charity's operations, a shift towards risk management and increasing a charity's accountability through increasing trustees' responsibilities had on constructing charities into accounting entities. While accounting structures and practices were not novel within the charity sector, the wave of accountingisation<sup>9</sup> picked up steam in the period commonly characterised as the new public management era.<sup>10</sup> This chapter provides further depth when demonstrating how private-sector contractual arrangements used by government

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<sup>9</sup> A term coined by Power and Laughlin in 1992, "accountingisation" is described as the shift which led to the "introduction of ever-more explicit cost categorisation into areas where costs were previously aggregated, pooled or undefined" (Hood, 1995b, p. 93).

<sup>10</sup> The new public management (NPM) era describes a period which represented a shift in how public administration activities were undertaken. Introducing a quasi-market like structure, this period placed great emphasis on financial control, demonstrating value for money and increasing efficiency. The practices of this period drew heavily from private sector business models through the use of a competitive contract tendering process. This shift was undertaken by the government in a bid to make the public sector more business-like and efficient through the setting and assessing performance against pre-determined targets, expectation of internal control systems, requirement to undergo external audits and the maintaining of an overall culture of entrepreneurial management (Hood, 1995b).

departments transformed the relationship between the funder, the government, and the funded, the charity sector. This exploration helps build an understanding of the role SORP, despite being developed as a body of guidelines, has played as a condition of possibility for the regulation of charities through ongoing accountingisation of the charity sector.

Chapter 4 asks, “*How has the shifting notion of public benefit reshaped how charities are defined in England & Wales?*” This chapter examines the notion of public benefit and seeks to question its taken-for-granted quality. It situates its historical examination in the early 1950s and studies the challenges the regulator and courts faced when trying to determine the charitableness of organisations seeking charity status on the basis of public benefit. This chapter illustrates the challenges of operationalising the amorphous notion of public benefit and the resulting difficulties charities faced when attempting to demonstrate this. It argues that the complexity of the notion has not lessened over time, despite becoming a regulatory requirement for charities to demonstrate. Rather, the challenges with operationalising the notion of public benefit intensified as the presumption of public benefit was removed for three of the four charitable objectives. Accounting standards and performance measures have been used in an attempt to demonstrate public benefit and bring rigour and reform to how it is reported. However, this shift served to create more complexity because accounting is unable to capture the qualities of public benefit, which are considered to be difficult to quantify because of the diversity present. Paradoxically, this chapter argues how accounting standards and practices meant to demarcate charities from non-charities also played a role in questioning the nature of charities, which had begun to look similar to for-profit organisations.

In illustrating the above, this chapter further explores the intersection of law and accounting in order to examine why the notion of public benefit came to be communicated through external financial reporting in accordance with the law. It examines the period following the 2006 Charities Act, which brought significant changes in how charities came to be defined and how they were expected to conduct their activities. This chapter



argues that, despite requiring charities to demonstrate public benefit, this notion has continued to remain nebulous and contested, and difficult to regulate. Through an analysis of the 2011 *Independent Schools Commission v Charity Commission* case, this chapter illustrates how public benefit remains imprecise as a construct, and that these characteristics lend power to the notion of public benefit, where control over its narrative is contested by those within the charity sector and those external to it, such as the regulator. However, this notion remains especially problematic for charities with fee-trading arms, like independent schools, who now have to work harder at demonstrating their public benefit, as they are situated on the boundary between the charity and the commercial sector. Such challenges and donor expectations pushed the charity sector to draw on financial accounting measures as a way to demonstrate public benefit, or what came to be known as impact. However, these shifts remain resistant to standardisation, and thus are hard to regulate.

Examining the case of the independent schools also allows us insight into challenges acutely felt by charities who sit on the margins of the charity sector as fee-trading charities. There are approximately 1,300 independent schools which are registered as charities with the Charity Commission (Lowe, 2019). They occupy a small fraction of the charity sector. However, the charitable status of independent schools is one which has been debated widely. It has continued to play a prominent role in political party election manifestos,<sup>11</sup> it has demanded regulatory interest by the Charity Commission and it has attracted considerable media and public scrutiny. As such, while independent schools are not representative of the broader charity sector, as chapter five will illustrate, their charitable status have driven considerable policy and regulatory debates and changes. These debates have particularly been focused on what it means to be a charity, and how charities are to demonstrate their ‘charitableness,’ particularly through the notion of public benefit. Examining the case of independent schools also help analyse how policy and regulatory changes permeate and take hold of in the wider sector, either in the form

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<sup>11</sup> Investigating and/or removing the charitable status of independent schools has been part of both the Labour and Conservative government’s political party promises (Cowburn, 2021; Watts, 2016).

of statutory changes or best practices. While majority of charities are not affected by regulatory changes, such as explicitly demonstrating public benefit, the small subsector of independent school charities helps highlight the porous nature of the notion which sits at the heart of law on how charities are to be defined.

As charities straddling the boundary between what it means to be a charity versus a for-profit organisation, independent schools can be seen as working particularly hard at defending their '*charitableness*' in a manner that other charities, including other fee-trading charities, have not had to do so. These include examples of rehabilitation clinics which are also charities selling their services at a discount to those vulnerable or performing arts centres selling tickets to their productions. In defending their status, independent schools help shed light on the ambiguity of the law in how notions such as public benefit come to be operationalised. Functioning as empty signifiers, chapter five will illustrate how a diverse array of accounting practices are used to concretise ambiguous regulatory notions, and how these practices are used by charities, particularly independent schools, to defend their charitableness. In trying to regulate the charity sector through public benefit, a notion difficult to standardise, the case of independent schools also help highlights the fragility of the regulator and trustee dyad as

Chapter 5 asks, "*How do charity trustees understand their role and responsibilities, and how do they make their role feasible to operationalise?*" While the previous two chapters are historical in their analysis, this chapter explores the present-day anxieties and challenges charity trustees face in discharging their fiduciary duties. It examines how the role of the trustee has been constructed and shaped by accounting and regulatory demands, and how it has been made feasible despite increasing regulatory demands. According to the Charity Commission, trustees are held 'legally accountable' for their charity's assets and operational activities as part of their overall governance, performance and management responsibilities (Charity Commission, 2015a). Within this mandate, trustees are responsible for financial governance to ensure that their charities demonstrate to the regulator and donors the efficient and transparent use of donated resources (Palmer &

Vinten, 1998). While the legal edict positions trustees as a vital actor in the governance sphere, how they operationalise their duties has largely escaped academic and policy focus.<sup>12</sup> According to Harris, the legal and administrative responsibilities placed on trustees made the role impossible to fulfil, and would lead to challenges in recruiting trustees (Harris, 2001). While the responsibilities of a trustee may make it challenging to recruit trustees, this chapter is concerned with examining how charity trustees fulfil their responsibilities within the existing regulatory and institutionalised context. By interviewing charity trustees, this chapter demonstrates that trustees find a range of ways to make this role doable in practice. It proposes that trustees either accept the role, find ways to make the job doable or reject the role by exiting the position. These understandings helped reconcile the gap between the role's abstract construction and the reality they experience.

The final chapter, Chapter 6, provides a discussion and a conclusion which summarises the main findings and implications of this thesis. In addition, the discussion will also reflect on the limitations of the thesis and areas for future research. Taking this research further, this chapter will discuss utilising ethnographic methods in order to expand the understanding into charity board governance and the actions and behaviours trustees draw on to fulfil their role. Furthermore, an in-depth study examining the role of the Charity Commission, the sector's regulator, will also complement the research agenda of the current project. Like the charity trustee, the regular is also expected to play a vital role in the governance of charities, and their role has also experienced significant change in parallel.

This thesis seeks to illustrate how accounting standards, practices and actors have worked in tandem to transform the modern-day charity in the UK. In bringing together the three substantive chapters (chapters three to five), this thesis sets the scene by examining the

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<sup>12</sup> Ostrower & Stone (2001, p. 1) and Miller-Millesen (2003) believe that there are 'major gaps in our theoretical and empirical knowledge' in understanding boards of directors, or trustees as known in the UK as the current understanding of their role is normative in nature.

emergence of the charity SORP and how it played a role in reshaping the boundaries of what it means to be a charity in present-day from a regulatory perspective. This exploration helps build an understanding over how the crafting of charities into accounting entities, ironically, also unsettled the charitable identity of charities, or their public benefit. Adoption and compliance with the standard, and demonstrating charitableness through public benefit also pushed the role of the charity trustee to the fore for playing a key governance role. As the sector experienced key organisational shifts led by changes in accounting and regulatory policy reform, the legal responsibility for complying with the changes largely resided with the charity trustee. As such, the role of the charity trustee comes to play a central role in how charities traverse the regulatory space. Bearing in mind the heterogeneity present in the sector, this thesis does not aim to speak or draw conclusions for the broader charity sector. Rather it seeks to highlight the tensions present in how accounting standards and practices have helped create the idea of a ‘modern-day charity’ in policy which is challenged by the heterogeneity of the sector in practice.

## 1.2 Literature Review

Academic scholars have sought to explain the factors which led to the increasing prevalence of formalised financial governance through the practices of external financial reporting and internal management control reforms in the organisation of modern society. Some scholars have cited efficiency as a central determinant for its growth.<sup>13</sup> However, Edelman, a legal scholar, argues that a quest to attain legitimacy in order to survive amidst a changing regulatory and bureaucratic environment played a determining role in furthering the governance agenda (Edelman, 1990). When studying the area of charity governance, this thesis acknowledges the burgeoning interest in the financial concepts and practices of governance, particularly through accounting standards and practices.

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<sup>13</sup> Refer to Edelman’s theoretical discussion drawing on various economic and organisational theorists who argue that efficiency has played a key role in the expansion of forms of governance in organisations (Edelman, 1990).

This thesis concerns itself with the notion of governance, and concepts related to it, which include accountability and transparency. These concepts often serve as ‘big words’ and can be defined in multiple and ambiguous ways. These definitions can act as powerful mobilisers for pushing through a wide array of activities and practices. The upcoming section seeks to build a foundational understanding upon which this thesis examines and problematises these concepts.

### 1.2.1 What is governance?

The past fifty years have shown a marked interest in activities and concerns related to the area of governance, and this interest does not appear to be waning (Tricker, 2015). Since the 1990s, there has been a flurry of reports, reviews and commissions- both state and non-state led- examining the issue of governance in the corporate, public and charity sectors. This interest has been magnified by major corporate scandals, which include the failures of Maxwell companies and Polly Peck between the 1980s and 1990s in the UK, and Enron, WorldCom and Lehman Brothers in the 2000s in the USA (Tricker, 2015). These scandals have led to the commission of notable reviews examining corporate governance and have recommended ways to implement systems of controls which are meant to ensure board oversight, independence and efficiency. These reviews, which have played a key role in shaping governance practices and structures, include the Cadbury Report (1992),<sup>14</sup> the Nolan Report<sup>15</sup> and the Greenbury Report<sup>16</sup> (Plummer, 1996). However, since the early 1990s, other reports have also been published which deal with specific issues such as financial reporting and audits, which also reside within the

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<sup>14</sup> The Cadbury Report was commissioned in the wake of several corporate scandals. It has been considered to be an influential report which has helped set the standards for governance within codes and regulations. Much of the report’s recommendations were focused on implementing internal management and financial controls which included improving independence between executive and non-executive directors in order to improve the monitoring and oversight functions within an organisation (Cadbury Committee, 1992).

<sup>15</sup> The Nolan Report was commissioned in order to make recommendations on principles that would better serve public life. This is related to governance as it seeks to guide behaviour of those active in the public sector (Nolan, 1995).

<sup>16</sup> The Greenbury Report reviewed and identified good practices on director remuneration which at the time had been seen to be growing, thus attracting shareholders’ dissatisfaction (Greenbury, 1995).

governance ecosystem.<sup>17</sup> The scandals and the subsequent reviews, together have led to internal financial management and external financial reporting reforms under the umbrella of improving ‘governance’.

There is no agreed upon definition of governance. However, the general consensus is that it involves “the direction and control of the enterprise and ensuring reasonable expectations of external accountability” (Cornforth, 2012, p. 8). As a term, governance needs to be problematised and unpacked in order to ascertain how it is used in specific contexts. This thesis is interested in the relation between how governance is exercised as the form of an activity through regulatory mechanisms. It seeks to examine three mechanisms by studying the specific regulatory context in which accounting standards, practices and roles have come to play a key role in the governance of charities. Through an exploration of the above three forms of mechanism, this chapter also explores regulatory capacity of the Charity Commission whose purpose is to maintain the regulatory regime of the charity sector. According to Lodge, regulatory capacity is concerned with the competency of how “[regulatory] systems of control maintain their well-functioning in often uncertain environments” where an actor’s reputation plays an essential role in how its powers are perceived and accepted by other actors (2014, p. 66). Regulatory capacity also entails a number of activities which can include standard setting, information gathering and behaviour modification. Lodge speaks of the “conditions of interdependencies” which help facilitate regulation across a host of organisations where no one organisation holds complete power. These conditions will also be shown to be evident through studying the charity SORP, notion of public benefit and the role of the charity trustee, and how these three dimensions play a vital role in structuring the governance of charities

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<sup>17</sup> Other reports and reviews include examples such as the Brydon and Kingman Report. The former examined the area of corporate reporting and auditing (Brydon, 2019). The latter examined the role of the Financial Reporting Council as a regulator (Kingman, 2018). It addressed concerns over the matters of quality, accuracy and reliability in the areas of corporate reporting, governance and audit. Both these reports relate to matters of governance as it deals with the conduct of how organisations should undertake its activities appropriately.

With the rise in interest in the topic of governance, much of the discussion has pertained to the area of corporate governance; however, one would be hard-pressed to find a sector of society which has remained untouched by matters of governance. Fundamentally, governance practices are seen as helping maintain trust and confidence. This aspiration is typically enshrined in a web of rules and regulations which actors and organisations are expected to comply with. How actors and organisations comply is monitored by those tasked with the responsibility of maintaining oversight, which can include actors, such as a board of directors in a non-regulatory capacity, and/ or regulatory institutions.

Within the corporate world, the Cadbury Report describes governance as “the system by which companies are directed and controlled” (1992, p. 14). It tasks this responsibility to a governing body, commonly referred to as a board of directors, who are meant to act in a manner which upholds and protects shareholders’ interests. Here, the role of the board is different from the role of executive management. The board is tasked - by law and a company’s shareholders- with ensuring that an organisation is running well. The responsibility of the executive is to do with the running of the organisation, in line with the wishes of the board, and thus its shareholders (Tricker, 2015).

The interest in governance and its practices have been associated with the pursuit of economic development as part of the neoliberal shift. While themes of transparency and accountability are not limited to the neoliberalism, they nonetheless have played a big role in justifying reliance on modes of rationalised, managerial governance practices commonly facilitated through accounting standards and practices. These standards and practices have led to administrative reforms within public and private sector institutions (Drori et al., 2006).<sup>18</sup> These shifts are not just limited to the business world, rather they

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<sup>18</sup> The authors examination finds that shifts towards rationalised, or managerial, modes of governance have been driven by global, rather than just national economic and political conditions. In studying factors influencing the shift towards rationalised forms of governance, the authors argue that global business and financial cultures which helped facilitate linkages between organisations around the world, and the prevalence of science and education within societies worked in tandem to contribute to shifts towards

permeate all levels of society, which include both organisations and individual actors. Governance practices are seen to shape all manner of daily life. In fact, the growing prevalence of governance practices can be found when dealing with all manners of social and organisational life, including but not limited to human rights violations, corruption, management of individual life and other forms of administrative response (Drori et al., 2006; Drori & Meyer, 2008). It is essential here to understand that what was once thought of as merely bringing in rational business practices in order to maintain oversight and scrutiny has now permeated society as an ideology which draws upon modes of standardisation and accountability.

Examining how rational practices have permeated how societies are governed, Drori and Meyer argue that a “worldwide wave of scientisation” took a hold in modern society in the absence of “strong regulatory systems” following World War II (2008, p. 31). They describe scientisation as a way to manage uncertainties and turbulence in social environments through scientific, rational practices. These practices can include forms of rule-making and conventions shaped by science and higher education, which can be organised both by formal institutions and social actors, state or non-state, who possess the ability to come together in the practice of rule-making (Drori & Meyer, 2008; Jacobsson & Sahlin-Andersson, 2008). When creating these rules by drawing on processes of scientisation, the actors, who are dispersed through all levels of society, perpetuate the myth<sup>19</sup> that these practices are part of rationalised decision making, and that they are integral to an organised life. These practices play a vital role in appearing “sensible and responsible” when being held accountable for one's conduct (Drori & Meyer, 2008, p. 31).

Since the 1980s, the charity sector has increasingly experienced an influx of accounting standards in order to hold them accountable for their activities and use of resources, often

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rational governance practice. The authors emphasised that facilitating this process was largely a result of cultural practices and norms, rather than just national economic and political processes (Drori et al., 2006).

<sup>19</sup> Myths, as described by Drori and Meyer in this context are “uncontested truths” (2008, p. 52). These truths are taken for granted and are not questioned or contested.



funded by the public taxpayer. A sector renowned for its heterogeneity in activities and purposes, has also been decried for diversity in how they sought to demonstrate accountability.

Plainly speaking, governance can be thought of in terms of how power is exercised from the one in possession of it over another who is under their power (Tricker, 2015).<sup>20</sup> Within academic literature, recurring themes of what governance may refer to include exercising power, in order to govern actors and institutions. Keohane (2002) broadly defines governance as a medium in which rules are created and enforced through exercising power over any given activity. According to Chris Hodge, who was responsible for developing and promoting the *UK Corporate Governance Code* (considered to be an influential resource for companies), “[t]he basic principles of good governance are pretty standard in any sector...A lot of the basics in risk management, good structure, independence and expertise, internal controls and accountability are standard practice”, (cited in Holderness, 2019). According to the Chartered Governance Institute of UK and Ireland, corporate governance is “the system of rules, practices and processes by which a company is directed and controlled” (Chartered Governance Institute, 2021).

Ebrahim, Battilana, and Mair (2014) further this view by arguing that governance of non-governmental organisations, which include charities, involves holding them accountable by monitoring their social and financial performance. According to Harris, governance is the “ongoing process in institutions by which guidelines for action are developed and adherence to them is monitored” (Harris, 2013, p. 97). Monitoring compliance with the rules is undertaken through modes of surveillance and control over subjects by drawing on managerial techniques such as audit and other forms of managerial control (Power, 1999). Through the use of such techniques, the shift towards decentralisation of the

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<sup>20</sup> Power, like governance, can be problematised in numerous ways. For Bourdieu, power was a notion conceptualised, in the form of ‘capital’. Capital, as a form of power, is the “capacity to exercise control over one’s future and that of others” (cited in Ebrahim, 2005, p. 4). According to Bourdieu, power can vary in form. It can be economic (money), symbolic (prestige, status) or cultural (art, education) in nature (cited in Ebrahim, 2005). Holders of power shape and direct the ‘freedom’ of those under their reign.

regulatory space, or self-regulation, in effect tightened the relations between the state, the ever-evolving field of non-state regulatory actors, and its subjects. The devolution or decentralisation of traditional modes of governing have triggered a seismic growth in standards, regulations and codes meant to govern and monitor the activities of organisations and individuals. This shift has expanded the scope for new types of regulating organisations and actors in a predominantly self-regulating, risk-focused environment (Hutter, 2006).

### *Deregulatory rhetoric fuels new modes of governance*

The rise of interest in governance by academic scholars has coincided with a shift towards a deregulatory rhetoric by the state. In the UK, traditional modes of regulating where the state played a more active role have given way to include a wide array of non-governmental organisations. This shift has made the power relations between the one governing and the one being governed impersonal and opaque (Cronin, 1996). These organisations are referred to as part of “small government”, playing a greater role in the regulation of society through means of “regulation, inspection and audit” (Cooper, 2001, pp. 118–119). In examining the deregulatory rhetoric of the 1980s which began during Prime Minister Margaret Thatcher’s term in power, Cooper discusses the paradox of regulation. According to him, the deregulatory rhetoric governing individual and organisational lives “has in fact bred more regulation” (Cooper, 2001, p. 119). He argues that this state of affairs has fostered a climate rooted in fear, driven by politics of control as the state moved away from traditional modes of political power. The politics of control also reappears as a theme in the Cadbury Report, a report commissioned by the Financial Reporting Council, London Stock Exchange and the accountancy profession. When discussing this report in the Accountancy journal, the author of the report, Sir Adrian Cadbury shared that the motivation was to avoid state intervention in the governing of the corporate sector (Cadbury, 1992).

Avoiding active intervention by the state in the regulation of the commercial sector was also aligned with the state’s interest. Paradoxically, as the UK moved towards a

deregulatory rhetoric, this transformation occurred under a climate of suspicion as part of the “audit explosion” (Cooper, 2001; Power, 1999). According to Cooper, “where government [once] was, now audit, regulation and management is” (2001, p. 122). This shift is important in informing our understanding of what drives notions of accountability and transparency, for these notions are inextricably linked with the practice and study of governance. Of particular interest is also how these notions are practiced.

### *Charity governance demands attention*

Charity governance is an area of topical interest, as attention given to how charities operate and are governed has intensified in recent years. Similar to the corporate sector, this scrutiny comes on the heels of scandals such as ones mired in financial mismanagement (Kid’s Company), questionable fundraising tactics (Laville & Butler, 2017; Swinford, 2016). These scandals have been said to erode public trust in charities (Hyndman & McConville, 2018b). An erosion of public trust plays a significant role in eroding public goodwill thus jeopardising the sector’s ability to attract fundraising and non-monetary driven goodwill (i.e., volunteering). Scandals also serve to place the charity sector under the spotlight of lawmakers, regulators and the media. In the past, they have triggered an institutional response by the charity regulator who maintains the responsibility for addressing the governance of charities. In addition, charity umbrella organisations, which include the National Council for Voluntary Organisations and Charities Finance Group, also join the regulator and the government in developing and publishing commissions, reviews and changes to regulation as a way to manage risk of abuse and deter misconduct in order to maintain confidence in the sector.

Charities attract scrutiny and increased regulation because of a desire by the state and other stakeholders to maintain confidence in the sector (House of Commons UK, 2013). Earlier, this discussion mentioned the role trust and confidence play in upholding systems of governance, and the reasons why rules and modes of regulations demand a vested interest. Trust and confidence in charities ensures monetary and non-monetary support from state, donors and the wider public. Regulations, codes of conduct and standards are

of particular academic interest as they play a key role in shaping modern charitable organisations and their actors; however, why and how the reforms have come about is often not well understood (Lampland & Star, 2008). Problems related to issues of fraud, financial mismanagement and other abuse have not abated despite the ongoing proliferation of regulation and rules.

Governance of charities is a significant aspect of evaluating performance and maintaining confidence in the sector. Governance can be defined, as “governing or ruling, exercise of political power...control, sway, mastery.”<sup>21</sup> Rose and Miller expand on the idea of political power differently. They argue that political power is “exercised today through a profusion of shifting alliances between diverse authorities in projects to govern a multitude of facets of economic activity, social life and individual conduct. Power is not so much a matter of imposing constraints upon citizens as of 'making up' citizens capable of bearing a kind of regulated freedom” (Rose & Miller, 1992, p. 172). According to political economist, Robert Keohane, governance involves the making and implementing of rules through exercising power. (2002). In the exploring charity governance, similar themes of power, control and monitoring can be observed. Ebrahim, Battilana and Mair (2014) view governance as holding charities accountable by monitoring their social and financial performance (2014). Lewis perceives this as a way to “enforce standards of morality, performance and accountability” in public (2014, p. 67).

Similar to the commercial sector, the responsibility for governing charities lies with a board of directors, or board of trustees as commonly referred to in the charity sector. However, unlike, the commercial sector, the responsibilities of a trustee are greater. According to Andrew Hind, a former chief executive of the Charity Commission, the responsibilities of trustees are greater than their commercial counterparts as the needs of stakeholders are greater and more varied (Hind quoted in Plummer, 1996). Within this,

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<sup>21</sup> Definition taken from the etymology of governance from Oxford English Dictionary (Oxford English Dictionary, 2021).

the difficulty for a charity trustee lies with who the charity is accountable too, and how they assess the nature of the outcomes (Plummer, 1996).

### 1.2.2 Accountability

The notion of accountability has come to command growing interest over the course of the past half a century. Research by academic scholars also reflect this growing interest. More than a third of *Voluntas* (a voluntary sector journal) publications, directly in the title or indirectly through the content of the article, pertain to the topic of accountability, and this trend seems to be increasing.<sup>22</sup> Given the role it plays in operationalising how organisations are governed within a self-regulatory climate remains a matter of interest. However, what accountability is, or what it means to be held accountable, is not always clear. Foucault's notion of disciplinary power helps provide a foundational understanding, as within a self-regulatory environment accountability plays a critical, disciplinary role in the surveillance of individuals and organisations. Fundamentally, accountability involves giving visibility to activities which are of import to those with the ability to exercise power over their subjects, whether it be an individual or an organisation (Foucault, 1979 in Roberts, 1991). Within this context, accounting information plays an 'authoritative' role in making those activities visible.

When exploring the different forms of accountability, Roberts highlights how the role of accounting information is commonly perceived to be a 'neutral arbiter'. This perception plays a key role in facilitating modes of accountability which are thought to be objective (Roberts, 1991, p. 355). However, accounting is not a neutral, objective device. Roberts argues that using accounting information to demonstrate accountability does not merely allow for a view inside an organisation's reality. Rather, use of accounting information 'creates and shape[s]' what is eventually made visible, or real, in a manner which reflects the self-serving interests of those in power (Roberts, 1991). As such, what gets made

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<sup>22</sup> Within the academic field of non-profit literature, *Voluntas* is considered to be one of the leading journals (Coule et al., 2020). The official journal for the International Society for Third-Sector Research, it published its first issue in 1990 and the search for mentions of accountability and related words (i.e. accountable) covered the period of 1990 and 2020 (*Voluntas*, 2021).

visible is a result of negotiations grounded in power relations. These relations curate what information and activities are considered important enough to be captured and communicated. This thesis will build on this by demonstrating the role key stakeholders played in what information is valued and thus communicated, information which is in their aspirations and agendas in Chapter 3.

Accountability can take many forms in practice. It can involve being externally accountable to someone else. This form entails the traditional manner of external accounting which involves the giving of an account of, or explanation for conduct through formal modes of communication (O'Dwyer & Boomsma, 2015; Roberts, 1991). These modes can manifest in the form of various compliance activities imposed on the subjects, such as performance metrics and financial statements (O'Dwyer & Boomsma, 2015). Other forms of accountability can entail holding oneself internally accountable (Roberts, 1991). This thesis is interested in the role accounting standards and practices play in shaping forms of external accountability mediated through financial reporting and disclosures (Chapter 3), the law, and public goodwill, which is tied with the notion of the benefit charities provide (Chapter 4). This thesis also tangentially touches on internal accountability when exploring how charity trustees fulfil their duties (Chapter 5).

### 1.2.3 Charity Accounting literature

The UK charity accounting regime has come to receive considerable attention in academic literature, particularly since the 1990s as greater responsibilities for delivering social welfare services were transferred to the charity sector. The following studies help situate the thesis's research aims as it explores how accounting standards and practices have played a role in constituting the boundaries of what it means to be a modern-day charity, and how they have come to be regulated by actors and institutions. Existing literature has described the state of accounting in the charity sector prior to the development of the first SORP in 1988 (Connolly & Hyndman, 2000; Hyndman, 2018; Williams & Palmer, 1998), how well charities complied with the first SORP (Connolly & Hyndman, 2000, 2001; Palmer et al., 2001), the impact of the published SORPs (different iterations) on charities

financial reporting (Connolly & Hyndman, 2000), and the role external actors played in the development of the first SORP and its later iterations (Hyndman & McMahon, 2010, 2011).

Whilst this thesis may be thought to be in the same vein as the aforementioned pieces of literature, the contributions remain quite different. First, it begins by examining accounting changes over a longer historical period to suggest different impetus were behind charity-related regulatory and accounting reforms. I show how small, seemingly innocuous changes over a long period of time, perhaps considered unrelated but occurring in parallel, accrete over time and lead to the crystallisation of events which have led the reconstitution of charities into accounting entities. While the label which denotes a charity has remained the same, the core substance of their activities and operations have changed. The substance of their objectives, activities and broader operations has dramatically shifted from where they were in the period following World War II. The actions and expectations of charities has significantly altered where charities today will be unrecognisable from the charities of the past. Each of the chapters contained within this thesis draws on a different focus: the emergence of accounting standards, how charities are defined and how their identity is constructed, and how charity trustees make sense of their roles in order to fulfil their fiduciary duty. This thesis looks at the issue of charity governance, focusing specifically on the role accounting standards and practices have played in how charities are identified, regulated and governed by actors.

When investigating the development of the SORP and the charity sector's accounting regime, much of the existing academic literature traces the beginnings of the accounting reforms to the early 1980s. Overwhelmingly, it has been argued that the publication of the 1981 Bird and Morgan-Jones study, which investigated the field of charity accounting and financial reporting, was instrumental in triggering an interest in charity accounting (Connolly & Hyndman, 2000; Hyndman, 1990; Hyndman & McMahon, 2011; Palmer & Vinten, 1998). The Bird and Morgan-Jones study, funded by the ICAEW, a professional accounting institute, highlighted the considerable diversity present in accounting practice

in the charity sector (Bird & Morgan-Jones, 1981). Following the findings of the study, those within the accounting profession considered the failure to take any action, as possibly leading to a decline in confidence in the sector's activities, and an increase in the likelihood of charity scandals (Hyndman, 2018). The study's findings were considered by academics to have served as an impetus for the development of charity accounting standards by the ASC (Ashford & Clarke, 1996; Connolly et al., 2014; Hyndman, 1990; Palmer & Randall, 2005).

Other academics have also studied the field of charity accounting by examining the accounting practices undertaken by charities, both before the development of the first charity SORP and in the period following it. These studies were also sponsored or undertaken on behalf of accounting professional institutes. The Ashford (1989) study which examined the financial accounts of 56 grant-making and fundraising charities in the UK was funded by the Charity Finance Directors Group (Ashford (1991) as cited in Palmer & Vinten, 1998). This study findings noted that "dubious accounting practices" remained in use by a large subset of the sample population of charities. Another study undertaken by Gambling, Jones and Kunz, though one on a smaller scale involving in-depth interviews, also examined compliance with SORP and charities' perception towards it. The study by Gambling et al., funded by the Association of Certified Accountants, found that charities interviewed had little to no incentive to comply with the first SORP, and remained largely unaware of the standards (Gambling, Jones and Kunz (1990) as cited in Palmer & Vinten, 1998). Over the course of the 1990s, additional studies which examined compliance with the SORP and its impact on financial reporting practices concluded that while compliance with submitting accounts had improved, diverse accounting practices continued to persist, particularly in medium to small charities (Connolly & Hyndman, 2000).<sup>23</sup>

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<sup>23</sup> Refer to Connolly & Hyndman (2000) and Palmer & Vinten (1998) for a discussion of additional studies undertaken examining the state of charity accounting in the 1980s and 1990s.



A review of existing literature raises the question of why diverse accounting practices demanded so much attention and concern from the accounting profession and the UK government, when these practices had been present in both the commercial and charity sector before? The Bird and Morgan Jones, Ashford and Gambling et al., studies framed the demand for action for improving financial reporting practices in order to meet user<sup>24</sup> needs through the production of quality and reliable financial information (Connolly & Hyndman, 2000). However, the reasons behind this shift appear to be absent in the discussion. In order to explore this question, Chapter 3 will examine the events which led to the development of accounting standards for the commercial sector, and the changes occurring in the accounting profession, which was focused on building its credibility and legitimacy through the development of its standards.

The link between charity accounting standards and the need for reliable financial accounting reporting from the 1980s was further developed by Morgan (2010) who examines the regulatory framework governing charities. He argues that the Charities Act of 1992, and later 1993, served as a major piece of legislation which formed the regulatory landscape within which charities continue to be governed. He explores the role a charity status plays in making it possible for charities to be regulated. He argues that a charity's annual return plays a critical role in allowing for the possibility of regulating charities. Morgan draws attention to the strong links between compliance with charity accounting standards and the charity status. In making this link, his work furthers an understanding of the role accounting standards play in constructing the boundaries through which a charity is defined. This research project argues that the foundation of the charity accounting regime was established much earlier than what the above pieces of academic literature have argued. It argues that the accounting regime and regulatory framework was

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<sup>24</sup> Academic literature reviewed which examined the origin of the charity accounting regime and the development of the first and second SORP for charities in 1988 and 1995 highlight that the role users played in the standard-setting process. However, who the users are or what their specific needs might be were not described or expounded upon. This thesis does not further problematise who the users of charity financial reports are; however, there are some studies which have sought to ascertain who they are, Hyndman (1990) sought to identify "important users" and their information needs. Ashford and Clarke (1996) also studied a group of grant making donor institutions to ascertain what their information needs and practices are.

set in motion following the passing of the Charities Act 1960. It argues that the events which led to the beginnings of a charity accounting regime, even if it was not meant as such, can be traced back to the welfare state in the mid-1940s. During this period, the state was interested in examining the role charities could play in the welfare state through the services they offered, rather than merely being interested in how they spent their money, or what objectives they achieved.

This thesis seeks to examine the aspirations and agendas which led to the emergence of the first SORP in 1988 (Chapter 3), and later the statutory definition of charities in 2006 (Chapter 4). Hyndman & McMahon (2010), explore the role of key stakeholders in shaping the accounting and reporting regime of the charity sector in the UK. They identify the government and the accounting profession as playing an influential role in the development of the first SORP and the later accounting reforms. Palmer and Vinten (1998) also draw attention to the role of the government, and also the accounting profession. They argue that the accounting profession was focused on furthering its own self-interest in pushing for charity accounting standards as a means of maintaining legitimacy and seeking new sources of growth. Later work by Hyndman & McMahon (2011) solely pays attention to the influential role of the government in shaping the charity accounting and regulatory regime through being an important resource provider. The reliance on the government for funding triggered an internal management reform through the use of performance measures and contract conditions, passing legislation which required compliance with everchanging accounting standards, and creating the regulatory framework within which the Charity Commission plays a central role. In their work, the authors highlighted how the government, once a “passive stakeholder” came to play an important role in changing the trajectory of how the charity sector now operations. Building on this research, this thesis argues that the government was interested in the charity sector even prior to viewing charities as a site of economic potential in the 1970s, a site which allowed them an opportunity to divest responsibility in a cost-effective manner. This thesis also furthers the argument that the government played an active role

in shaping the accounting and regulatory regime of the charity sector, particularly through charity accounting standards; however, this interest can be traced back to the mid-1940s.

The field of charity accounting has played a fundamental role in drawing the boundaries of the charity sector, and what it means to be a charity. Core to this interest remains what role accounting standards and practices have played in how a charity is defined. Morgan (2010) discusses the definition of charities and how the Charities Act 2006 helped clear away the ambiguity around how charities could be defined. He argues that “much of the uncertainty is now being removed”, as the “definition of ‘charity’ is now enshrined in statute (not just in case law)” (Morgan, 2010, p. 216). Morgan maintained that there now remains no uncertainty as to whether an organisation with charitable objectives can be considered a charity. While it is recognised that the 2006 Act was the first time a definition of charity could be found within a statute, this thesis will argue that the notion of public benefit, a key part of a charity’s statutory definition, remains ambiguous. As such, how charities are defined continues to be contested. Despite the ambiguity present, Chapter 4 will examine how charities, particularly fee-charging charities, like independent schools, have drawn on accounting practices through performance measures in order to demonstrate that their charitableness remains accessible to the general public. Using the case of independent schools, this thesis demonstrates how the definition of charities remains dynamic and fluid. Therefore, it remains uncertain at the macro level whether charities, particularly fee-charging charities like independent schools, are organisations which can be considered charitable. Nevertheless, this Chapter 4 illustrates how accounting practices allow charities to operationalise the law in order to demonstrate their public benefit.

In the last substantive chapter, Chapter 5, this thesis segues away from a primarily historical focus, and shifts its attention to the role of the charity trustee. It examines data collected through field interviews with forty current and former charity trustees. The law states that a charity trustee holds the responsibility for maintaining oversight over the general administrative and management control of the charity (Charities Act, 2016). In

practice, trustees play an essential role in maintaining the charity governance ecosystem. This role, at least in appearance, allows the charity regulator the ability to discharge its duty, and it provides a means of assurance to donors that their resources are looked after and used appropriately. The role of the charity trustee has increasingly attracted considerable public and regulatory attention in the wake of the scandals which have held them responsible for negligence to their duty. However, interest in their role has not always correlated with building an in-depth understanding of how trustees are able to undertake this responsibility.

Much of the academic research examining the role of charity trustees, or boards of trustees has focused on volunteer recruitment, what motivated them to take on the role and stay with it and the challenges they may face. These bodies of research have overwhelmingly discussed the challenges and burdens trustees face in a role undertaken in a voluntary capacity (Dartington, 2005; Harris, 2001). While expanding our understanding into the role and the challenges charity trustees may face, the above body of research does not critically examine how trustees make their role feasible to undertake, and why the role plays a critical role in the governing of the charity sector by the regulator. Chapter 5 seeks to build an understanding of how trustees make sense of their roles and responsibilities, and how they make a role, thought to be impossible to fulfil, possible to undertake.

### 1.3 Unsettling the status quo

#### 1.3.1 Social constructivist approach

This thesis's is interested in exploring *how* and *why* questions. This curiosity has largely guided the research project since its inception. How and why did charity accounting standards emerge? How has accounting come to play a defining role in how charities are defined? How do charity trustees fulfil their responsibilities and discharge their duties? Why are charity trustees posited as playing a key role in the governance of charities? this Thesis was influenced by a social constructivist approach when exploring these questions and building an understanding of the socio-political and economic climate which has shaped the charity sector.

The social constructivist approach views reality as a construction of social interactions between humans (Berger & Luckmann, 1966). Within this intellectual space, reality is thought to be a manifestation of repeated patterns which become habitual in nature and are accepted by society (Berger & Luckmann, 1966). In a sense, these habits, or patterns, become taken for granted or assumed (Goldstein, 1984). As such, when studying social phenomenon, one must “defamiliarise”, or unsettle assumptions commonly relied upon in order to access the meanings and knowledge which gave rise to particular constitutions (Czarniawska, 2001; Goldstein, 1984). An important consideration when studying how a phenomenon came to be, and studying its makings, is examining the conditions of possibilities, or pre-conditions, which gave rise to them, and helped further its particular production (Burchell et al., 1980; Power, 2015).

### 1.3.2 Accounting Change

Accounting has traditionally- and accounting scholars will argue, too quickly- been thought of as a set of calculative, technical, neutral practices and procedures (Miller, 1992). It’s role and purpose has often been diluted to as merely facilitating economic activity (Hopwood, 1992). That accounting merely helps provide insight into the reality of an organisation, and is a tool used to enable the flow of information between parties. However, these traditional conceptions have increasingly been challenged by academic scholars, and has been gaining momentum and purchase since 1980s (Burchell et al., 1980, 1985; Miller, 1994; Roberts, 1991).<sup>25</sup>

Given the emphasis placed on accounting, it is necessary to go beyond just considering its technical attributes. Describing accounting as a “craft without essence,” Hopwood highlights the fluidity of the concept and the absence of a specific function (cited in Chapman et al., 2009, p. 2). Rather its function is determined by others, be it cultures, norms or institutions which can be rooted in socio-political and economic discourse

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<sup>25</sup> Refer to Robson (1991) for a detailed review into the academic literature and insights being produced within the space of sociological accounting research in the 1980s.

(Burchell et al., 1980). It also determines and moulds their behaviour and serves to bring them under power and control through its subversive practices (Chapman et al., 2009). This thesis furthers the *Hopwoodian* tradition of studying accounting in its social and institutional context (Miller, 1994). It studies the socio-political context of charities to help understand the conditions of their constitution. It seeks to contribute to the literature on how charitable organisations are brought under control and made governable through financial accounting standards and performance measures.

Ruth Hines, in particular, has analysed the role accounting plays in governing actors and constructing reality. Hines examines the selective nature of financial accounting (1988). Drawing on the socio-political context in which accounting is situated, she argues that what is *recognised* and *realised* through accounting reflects the social and political choices of those in power. She argues against the notion that accounting *represents* economic reality. Rather, she argues that accounting gives visibilities to matters of conscious choice and that such visibility is powerful, as it reveals while simultaneously concealing what actors in power cannot or do not want to measure. Hines is firm in her view that what is measured through financial accounting are a result of deliberate choices made. As such they should not be taken for granted because they do not merely provide an objective, ‘transparent’ insight into an organisation.

The macro environment within which this thesis’s research explorations reside has played a significant role in shaping these forms of accounting change, and the environment itself has been transformed by them (Hopwood, 1992; Miller, 1994). The importance of studying accounting in its organisational and social context is to examine and better understand the role accounting plays in shaping behaviours, actions and activities through the use of the calculative practices and modes it is characterised by (Miller, 1994). Rather than merely being neutral and technical in nature, such an approach allows one to appreciate accounting’s transformative capacity in shaping how individuals and organisations behave, and how it has been shaped by the objectives and interests of those with the power to direct that behaviour (Miller, 1994; Robson, 1991).

This thesis seeks to examine accounting change within the charity sector by specifically looking at the emergence of charity accounting standards, the role accounting practices have played in defining charities and how the role of the charity trustee has been constructed through the role of these standards and practices. While the focus of these explorations is rooted in a specific context, it cannot nor should it be removed from its social and institutional context. In examining these contexts, having an understanding for the changes accounting facilitates helps provide insight into its effect on practices which are taken for granted in the present, and the legitimating role the rational practices of accounting have taken on. This is especially important, as it is by delving into the broader macro environment that one can begin to appreciate the role it plays in bringing about accounting change. Such an approach allows further insight and facilitates the examination of the role accounting standards and practices have played in the construction of organisational order and subsequent maintenance of the charity sector as a legible field, and the creation of a charity as an accounting entity. It allows for a nuanced examination of the role key actors and institutions have played in bringing about accounting change as a result of shifts in the broader macro environment, as these changes served their own objectives and interests, and also allows an examination of actors and institutions who had to adapt and conform to the changes occurring in order to maintain legitimacy and survive.

#### 1.4 Key Sites and Actors

The key site of this thesis's examination is the charity sector as this thesis is concerned with the transformation of the modern-day charity in the United Kingdom. Determination of key actors was facilitated by an examination of archival documents, and through speaking with interviewees. These documents included parliamentary debates, government reviews and commissions reports, charity regulation guides, accounting and charity sector-specific academic and practitioner journals, newspaper articles. Through a review of primary and secondary data, the state, regulators and charity trustees were identified as key actors who played an instrumental role in shaping and constructing the

modern-day charity, and the sector as a field. The upcoming section provides a brief description.

#### 1.4.1 Charities, a site of examination

Charities are commonly considered as part of the wider not-for-profit sector situated within the third sector (Morgan, 2010). Not-for-profit organisations are organisations which can generate a profit, however, that profit is reinvested or retained within the organisation to further its growth and objectives. These broad descriptions of the sector include a wide array of organisations which include social enterprises, cooperatives, mutual societies and housing associations (Alcock, 2010). The not-for-profit sector also includes the voluntary sector which is home to organisations whose purposes are non-statutory and not-for-profit, and are commonly led by volunteers. Charities have commonly been referred to as part of the voluntary sector or the third sector (Harris, 2013; Harris & Rochester, 2000). The latter reference was increasingly common as charities came to play a greater role in civil society in the 1990s as different from the corporate and public sector (Harris, 2013). However, not all not-for-profit or voluntary organisations are charities.<sup>26</sup> In order to be considered a charity in the legal sense, an organisation must have charitable objectives which are for the public benefit, and they must be registered with the Charity Commission, the charity sector regulator (MacLennan, 2007).<sup>27</sup>

Unlike the for-profit sector which has the capacity to generate its own capital and the public sector (which is part of the state's purview), the charity sector straddles an uncomfortable position somewhere between the two sectors. It is a sector dependent on the goodwill of others to generate a source of income and it is also one which must balance

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<sup>26</sup> Refer to Morgan (2010) for further descriptions of the organisations which belong to the not-for-profit and non-statutory sectors.

<sup>27</sup> It should be noted that in the UK, there are three categories of charities: registered, exempt and excepted (Morgan, 2010). Exempt charities are not required to register with the Charity Commission if they are adequately regulated by another public body (i.e., Financial services Authority). Excepted charities (i.e., some religious charities) are not obligated to register with the Charity Commission in accordance with specific rules as set out by the regulator (NCVO, 2021d).



it's commercial, entrepreneurial activities so as to not blur the lines between their 'charitableness' and 'commercialness'.

This thesis began by highlighting the key economic role charities play as their activities approximate 1%, or 0.88%, of the UK's GDP (NCVO, 2019e). While, the sector's economic value has been criticised for not factoring in the social value created by charities, it nonetheless represents a significant amount in value (Cipriani, 2020). This economic interest, has over time, attracted considerable regulatory and academic interest. Academically, the study of charities demands scholarly attention as it is unique in how it is legally defined. Examining the very foundational core of what makes a charity, a charity, remains critical at a time when greater responsibilities are placed on charities by the state. The increase in responsibility is accompanied with a growing public voice demanding greater accountability of public value in exchange for public resources. A focus on creating "social value", and not just ensuring cost efficiencies, has featured in media commentary critical of government outsourcing practices (Hobbs, 2016). In the period following austerity where private organisations have been viewed as sites of greed and maladministration, governments have been urged, or rather reminded to place "social value back at the heart of its public services" (Singh, 2018).

#### 1.4.2 State

Karl Marx, considered to be "one of the founders of the sociology of the state", maintained that the nature of what the state is varies by country. He provocatively argues that the "'present-day state' is [...] a fiction" (cited in Badie & Birnbaum, 1983, p. 4). The state can be contextualised and defined as existing in many forms, and in recognition of that, should be studied based on the substance of its activities'. Such an approach appropriately maintains an interest in how states act rather than merely being interested in high-level definitions, thus avoiding the risk of diluting their core purpose. When viewed as an institutions, states reside in a social system where they maintain power to shape civil society through control of key resources and power (i.e. police) apparatuses (Badie & Birnbaum, 1983).

Building on the above idea Weber, describes the modern state as a “centralised structure of bureaucratic control” which relies on forms of “rational-legal domination” (Nelson, 2006, pp. 118, 124). Rational forms of control rooted in managerial and entrepreneurial practices came to form the basis for helping facilitate the deregulatory rhetoric in the UK between the 1970s and 1990s (Moran, 2003). The state, rather than actively intervening in the facilitating of economic markets, sought to steer and shape new forms of regulation which relied on forms of self-governance. Paradoxically, rather than divesting itself of its responsibilities, the state came to implement systems of greater controls that has allowed for the exertion of more power over social and economic life (Moran, 2003). Moran, considered these changes to be part of both economic and constitutional reforms. As he argues, the policies of this period served to unsettle the boundaries between the public domain and private ownership (Moran, 2003).

This thesis is concerned with this particular form of unsettling, or blurring, of the boundaries between a charity and for-profit organisation, and the role accounting and regulatory policy reforms have played in shaping how to define a modern-day charity. Central to this thesis is an examination of the role the state has played in pushing change through use of policies and the law since the mid-1940s. While political ideologies do impact what policies and regulations come into effect, this thesis is not primarily concerned with the particular political parties in power. Such an approach has enabled the thesis to traverse the commonly-held narrative that the shift in the charity sector towards accounting and managerial practices was solely a result of the neoliberal era of the 1980s. Rather, this thesis illustrates that the aspirations and agendas which have shaped the governance of charities, and the sector, came in to play because of the policies put into place by the state during the welfare era following the second world war (this narrative will be further explored in Chapter 3).

#### 1.4.3 Charity Commission, charity sector regulator

The Charity Commission's origins can be traced back more than 160 years to 1853 (Hind, 2011; National Archives, 2009).<sup>28</sup> They are the main regulator for the charity sector in England and Wales, and are responsible for granting charity status to charities (MacLennan, 2007).<sup>29</sup> While the regulator has a government role, and remains funded by the Treasury (CAF, 2018), its operations remain at arms' length from the government (MacLennan, 2007; Piper et al., 2020). Currently, its Commissioners are appointed by the Department of Culture, Media and Sport, funded by the Treasury, and they are accountable to the UK Parliament (CAF, 2018; Delahunty, 2021).

When considering the relationship between the Charity Commission and the government, the regulator can be described as a semi-autonomous, non-ministerial branch of the UK government.<sup>30</sup> The description of these fields allow an appreciation for the influence external actors, particularly the state, can have on the regulator's operations and agenda through control of their funding and appointments of the Chief Commissioner (Hyndman & McMahon, 2011; Palmer & Vinten, 1998). The Commission's purpose at the time of origin was to enquire into the management of charities (Charity Commission, 1853). Since then, their role has expanded to include maintaining regulatory oversight over the charity sector in England and Wales. While the broad fiduciary duty of the regulator has remained the same over time, its responsibilities and powers have grown to include:

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<sup>28</sup> At the time of inception, the charity regulator was known as Board of Charity Commissioners for England and Wales (National Archives, 2009).

<sup>29</sup> Charity regulation for charities within United Kingdom is devolved, as such, charities in Scotland and Ireland are subjected to separate legislation in these respective countries (Morgan, 2010, 2010). The Scottish regulator, Office of Scottish the Charity Regulator, was formed following the passing of Charities and Trustee Investment (Scotland) Act in 2005 (Scottish Charity Regulator, 2021). The Charity Commission for Northern Ireland was formed in 2009 following the passing of the Charities Act (Northern Ireland) 2008 (Charity Commission for Northern Ireland, 2014).

<sup>30</sup> According to legal sociologist Sally Falk Moore, a semi-autonomous field is one which is able to "...generate rules and customs and symbols internally, but that it is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded. The semi-autonomous social field has rule-making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, some- times at the invitation of persons inside it, sometimes at its own instance" (Moore, 1973, p. 720).

“promoting the effective use of charitable resources by encouraging the development of better methods of administration, by giving charity trustees information or advice on any matter affecting the charity and by investigating and checking abuses” (Charities Act (Repealed), 1960, sec. 1(3))

In addition to their role as a regulator, in Chapters three and four, this thesis explores how law and accounting modes of regulation relied upon by them have played a key role in shaping how charities are held accountable. As Chapter four will illustrate, they have not always succeeded in this goal, and are often hampered by their own limited resources. Nevertheless, the role of the regulator is a key one in shaping the governance of the sector, and the high level of reliance it *needs* to place on charity trustees in order to maintain distance and allow the illusion, at the very least, of them fulfilling their purpose.

#### 1.4.4 Accounting Standards Commission, accounting standard setter

The mergers and acquisition boom and subsequent scandals in the 1960s highlighted the limitations of financial reporting practices relied upon at the time (Rutherford, 1996). These scandals led the ICAEW to establish the Accounting Standards Steering Committee (later renamed as Accounting Standards Committee (‘ASC’) in 1976) in 1970 (further discussed in Chapter 3) (Rutherford, 1996). This body was tasked with the responsibility for setting mandatory accounting standards for financial reporting for the for-profit sector in order to facilitate economic decision making, and to narrow the diversity in accounting practice (Napier, 2010). While the ASC’s remit was primarily focused on setting standards, to be followed by professional accountants, for the commercial sector, they were also engaged in the development of charity accounting standards. Their involvement in spearheading the development of standards for the charity sector helps highlights the key role they played in shaping the governance climate for the sector through financial standards and reporting practices.

#### 1.4.5 Charity Trustees

Charity trustees reside at the heart of the charity governance ecosystem. They make up a board of trustees who are tasked with the responsibility for maintaining oversight of a charity, similar to the board of directors in the commercial for-profit world. However, unlike their for-profit counterparts, charity trustees are legally held responsible for the management and administration of charities (Charities Act, 2016). Trustees are expected to play an active role in the governing of charities, and to ensure that charity's fulfil their charitable objectives (Charity Commission, 2018b). While the role is undertaken in a voluntary capacity, the law nonetheless posits them with the full responsibility for a charity's activities, and not the executive team.

Traditionally, the role of trustee is typically undertaken by those near or following the end of their professional careers (Charity Commission et al., 2017). Over the course of the past half-century, these roles have undergone considerable change, demanding increasing time, skills and expertise in the areas of law and accounting (Ainsworth, 2013, 2017). Since the 1980s, increasing managerial and administrative responsibilities have been placed on trustees. These responsibilities have come to demand from them greater professional and entrepreneurial skills, particularly in the areas of law and accounting (Dartington, 2005; Harris, 2001). These shifts will be further explored and problematised in order to understand how trustees make it possible to undertake this role in Chapter five.

#### 1.5 Contribution to knowledge

By tracing the historical transformation of the charity sector and the increasing role of accounting standards and practices, this research study demonstrates how the substance of a charity's role and responsibilities has changed since the mid-1940s. In addition, this thesis explores key accounting reforms between the mid-1990s and the late 2000s which have further driven the accountingisation of the charity sector through shifts in accounting standards and practices, and the subsequent impact these have had on shaping the role and responsibilities of the charity trustee.

This thesis seeks to contribute to knowledge on the field of accounting by studying how charities are shaped by the broader social and institutional context in which it operates, and the role accounting plays in facilitating this process. Chapter 3 traces the historical emergence of accounting standards in order to ascertain the aspirations and ideas which led to the standards development following second world war period, and that this development went beyond an interest in just fraud and financial mismanagement matters by key stakeholders. Through examining the period after charities were required to comply with accounting standards, Chapter 3 illustrates how a shift towards accrual accounting allowed for risk management concerns to drive the accounting reforms in the sector. Chapter 4 examines the legal notion of public benefit used to distinguish charities from other entities. An examination of seminal court cases starting from the early 1950s helps demonstrate the complex and ambiguous nature of public benefit which has persisted, despite critical changes in the law. Chapter 4, however, seeks to make a key contribution by examining the role accounting practices play in helping define and craft the narrative on how public benefit is operationalised by charities in the modern-day. Finally, Chapter 5 seeks to provide insight into the lived reality experienced by charity trustees. It begins by seeking to open the ‘black box’ of who a charity trustee is by analysing the multiplicity of challenges they experience. Through analysing data from interviews with charity trustees, this chapter seeks to develop an understanding of how they make a role which is seemingly considered impossible to do, possible to undertake. Such an understanding holds considerable value for policy makers and regulators.

## Chapter 2 – Methods

### 2.1 Introduction

The aim of this research project is to discern the dynamics and tensions between institutional actors which led to the emergence of charity accounting standards and practices. With this understanding, this research project explores how the emergence of accounting standards and practices have shaped the charity sector, and what trustees perceive their role to be. These modes of enquiry were supported with a qualitative methodology which helps explores meanings and interpretations within the specific social world inhabited by charities and its trustees (Parker, 2012; Vaivio, 2008). Qualitative research methods are well suited to investigating “how” questions, as well as providing an understanding of the context and the process through which individuals evaluate alternatives and make decisions (Myers, 2020). This approach allows researchers an opportunity to build a better understanding of complex social world in which individuals reside and behave (Hall & Messner, 2017; Myers, 2020). The project used two qualitative methods: an analysis of archival documents and semi-structured interviews (Flick, 2014; Hall & Messner, 2017).

A key aspect of qualitative research is that far from being objective, reality remains social which is “emergent, subjectively created, and objectified through human interaction” (Chua, 1986 as cited in Ahrens & Chapman, 2006, p. 819). When using qualitative methodology, it is the researcher’s responsibility to “*express* the field as social and not simply *describe* or *clarify* it to the reader” as the field does not constitute an objective, passive reality (Ahrens & Chapman, 2006, pp. 819–820).

Traditionally, management accounting can be thought of and studied as an objective form of reality (Burchell et al., 1980).<sup>31</sup> This study, however, seeks to explore the segmented

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<sup>31</sup> Accounting, in practice, has commonly thought to be a technical, neutral practice, one whose figures are considered to be objective and indisputable (see Miller, 1992). However, over the past half a century, a growing body of scholars have been examining and challenging accounting’s objective, taken-for-granted

forms of realities which are actively constituted *by* and *for* the actors involved (Hopwood, 1992). My goal is to study and illuminate the interactions occurring within a snippet of ‘reality’ by exploring a “set of actions and arguments that contain even a ‘small parcel of thought’” (McKinlay & Pezet, 2017). Thus, the aim of the project is not to arrive at objective, universal generalisations of the charity sector. The aim of the research is to probe at the different truths which make up different realities inhabited by actors shaping the charity sector through standards and practices, and also charity trustees.

How actors and institutions, and their interactions, are studied is a “profoundly theoretical” process which is inherently guided and shaped by the researcher and their interests (Ahrens & Chapman, 2006, p. 820). The process of “theoretical generalisations” (Vaivio, 2008, p. 78) is strengthened by the continuous relay between the data collected and the theoretical nature of the research query, each shaping the other with the accumulation of increasing knowledge and understanding about the chosen field of study. In this space, data collected is never objective nor independent of the researcher’s interest. They are not “untainted slices of objective reality but aspects of recorded activity that a study finds significant for theoretical reason” (Ahrens & Chapman, 2006, p. 820).

Management accounting scholars have promoted the use of qualitative methodology as it allows for the collection of rich empirical data. This collection enables a process of theorising which allows researchers to traverse “a narrow and functionalist view” of accounting (Vaivio, 2008, p. 65). This process is aided by the practice of *problematizing*, or unsettling and challenging assumptions which are taken for granted (Alvesson & Sandberg, 2011). In this study, problematizing involved asking lots of questions which began with ‘why’, ‘how’ and ‘so what’ in order to move from the descriptiveness of the field data towards a more rich, analytical theory.

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nature (refer to journals, *Accounting, Organisations and Society*, *Critical Perspectives on Accounting*, *Accounting, Audit and Accountability Journal*).



## 2.2 Documents

Documents are nuanced pieces communicating a rich and colourful story (Douglas, 2007). They can be used for exploring, comparing and contrasting emerging, broader themes. Despite being two-dimensional, they help tell a story beyond its textual content through analysing language, tone, structure and content (Karppinen & Moe, 2012). Document analysis helps provide an epistemological insight into the thoughts and viewpoints held by the social actors' active in a given period (Mason, 2002). Far from being objective, they must be examined in tandem within their social and organisational context (Smith, 1984). According to Smith, "texts speak in the absence of speakers" (1984, p. 60). Reviewing archival materials allow an insight into the tensions and challenges present in the time which led to the publication of the permanent pieces of texts.

During archival research, the challenge for the researcher then becomes how they manage the responsibility of interpreting why a document was created or framed in a particular way, and what the implications may be for understanding the broader field. This ongoing challenge was managed by widening the scope of archival document sources to go beyond regulatory and formal pieces of governance discourse. According to Vaivio:

"Decision processes are rarely rational and linear. Rather, they are complex bundles of interconnected, loosely coupled events that bounce back and forth. They involve many actors who represent diverse opinions, interests, biases, hidden agendas and competencies. Decision-making often gets interrupted, marginalized, diverted, restarted or merged with another stream of urgent concerns" (Vaivio, 2008, p. 66)

The scope of the document analysis for this project included reading and coding parliamentary debates, sector magazines (i.e., Accountancy), academic journals focused on the charity sector, government and non-government-led reviews and commissions,

regulatory guides and media coverage<sup>32</sup> (The Guardian and The Times)<sup>33</sup> (see **Appendix A** for a list of archival sources analysed. These pieces of archival sources, or what Dorothy Smith refers to as *discourses*, illuminate the social practices and relations being constructed through the practice of documenting (1984). Relying on historical archives enabled an exploration into the lively and contentious debates occurring within and outside the charity sector which helped give rise to the sector's accounting regulatory regime.

Document analysis forms the basis of Chapter 3 which focuses on the emergence of charity accounting standards) and how various stakeholders led to the development of accounting standards. Through a review of historical archives, this thesis aims to show how key institutions, namely the accounting profession and the charity regulator, pursued the standard-setting agenda in order to maintain their legitimacy. It also forms the basis of Chapter 4 which traces the evolution of how public benefit came to play a statutory role in defining charities in 2006.

The analysis of the documents drew on the broad interpretive and discursive nature of content analysis. This form of analysis is useful when seeking to ascertain trends in published material and developing an understanding of key concepts, events and shifts (Berelson, 1952). This form of analysis is focused on exploring the meaning in text (Krippendorff, 2018; Zaidman-Zait, 2014). According to Krippendorff, the study of documents cannot, and should not be separated from its social world for it is that context which shapes how forms of communication are to be studied, interpreted and reflected upon (2018). For this research project, analysing archival documents played a vital role in developing an understanding of the social-political and cultural shifts of the past. These

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<sup>32</sup> Use of media helps access the views of the public. However, it is important to note that these views may reflect the thoughts of a limited set of audience, and that media outlets may have in turn shaped these views rather than merely representing them. Nonetheless, use of media outlets remains a useful source for providing insight on varying views of the public

<sup>33</sup> Other media outlets, such as the Sunday Times, The Financial Times and The Telegraph also provided insight to supplement the other media publications when I sought further clarity on issues and events.

shifts were identified by paying attention to what the focus and worries of the key actors were in their own words.

The charity sector constitutes the main focus of the study, followed with an interest in the government and the accounting profession. Content analysis shaped the manual examination of the archived documents which were physically sourced from a series of public institutions. The public institutions included the British Library, the London Metropolitan Archives, UK Parliamentary Archives, Westlaw UK legal database, British and Irish Legal Information Institute legal database, historical newspaper archives and the National Archives (UK).<sup>34</sup> Additional archival resources were also obtained from the British Library of Political and Economic Science at the London School of Economics (LSE) and the ICAEW Library.<sup>35</sup>

### 2.3 Interviews

Interviews are a well-established form of primary data collection to support accounting research (Flick, 2009; Hall & Messner, 2017). They help facilitate inquiry into the social reality which actors construct, and how they make sense of it in their own words (Berger & Luckmann, 1966; Flick, 2009). This mode of analysis is particularly useful as I was to build an understanding of how trustees made sense of their roles and responsibilities, and how do they fulfil a role described as burdensome. Through adopting a semi-structured style, I largely focused my questions on asking interviewees ‘what do you do?’, ‘what worries you?’, ‘how do you draw comfort over executives’ activities?’ The semi-structured style of the interviews allowed me to adopt an open-ended narrative in order to access interviewees perceptions, knowledge and experience as a trustee (Flick, 2009).

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<sup>34</sup> The research databases at all these sites were accessible to the public and in most cases required a membership card which was offered free of charge to registered members.

<sup>35</sup> The research database at these two sites were accessible to its members. Membership at the LSE and ICAEW was obtained as I was a student at the LSE and an accredited professional member of the ICAEW.

Interviews remain a popular qualitative research method. They help capture interactions between the researcher and interviewee. However, they are not as simple as a casual conversation. It is important to be mindful that they are undertaken in an artificial setting where what the interviewee says may be different from their actions and behaviours. Through reflecting on each interview, there was an ongoing realisation that the control of the interview resided with the interviewer, me. The questions asked, the follow-ups prompted and the general steering of the conversation was situated within the framework of the research agenda. The questions and issues which may be focused on are a priority for the interviewer, and not necessarily for the interviewee. These interactions, as Briggs states, “constitutes an inversion of the normative structure for the conveyance of information” between people (Briggs, 1984, p. 21).

The artificial setting of the interview was deemed manageable as the focus was on understanding how trustees made sense of their roles, rather than focusing on what it is that they do. In a way, what was communicated was performative, and that that the interviewees’ responses reflected their own understandings of what they deemed to be the ‘truth’ and part of their reality. Such an exploration was focused on gaining insight on what trustees believed to be the work they engage in rather than just being guided by what it was that they should be doing in accordance with governance codes and regulatory edicts.

Interviews also allow for a series of active interpretations which are produced between the researcher and interviewee (Briggs, 1984). These interpretations include those made by the interviewee of the questions asked by the researcher and the ones made by the researcher of the responses given, which alongside the researcher’s interest also helped guide the direction of the interview. They helped me better reflect on the views and reflections shared by current and former charity trustees who formed the participant base for this study.

All interviews, except in one instance, was recorded. During the course of the interview and after each, I made notes on my thoughts of the interaction. These thoughts, included asking follow-up questions or clarifications during the interview itself to more reflective thoughts following the conversation. The field notes created, largely following each interview, were also relied upon as a source of data and allowed for a more reflexive approach during the data analysis process. They also allowed an opportunity to make note of and reflect on nonverbal cues (Hall & Messner, 2017). In addition to nonverbal cues, these notes also included my thoughts, feelings, observations and overall perception on how my interaction with the respective participant was (Myers, 2020).

Conversations as a form of communication, according to Briggs, are “punctuated with “contextualization cues” which mark relevant features of the social and linguistic setting, thus providing interpretive frameworks for deciphering the meaning of other participants’ signals and for shaping one’s own contributions” (Briggs, 1984, p. 8). Non-verbal cues, in particular, helped guide me in steering the interview, and also making keen insights over the conversation itself. These cues included body language, tone, attitudes and gestures of the interviewee. They helped me make sense of the content of the interview, and helped me go beyond the black-and-white text of the interview to help contextualise the conversation. For example, paying attention to such cues helped me become better attuned with how interviewees felt during the conversation- were they, relaxed, rigid, worried or anxious to name a few. Remaining sensitive to the emotive aspect of the conversation helped me better understand the viewpoints of the interviewees.

My initial research interest was focused on understanding *what* it is that trustees do. There remained considerable policy and academic literature focused on what is expected of trustees, and what their roles and responsibilities are. When examining archival policy documents, the role of trustees and the impact on their responsibilities was not often a topic of concern when discussing the development of standards and other forms of accounting and legal reforms. However, in practice, trustees are relied upon by the state and the charity regulator as playing a vital role in the regulation and governance of

charities. During the interview phase of the research, when speaking to trustees and hearing their perspectives, I began to focus more on *how* is it that trustees fulfil their role. It helped me think more about the gap between the policy construction of the role and the lived reality of the role, and how that space is filled by real trustees and their experiences.

In order to construct an image of the charity trustees and executive interviewed, I documented what kind of charities they were involved with, the income size, and if they had experience as a non-executive director. These characteristics, particularly their NED experience, were of interest as they allowed me to better understand how they made sense of their roles and responsibilities. Insight into experiences of a NED allowed opportunity to consider how corporate governance practices influenced the trustee's perceptions and their understandings (see **Appendix D** for a summary of interview participants). Much of the literature has discussed the transference of commercial sector practices to the charity sector through accounting standards, practices and processes (Harris & Rochester, 2000; Scott & Russell, 2001). Remaining mindful of the trustees NED backgrounds allowed an opportunity to consider how corporate governance ideas and practices travelled between sectors through actors.

## 2.4 Data collection and coding

As mentioned earlier, this thesis's findings are based on an analysis of data collected from archival documents and interviews. Coding of the data the search for common themes and patterns was undertaken manually. The process of highlighting hard-copies of data, making notes and physically moving between different pieces of data allowed for a more immersive and intimate process, rather than using a formal coding software, i.e., NVivo.

Throughout the data analysis process, I was searching for evidence of the relationship between charities and their stakeholders, how they were perceived, what was expected of them and the overall sentiment regarding their activities. I remained particularly interested in gaining insight into why and how shifts occurred within the key arenas of the state, accounting profession, the charity regulator and the charity sector. When constructing a

historical timeline of key events, the stakeholders influencing these arenas expanded to include trustees, the courts, charity umbrella groups, and the wider public.

As analysis of the data progressed, new events and actors were identified which were examined further and included in the study. This approach is consistent with Dent's (1991) study of organisational culture, which recommended the interpretation of the data to remain grounded in the context of the period they occurred in. He stated that this process allows for a measure of credibility when identifying and communicating themes and insights, and allowing readers to possibly revisit and trace the same events. While the initial interviews were personally transcribed, the remainder were transcribed by a professional transcription service whose processes were vetted to ensure compliance with General Data Protection Regulation (GDPR) guidelines.

Content analysis helped analyse and code documents where key words were highlighted and annotated with a description of the context in which they appeared. While manually coding the data, the emphasis was given to identify patterns and themes, both descriptively and theoretically in order to glean insights into problems and issues (Flick, 2004). Thematic analysis also helped ground my understanding of how to remain sensitive when identifying emergent themes and patterns in the data collected (Attride-Stirling, 2001; Braun & Clarke, 2006). Here, I aimed to collect a large body of corroborating, and where relevant contradictory data in order to build my understanding. The fundamentals of thematic analysis guided, rather than strongly directed, the analysis of interviews. This allowed me to uncover perceptions held by trustees based on their past experiences. An appreciation of both forms of analysis helped me remain mindful of emerging themes and patterns in the data collected.

Though academic literature places emphasis on financial and legal governance, I opted for a qualitative investigation offering potential for novel theorising through identifying patterns, or themes in the data (Braun & Clarke, 2006; Fereday & Muir-Cochrane, 2006). While theoretical literature, such as governmentality and institutional theory, did drive

and shape my understanding of the events and settings of the field, there is no one theory which explicitly drove the aims of the research project. Inductively coding also allowed me to explore a trustee's perceptions (Boyatzis, 1998) while remaining open to research field for new patterns and themes.

### Chapter 3

In the SORP chapter, I wanted to know how and why the charity sector had their own set of charity accounting standards, and how did this state of affairs come to be developed. In England and Wales, charities (based on their income) have to submit their annual accounts, audited or independently examined, to the Charity Commission. These accounts are published on the regulator's website as part of the charity register,<sup>36</sup> and play a critical role in helping maintain their charity status, and the overall regulation of the sector (Morgan, 2010, p. 201).

Data for this chapter is drawn from primary archival resources. Primary points of analysis included government and non-government reports, consultations and guides between 1945 and 1995. Covering this period of 50 years allows rich insight in the events and discourse of a time when the economy, accounting profession, public sector and the charity sector underwent significant legislative, economic and societal changes. The conversation on the role of voluntary sector and how they can play a role in supporting the welfare state can be traced to the early 1940s before the Beveridge Report published in 1948. 1975 marks the year Margaret Thatcher became the leader of the Conservative Party. Under her leadership, the Conservative's political ideology led to significant economic, political and social changes, in particular within the public and charity sector, through policy and legislative reform.

This research examines the immediate post-war period where the charities played a role in building the post-war welfare state, and the period following the 1970s where the

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<sup>36</sup> The charity register for charities in England and Wales is managed by the Charity Commission, and can be accessed through <https://www.gov.uk/find-charity-information>.



welfare state model was questioned, and neoliberal principles of governing were introduced. It helps examine the changing aspirations and agenda of how the state came to view the sector and what they expected of it. The large mass of archival analysis collected covers the period until 1995. This chapter then looks at key moments of accounting reforms between 1995 and 2015 to examine how the SORP furthered the broader accountingisation of the charity sector. This chapter goes further back than existing works to expand and give new insights into the aspirations which led to the development of charity accounting standards (Connolly et al., 2014; Hyndman & McMahon, 2009; Palmer & Randall, 2005; Williams & Palmer, 1998).

The main object of analysis in this chapter was concerned with ‘how’ and ‘why’ charity accounting standards emerged. Given my interest in exploring the historical evolution of charities in the UK, I began my research by constructing a historical timeline for key events in the charity sector beginning in 2015 and working my way back over time (see **Figure 1.2** for a condensed list of events studied). Through this process I identified key legislative changes which came in the form of defining charities (i.e., Charities Act 2006) and requiring charities to comply with charity accounting standards (i.e., Charities Act 1992/1993). From this process, the starting point for coding began with Accountancy Journal in 1988 as that is when the first SORP was developed, before going further back in history. The documents were analysed to identify key events, issues, concerns and themes which played a role in the development of charity accounting standards. Coding the documents supported my research analysis in two ways – it helped me pay attention to the events of the past, and to what the issues and concerns of the time were, and it also helped me identify further key events which had not been previously identified. Bulk of my archival research of the Accountancy and media briefings were undertaken between 1975 and 1995. I chose this period as it was the year Margaret Thatcher became the leader of the Conservative Party before becoming Prime Minister in 1979, and 1995 was the year charity accounting standards became mandatory to comply with.

Given the important role accounting played in the charity sector during this period, the ICAEW's journal, "Accountancy" provides an insight into the historical discourses from the perspectives of accounting regulators, institutions and professional accountants, as it was considered to be the "voice of the profession" (Croner-i, 2018; ICAEW, 2018a). Between 1975 and 1995, 240 issues of the Accountancy were published. From these issues, 450 relevant articles, news and professional briefings, opinions and reviews of accounting drafts and guidelines were read before selecting a sample to analyse. This accounting journal allowed me to capture the key shifts happening within the accounting world following the creation of the accounting standard setter in 1970. The materials selected relate to the accounting profession, the government, public sector and charity related matters and reflect the views of the accounting profession. In addition, this chapter also examined ASC's discussion papers and comment letters, charity accounting standards (1988-2014) and national newspapers (Financial Times, The Telegraph, The Times and The Guardian) (please refer to **Appendix A** for a list of archival sources analysed for the three substantive chapters).

The initial stages of my research were largely shaped by normative understandings of the role of the financial reporting and management in the sector- that these helped maintained accountability and transparency in the charity sector. By trying to understand how charity accounting standards developed and the factors which contributed to it, my 'how' and 'why' questions remained at the level of the concerns and problems of key actors. These questions helped me gain insight into the *interests* of the Conservative Party, accounting standard setter and the Charity Commission. It was in repeating these questions that I was able to dig deeper into *aspirations* which drove the interest in the accounting standards. The iterative process of reading, coding and writing helped me build knowledge beyond the surface-level problems and concerns of actors and institutions. Previously, in the early stages of research, I understood the motivations for the standard to come as a result for fixing financial reporting practices in order to manage concerns of fraud and financial mismanagement.

Across the reading, highlighting and iterative process of writing, the arc of the data plugged into global themes which included accountability, legitimacy and regulatory capacity. The process of coding included identifying pieces of data based on my interest in accessing the views, goals, expectations and concerns of actors. Following the process of coding the data, I moved on to identifying and grouping emerging themes. Through analysing and interpreting the data, I organised the codes into themes before grouping related themes under larger, global headings (see **Table 2.1** for an excerpt) (Attride-Stirling, 2001).

**Table 2.1 Excerpt of the global theme of accountability**

<b>Global Theme</b>	<b>Organising Theme</b>	<b>Codes</b>	<b>Statements from archival data</b>
<b>Accountability</b>	<b>Building knowledge</b>	Lack of accessible information	"The Committee regarded as "highly unsatisfactory" the almost complete lack of up-to-date, classified and accessible records of charitable trusts"
		Frustrated stakeholders	"Deplored the lack of them [reliable records], particularly those devoted to social welfare, and they pointed to the frustrations experienced by would-be beneficiaries, social workers and public bodies needing information on trusts relevant to their needs or purposes"
		Filling service welfare gap	"Records would also be required if full advantage were to be taken of the relaxed cy-pre doctrine"
		Demand for information	"At the end of the day we want to know what has been collected and what has been done with it"

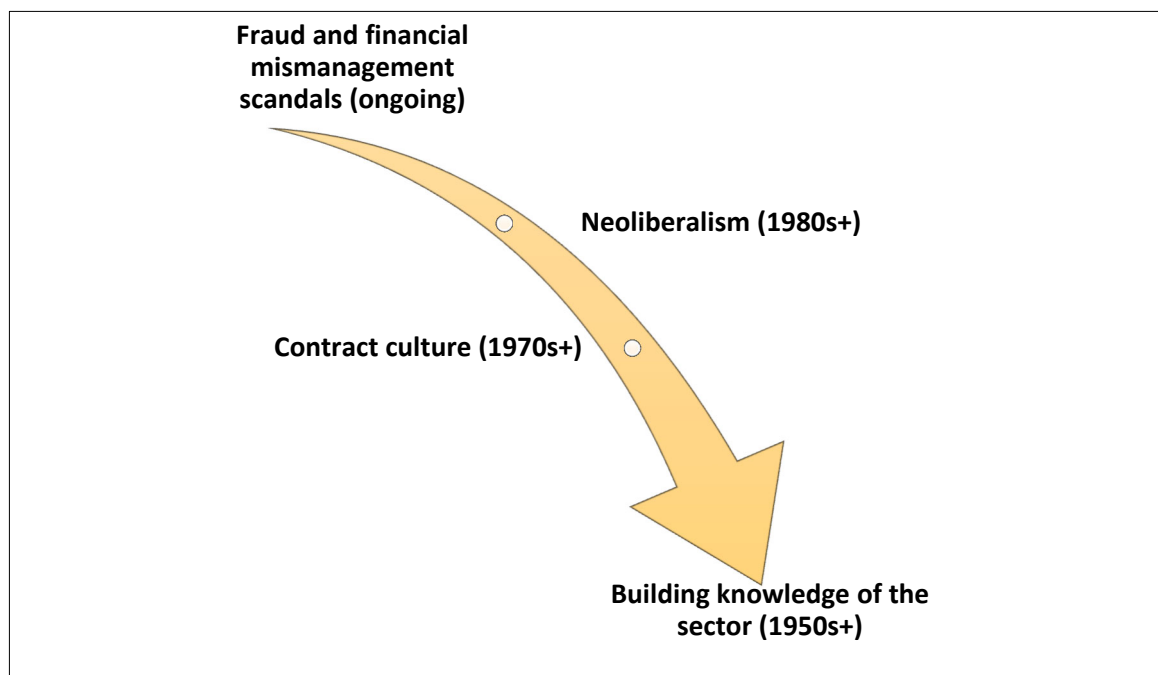
	Protecting charitable status	Uncertainty over activities	"Many charities are undoubtedly run fairly, honestly and efficiently, but no one can be sure"
		Financial abuse	"Outright fraud, where money which is raised by, or on behalf of, a charity is not used for the purpose for which it was raised"

The excerpt of the above coding process helped provide insight into the historical landscape of the charity sector. Throughout the data collection, reading and coding process, I kept thinking about *why* did accounting standards and financial reporting come to matter in the 1960s when the charity sector had enjoyed broad support by the state following the post-war period. For much of my work on this chapter, my understanding of the motivations remained in line with the common discourse that the standards emerged as a result to improve the quality of financial reporting in the sector, and manage concerns related to fraud and financial mismanagement. Initially, the research focused on the 20-year period between 1975 and 1995. Considerable political, accounting and regulatory changes had occurred in this period for the charity sector. While the events of this period were interesting and played an essential role in shaping the sector, I still did not have a sense of why these changes happened. Widening my search to the 1960s, and later expanding it to the mid-1940s allowed me insight into a different facet of history. Going further back in history allowed me insight into different aspirations and concerns which were relevant to that period, and which played a key role in shaping the trajectory of charity accounting regulation in the decades to come. I argue that these changes played a pivotal role in establishing the foundations of the accounting and regulatory regime within which charities are now governed.

By revisiting key archive materials, in particular the 1948 Beveridge Report and the 1952 Nathan Report, my initial assumptions were destabilised. I came to realise that the concerns of the state in relation to the charity sector greatly differed from the concerns of

the state from 1970s. The interest in the charity sector before the 1970s was quite benign and focused on building knowledge of the sector, albeit in financial terms. The government at the time was not primarily concerned with the quality of financial reporting or resource abuse. Rather the concerns problematised at the time pertained to building knowledge of the sector's activities in order to use the charity sector to play a role in the welfare state. The interests and aspirations of this period, however, went on to provide a base for wide-sweeping reforms of the sector to occur in later decades.

Through engaging in the evolving and dynamic nature of problematising and theorising between the data collected from the field and revisiting my research aims and interests, I continued to expand my understanding of the sector. This process helped me understand past accounting reforms, why they happened, how they happened and what the implications were. Rather than deeming accounting reforms to be a result of ongoing scandals over the course of history, I was able to interpret the events of the past to argue that the state's interest in the charity sector was to build knowledge about the sector (see **Figure 2.1**) (Ahrens & Chapman, 2006).



**Figure 2.1** – Evolving theorisation behind accounting reforms in the charity sector  
(Source: Researcher)

#### Chapter 4

Data for this chapter was also drawn from archival sources. This chapter examines seminal court rulings, key government and sector-wide commissioned reports and reviews, parliamentary debates, regulator guides and newspaper articles (see **Appendix A** for a list of primary archival sources). The empirical material collected from archival sources covered the period between 1950 and 2016. It investigates how the notion of public benefit has reflected the concerns, tensions and complexities in attempting to operationalise the definition since the post-World War two period. In this chapter, I wanted to better understand why charities from 2006 onwards had to *explicitly* demonstrate their public benefit.

The Charity Commission's statutory responsibility includes developing guidance to help charities and its trustees fulfil their roles. The initial point of search began at the Charity Commission website and involved a review of the most recent public benefit guidance published in 2013. From there, further key documents were identified from the references contained within the initial documents accessed. Consultation documents and reports provided richer analysis than formal copies of the guides published by the Commission. The former provided insight into the challenges and concerns of the regulator.

Reviewing the legal analysis of public benefit (Garton, 2013; Maclellan, 2007) helped determine the periodisation of the examination. It also made references to seminal cases which I found to be repeated in much of the legal scholarship I referenced. I selected these cases to help illustrate the complexity and challenges in operationalising the notion of public benefit. My awareness of seminal court cases was also informed through the reading of parliamentary debates, academic legal literature and government reviews which examined the role of public benefit in charities.

Current literature struggles to make sense of what is meant by ‘public’ or ‘benefit’, commonly referred to as *value* (Mazzucato, 2018; Steccolini, 2019). This chapter will not propose definitions for these notions; instead, it will examine how the notion of public benefit has been problematised over the course of history in order to understand the tensions that shaped current understandings. A lot of emphasis is placed on the new public management<sup>37</sup> era as driving change within the charity sector, and pushing the sector’s activities to become more measurable and auditable. By delving into the history and examining seminal court cases, this chapter argues that the challenges faced in defining charities as a means of regulating the sector pre-date the NPM era. These court cases are key sites where the notion of public benefit has been negotiated. Through an examination of these cases, this chapter illustrates how an opportunity was created for accounting to enter the space of public benefit which helped concretise ways for demonstrating it. The court cases provide insight into how the notion of public benefit has been problematised historically by the state, courts, charity regulator and the charity sector.

## Chapter 5

The aim of this chapter investigation is twofold. First, it is to better understand, ‘*how* trustees fulfil their roles’, and second, ‘what the implications are for the regulatory capacity to maintain oversight’. To address the above goals, this study uses two research methods: interviews and documents. Interviews are an effective way to access actors perspectives and how their thoughts may be influenced by the wider environment (Hall & Messner, 2017). Documentary analysis, as the secondary method of data collection, was used to explore, compare and contrast emerging broader themes on charity and charity trustee governance (see **Appendix A** for a list of archival documents).

In order to develop an understanding of trustees’ roles and responsibilities, I spoke to charity trustees, both current and former.<sup>38</sup> By the end of the fieldwork, a total of 125

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<sup>37</sup> Refer to footnote 10 for a discussion of the NPM era

<sup>38</sup> Relationships with former charity trustees were made through personal connections or the snowball approach where other interviewees connected me with them.

individuals were contacted, of which 103 were charity trustees.<sup>39</sup> The others were involved in varying capacities in the charity sector in executive management, auditing and/or consulting roles. Over the course of fieldwork 40 individuals agreed to be interviewed (see **Table 2.2** for a summary of interviewees by charity size and roles).<sup>40</sup> Trustees of charities headquartered in London were contacted as a significant portion of the sector's income is situated in the country's capital.<sup>41</sup>

The 40 interviewed participants<sup>42</sup> charity trustees (30), charity executives (4), and finance directors (3) and a company secretary. Interview participants were found through attending public lectures, charity events, volunteering, snowballing.<sup>43</sup> 169 individuals were identified through conducting searches in the Charity Commission's charity register<sup>44</sup> and then contacted through the LinkedIn platform. This approach had the least successful rate of responses and acceptance. Less than 20% of individuals (28 interviewees) contacted through LinkedIn agreed to be interviewed. Email and the LinkedIn platform were used as primary modes of communication with interviewees.

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<sup>39</sup> While the focus of the study was in speaking to charity trustees, on a number of occasions, the researcher was directed to speak to someone else within the organisation who was involved in a financial or governance-related role.

<sup>40</sup> An additional 8 respondents had agreed to participate but were not interviewed due to unforeseen circumstances and/or scheduling challenges.

<sup>41</sup> According to NCVO, approximately half of the charity sector's income in England and Wales was based in London. It should be noted that while the charities headquarters are in London, the activities and operations of the charities were spread across the country (NCVO, 2021b). While London is home to a significant portion of the sector's income, as a city it may not be representative of other cities in England.

<sup>42</sup> Two of the interviewees were not directly involved in the governance of charities. As a governor of an academic institution, I had thought that they were a trustee in the legal sense in accordance with the Charities Act. However, the makeup of the institution allowed for many roles in the organisation's governance which did not confer legal responsibilities and liabilities similar to the role of a charity trustee. These individuals experience and background within the commercial sector, and as a NED nonetheless provided rich insights into the tensions trustees face when compared to NEDs.

<sup>43</sup> Snowball sampling is where existing research participants direct or refer you to connecting with new participants (Myers, 2020).

<sup>44</sup> The Commission's register and accompanying search engine allowed access to a broad pool of trustees in charities of varying incomes. Charities of five varying income brackets between £10,000 to more than £100 million were spoken with. The intent behind speaking to charities of varying income brackets was a curiosity to understand the similarities and differences present in how trustees fulfil their roles.



**Table 2.2 Summary of Interviews by Charity Size and Roles**

<b>Income</b> <b>Roles</b>	<b>Trustee</b>	<b>Trustee- Board or Sub-Committee Chair</b>	<b>Charity Executive (or other)</b>
<b>Small</b>	2		1
<b>Medium</b>	4		1
<b>Large</b>	6	2	2
<b>Major</b>	11	5	3
<b>Super major</b>			1
<b>TOTAL<sup>45</sup></b>	23	7	8

The thirty charity trustees interviewed were spread across a range of charity organisations which varied in income, sector and type.<sup>46</sup> It was particularly challenging to access trustees of small and medium charities to interview. Twenty-two trustees of small charities and 36 trustees of medium charities were contacted. In response, two trustees of small charities and four trustees of medium charities agreed to be interviewed. Trustees in these income brackets were primarily contacted via Linked-In, similar to a ‘cold-call’ which may have contributed to the low response rate. An absence of prior connection may have contributed to the low response rate. About two-thirds of the trustees interviewed were trustees of charities with income greater than £1m, with more than half maintaining oversight over ‘major’ charities with income greater than £10m. Charities in these income brackets also hold a significant portion of the sector’s income and have less discretion

<sup>45</sup> This table provides a summary of interviews of trustees and charity executives involved in the management and administration of charities registered with the Charity Commission. Refer to footnote 42 for further details on the two school governors also interviewed.

<sup>46</sup> NCVO has grouped charities into six income bands:

<b>£</b>		<b>£</b>	
<b>Micro</b>	Less than £10,000	<b>Large</b>	£1m to £10m
<b>Small</b>	£10,000 to £100,000	<b>Major</b>	£10m to £100m
<b>Medium</b>	£100,000 to £1m	<b>Super-major</b>	More than £100m

**Source:** UK Civil Society Almanac (NCVO, 2019a)

when complying with the regulatory and administrative regulation governing the sectors. A large proportion of the trustees interviewed, twenty-six in total, also had experience as non-executive directors (NEDs), and had worked or been trained in a commercial or voluntary management setting (see **Appendix D** for a list of trustees interviewed and their backgrounds). They also held senior positions in their organisations or were retired. This may have contributed to the high response rate in this group as they may have had more autonomy over their time. While the number of trustees interviewed represents a small fragment of the vast sector, their varied backgrounds and experiences do challenge the homogeneous characteristics of the abstract, standardised role.

When establishing first contact, either in person or in e-mail, an overview of the research project and interests was shared. The researcher also expressed interest in learning more about their role, experiences and thoughts as a charity trustee. For those who accepted, arrangements were then made to set up an interview time and location. In-person interviews were held at LSE or a convenient location of their choice, usually at their place of work. All interviews, except one, were recorded and transcribed in accordance with the interviewee's wishes. Furthermore, two interviews were conducted over telephone due to geographical and logistical issues as the trustees resided outside the greater London area. On average, the interviews lasted between 45-70 minutes. The shortest interview was 21 minutes long, and the longest was 117 minutes long. Over the course of the interviews, there were over 800 pages of transcribed data. The first interview was held on February 27, 2017 and the last interview was held on August 5, 2019.

Each interview began with an outline of the research project and discussing the informed consent form, which both interviewee and interviewer would sign, with each retaining a copy for their own records. At this point interviewees were asked for their expressed consent for recording the interview, and were informed that their participation in the research would be on an anonymised basis.

The interviews followed a semi-structured style which allowed interviewees an opportunity to express their thoughts freely, and in fact were encouraged to do so while also providing some structure in terms of the themes to explore through pre-formulated questions (Myers, 2020). The interview protocol used was developed from archival documents which drew on charity-related practitioner and academic literature (see **Appendix C** for the interview protocol). It was used to help guide the semi-structured, open-ended narrative of the interview as a point of reference rather than being something strictly adhered to (Robson & McCartan, 2016; Rubin & Rubin, 2004). The protocol largely was organised around asking questions, such as- ‘what do you do?’, ‘what worries you?’, ‘how do you draw comfort over the charity’s activities?’ These questions largely drove the interviews, with the researcher steering the conversation with follow-up questions or clarifications. The aim of the interview was to access the interviewee’s experiences, thoughts and reflections on their role as a trustee and/or their involvement with their respective charities in general.

The data analysis of interviews largely occurred between late 2018 and mid-2019. Analysing the interview transcripts occurred in three broad phases.<sup>47</sup> The first phase involved a quick read of the data. Focusing on the data analysis of the interviews, I printed them all out and read the transcripts from beginning to end in order to begin familiarising myself with the data. I did not highlight or make any codes during this process. Rather, I focused my time on building a sense of the data amassed in order to get a broader picture of the themes contained within it. At the end of each quick read of the transcripts, I would jot down bullet points on things which stood out for me, surprising anecdotes, or themes I wanted to pursue further.

Armed with a basic understanding of the data, I began the second phase of the data analysis and coding process. After completing the initial read of the transcripts, I undertook a longer and slower of the transcripts. During this phase, interesting phrases

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<sup>47</sup> I am grateful to Dr. Nadine de Gannes, Dr. Saipriya Kamath for their advice and support during the data analysis process.

which helped shed light into the interviewee's understandings, thoughts, feelings and opinions were highlighted. These were accompanied by notes made in the margins. These notes were further distilled and summarised into empirical codes. The third, and often the final full read of the transcripts, helped connect the empirical codes to the broader themes like acceptance, managing risk or fear. The focus throughout these phases was to allow the data to 'speak' for itself and drive the emergence of the themes. The following table provides an example of how data from interview transcripts were turned into empirical codes.

**Table 2.3 Coding of Interviews**

Quote	<p>"They were more afraid of upsetting him and being reported to the Charity Commission for something than supporting their chair and their chief exec. Their new chief exec with a business plan, despite the fact that it was what they said they wanted to do"</p> <p>(Charity trustee and CEO of a large charity)</p>	<p>"Well, you're leading the board and managing the board, you're chairing meetings of the board. All of this is in order to ensure that you have good oversight of what is happening in the charity. Where's the money coming from? How is it being spent? How is it being accounted for? Have we got the right systems to make sure they're recording it? All that sort of thing. So general management of a very small business, like any small business."</p>	<p>"We're all focused on delivery because there aren't any staff, we'll take an active role in making sure the work of the charity gets done, so in many ways we're focused on delivering operational as well as trying to be strategic, which cuts down on our own self-evaluation time, I guess."</p> <p>(Charity trustee of a small charity)</p>
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		(Charity trustee of a medium charity)	
Codes	(i) Fear of regulator (ii) Managing relationship between board and executive	(i) Need of business skills in running charities (ii) Role of accounting systems in maintaining oversight	(i) Tensions between operational and strategic role (ii) Boards drawn into executive role

## 2.5 Ethics

This project's ethical standards were in compliance with procedures outlined by LSE's Research Division. A self-assessed checklist was reviewed by the two academic supervisors who agreed on the research risk being minimal. Verbal and signed consents were obtained by the respondents, they were once again reminded of the project, the confidential nature of their participations and data storage (Flick, 2014). They were also reminded of their right to withdraw participation, which one of the respondents chose at a later date (Mason, 2002). The data collected is also stored in a password-controlled computer with the password accessible only to the researcher (Flick, 2009).

## 2.6 Reflexivity

Reflexivity helped me consider my background and position as the researcher, and how it could intentionally or unintentionally impact the research field through how I conducted myself, constructed and asked the questions, transcribed and coded the data (Hall & Messner, 2017; Lofland et al., 2006). I came to this project as a chartered accountant and a previous charity trustee. I do feel that because of my background as an auditor, the interviewees initially did not feel the need to discuss the actual workings of how they sought to carry out their role as it may have been deemed 'obvious'. However, upon realising this in the early stages of fieldwork I sought to stay close to the conversation at

hand and would ask questions seeking clarifications and examples of what they meant, and would encourage them to expand on the anecdotes shared. To minimise this impact, I also sought to remain mindful of how I speak by not relying on industry jargon and common words when speaking to interviewees as their response may be influenced by my conduct (Groenewald, 2004; Hall & Messner, 2017). In some cases, I do think my background may have provided legitimacy by helping me obtain access to interviewees due to my professional credentials.

My interest in the charity sector began with a curiosity focused on the role of trustees-what is it that they do? In wake of sector scandals in 2015, trustees of the respected charities were found to be incompetent and/or negligent (Laville & Butler, 2017; Swinford, 2016; Viña, 2016). As Chapter 5 will examine in detail, the law stipulates that the trustee is held fully responsible for the general management and administration of a charity (Charity Commission, 2018b). In academic and policy literature, much had been written about what is expected of trustees and the challenges they face, but there was limited literature available on what it is that trustees *do* (Charity Commission, 2018b; Dartington, 2005; Harris, 2001; Hill, 1974). The regulator's task is to communicate the role expectation in order to maintain the governance of the sector. The work of Harris (2001) and Dartington (2005) examined the impact of the policy changes of the 1990s and 2000s on the role of the trustee and argued that it had become burdensome and could risk the recruitment of trustees. I wanted to further the available literature on trustees to understand how they made sense of the roles and responsibilities in order to make it feasible to do.

Nevertheless, the initial queries helped shape the research aims of the project and how it evolved. Being new to the UK, I sought to build an understanding of charity sector and the key events in its history in order to better understand how the sector has been shaped. Beginning the search with key legislative changes, I then drilled further down to collect and analyse charity legislation bills, government reviews and commissions, media articles and secondary academic literature. Parliamentary debates proved to be a key resource

which helped provide insight into the social and political contexts where these changes happened. This is not to say that I was able to understand and be sensitive to all the nuanced complexities of the historical times being researched, these archival sources nonetheless allowed me insight into a past which is not easily gleaned from reading published, final copies of the law and/ or standards.

The process of interpretation, and the reflexivity which accompanies qualitative methodology is both a strength and concern of the process. The challenge with such an approach; however, always remains with the process of interpretation by the researcher who is viewing the past through the lens of the present. In managing this risk, widening the search to include different sources of archival materials, both primary and secondary, help lessen this concern. This approach is different to the process of triangulation. Triangulation presupposes the existence of an objective truth and ignores the complexities of a reality which is constantly rewritten by the wider social, political and environmental sphere (Flick, 2005; Scott, 1990). By expanding the data collected, the goal is to explore different social realities revealed within the data collected (Ahrens & Chapman, 2006). That the data relied upon and interpreted remains ‘trustworthy’ (Covaleski, Dirsmith, Heian & Samuel (1998) as cited in Ahrens & Chapman, 2006). This process is also facilitated by the ongoing back and forth, the constant revisiting and developing of stronger hypotheses which build on current understandings.

## Chapter 3 How did the emergence of accounting standards play a central role in building the regulatory capacity of the Charity Commission of England & Wales?

### 3.1 Introduction

Standards, guidelines and codes are ubiquitous and have played a significant role in organising and classifying modern life as “invisible, potent entities” (Bowker & Star, 2002, p. 3). While their development is considered to be a “valuable and necessary” response, when addressing socio-economic and political problems, how they function and the impact they have made has largely been taken for granted by policy makers and academics (Lampland & Star, 2008, p. 10). The study of accounting standards remains important, as these standards help facilitate an organisation’s financial reporting. Standards are commonly regarded to be neutral, objective devices relied on to ‘reflect’ or give ‘insight’ into an organisation’s activities. Accounting as a mirror is challenged by Hines (1988) and Hopwood (1992) who argue that accounting communicates very specific realities as crafted by those who have shaped it. In line with over half of century of sociological perspectives in accounting research, the strictly technical view of accounting is challenged and “the state of the socio-political foundations” which underlie its development are brought to bear on the study of accounting standards (Tinker, 1980, p. 12). Of interest here are charity accounting standards; a blending of ‘worlds’ given the for-profit systems which accounting standards support and sustain, and the not-for-profit logics on which charities subsist.

This chapter studies the emergence and subsequent stabilisation of the UK’s charity accounting guidelines, the Statement of Recommended Practice (SORP).<sup>48</sup> First developed as a set of recommended practices in 1988, the SORP took on a standard-like status when it became part of Charities Act 1993.<sup>49</sup> The SORP’s emergence is in part a

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<sup>48</sup> The SORP serves as recommended accounting guidelines which supplement official accounting standards. They reflect best practice for accounting treatments and are generally specific to individual sectors or accounting issues, for example, the charity sector or pension accounting (FRC, 2022).

<sup>49</sup> Not all charities are required to prepare accounts in compliance with the SORP. The current Charities SORP, also known as FRS 102, requires all charitable companies and non-company charities with an



story of fraud and financial mismanagement story, but it also reflects a desire by the state to build knowledge and awareness about the charity sector, albeit in financial terms. This chapter argues that the aspirations behind the SORP were initially about strengthening the state's social welfare provision, and determining what role charities could play in that. Second, developing the SORP was about building the Charity Commission's regulatory capability in order to provide them the means to fulfil its regulatory purpose in order to govern and maintain oversight over the sector. Third, this chapter argues that the SORP simultaneously enabled an external financial reporting *and* an internal financial management reform as charities experienced significant operational changes from the 1980s.

This chapter studies the process of accounting and social change, and the conditions which paved the way for these changes to occur. Through adopting an archival approach, it will examine the interrelationships between actors and institutions located within and outside the charity sector. This examination will include exploring the aspirations and agendas of the state, the Charity Commission and the Accounting Standards Committee. While the main analysis will primarily include an examination of these three actors, other actors and institutions situated within and outside the charity sector have throughout the passage of time also played a role in the emergence of the SORP.

The theoretical framework supporting this study is drawn from Burchell, Clubb, & Hopwood's (1985) examination of value-added accounting using the notion of arenas. This notion provides space to examine and explain the inter-dynamics at play within a respective field while also allowing for the shaping and influence of the world outside the respective field. The notion of arenas is used to investigate the emergence and subsequent

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income of greater than £250,000 in the UK to "prepare accounts on the accruals basis to give a true and fair view of a charity's financial position and financial activities regardless of their size, constitution or complexity" where an alternative reporting framework exists in accordance with respective laws or other applicable SORPs which are geared towards the specific nature of the charity (Charity Commission, 2019, p. 3). Smaller charities, not registered as companies under the Companies Act, with gross income less than £250,000 also have the option of preparing accounts under the receipt and payments method (Charity Commission, 2013a).

reformation of charity accounting standards, and the role different actors and processes have played. The notion of ‘arenas’, can also be thought of as a condition of possibility which help examine the role different actors and processes have played in facilitating accounting change. The notion helps take the concept of fields further as it allows for longitudinal historical analysis to examine the interplay between actors, institutions and practices.

This chapter argues that the aspiration behind the development of the first charity accounting standard, formally known as the Statement of Recommended Practice (SORP), in 1988 can be traced to the pre-neoliberal era following the post-war period before it gained traction in the neoliberal era as governments sought ways to manage and control entities. It does this by examining the interrelationships between the state, the accounting standard setter and the charity sector regulator under the umbrella of political economy studies (Roslender, 2017; Tinker, 1980). This examination helps support the argument that the SORP’s development was a culmination of decades of efforts to exercise power and control over charities. The three arenas show how the state’s desire to maintain power and control over the charity sector, the accounting standard setter’s desire to maintain its legitimacy, and the regulator’s desire to build regulatory capacity, all led to the emergence of the SORP. Through exploring the critical role standards play in shaping and influencing actors and organisations, this chapter also seeks to explore how accounting standards have shaped the charity sector’s accountability regime.

In 1988, the first charity accounting guidelines were developed and published by the Accounting Standards Committee (“ASC”) following six years of consultation. Formally known as the *Statement of Recommended Practice 2: Accounting by Charities* (“SORP”),<sup>50</sup> these guidelines helped lay the foundation for an accounting regime which sought to standardise the presentation of financial statements, and helped make charities’

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<sup>50</sup> The Statement of Recommended Practice No. 1: Pension scheme accounts (SORP 1) published by the ASC in May 1986 was the first SORP of its kind (ASC, 1986). The first charity SORP known as SORP 2, was the second SORP published by the ASC.

performances comparable through their annual accounts. Initially developed as a set of recommended best-practice accounting guidelines, SORP 2 took on a ‘standard-like’ quality when the Conservative government made compliance mandatory in 1995 for charities with incomes greater than £100,000 (Connolly & Hyndman, 2001).

The development of SORP heralded significant financial, regulatory, and operational changes for charities, as loosely-structured and weakly regulated charities came to adopt financial reporting practices, management control systems and operational practices commonly found in the commercial sector. Despite the lengthy period involved in developing the first SORP, interest in charity accounting, and in particular the SORP, has not waned. Since its initial development in 1988, the SORP has been updated in 1995, 2000, 2005 and 2015 (Davies & Anderson, 2016).

All charities are required to submit accounts and annual reports, referred to as Trustees Annual Returns (TAR), to their respective charity regulator with a few exceptions if they are considered to be exempted or excepted charity.<sup>51</sup> Based on a charity’s income size, the TAR is required to be either filed, independently examined or audited.<sup>52</sup> Financial statements prepared by charities in accordance with the SORP do not just report on a charity’s activities, rather their compliance also helps legitimise their place (Tinker & Neimark, 1987) which further helps in making the field of charities legible. The SORP shows how through these acts of compliance, it facilitated the creation of a homogenous, rationalised field through charity financial reporting. Since its initial development, the SORP<sup>53</sup> has been updated four times (ICAEW, 2020).

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<sup>51</sup> The charity SORP is a UK wide set of charity accounting standards. However, this thesis’s examination is focused on the charity sector in England and Wales, and its respective regulator, Charity Commission for England and Wales.

<sup>52</sup> All charities with income greater than £10,000 must file annual accounts with the Charity Commission. Charities with income greater than £25,000 must have their accounts audited or independently examined. Charities with income greater than £1 million must have their accounts audited (Commission, 2015).

<sup>53</sup> The SORP is a set of guidelines for charities in all of the countries in the UK and draws on the participation of all the charity regulators in England, Wales, Northern Ireland and Scotland.

A key reform of later iterations of the SORP have included the requirement for larger charities to prepare accounts on an accrual basis. This chapter will illustrate how this change in effect served as a ‘Trojan horse’, which brought more accounting reforms to the sector, particularly in the areas of reserves and risk management. These reforms have also increased responsibilities for the charity trustee by requiring them to sign-off on the annual accounts submitted to the Charity Commission. The act of providing a sign-off functions as a form of regulatory device which explicitly holds the trustee responsible for a charity’s activities. These shifts have contributed to greater attention being placed on demonstrating impact and reconstructing the role of the charity trustee. While it was initially focused on improving the “reporting hygiene” practices of the sector, the SORP since the 1990s has become an exercise in risk management. In so doing, it has facilitated the ongoing accountingisation<sup>54</sup> of the sector by being a key mechanism through which ideas and practices travel from the for-profit sector to the charity sector.

This chapter seeks to make two contributions. First, this chapter provides a detailed historical insight in order to help explain how the aspirations for the development of the SORP can be traced to the post-war period where the state sought to build knowledge about the sector’s activities. In addition, this chapter contributes to a nuanced understanding of how the charity SORP has reformed since its initial development to encompass greater concerns about risk management and has also imbued the role of regulator and the charity trustee with increasing responsibilities. Under the political economy approach, this chapter also contributes to furthering understanding of how different actors’ aspirations and interests shaped the charity sector’s accounting regime through the SORP. This chapter also examines the role the accounting profession and the standard setter played in the development of the SORP (Hyndman & McMahon, 2010). It builds on current literature by problematising *why* and *how* the SORP was developed as a way to maintain the legitimacy of the accounting profession and the regulator, and the subsequent impact it has on charities seeking to maintain their legitimacy and ensure

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<sup>54</sup> Refer to footnote no. 9 for further clarity on what is meant by the term ‘accountingisation’

survival by adopting the standard. This chapter's analysis also helps contribute insight into how the accountingisation of the charity sector through the SORP has blurred the boundary between charities and for-profit organisations. (Commission, 2015)

This chapter is organised into five sections. Section 3.2 analyses the current literature on charity accounting standards and the theoretical considerations underpinning this chapter's examination. Section 3.3 looks at the origin story of the modern regulatory framework governing charities by exploring the political economy of the SORP. Here, I analyse why the British government first developed an interest in the charity sector as an element of the country's incipient welfare state. I argue that the 1960 Charities Act was the first step in linking a charity's financial performance to the broader regulation of the sector. This link was further strengthened in the 1980s when Thatcher's Britain was embracing ideals of economy, efficiency and effectiveness. During this period, the charitable sector's activities in the delivery of social welfare services grew in prominence due to the rise of a "contract culture". Charities' performance evaluations were now explicitly tied to how they satisfied contract conditions. It was during this period that the state and regulatory bodies battled over institutional legitimacy and the power to determine the standards for the sector. Here, this chapter shows how a lack of adequate financial reporting from charities led to criticism of the Charity Commission by the government and a demand for more reliable and consistent information. Section 3.4 of the chapter draws attention to the influential role the SORP has played in acting as a condition of possibility for further reformation of the charity sector. Section 3.5 ends the chapter with a discussion and a conclusion focused on areas of future research and implications.

## 3.2 Literature Review and Theoretical considerations

### 3.2.1 Current Literature

Much of the current literature on accounting standards has focused on how the SORP came to be developed (Connolly et al., 2014; Hyndman & McMahon, 2009, 2011; Palmer & Vinten, 1998), the impact it had on charities' financial reporting practices as well as their compliance with the standard (Connolly & Hyndman, 2001; Gambling, 1997; Hines

& Jones, 1992; Morgan, 1999; Palmer et al., 2001), and challenges faced by the Charity Commission in ensuring the standard is complied with (Morgan, 2011). Connolly et al. (2014) explore how the SORP came to be developed, they focus on problems faced by charities within the sector, rather than changes promoted by external influences. They argue that diverse accounting practices and the challenges users faced in accessing information about a charity's operations led to the SORP's emergence. Palmer and Vinten (1998) go beyond the issue of diverse accounting practices and link the SORP's development to a climate of changing social policy following the Conservative Party's rise to power in 1979. Unlike the above authors, this chapter does not examine the challenges and issues charities faced which led to the emergence of the SORP. This chapter focuses its examination on the external origins of the SORP, and problematises *why* and *how* the changing social policy came to impact charities. In addition, it positions the development of the SORP as a quest for knowledge by the government, and the role this played in making charities governable through later regulatory and accounting reforms.

This chapter also examine the aspirations and agendas which led to the emergence of the first SORP in 1988. Hyndman and McMahon (2010) explore the role of key stakeholders in shaping the accounting and reporting regime of the charity sector in the UK. They draw on stakeholder theory to study the role the government and the accounting profession played in the evolution of the charity SORPs between 1988 and 2005. They argue that the government at the time, and the accounting profession played a key role which led to the emergence of the first SORP, and its later iterations. This chapter seeks to contribute to the above body of literature by critically examining *why* these stakeholders were invested in this process and *what* they sought to gain by participating. This chapter goes further back in history and highlights that following the post-war period, the state was interested in building knowledge about the charity sector, and the role it could play in supporting the state in its welfare provision. Over the course of a number of decades, this interest shifted as the state began placing the responsibility of service welfare provision on the

charity sector. Thus, the development of SORP was more about a quest for knowledge, than it was about addressing concerns of fraud and financial mismanagement.

In the 1970s, the accounting profession *did* play a dominant role in the standard setting process (Hyndman & McMahon, 2010). However, this chapter will illustrate that their interest in developing the SORP was about maintaining their own legitimacy amidst a turbulent time for the standard setter. Furthermore, this chapter examines the history of the SORP through adopting a political economy lens. It does this in order to explore the power dynamics and struggles which took place amongst the key actors and institutions. Through a study of archives, this chapter provides insight into what motivated the Charity Commission, ASC and the Conservative Party to promote the charity accounting standards agenda in the 1980s. By critically analysing the role of the above actors, this chapter will explore the agendas, interests and concerns which came to be reflected in the standards and how the charity sector came to be governed.

Standards are commonly thought of as objective, neutral mechanisms in the modern world. However, it is important to consider the role they play in facilitating, organising and classifying life. Moreover, it is important to study, what Bowker and Leigh Star (2002) refer to as conditions of production and the varying agendas and aspirations which played a role in said production and subsequent maintaining of them. This is especially critical as “the control of standards is a central, often under-analysed feature of economic life” (Bowker & Star, 2002, p. 15). The study of standards helps explore the political economy of the development of SORP as ultimately the state was in power and played a key role in facilitating the shift towards the standardisation of the sector and bringing homogeneity to the organisation’s operational structure. Conforming and complying signal that if you follow and meet the requirements of the ‘system’ then you are seen to be legitimate.

SORP has played a key role in making it possible for charities to measure and communicate their ‘charitableness’. Through an influx of accounting standards, practices

and structures, it has led to a transformation of charities into accounting entities. For the state and the regulator, the charity has become a site of economic interest, and this interest is mediated through a narrowing of accountability with a focus on financial reporting. By making organisations responsible for their performance and finances, accounting is used to create new boundaries (Kurunmaki, 1999). Through the process of financial reporting, standards play multiple roles. They help enhance financial governance and respond to demands for financial accountability. In addition, they also become a key ingredient in defining what a charity is. However, in the case of the SORP, the challenge charities faced is when it also blurred the boundaries between public and private organisations through the transferal of private-sector accounting and accounting entity definitions. This set of standards helps tether a charity to the charity regulatory space and ultimately, the Charity Commission.

The interest in standards is closely tied with the practices which enable the process of governing. In this context, the themes of transparency and accountability play a key role. The shift towards rationalised, or managerial, governance practices, which espouses the values of transparency and accountability, has commonly been facilitated through accounting practices and structures leading to administrative reforms within public and private sector institutions (Drori et al., 2006).<sup>55</sup> These shifts are said to not just be limited to the business world, but are rather ones which permeate all levels of society which include both organisations and individual actors. Governance practices are seen to shape all manner of daily life from. In fact, the growing prevalence of governance practices are drawn upon and used to justify its use when dealing with all manners of social and organisational life, included but not limited to human rights violations, corruption, managing family life and other forms of administrative response. (Drori et al., 2006; Drori

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<sup>55</sup> The authors examination finds that shifts towards rationalised, or managerial, modes of governance have been driven by global, rather than just national economic and political conditions. In studying factors influencing the shift towards rationalised forms of governance, the authors argue that global business and financial cultures which helped facilitate linkages between organisations around the world, and the prevalence of science and education within societies worked in tandem to contribute to shifts towards rational governance practice. The authors emphasised that facilitating this process was largely a result of cultural practices and norms, rather than just national economic and political processes (Drori et al., 2006).



& Meyer, 2008). Key here is in understanding that what was once thought of as merely bringing in rational business practices in order to maintain oversight and scrutiny over the actions of another entity or being has now permeated society as an ideology which draws upon modes of standardisation and accountability.

Further studying how rational practices have permeated how societies are governed, Drori and Meyer (2008) argue that a “worldwide wave of scientisation” took a hold in modern society in the absence of “strong regulatory systems” (2008, p. 31). Scientisation is described as a way to manage uncertainties and turbulence in social environments through scientific, rational practices. These practices can include forms of rule-making and conventions shaped by science and higher education which can be organised both by formal institutions and social actors, state and non-state, who possess the ability to come together in the practice of rule-making (Drori & Meyer, 2008; Jacobsson & Sahlin-Andersson, 2008). When creating these rules and drawing on processes of scientisation, the actors, who are dispersed through all levels of society, perpetuate the myth<sup>56</sup> that these practices are part of rationalised decision making, and that they are integral to an organised life. That these practices are integral to appearing “sensible and responsible” when being held accountable for ones conduct (Drori & Meyer, 2008, p. 31).

By considering the role accounting plays in holding someone accountable for their conduct, the aspirations and agendas of the those in power becomes important to consider. Financial statements are described as “subtle political statements” whose power lies in producing specific, curated realities in an unobtrusive, incontestable manner, not often reflected upon (Quattrone, 2015, p. 53).

In the development of the SORP, various bodies and actors- such as accounting standard setters, lobby groups, regulators- played a role in determining the rules and standards which are said to ‘reveal’ or represent an objective reality. The setting of financial

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<sup>56</sup> Myths, as described by Drori and Meyer in this context are “uncontested truths Drori and Meyer (2008, p. 52).

reporting parameters determined by these actors directs what gets counted and measured, what is ascertained to be relevant, and what is deemed relevant (Quattrone, 2015). As such, examining accounting formation stories become important because the aspirations and interests of the active constructors of the standard become entrenched, and taken for granted. While accounting is often characterised by a façade of objectivity, the development and mechanisms of financial reporting, relied upon as an important tool of communication is anything but objective.

### 3.2.2 The political economy of SORP through arenas

The study of political economy explores the “political nature of decision making” in order to examine how decisions impact the broader economic realm (Drazen, 2002, p. 5). Drazen further expounds on the definition by stating that the study and exercise of “power and authority[sic]” are core components of the study of politics which is described as the “struggle over authority” (Lindblom, 1977 as cited in Drazen, 2002). Drawing on the works of Weber (1947) and Keohane (1984), Drazen describes power where an individual maintains the ability to carry out their wishes despite the presence of any forms of resistance, and is able to exert that power over others (Drazen, 2002). Within this context, the core of political economy remains in exploring the conflict of interests where policy outcomes are a result of competing individuals or organisations who prioritise their own agendas over that of society’s welfare.

In 1984, Cooper and Sherer studied the value of corporate accounting reports from a political economy approach. This approach focuses on the power and conflict present in society which are reflected in the construction of accounting reports. They argued that accounting reports are not neutral devices. Rather these reports reflect aspirations and interests of actors in power who determined and influenced the organisation and development of the reports. That these actors in power represent the elites whose actions impact the broad masses in society. The authors argued that the study of such reports remain critical as the accounting reports impact the distribution of “income, wealth and

power in society” (Cooper & Sherer, 1984, p. 218). This chapter aims to explore these dynamics in the study of how charity accounting standards first emerged.

Burchell et al. (1985) explored the rise of value-added accounting in the UK during the 1980s. They were interested in better understanding the relationship between accounting and the society, and how they mutually influence and shape each other. Through the study of arenas and constellations, they wanted to explore how something as ambiguous as the notion of value-added accounting was reflective of the co-constitution of accounting and its wider social environment.<sup>57</sup> In studying the space of value-added accounting, the study of accounting change was not “a mere assembly of calculative routines, it now functions as a cohesive and influential mechanism for economic and social management” (Burchell et al., 1980).

Arenas in this context are “complexes of issues, institutions, bodies of knowledge, practices and actions, within each of which there may be traced a descent – a succession of phases in the trajectory of a social movement” (Burchell et al., 1985, p. 390) Used as an analytical tool, arenas do more than just capture the historical narrative of the past, they help to conceptualise and organise key, complex social and technical movements within each space which can influence and lead to organisational change. It is at the intersection of these movements where the *birth* of an accounting constellation takes place.

According to Burchell et al., an accounting constellation occurs when arenas such as “institutions, economic and administrative processes, bodies of knowledge, systems of norms and measurement, and classification techniques” intersect (1985, p. 400). In a sense, an accounting constellation can be considered to be the ‘resultant space’ which creates space for accounting ideas to emerge. It can take the shape of regulation, standards,

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<sup>57</sup> In studying accounting change, academics like Burchell, Hopwood and Clubb sought to challenge traditionally held views of accounting as a static, *routine-like* activity depicting organisational reality in a neutral and objective manner (Miller, 1992). Through studying the social and technical environment, they wanted to demonstrate that accounting has the ability to steer, change and influence organisational decision making and behaviour.

new institutions, organisations, practices and even roles. Studying the emergence of standards through the conceptual framework of arenas helps explain how the process of standardising begins changing a field even before standards are formalised and adopted.

### 3.2.3 Field of Charities

Prominent within the neo-institutional theory literature, DiMaggio and Powell's (1983) work on organisational fields help explain how charity accounting standards came to reshape the field of charities. The concept of institutional isomorphism is used to explain how a diverse field takes on homogenous, taken-for-granted characteristics by examining the dynamics occurring within the field. Fields, according to DiMaggio and Powell (1983, p. 148), "constitute a recognised area of institutional life". Institutional theory helps explain "the emergence and structuration of an organisational field as a result of the activities of a diverse set of organisations; and second, the homogenization of these organisations, and of new entrants as well, once the field is established" (DiMaggio & Powell, 1983, p. 148). The field is home to actors who interact with each other, are situated within "sharply defined inter-organisational structures of domination and patterns of coalition, have certain guidelines and expectations they must follow and share an understanding that they partake in a "common enterprise", (p. 148). In applying these concepts to charities in the UK, one can begin to make sense of the vastness of the field and the various actors which are situated within and outside the field of charities. The study of fields through a political economy lens provides a grounding by helping maintain awareness of the power dynamics and tensions at play.

While field theory and institutional isomorphism recognises some influence from the external world in the form of coercive isomorphism, they do not help explain why structures and practices which are being mimicked exist, and what influenced their emergence. As such, it is important to contextualise how the wider environment has initiated reforms occurring within the charity field by actors whose concerns were not directly related to charities but nonetheless came to impact them. Burchell et al's (1985) notion of arenas helps examine this further.

Arenas and fields share similarities, yet they also differ. Unlike fields, arenas allow for a broader analysis of the internal dynamics occurring within a field, *and* also dynamics occurring externally which come to impact the field. Fields in a sense can be conceptualised as a fairly constrained and constructed arena which is focused on the internal activity occurring within, with only limited scope to consider external activity. Arenas, on the other hand, add to field theory by providing a space to conceptualise the inter-dynamics at play within a respective field while also allowing for the shaping and influence of the world outside the respective field. The use of arenas and constellations help explain how broader organisational and field-level forces have co-opted accounting in the rise and institutionalisation of the SORP, and how they later came to structure the field of charities.

Norms, morals and ethics play an important role in directing social and organisational behaviour. Standards, codes, practices, guidelines and regulation often come to reflect these norms and beliefs and guide the actions of how organisations may conduct themselves. An organisation today can hardly be considered an operable, legitimate entity without complying with some form of standardisation in its economic and operational life (Lampland & Star, 2008). According to Lampland and Leigh Star (2008), standards are characterised by five dimensions. A body of rules is considered to be standard-like when they are: nested inside one another, increasingly linked and integrated across organisations and systems, distributed unevenly across actors and organisations, relative to users, and emblematic of ethics and values. In analysing charity accounting standards, the latter three are perhaps more clearly identifiable. The field of charities is highly variegated as wealth in resources and personnel expertise is distributed unevenly across large and small charities. It is home to organisations who rival large multi-million-pound corporations and thousands of employees to small charities primarily staffed by a few volunteers. Accounting standards for charities can also create barriers to entry for smaller charities who may lack administrative resources and the expertise required to meet the compliance demands of regulators and donors, and attract resources

Standards tend to be characterised by their pervasive, taken-for-granted role in shaping modern organisational life. Their impact can also vary widely as some standards codify existing practices, whereas others change existing practices. The development of standards is often considered to be “valuable and necessary;” however, the question of whether standards are an appropriate solution is often left unasked (Lampland & Star, 2008, p. 10). Standards demand academic interest as they shape how the roles and responsibilities of organisations and actors come to be defined. In the accounting world, they do not just help facilitate financial reporting (Tinker, 1980), rather they provide insight into the interests and aspirations of the actors who helped shape its emergence and subsequent reform. SORP is not an objective, neutral device. Instead, it is an instrument is used to mediate the relationship between the state and the charity sector by way of the Charity Commission and the ASC.

The charity sector remains an interesting field of site to study. Despite their varying activities and size, their organisational structures and operational practices, and how they are regulated can be quite homogenous. This then raises the question of why did charities come to resemble each other in their organisational form and practices. Through SORP, standards have created possibilities for how an organisation, or an individual, may behave, be governed and monitored. This chapter will show how it changed the existing practices of charities once they were required to comply through reforming practices of external financial reporting and adopting internal management systems. In the case of charities, compliance with accounting standards can be seen as a way to maintain charitable status, attract donations and direct the behaviour of actors.

### 3.3 Political Economy of the SORP

While accounting practices and structures were not novel to the charity sector in the post-World War Two period, what had previously been demanded of charities differed widely from the present day. Charities’ operations, how they were structured organisationally and monitored by external stakeholders, including regulators, were historically conducted in

a laissez-faire manner. Historically, charities have enjoyed considerable autonomy in how they conducted their operations, both in the activities they engaged in and how they spent their resources (Beveridge, 1948). In contrast, charities today are now required to comply with the rules and regulations of at least of one regulator, prepare and submit annual accounts in accordance with charity accounting standards, and follow governance best practices as determined by leading actors in the sector (i.e., National Council for Voluntary Organisation).

In order to understand the emergence of the first SORP in 1988, this chapter traces its historical emergence from the post-WW2 period. This section explores the interrelationships between the state, the accounting standard setter and the charity sector regulator in order to understand the aspirations and power negotiations which led to the development of the first SORP. This section argues that the three arenas are situated at the roots of the standards development. First, an interest in what role charities could play in the welfare state led to a growing interest in monitoring and controlling their activities. Second, protecting their own legitimacy as an accounting standard setter fuelled the Accounting Standard Commission to take action and lead the development of the standards. Finally, the efficiency rhetoric of the new public management era placed increasing attention on holding charities financially accountable to the state. This discussion helps provide an understanding into how an accounting-driven logic was able to take root in the charity sector between 1945 and 1995.

### 3.3.1 Monitoring and controlling charities

#### *The state's search for knowledge- what does the charity sector do?*

The role of the voluntary sector demanded increasing attention by the UK government in the post-World War Two period. During this period, charities enjoyed considerable autonomy with little to no regulatory scrutiny by the Charity Commission on how they conducted their activities and spent their resources (Beveridge, 1948). At the time, they were viewed by those in the Parliament as more flexible and responsive to the needs of the public than the state (Finlayson, 1994). This sentiment was shared by Lord Beveridge,

who advocated for the charity sector, or as he referred to them as the voluntary sector, to play a supporting role to the state in the delivery of welfare services (Beveridge, 1948). His 1948 report, titled *Voluntary Action* built on the ideas expressed in his 1942 report, *Social Insurance and Allied Services* (commonly referred to as the Beveridge Report).<sup>58</sup> Focusing on the charity sector, he was interested exploring the role ‘professional charities’, which employed paid staff and were organised independently of the state, could play in the welfare state. The report emphasised a “need for political invention to find new ways of fruitful co-operation between public authorities and voluntary agencies (Beveridge, 1948, p. 10). His report was concerned with determining what role the charity sector could play in meeting the needs of the broader public, and how they could help fill the gap between the welfare services offered by the state and the charity sector’s activities.

A key recommendation of the Beveridge Report urged the state to explore and examine the charity sector, the law on charity trusts and the role they can play in the evolving welfare state. This report also recommended that the state undertake a survey in order to determine the size and scope of the sector and its activities. At the time of the report, the size of the charity sector in terms of the number of charities, its activities and income remained unknown to the Charity Commission due to the diversity present in the sector (Beveridge, 1948). While charities were expected to maintain accounts, lack of registration meant that the Commission remained largely unaware of the sector’s activities. As a result, lack of knowledge about the sector’s activities and income were issues problematised as contributing to the regulator’s weak oversight over the sector.

The Beveridge Report’s content and recommendations aligned with the state’s interest which was focused on exploring the charity sector’s potential for complementing the activities of the welfare state. In response, the government established a commission to examine and investigate the charity sector and the administrative laws governing it

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<sup>58</sup> Lord Beveridge is also credited with recommending the creation of the National Health Services of the United Kingdom (Musgrove, 2000). The 1942 Report, commissioned by the government, was solely focused on the role the state can play in improving the lives of its citizens (Beveridge, 1948). This report is viewed to have provided “the blueprint for social policy in post-war Britain” (Beveridge, 1942).



(Finlayson, 1994). The 1952 Committee on the Law and Practice Relating to Charitable Trusts chaired by Lord Nathan – commonly referred to as the Nathan Committee, examined the law on charity trusts in order to recommend ways through which it can be modernised. Of its recommendations, the key ones included that the charities are to register with the Charity Commission and that this register is to be maintained by the regulator, and that charities are to keep annual accounts. Charities were not required to submit the accounts to the regulator annually, they would only submit it if the Commission requested it of them. This recommendation helped establish the foundational basis for maintaining oversight over the charity sector from a financial perspective, rather than from a non-financial basis. The requirement of creating a charity registry and maintain financial accounts highlight the links between growing concerns of governance and accountability, and a charity's financial management.

The Nathan Report also recommended that the powers of the regulator be widened, particularly in the area of *cy-près*,<sup>59</sup> in order for them to ensure that the resources of charity trusts whose purposes were at risk of becoming or had become defunct could be applied by the Commission to new purposes which maintained the spirit or intention of the original trusts (Finlayson, 1994). This was to allow for an understanding of how the charity sector could complement the state's service provision with their own service offerings, and also to allow for charity resources to be better applied when they would have to be redirected under the doctrine. Through enacting the *cy-près* doctrine, the regulator was being provided the means to respond to the changing needs of the public in how the resources of the original trusts are allocated while being mindful of the donor's wishes. This recommendation helps illustrate the ties between the charity register and the relaxing of the *cy-près* doctrine. The role of the register here is to help enable the regulator in determining what activities charities are currently engaged in, and where the needs of the public would be best served through the reallocation of defunct charitable trusts. Here

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<sup>59</sup> In legal terms, the *cy-près* doctrine allows for the wishes of the donor in a charitable trust to be implemented even if the original purpose has not been maintained or has been deemed impracticable to carry out (Thomson Reuters, 2021). The idea is to fulfil the wishes of the donor and the original objectives as close as possible to the original intent (Nathan, 1962).

the notion of public benefit is being problematised by the state who is interested in building knowledge of the sector and identifying gaps in order to determine policies which would serve the welfare needs of the wider public

The Nathan Committee's recommendations largely formed the basis of the *Charities Act 1960*. This Act has been described as establishing the modern regulatory framework governing charities (House of Lords, 2017). This Act accepted both recommendations made by the Nathan Committee where charities were now required to register with the Charity Commission and maintain annual accounts. It also widened the powers of the regulator in order to allow it with the means to better regulate the sector and give it powers to investigate a charity's activities (Hodgson, 2012), and it also tasked the Home Office with the responsibility of appointing future Commissioners thereby strengthening the ties between the regulator and the state.

The charity register, and the requirement for charities to maintain annual accounts<sup>60</sup> allowed the Charity Commission an avenue to build a database. However, it did not provide the regulator the means to ensure that charities registered with them and maintained annual accounts. During this period, notions of transparency and accountability are being problematised in terms of financial responsibility. However, while the policies at the state and regulatory level were focused on building awareness of the sector, compliance remained low. For example, only new charities at the time were required to register, and there were no time limits set for trustees to register their charities. There were also no sanctions in place, i.e. fines, for trustees who did not register their charities (Nathan, 1962). In practice, the Commission struggled with operationalising these policy changes. Nevertheless, the policy reforms and the aspirations which led to the Charities Act 1960 laid the foundation for the state and the regulator to build on the regulatory framework in the future. The policy changes of this period helped chart a course for further legal and accounting reform to occur in later decades.

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<sup>60</sup> As required by Charities Act 1960, charities were only required to maintain annual accounts; however, they were not required to publish them (Morgan, 2010).

Risk of fraud and financial mismanagement did not play a primary role in fuelling these changes. Instead, a concern with a lack of knowledge of the sector's activities played a role in recommending the creation of the charity register. The establishment of the charity register and the desire to learn of the sector's activities were part of what Lord Nathan referred to as the main purpose of the Act. He stated that the Act was to have made possible to "collect information [about charities] and make it available to the public" (Nathan, 1962, p. 20). The above excerpt highlights how the policy reforms of the 1960 Act played a crucial role in setting the foundation for making the charity sector legible through means of building knowledge about charities over the course of the next few decades.

### *Shifting notions of accountability and transparency*

The 1970s was not a period of significant policy reform for the charity sector. However, the policy debates of this time helped reshape the boundaries of the charity sector in terms of how the sector came to be held accountable for its activities. In addition, to the policy and law debates, the economic events of this decade helped mark where the state placed increasing reliance and responsibility on the charity sector for the delivery of social welfare services. Whereas previously the charity sector's role was to complement the welfare state's activities, since the 1970s, its role as an alternative to the state grew (Finlayson, 1994). This section will outline how key government and charity sector reviews and commissions, along with political and economic events led to shifts in the changing relationships between the charity sector and the state, and how the former came to be held accountable by the state.

At the time of the 1960 Act, the state was interested in building knowledge of the sector and its activities through the charity sector, and providing the Charity Commission the means with which to carry out reviews or investigations of a charity's accounts. However, following the passing of the Act, compliance by charities was found to be poor as charities were not registering with the Commission nor maintaining accounts. While the Act

recommended that charities maintained annual accounts, it did not include any prescriptive guidance. Beyond recommending that charities maintain an income and expenditure account, and a balance sheet, the Nathan Report also did not make any specific recommendations. This along with the absence of any sanctions for charities who failed to comply did not bring about meaningful change to the sector's financial reporting practice.

The above issues were also later addressed in a series of government and non-government bodies which once again examined the body of law on charities in the mid-1970s. These reports were undertaken by: Charity Law Reform Group (CLRG)<sup>61</sup> (1974), the 10<sup>th</sup> House of Commons Expenditure Committee Report titled "Charity Commissioners and their Accountability" (1975)<sup>62</sup> and the Goodman Committee (1976)<sup>63</sup> (Mackie, 1975). These three key government and charity sector-led reviews were critical of the role of the Charity Commission and its inability at maintaining regulatory control over the charity sector. Two of the reports, the CLARG and the Expenditure Committee examined the role of the Charity Commission and found it wanting. In particular, the CLRG and the Expenditure Committee criticised the regulator for failing to know the size and the scope of the sector and its activities, and maintaining adequate scrutiny over the submission of charity

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<sup>61</sup> The CLRG's membership, though reported to be an independent group from the government,, included Labour and Conservative members of parliament (Mackie, 1975). This group remained active between 1972 and 1977, and presented its report in 1974 which was later debated in parliament. The Committee examined the definition of charities, the fiscal privileges charities received and the administration, regulation and surveillance of charities " (White, 1975).

<sup>62</sup> The Expenditure Committee was part of the House of Commons and had replaced the Estimates Committee in 1971 with the mandate to review the government's expenditure proposals (Silkin, 1975). In reviewing the work of the Charity Commission, the motivation behind this report was to address concerns "that the effects of charity law and its administration were restricting the work and development of the voluntary movement" (excerpt from The Tenth Report from the Expenditure Committee, 1974-1975, Charity Commissioners and their Accountability, HMSO, London, 1975, p. v. as quoted in O'Halloran, McGregor-Lowndes, & Simon, 2008, p. 147). The report also examined the accountability of the Charity Commission and proposed ways in which they should maintain stronger oversight over the charity sector using submission of annual accounts (Hansard, 1977).

<sup>63</sup> Formally known as the Report of an Independent Committee of Inquiry to Examine the Effect of Charity Law and Practice on Voluntary Organisations was commissioned by the National Council for Social Service (present day National Council for Voluntary Organisations) to examine and make recommendations on the current law on charities at the time in order to make the sector more effective. The Committee was established in 1974 and the report was published and debated in parliament in 1976. (NCVO, 1976).

accounts (White, 1975). The CLRG described the regulator's work to be riddled with "bureaucratic inefficiency and legalistic pettifogging" (White, 1975). The Committee found that lack of adequate regulatory oversight allowed the risk of "incompetence and financial maladministration" in charities to go undetected (Mackie, 1975). As such, they proposed a "radical reorganisation" of the laws governing charities (Mackie, 1975).

The CLRG recommended that *all* charities should file their account every year with the Commission, and that these accounts should be reviewed every year instead of "once every 15 years" (White, 1975). The reports, in particular by the CLRG, found that the Commissioner also needed to build its financial and accounting expertise by hiring accountants, as it was "dominated by lawyers and civil servants" who lacked the financial acumen for investigating a charity's financials (White, 1975). The CLRG envisioned a regulatory regime which actively monitored and maintained scrutiny of charities through the use of annual accounts. The other reports by the Expenditure Committee and the Goodman Committee also proposed a review of accounts every three and five years, respectively (White, 1976). Unlike the other two reports, the NCSS's Goodman Committee Report was not critical of the Commission; however, it did recommend the powers of the regulator be widened in order to enable it to better regulate the sector. A key recommendation of the Goodman Report included that large charities should submit audited accounts to the Commission (Barton, 1979). However, this recommendation was not accepted by the government at the time.

The financial reporting practices of the charity sector were considered to be weak and not reliable. These concerns grew over time as the Commission was expected to maintain regulatory control of the sector. The bigger concern at this time was to improve the reporting hygiene practices of the sector as the financial information available at the time was not consistent or reliable. However, lack of reliable information was not limited to the charity sector. The commercial, for-profit sector also followed accounting practices which were not consistent or reliable. The issue of poor financial reporting hygiene practices would become a bigger concern in the 1970s.

At a time when the economy was poor, the charity sector turned to new sources of funding to help weather the crisis through seeking non-statutory funds in the form of charging for services offered, in addition to the state's funding (Hansard, 1978a). The 1973 oil crisis resulted in high inflation and unemployment, and the state of a weakening economy came to increasingly strain the state's capacity to continue its role as welfare provider (Finlayson, 1994). During this period, the charity sector's role attracted renewed interest to explore ways of how they could play an increasing role in providing welfare services in a cost-effective manner.

Specifically, charities came to increasingly rely on statutory funding in the form of grants and service contracts from both local and central government, as public sources of funds were on the decline. This shift was not viewed in a favourable light within the government, particularly within the Voluntary Services Unit situated within the Home Office. By those active with the sector's work within the government, the charity sector's reliance on the state for funding described their status as at best a "quasi-statutory" provider of welfare services or "glorified sub-contractor[s]" (Finlayson, 1994, p. 43). The sector's increasing in reliance on statutory funds was viewed as placing a strain on the state in a weak economic climate.

As the above discussion shows, change at the policy level took a long time to crystallise and permeate to the grassroots level. The overall interest in the charity sector by the state commenced with a slow start despite accounting reforms being put into place in the Charities Act 1960. This Act can be seen as laying the foundation for the relationship between the charity sector, regulator and the state which was tightened through subsequent legislation. The concerns of the 1970s show how notions of accountability and transparency were being linked with financial accountability through the medium of external financial reporting. Whereas previously the state was interested in building knowledge of the sector, they now came to demand an account of a charity's activities. The relationship between the Charity Commission and the state is also shifting where the

latter begins to maintain greater expectations of the regulator and became increasingly critical when it did not meet them. The policy reforms recommended in the 1970s came to play a significant role in shaping the charity sector, as greater accountability and transparency demands were placed on charities.

### *The state desires an accounting of charitable activities*

By the mid-1970s, charities were commonly found working alongside the local government who bore the weight of the responsibility for delivering social welfare services. (Drain, 1975; Jones, 1975). Their work could often be found taking place in “unpopular and unfashionable areas” which were known to be under-served by local authorities (Hansard, 1975a, col. 348). While the role they played in the social service sector was recognised, there remained concern over the lack of clarity around the sector’s activities, the resources under their care and a desire to hold them accountable for their activities began to increase. The shifts in these concerns also came to be tied to concerns around fraud and financial mismanagement in an attempt to guard the public’s wealth from abuse. This was particularly of concern as the sector’s resources traditionally came from public donations, central government grants, local authority contracts and, in some cases, commercial trade (Newman, 2007). However, little was known about the combined value of these resources in assets and income. According to Mr. Timothy Yeo, a Member of Parliament:

“The accountability and regulation of charities must be overhauled, because the regrettable fact is that there is growing criticism of the activities of some charities. The criticisms can be categorised in three broad ways. First, in relation to the activities of charities, some organisations engage in activities which common sense or public opinion would generally regard as not being charitable in nature. The second category concerns costs, where charities spend excessive proportions of their income on fund-raising or on administration. The third category is outright fraud, where money which is raised by, or on behalf of, a charity

is not used for the purpose for which it was raised,” as per Mr. Timothy Yeo, MP (Hansard, 1983b, col. 168).

The focus on a charity’s accountability also captured concerns with the ‘charitableness’ of their activities, and whether they were in essence, for the public’s benefit. However, at the policy level, the focus of the state’s attention remained on dealing with issues of cost management and financial accountability in trying to ensure that a charity’s work remained charitable. The notion of public benefit was problematised and linked to concrete concerns which were largely framed around activities of fraud and financial mismanagement. In seeking to manage these concerns, the state’s proposed policy reforms were increasingly connected with the need to hold charities accountable and ensure appropriate regulatory oversight. The government pushed for this reform as cases of fraud, including siphoning charitable resources for personal use and creating charities for the purposes of tax evasion were increasingly being paid attention too (Hansard, 1986). The charity sector, dependent on the state for funding, was pushed to adapt as approximately half of the sector’s funding came from government sources. The Home Office along with three government departments- Departments of State, Environment, and Health and Social Security, were key grant and later contract providers for the charity sector (Hansard, 1978b).

Concerns around fraud and financial mismanagement came to be tied with demands for accountability and transparency by the state in both the House of Commons and House of Lords. In 1986, Lord Halisham the Lord Chancellor stated that fraud was “a serious and urgent problem” which was becoming costly to the public (Hansard, 1986).<sup>64</sup> This concern was supported by Sir Gordon Downey, the Comptroller and Auditor General who noted “disturbing evidence of a growth in the extent of criminal charity-related fraud and abuse” (NAO, 1987). This problem was also one of considerable economic size,<sup>65</sup> and it was

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<sup>64</sup> Costs of fraud just in the financial sector were estimated to range between £750,000 and £3 billion annually (Hansard, 1986).

<sup>65</sup> One of the large charity scandals during the 1980s involved War on Want whose income was found to be “materially mis-stated” (Paterson, 2003). A 1991 Charity Commission inquiry into the charity War on Want



believed by the state that if left unresolved, it would threaten the public's confidence in the charity sector (Connett & Jacobs, 1986; Fletcher, 1988). Poor public confidence did not bode well for the charity sector, since it relied on the public and political goodwill in order to attract donations which helped it remain financially viable.

While fraud and financial mismanagement were a concern, identifying and investigating suspected cases became difficult for the Metropolitan Police. The police force's Charity Fraud Unit ran into difficulties as the sector's diverse accounting practices and poor records made investigating instances of fraud challenging (Ellis, 1987). In investigating a charity for allegedly siphoning away funds for personal use, the Unit found it "difficult for the auditors and accountants and, finally, the Fraud Squad to find out how much money" had been taken (Jordan, 1980a). Missing accounting records and weak controls further exacerbated the situation. A common criticism by the investigators was on how charity accounts were difficult to understand and were "...remarkably uninformative...[as] no breakdown of a large sum for operational expenses, no details of cash donations..." could be ascertained (Hencke, 1984).

While fraud was a problem for the charity sector, instances of financial maladministration proved to be a bigger concern. Unlike fraud, instances of high administrative spending were considered unethical, not illegal; nonetheless, they similarly shook the public's confidence in charities. One of the two central issues concerned the use of donated resources being applied towards administrative overheads rather than programme expenditures<sup>66</sup> (McIntosh, 1982). This was considered problematic as the law did not impose a limit a charity's administrative expenditure. Case law contributed to the

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came on the heels of allegations of financial mismanagement and abuse of power (Paterson, 2003). There were other charity scandals at the time. For example, the Chief of the charity trusts, St. Mungo Community Trust and the St. Mungo Housing Association, was charged with falsifying financial accounts related to grants worth approximately £350,000, of which £26,000 had been unaccounted for due to falsified or missing accounting records between 1978 and 1979 (Anonymous, 1979a; Jordan, 1980b). The Bob Hope British Class charity was investigated by the Charity Commission as less than £200,000 had been distributed to charities between 1980 and 1981 despite income exceeding £2 million (Anonymous, 1982b).

<sup>66</sup> Administrative overheads are costs related to operational costs such as rent and wages whereas programme costs pertain to programme activities which directly further charitable objectives.

burgeoning problem, as a court ruling had stated that “80% plus” of a charity’s income could be applied towards administrative costs (Sapsted, 1986).

According to the government “...one of the main justifications by non-donors for not giving is the belief, rightly or wrongly, that too much goes into administration,” which was considered to be an ineffective use of donated resources (McIntosh, 1982). This was a key concern for both the state and the charity, as an abuse of resources was considered to have a “destructive effect” on the public’s willingness to donate to the sector (Evans, 1986). Use of commercial fundraisers was one such example which drew the public’s ire. These fundraisers were known to retain as much as 65% of the funds raised for respective charities for their fees, thereby depleting the value of donations available for programme objectives (Keel, 1984). Instances of charities spending more on fundraising costs than actual surplus raised were not uncommon either. In one example, a charity was found to have spent £227,000 on fundraising costs in order to raise £273,000 (Lever, 1984).

These cases served to threaten the sector’s operational viability which relied on the public’s goodwill. This was especially critical at a time when charities were struggling financially. The weak economic climate of the 1970s had also made it challenging for charities to continue their operations amidst increasing costs. The decline in public donations and grants from the local authorities also placed the charity sector’s operational survival under threat (Hansard, 1975a). The voluntary sector was facing an economic and operational crisis as rising costs and declining income limited their operational activities.

### *Building regulatory capacity*

As wider debates regarding charities use of resources were underway, the role of the Charity Commission also attracted great scrutiny. The Commission was responsible for maintaining a charity’s register, and supporting and supervising registered charities to ensure resources were being utilised effectively and appropriately (O’Halloran et al., 2008). However, there was considerable political dissatisfaction with the Commission’s activities by the state as evidenced in parliamentary debates and key government reviews.

While the Parliament recognised that charities, and the voluntary sector in general, required monetary support from the government there was concern regarding how their activities were being managed and monitored. The previously mentioned 10<sup>th</sup> Expenditure Committee's Report expressed concern over the poor regulatory oversight in the charity sector. Member of Parliament Mr. William Hamilton, also a member of the Expenditure Committee, articulated that,

“Many charities are undoubtedly run fairly, honestly and efficiently, but no one can be sure, least of all hon. Members. Of the 115,000 that I quoted, only 8,500 were inspected in 1974. That is about one in 13. What about, the other 12 that got away? There is little or no parliamentary accountability, and little or no accountability to Government” (Hansard, 1981b, col. 454).

These issues were repeatedly highlighted in subsequent reviews. This issue had also been raised earlier in the 1976 Goodman Report<sup>67</sup> which noted that out of “130,000 or so registered charities, just 6.5 per cent have their accounts scrutinised in any one year” (McIntosh, 1982). At a time when government grants to the charity sector were increasing, there was growing concern regarding charities' activities and their use of resources. In a span of five years between 1976 and 1981, government grants to the charity sector increased from £36 million to £130 million a year (Hansard, 1983b). However, cases of fraudulent activity and financial mismanagement were raising alarm in the government, and there was concern over the safeguarding of resources under the care of charities. Central to this was the continued concern that the Commission was failing in its duty as the sector's regulator. These concerns later led the government to undertake a review on how charities are being supervised in the sector.

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<sup>67</sup> Goodman Report was formally known as ‘National Council of Social Service, *Report of an Independent Committee of Inquiry to Examine the Effect of Charity Law and Practice on Voluntary Organisations*, 1976

The Woodfield Report, formally known as the *Efficiency Scrutiny of the Supervision of Charities*, undertook a review of the charity sector in 1987. Considered an influential report by the state and charities, this report sought to assess the efficiency and effectiveness of the charity sector<sup>68</sup> (Deakin Report, 1996). The report was very critical of the Commission's role as a regulator and the state of a charity's financial management process (Palmer & Randall, 2005). The report noted that an out-of-date charity register, weak controls which allowed charities to disregard filing their accounts, and poor reviews of filed annual reports all worked to contribute to an ineffective, weak monitoring environment.

Of the report's 46 recommendations, key recommendations included requiring the "submission of [charity] annual accounts to the Commission" based on the size of a charity's income (p. 4). The Woodfield report, similar to the National Audit Office and Public Accounts Committee reports linked accountability to "good quality financial information" in order to facilitate the supervision of charities. However, all three of these reports found that reliable and useful financial information were largely absent in the sector and that the requirement to submit annual accounts to the regulator were "widely ignored" (Home Office, 1989, p. 18). This report also recommended an "increase [in] the power of the Commission" in order to effectively regulate charities (p. 1). For example, previously the Commission was allowed to act if they believed there had been "mismanagement or misconduct *and* that it is necessary or desirable to protect the property of the charity or to secure its proper application" (1987, p. 28). However, the Report recommended that needing to prove both requirements "seriously restricted their [the Commission's] ability to act where abuse was known..." and as such they argued that meeting any one of the conditions was sufficient in order for the Commission to act swiftly

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<sup>68</sup> While the objectives of these reports were not all similar, the conclusions all pointed towards a sector whose accounting practices were diverse, unclear and not reliable. This was flagged as a concern because poor accounting was seen to contribute to growing instances of fraud, maladministration and questionable fundraising tactics. Through these reports and the growing interest of the public in the charity sector, the topic of charity accounting came to receive much more attention.

(1987, p. 28). Overall, this report was critical of the Commission's weak regulatory oversight over 160,000 charities.

The Charity Commission's lax regulation and the state's inability to curb charity abuse were seen as contributing to a "climate of deep suspicion" thus leading to challenges when seeking donated resources from the public (Forbes, 1989). Although, there was also clear recognition by some within the government that the Commission was ill-equipped to deal with the responsibility of monitoring the charity sector, others felt that the Commission had been too passive in its duties.

As some of the below quote's highlight, the issue of scarce resources facing the Commission were very relevant to how they exercised regulatory oversight. Staff turnover at the Commission was high, and roles within the regulator were either seen as a stepping stone to better opportunities at the junior levels, or where civil servants came to retire near the end of their careers. Furthermore, the Commission's expertise in the early 1980s was characterised as "almost entirely that of the lawyer," with time and resources spent on addressing and advising charities on legal challenges (Bird & Morgan-Jones, 1981, p. 225). It was not until the late 1980s that the Commission hired its first accountant and assigned a head for monitoring and investigating charities (Hansard, 1989b). Lack of financial expertise and adequate monetary resources made it challenging to maintain regulatory oversight over a growing sector. The regulator's struggles and scope of responsibilities were recognised in part by some voices within the government over the 1980s.

"Often attacked and frequently derided, the Charity Commission is a creature of the legislation passed in the House, and, if it is defective, that is almost entirely because the House and the other place have made it so. If we want new charities to file accurate accounts every year within a few weeks of the year end, as we should, if we want those accounts to be examined regularly, and if we want fund raisers' records to be examined

and their operations registered, as we should do well to insist, we should say so in law and give the Charity Commissioners the resources to do the work. It is not the slightest use kicking a watchdog from which the House has removed the teeth”, Mr. Andrew Rowe MP for Mid-Kent (Hansard, 1983b, col. 176).

“A charity is registered every 30 minutes of the working day. From that one gets an appreciation of the great volume of work that has to be done and the little time there might be for proper supervision, inspection and checking of accounts” Lord Mishcon in the House of Lords (Hansard, 1989b, col. 539).

However, government reviews in the late 1980s and early 1990s which examined the role of the regulatory adopted a critical stance on what it viewed as failings on the regulator’s part. A report by the National Audit Office in 1990 criticised the Commission for its failure to maintain control over the sector.

“The Committee were disturbed to learn that the Commission’s register was seriously out of date and unreliable and was ineffective for the monitoring and supervision of charities necessary to safeguard the interests of those benefitting from or contributing to charities. They believed that, notwithstanding its resource difficulties, the Commission had adopted a passive attitude to its registration responsibilities and this had to change” (NAO, 1990)

Given concerns regarding the Commission’s role as a regulator and the resource challenges it was facing, the Commission could be seen as being ill-equipped to provide guidance to charities on accounting related matters. Its focus in the 1980s was on strengthening its resource capacity. As Lord Allen of Abbeydale articulated when debating the Charities Bill which later became part of Charities Act 1992/1993,

“[the]main objectives of the Government...are to make the Charity Commission focus more sharply on monitoring and investigatory work at the cost of giving up certain functions on some of the advisory work; to reduce the scope for abuse; to put more responsibility on trustees; and, above all, to maintain public confidence” (Hansard, 1989b, col. 528).

The Commission’s aim was to protect its legitimacy and survival by seeking to increase the monitoring and governing of charities, the demand for charity accounting standards by the state did not abate. The SORP was meant to build the Commission’s regulatory capacity by making the financial activities of the sector standardised, measurable and comparable. In addition to fraud and financial mismanagement, a lack of knowledge regarding the size and scope of the sector continued to be a clear concern of the Parliament. Leaving it unresolved was thought to weaken the public’s confidence in the sector and allow for abuse of the sector’s resources- resources which were also provided by the government. In addressing the matter of charity accounting, the ASC came to play a significant role in the development of the first SORP. The standard setter’s established experience with commercial sector accounting standards and its role as a non-governmental regulator positioned it to play a key role. The next section will discuss how the state and the standard setter’s agendas came to intersect by studying the emergence of the SORP.

### 3.3.2 Protecting legitimacy as a standard setter

#### *Accounting Standard Commission’s fight for legitimacy*

Accounting, itself a set of rules and practices, has come to play an important role in facilitating economic activity. The growth in corporate mergers and in large businesses going public in the 1950s created a need for comparable financial information to be used by shareholders and analysts (Anonymous, 1979b). These events propelled the accounting profession into the spotlight as accountants were considered the “guardian[s] of the public

purse” (Flegmann & Sandford, 1979, p. 54). The accounting institutes<sup>69</sup> came under pressure to solve the growing problem of poor and misleading accounting and financial reporting practices. This pressure increased when diverse accounting practices led to significant losses in the AEI takeover by GEC and the Leasco takeover of Pergamon Press.<sup>70</sup>

Prior to accounting standards, both private and public companies followed accounting principles<sup>71</sup> under the Companies Act 1948. These principles allowed management and auditors room for discretion and judgment when considering accounting treatments. However, application of the principles could lead to differing depictions of an organisation’s *financial reality* which made it that much more challenging for users to rely on financial statements. The weakness of accounting principles was highlighted by the above discussed takeover scandals.

These scandals led to declining confidence in the accounting profession’s ability to provide assurance through audited financial statements as poor subjective financial reporting practices were implicated in playing a key role in misrepresenting accounts (Rutherford, 2007). The GEC-AEI scandal in particular, was seen as pushing the ICAEW to establish the Accounting Standards Steering Committee (ASSC; later Accounting Standards Committee (‘ASC’) in 1976) in 1970 (Rutherford, 1996).

The ASC’s development of standards can be seen as the accounting profession’s “necessary” response for fixing scandals and problems with regards to financial reporting,

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<sup>69</sup> The Consultative Committee of Accountancy Bodies (CCAB) was a member organisation for the accounting institutes in England and Wales, Ireland and Scotland, Association of Chartered Certified Accountants, Chartered Institute of Management Accountants, CIPFA and also the Institute of Cost and Management Accountants (Auditing Practices Committee, 2020).

<sup>70</sup> Central to these scandals were the material differences present between financial results and profit forecasts of the buying and selling organisations which emerged as a result of diverse accounting practices adopted (Rutherford, 1996).

<sup>71</sup> ICAEW made recommendations on Accounting Principles between 1942 and 1969 until the release of accounting standards by the ASC (Nobes & Parker, 1979).



and maintaining control over the process of standard-setting (Lampland & Star, 2008, p. 10). However, such a view sets aside the unintended consequences and problems created by the onset of standards. Within its first six years as the standard-setter, the ASC rapidly developed and published 11 accounting standards; however, this development did not escape criticism. When created, the ASC's purpose was to narrow the "degree of possible flexibility in accounting practice" (Lee, 1977, p. 52). However, the ASC was criticised for issuing standards which were "...either equivocal or sidestep[sic] some of the more controversial problems..." (Lyall & Perks, 1976, p. 35). This issue, along with the role of auditor, was routinely scrutinised in the Department of Trade and Industry (DTI) inspector reports.<sup>72</sup>

Simple, easy to understand financial statements were considered essential for meeting the needs of financial users. In the public sector, the 1973 Code of Practice developed by CIPFA and used by local authorities when preparing annual accounts echoed this sentiment:

"Accountability to the electorate is the essence of local democracy. The best safeguard against waste, extravagance and inefficiency remains the watchdog activities of the local electorate, whether acting in organised groups, through the local press, or as individuals. But for local accountability to be effective in matters of finance, it is not enough that the accounts and reports should be made public. The local electorate must be able to understand the financial facts about the decisions taken by local authorities, and this means that local authorities must devise means of presenting this information in reasonably simple and straightforward terms which will in particular distinguish costs and subsidies. A challenge here to

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<sup>72</sup> Department of Trade and Industry Inspectors were appointed to carry out inspections of companies suspected of wrongdoings and/or questionable activities in the Companies Act 1948. It was common for a member of a large accounting firm to be part of the inspection team (Mitchell et al., 1994, pp. 39–51).

the accountant. Thus, in the last resort, efficiency depends on accountability” (Sandford, 1976, pp. 62–64).

The above quote highlights the role financial reporting played in demonstrating accountability which was focused on communicating narrow notions of efficiency framed in a cost sense. For users of charity accounting, what was meant by accountability and transparency differed between the wide groups of stakeholders. State bodies, like the Department of Environment, were more interested in ensuring that charities used donated resources for charitable purposes in an efficient manner whereas a beneficiary would be more interested in how effective charities were in their activities. This quote also illustrates the importance being placed on accessible information which users relied upon in order to facilitate their decision making.

#### *Threat of state intervention*

By establishing the ASC and the standard setting process, the accounting profession sought to manage the fear of government intervention. Corporate failures, charity fraud and maladministration, and DTI inspector reports all contributed to the rise in interest in financial reporting and auditing. These circumstances also led the accounting profession to play a more “interventionist” role in the profession “demanding higher standards of its members and imposing greater demands on them” (Tricker, 1983, p. 119). Their role was seen as protecting the public’s interests,

“The profession will continue to be free from government control – otherwise it will have ceased to fulfil one of its major roles as a guardian of the rights of the individual against the state” (Richards, 1980, p. 72).

This above quote is key in highlighting that the ASC’s leading the development of standards was a means to keep the government at a distance. Furthermore, developing the standards was also a way to maintain control and legitimacy of the standard setter. According to the Tricker Report published in 1983, political pressure at the time expected

ICAEW “to intervene and lead the way in matters of accounting standards and practice, in a way unimaginable 20 years ago” (Tricker, 1983, p. 119). Following criticism and debates of the ASC and the accounting profession over delay in addressing the matter of inflation accounting, the government turned its focus to the area financial reporting (Lee, 1977). From 1974, threat of government intervention remained high and threatened the ASC’s autonomy. According to Kenneth Sharp, head of Government Accountancy Service,

“...should [there] come a time of serious doubt, in the light of numerically small but commercially significant evidence as to the ability of the profession to justify that confidence, then it is inevitable that political pressure for government intervention in the control of the profession would grow” (Sharp, 1980, p. 70).

Fear of government intervention was realised when the Companies Act 1981 was passed. Through this Act, the state prescribed new accounting formats which were at odds with ASC’s standards as it required costly disclosures which the profession did not deem to be in the ‘users’ benefit (Tweedie, 1983). The statutory rules were also considered to be more conservative and therefore were considered to not “reveal the economic *performance* [sic] of the company” (Tweedie, 1983, p. 118). This was a concern, as the ASC’s powers and the reach of accounting standards was not statutory in nature. As such, in order for its standards and guidelines to remain relevant, they needed political support. While there was general consensus that the quality of financial reporting had improved, there was still discontent with the overall standard setting process as the presumed lack of independence between the accounting standard setter and the accounting profession was criticised by some members of parliament.

“We are not impressed by the present self-regulatory approach with the major accountancy firms dominating the body responsible for drafting

accounting standards—and a particularly secretive body it is, too,” stated Mr. John Garrett (MP) (Hansard, 1989a, col. 323)

These comments came following the release of a report by the accounting institutes which undertook a review of the standard setting process. The Dearing Report, commissioned in 1987 by CCAB, was given the task of reviewing the standard setting process (Anonymous, 1987). This review was in response to concerns as accounting standards which had been criticised by the state, auditors and commercial organisations as being slow, resulted in inconsistent reporting and full of “loopholes” which companies could take advantage off (Ebling, 1990; Loveday, 1988). Control over the standard setting process was important to the accounting profession who sought to regain the trust and confidence of the government, and also the public. However, one of the criticisms of the ASC was that it was not perceived to be independent of the professional accountancy bodies nor did it have statutory powers (Napier, 2010). In response to critics, an independent Financial Reporting Council was established. The mandate of this council was to support the new standard-setting body, the Accounting Standards Board (ASB) in 1990 which was independent was the ICAEW, unlike the ASC (Ebling, 1990; Napier, 2010). With the establishment of the ASB, the ASC ceased to exist and became defunct. Furthermore, the FRC and through it the ASB also received statutory support in the Companies Act 1989 where companies not complying with published accounting standards could be taken to court (Napier, 2010).

While there were concerns regarding the reach of the accounting profession and the standard setting process, the profession nonetheless played an important role as a non-governmental regulator of organisations through providing assurance over a company’s financial reporting process. More importantly, unlike the Charity Commission, as a profession, the accounting standard setting body, the ASB had the skills in setting financial reporting standards and guidelines- a skill the regulator lacked and the time. The ASB’s resource capacity, expertise and skills were greater than the Commission, as the

former had the responsibility for developing accounting standards for for-profit organisations.

### *SORP*

Given the tumultuous period faced by the ASC in the late 1980s, the accounting professional institutes sought to protect its control and legitimacy of the accounting standard setting process. However, the complexity of some accounting matters made this task challenging. In 1983, the ASC announced its intention to first develop the Statement of Recommended Practice (ASC, 1983). The SORP was first developed as a set of best practice, recommended guidelines, and unlike accounting standards, compliance with the SORP was not mandatory nor enforceable by the regulators.

The SORP can be considered to be a way which allowed the ASC means to release accounting guidelines on sector-specific matters without needing to engage in a complex-consultative process or seek the approval of CCAB and its six governing bodies (McConville et al., 2021). Through the SORP, the ASC was able to engage with accounting matters which they considered not to be of “major or fundamental importance,” and/or where the standard setter felt that traditional accounting standards “would not be followed or could not be enforced” (Atchley, 1983). Here, SORPs can be considered an innovative way for setting standards as it allowed the ASC to address complex, technical accounting issues without requiring enforcement. It was also able to address these issues while allowing the ASB the means to retain control over the standard setting process.

The first SORP addressed the issue of how to account for pension funds, an area considered to be “highly controversial and technically complex” and one also in “urgent need of regulation...” as Tom Watt, ASC’s chairman stated (Anonymous, 1982a, p. 4). Of significant economic size, pension funds were estimated to represent approximately £60 billion in assets (Anonymous, 1982a). Economically, both the public and charity sectors also held significant resources in terms of income and assets. However, given the

complexity of public and charity sector-related accounting matters, and that the current accounting standards to date had been created for the commercial sector, the ASC chose to issue a SORP for charities. This view was emphasised a few months prior to the official pronouncement of the SORPs by ASC's chairman Ian Hay Davison who supported "...issuing guidelines, rather than mandatory standards [as the] piecemeal approach seemed entirely appropriate for the public sector" (Anonymous, 1983a, p. 6). However, the standard-setter's first charity SORP was criticised as being too commercial in the guidelines proposed (McConville et al., 2021). Having been published as a set of guidelines, compliance with the first charity SORP remained low.

The 1970s was a period of significant activity for the accounting profession, in particular the ASC who were developing accounting standards for the for-profit sector. This period can be described as an intense rationalisation of the accounting craft through the development of accounting standards and adoption of accounting systems to facilitate financial reporting. Despite holding significant wealth, change in charity accounting and regulatory reform took time. The ICAEW had first announced its intent to look into the matter of charity and local authorities accounting standards in 1978 (Pearson & Gray, 1978).<sup>73</sup> They commissioned Professors Bird and Morgan-Jones to undertake a study to learn more about the financial reporting practices of the charity sector (Jones, 2013). Through studying the annual accounts of 85 charities, the study identified the issue of incorrect and diverse accounting practices in the charity sector. Considered a key finding from the report, the authors stressed that a lack of comparable and standardised accounts hindered a user's ability to understand a charity's financial position and activities (Bird & Morgan-Jones, 1981). This study was considered to serve as an impetus behind propelling the issue of charity accounting standards forward (Palmer & Vinten, 1998).

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<sup>73</sup> While there were editorials and articles within the Accountancy which discussed the area of charity accounting (i.e. Pearson & Gray (1978)) it is not clear why ICAEW commissioned a study to examine the state of charity accounting at the time. 1970s was a period of intense activity as the UK accounting standards setting agenda was gaining momentum for the commercial sector.

In addition to reviewing annual accounts, Bird and Morgan-Jones also surveyed a small group of corporate donors and grant-making trusts<sup>74</sup> to better understand how charity accounts at the time met the information needs of those users. While the response rate was 44% and not wholly encompassing any respective user group, the survey results still provided a brief insight into a user's information needs. In articulating how charity accounts could be made more useful to them, survey respondents prioritised "more standardisation, more clarity and detail for comprehensibility...[and] strict compliance (especially by auditors) with latest disclosure requirements of statutes and mandatory statements of standard accounting practice" (Bird & Morgan-Jones, 1981, p. 138). As one respondent noted,

"At the end of the day we want to know what has been collected  
and what has been done with it" (Bird & Morgan-Jones, 1981, p.  
139)

Diverse accounting practices as noted in the study made seeking reliable and comparable information about a charity's performance and its activities challenging due to the lack of clarity surrounding the use of accounting treatment(s) (Barton, 1979; Bird & Morgan-Jones, 1981). This sentiment was also echoed in the remainder of the professional accounting world as debates continued on the topic of charity accounting standards. Accountants John Pearson and Rob Gray argued that a lack of standardisation "...has severely limited the usefulness of such accounts and has deprived users of the accounts of the information they require" (Pearson & Gray, 1978). Coverage by national newspapers also supported the move towards standardisation. The Guardian in its coverage of the issue also argued that "measured [and] audited" charity accounts were needed in order to review a charity's performance for efficiency (McIntosh, 1982). Examples of diverse accounting practices included charities accounting for income under

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<sup>74</sup> Of the 100 questionnaire requests mailed out, twenty-six corporate donors and eighteen grant-making trusts responded to the authors' questionnaire by sharing their thoughts on charity accounts (Bird & Morgan-Jones, 1981). A further fifteen grant-making trusts replied stating that the questionnaire was not applicable to them as they did not give grants to charities.

assets, i.e. legacy accounts, which meant that unrestricted funds would completely bypass the statement of income and only appear on the balance sheet (Barton, 1979). This meant that users of the statements would not have a reliable understanding of the charity's income as it would have been understated. Such practices were also seen as part of an attempt to conceal a charity's true state of financial affairs in hope of attracting greater resources (Bird & Morgan-Jones, 1981).

While diverse accounting practices were articulated as a concern by users, the ICAEW's decision to undertake such a study could be seen as a signal to rationalise, or justify their reason for intervening in the charity field through accounting standards. This practice of undertaking a survey had also been mimicked earlier in 1970 when the Institute examined the commercial sector's diverse accounting practices before reinforcing the need for accounting standards (ICAEW, 2018b).

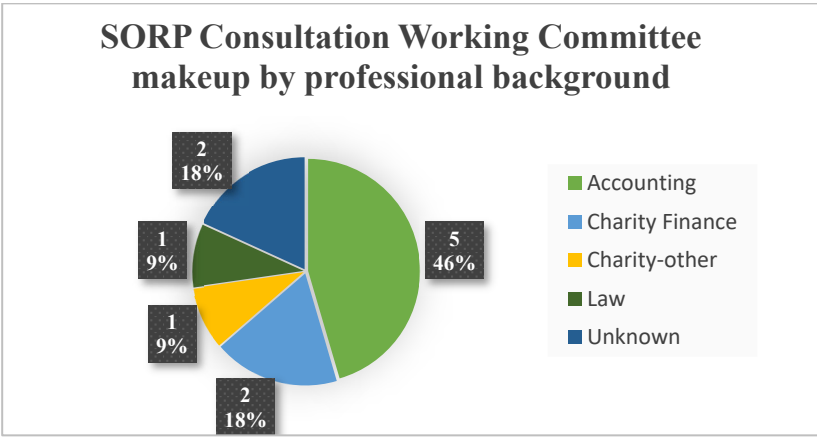
The Bird and Morgan-Jones study was considered pivotal by the accounting profession, and led the ASC and ICAEW to spearhead dialogue and demand for charity accounting standards (Palmer & Vinten, 1998). This move by the accounting profession was of significance as they lead the discourse and consultations on this issue- ahead of the government. Such interests from the accounting profession could arguably be linked to pushing for more accounting standards and related practices in the sector as means of maintaining legitimacy, relevance and access to market growth. According to Morgan (1999), accounting firms benefited from the 1993 regulatory change both in terms of income growth and areas to develop expertise in. The charity sector represented new growth at a time when the commercial market was close to saturation, and the economy was in recession.

In the 1970s, uncertainty regarding the wealth contained in the charity sector coupled with a string of financial abuses was of concern to the state. Their interest in a charity accounting standard, and the ASC protecting their role as standard setter pushed the latter to address the issue of charity accounting. In 1982, the ASC formed a working group to



address the issue of diverse accounting practices in a bid to improve financial reporting within the charity sector. The group’s aim was to improve user access to comparable and reliable financial information (ASC, 1984a).

Close to two-thirds of the ASC’s working group consisted of accounting and finance professionals (refer to **Figure 3.1**). Of the 10 members, four members were partners at accounting firms; three were finance directors in large, national charities; one was representing the Charity Commissioner and another member was representing the NCVO<sup>75</sup> (ASC, 1984a). The commercial and financial expertise of the working group made it possible for a commercial ideology to travel into and permeate the charity sector through the use of an accounting tool.



**Figure 3.1-** 1984 SORP Consultation Working Committee. Source: ASC Accounting by Charity Consultation document, (1984a)

Members of the charity sector who participated also had financial, accounting and regulatory backgrounds (ASC, 1984a). These members were finance directors for their

<sup>75</sup> The three finance directors were from Nuffield Foundation, Church of England’s Central Board of Finance and Save the Children and the member from the Commission was Assistant Charity Commissioner which ensured that financial and regulatory matters would be focused on. The remaining member served in a secretarial capacity). From the discussion paper, it remained unclear what the professional background of the members acting in a secretarial capacity and representing the NCVO were.

respective charities, which were likely incorporated. As such, these charities were already in compliance with commercial accounting standards, and thus the core not-for-profit nature and activities of the charity sector may not have been heavily focused on. Nevertheless, the composition of the committee and the various organisations they belonged too allowed for different backgrounds and experiences to be represented in the committee. The discussion paper prepared by the committee was made available to be commented on by stakeholders within the professional accounting, regulatory, charity sector and broader public.

During the consultation process which followed the publication of the discussion paper, comments came from charities (18), accounting firms (12), accounting representative bodies (24), individuals<sup>76</sup> (18), the Charity Commission (1) and other bodies (2) (ASC, 1984b). While the charity sector had a voice during the development of the discussion paper, and during the consultative process, more responses were collected from accounting firms, individual accountants and accounting academics. The accounting profession also played a key role in setting the agenda and directing the consultative process as the working group was established by the ASC, a body which was part of the ICAEW at the time of its inception. The profession benefitted from having a collective, united voice in a way that was not quite as evident in the charity sector which did not have as strong of a unifying voice at the time. Nonetheless, finance directors of charities were also part of the committee which allowed for different voices and interpretations to be heard from the charity sector.

Much of the research which went into the topic of charity accounting was driven by the state and the accounting profession in the form of reports and surveys which focused on the need on requiring charities to maintain and submit annual accounts. As such, analysing how accounting standards emerge, the interests they represent and who sets the agenda are important foundations to consider when exploring how accounting comes to construct

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<sup>76</sup> The group of individuals who sent in comments on the 1984 discussion paper were largely academics working in the field of accounting and/or professional chartered accountants.

and shape organisational behaviour. The next section provides further analysis on how the SORP's rhetoric rooted in a commercial ideology came to be supported by the Conservative government who were primarily focused on achieving cost efficiencies in the public sector.

### 3.3.3 Pushing for efficiency

In 1979, Margaret Thatcher becoming Prime Minister of a majority government marked a renewed period of power for the Conservative. A supporter of free market principles, Thatcher's era is characterised by shifts towards deregulation, privatisation and de-unionisation (Hutter, 2006). This was evident as the state privatised natural sector and rail services, deregulated financial markets and reformed labour unions (Robertson, 2016; Seymour, 2012). Central to these shifts was a move towards efficiency, promoting a self-regulating society and making welfare providers more accountable for their activities through contracts. This section will also provide insight into the Conservative party's ideology and the debates which circulated as the charity sector underwent significant changes in the 1980s.

#### *Thatcher's push towards efficiency*

As mentioned earlier in section 3.1.1, delivery for social welfare services largely resided with local governments in the past. However, wasteful expenditure, lack of accountability and the absence of a commercial discipline was used to characterise their local government operations. The 1983 White Paper "Streamlining the Cities," published under Thatcher's government, accused local authorities of "wastefulness and extravagance" (Mitchell, 1983, p. 20). Given that Thatcher took over a government which had significant public sector wage commitments coming at the heels of the welfare era and a poor economic climate, her reforms sought to reign in public spending (Goldberger, 1981, pp. 66–67). Following this shift, local authorities came under pressure to cut costs, and focus on how to deliver crucial services in a cost-effective manner (Jones, 1975; Hansard, 1978a).

Within days of coming into office, Thatcher personally appointed Lord Derek Rayner with the task of reducing inefficiency in the government (Norton-Taylor, 1982). Rayner, a businessman, was renowned for “introducing innovative management techniques, fostering enterprise among employees, driving down costs and bringing in improved financial management” (Haddon, 2012, p. 6). With Rayner as part of her government, Thatcher’s government established the Efficiency Unit in 1979<sup>77</sup> (House of Lords, 1998, para. 62). Through undertaking efficiency “scrutinies,” the unit’s mandate was focused on identifying cost savings across government departments. The focus of these scrutinies was to “identify and cut those functions, systems and processes that were seen to be wasteful or unnecessary, in the hope that this would help generate efficiency savings” (Panchamia & Thomas, 2014, p. 23). Rayner’s agenda through these scrutinies was focused on achieving cost savings. At the time of these scrutinies, the culture within the government was also experiencing a significant shift. Accounting and managerial reforms were reshaping how government departments operated through introducing “systems of managerial responsibility, financial accounting and control” (Panchamia & Thomas, 2014, p. 23). The government at the time prioritised entrepreneurial values of management and cost control (Norton-Taylor, 1982).

Rayner’s Efficiency Scrutinies identified cost savings of £421 million within the first six years. However, according to a 1986 NAO study, only a fraction of these savings had actually been realised (Haddon, 2012). Nevertheless, the ‘efficiency culture’ of Thatcher’s era was focused on making money and boosting the economy out of a recession. Whitehall emphasised efficiency and value for money when pushing for a review of administrative procedures, and policies. When pushing these changes, they promoted use of “tight financial controls” similar to those applied by “managers of private companies” to combat high spending and operational inefficiencies (Norton-Taylor, 1982).

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<sup>77</sup> The Woodfield Report discussed in section 4.3 was a product of this unit.

A key driver for enacting the culture and operational changes in the Thatcher government also included use of auditors. The government's efficiency agenda was furthered by private audit firms who were commissioned to undertake public sector audits. According to Michael Heseltine, Secretary of State for the Environment, private auditors were as a way to help the government further its agenda of "economy, efficiency and effectiveness" through assessing how taxpayer's money was being spent and pursuing financial savings (Timmins & Gash, 2014, p. 1). A few years later in 1983, he went on to state that the government was keen on giving "...every possible encouragement to the drive towards standardisation of accounting practices and financial reporting..." through involving private sector auditors (Heseltine, 1983, p. 30).

The government's aspiration came to take root with Heseltine's establishment of the Audit Commission in 1983 (Campbell-Smith, 2008). The purpose of the Audit Commission was two-fold: (1) to appoint commercial auditors in what was considered a shift towards the "privatisation of public sector audit" and (2) to publish auditing guidelines for the public sector audits (Anonymous, 1981). Following the establishment of this Commission, 30% of the 456 audits were transferred to private auditors within its first year (Anonymous, 1983b, p. 6). These changes emerged in a climate where the government's own audits, historically carried out by civil servants in the District Audit Services, were seen as 'outdated and inadequate,' thus furthering the interest in engaging private sector auditors in local authority audits.

The Audit Commission also played a crucial role in preparing the ground for and implementing "value for money" audits (Campbell-Smith, 2008). These audits allowed the ideas and practices of the government's 'economy, efficiency and effectiveness' agenda to take root in the local government sector. The purpose of the audits was to hold local authorities accountable for how they spent taxpayer's money. The impact of the audits were far reaching as the performance of the local authorities came to be made public through 'public interest' reports (Timmins & Gash, 2014). These audits fostered an inspector-regime in a manner. The changes reflect the increasing control being exerted by

the state over local authorities in a bid to make them more accountable through the giving of an accounting of how resources were being spent. What is key to note here is transference of private-sector accounting technology, in the form of accounting and audit rules and practices, which were also accompanied with a transfer of the private sector's 'commercial ideology'.

These practices and ideology strongly influenced the government's entrepreneurial agenda, which was wholly focused on making individuals and departmental agencies within the public sector responsible for their actions. A 1988 report, *Next Steps*, further emphasised this agenda and recommended the adoption of accountable management through "which individuals and branches can be held responsible for objectively measured performance" (Jenkins et al., 1988, p. 32). It recommended training existing staff on the principles of business management and hiring those with managerial backgrounds to facilitate a working environment which remained focused on policy targets, results and budgets. The report urged the Prime Minister to allow departmental agency heads autonomy over decision-making of how resources were to be spent in order to achieve pre-determined result objectives (Jenkins et al., 1988).

The Efficiency Scrutinies coupled with the government reports illustrate the pervasiveness of the entrepreneurial rhetoric in the public sector. Notions of accountability during this period were closely linked to adopting and engaging with business managerial practices and delivering on cost efficiencies. These links came to be further strengthened within the public sector through performance appraisals and budget setting processes. While the public sector was experiencing fundamental shifts to its culture and operations, these changes soon came to permeate the charity sector.

### *Contracting out welfare responsibility*

In pursuing cost savings and efficiencies, the "sustainability of the welfare state" was questioned (Munro, 2004, p. 1077). The Conservative Party's stance towards the welfare state came to be criticised by opposing Members of Parliament-

“The Government are engaged in a massive exercise to destroy the welfare state. They have resented it ever since 1948. We should never forget that they voted against it consistently. They never accepted the argument and the ethos for the setting up of such a system”, as per Mr. Ronald Brown, Member of Parliament (Hansard, 1983a, col. 1208).

While some members from the Conservative Party supported and recognised the importance of a welfare state, they nonetheless also argued that vulnerable citizens in need of social support will be better served through a public-private partnership. Mr. Nigel Forman, MP, argued for a “...genuine trilateral partnership between the Government, the professions concerned and the voluntary bodies within the private sector,” as a way to meet the needs of society (Hansard, 1983a, col. 1230). The Conservative government at the time was focused on strengthening the UK market to help the economy recover and remain competitive in a period characterised by financial restraint (Kendall, 2000). As part of this agenda, the government began to shift its role as a welfare provider to the charity sector through service contracts, as they viewed charities to be a cost-effective alternative to the state (Gruening, 2001; Hood, 1995b; Hyndman & McMahon, 2011; Lewis, 1999).

The sharp rise in from grants to service contracts is commonly described as part of the “contract culture” both in policy and academia (Deakin, 1996a; Morris, 1999). Under Thatcher’s leadership, grants from the central government to the charity sector tripled from £93m in 1979 to £292m in 1988 (Crowson, 2011). Scott and Russell studied the impact of the contract culture on the finances of 21 social welfare service charities between 1989 and 1993. They found that between 1989/1990 and 1992/1993, the statutory funding of the sampled charities represented about 50% of their income. Overall, between 1991 and 1995, government funding also increased by approximately 50% (Morris, 1999). The growth in income from statutory sources signalled a key shift in the changing relationship between the charity sector and the state.

A fundamental change in this relationship between the state and the charity sector included the move away from grant-like funding, where charities had the discretion over their spending, towards contracts,<sup>78</sup> where charities increasingly experienced a loss of autonomy (Scott & Russell, 2001). Unlike grants, contracts were more prescriptive in nature (Morris, 1999). Through contracts with the central government, charities had to deliver on pre-determined outputs and objectives, and have their performance assessed against quantified performance targets (Ashford & Clarke, 1996). In this changing landscape, charities came to be held accountable to the ‘purchaser’, the state or other funding bodies and not the ‘user’, or the beneficiary (Rochester, 2005). The shift from grants to contracts, and the pressure for charities to deliver on contract conditions reflect a change in how charities were being held accountable. The sector’s reliance on statutory funding created space for the state to assert increasing managerial control over a charity’s operations. (Leat, 2005). The use of conditions, performance management systems, and regulatory and audit regimes all were used by the state in order to ensure charities delivered on agreed upon targets (Cornforth, 2012). The use of contracts played a defining role in reconstituting accountability between the charity sector and the state which reflected and implemented the state’s policy agenda (Rochester, 2005). In order to access resources and survive, and be seen as legitimate, charities were pushed to adapt.

The use of contracts by the central government allowed the Conservative government’s value for money agenda to take hold in practice as it created a quasi-market like space for charities to compete for contract funding with the private sector (Cornforth, 2012). Contracts allowed the government’s agenda to take form in the manner of seeking the cost efficiencies discussed in the previous section. The government’s partiality to business systems and practices were evident in the contract relationships between government departments and charities. These relationships relied on financial information to value the contracts, measure and assess the performance of charities. In examining the contractual

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<sup>78</sup> It should be noted that the difference between grants and contracts may not always be very clear, and that the legal agreements need to be carefully reviewed to ascertain the nature of the agreement (Morris, 2000).



relationship, a key condition of successful contracts included ensuring that means of reliable measurement were attainable “without which it is difficult to write and price contracts and monitor performance” (Sasse et al., 2019, p. 38).

Amidst the changing funding climate, charities also began competing with other charities and the private sector for access to funding related to these grants. In a bid to remain competitive, charities were pushed to take on business-like management practices, and not doing so threatened their access to government, and other sources of funding.<sup>79</sup> In 1987, the Alzheimer’s Disease Society faced the risk of not having their Department of Health contract renewed due to what the department termed “wholly inadequate management controls” (Plummer, 1996, p. 16). They were provided with two options from the funder- they could either be taken over by another, larger charity whose management controls were deemed satisfactory, or to restructure their own charity (Plummer, 1996). The society underwent significant managerial and board changes to make way for individuals with business experience. Accounting internal controls and management systems became an important part of accessing and maintaining government funding as non-compliance could trigger a loss of funds (Morris, 2000).

According to Morris (2000, p. 127), “enhanced accountability on the part of charities is an inevitable consequence of contract funding”. This manifested in how “voluntary agencies had to develop specific operational policies...and had to develop systems and processes for contract compliance and for facilitating monitoring and evaluation” (Scott & Russell, 2001, p. 56). While these conditions increased a charity’s administrative expenses and required use of more dedicated time and resources in its application, not all charities considered the change to be negative. One charity manager shared how the implementation of a new information system,

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<sup>79</sup> This shift is similar to changes happening in the public sector. See here hospitals (Kurunmäki & Miller, 2011) and prisons (Mennicken, 2013). Prison privatisation was introduced to enhance competition between public and private prison providers and stimulate innovation and change within public sector prison management. Emphasis in both service delivery models was on achieving cost efficiencies and adopting managerial practices to ensure operational efficiency.

“...forced us to be more efficient in creating internal systems for recording information and has refined our skills. If I am honest I have to admit that our systems were wooly” (Scott & Russell, 2001, p. 56)

The shifts in the charity and wider voluntary sector were considered necessary by a government who was focused on divesting their social welfare responsibility, while simultaneously seeking to hold charities accountable. Charities had to adapt to the changing environment, as the Conservative Party was intent on making charities less reliant on grant funding, and more self-serving and sufficient. The general focus of this period was for the state to intervene and spend less on the delivery of social welfare services. The reforms of the above fifty-year period helped pave the way for further accounting reforms to enter the field of charities in later decades.

Adoption of business managerial systems and practices were conditions charities had to respond to in the contract culture. The need for funds triggered internal financial management reform in order to be able to report on performance. Charities had to adapt to the changing, competitive environment in order to access financial resources and ensure organisational survival. Rational, business practices, particularly ones which prioritised cost savings, were seen to indicate efficient and effective organisational performances by the state. The charity SORP provided a platform for such rationalisation to occur which enabled the internal transformation of charities into accounting entities. The body of accounting standard stimulated internal change in order to make external financial reporting possible, thus providing charities the means with which they were also held accountable for their internal operations through management control systems. This transformation was needed as it played a crucial role for making space in order for further accounting reforms to take root. In a way, the accounting rationalisation which accompanied the emergence of SORP acted as a prerequisite for further accounting rationalisation.

The 1993 Charities Act “formalised a new regulatory regime” for the charity sector (Palmer, 1995, p. 7). Charities, depending on their income size, needed to have their annual accounts audited before submitting them to the Charity Commission. Through the SORP, the Commission is viewed as narrowing the boundaries of accountability by emphasising fiscal accountability (Rochester, 2005). While the SORP has played an essential role in making this possible, its impact goes beyond making charities ‘auditable’ just for regulatory compliance. In the case of SORP, the financial reporting practices of the sector needed to be ‘fixed’ before further accounting reforms could occur. Issues related to risk, organisational performance and operational viability could only be addressed after establishing a management and control system which could be used to help manage these concerns. By transforming both the internal management operations and external financial reporting practices of charities, in a way, the SORP made charities ‘auditable’ in a manner which goes beyond the technical processes of financial audits.

### 3.4 Reformation of the SORP post 1990s

The above discussion highlights a dynamic period where the charity, standard setting and political arenas experienced significant changes. The period analysed captures how various actors and institutions competed and interacted with each other in a bid to retain organisational legitimacy, ensure survival and maintain the public’s confidence in the charity sector. The notion of arenas helps us understand how the intersection of ideas, agendas and aspirations gave rise to the charity SORP which further led to the adoption of accounting practices, structures and tools. As a metaphor, the arenas help conceptualise how the SORP was institutionalised as a result of changing regulation, funding flows and an appetite for increased monitoring of activities. Here, the Conservative government, standard setter and the regulator’s focus on modes of accountability made the emergence of the SORP possible. Concerns around maintaining regulatory power and capacity, the Charity Commission shifted their focus away from advising charities towards monitoring and governing them through financial accounts. The ASC sought to hold on to their ability for developing accounting standards and minimise the growing threat of government intervention in the standard-setting process. The state amidst all this activity also co-opted

the above actors to play a bigger role in the regulation of the charity sector as it sought to control its activities.

In practice, financial reporting has become central to the issue of how accountability is operationalised (Ebrahim, 2010). Accounting standards have allowed stakeholders aspirations for greater accountability to take root. The development of the charity SORP changed the scope for how charities were to be governed by placing financial reporting practices at the heart of a charity's communication with wider stakeholders (Morgan, 1999). The standards helped pave the way for further reform of the sector through accounting practices and structure. By tracing its emergence, the shift towards accounting standards can be seen as a way to tighten the monitoring and control of the charity sector through the process of financial reporting. Accounting here was thought of as an appropriate solution for a myriad of concerns, including addressing issues of fraud and financial mismanagement, within the charity sector.

While the development of the 1988 SORP showed the dynamics at play through the course of the history of its development, its later developments have played a greater role in reforming the accounting regime of the charity sector. It also was described to have linked a charity's credibility to accounts produced in accordance with SORP (Connolly et al., 2013). The charity SORP, since it was first published has now become a set of standard which is focused on both financial reporting *and* performance, rather than just financial accounts (Hyndman, 2018). Fundamental changes to later iterations of the charity SORP include its charity specific focus, requirement for charities to comply with the standard and a more prescriptive language to the rules which previously had allowed for greater leniency in its application (Connolly et al., 2013). In particular, specific accounting and disclosure changes have transformed how charities account for and communicate their activities. These changes were particularly significant in the areas of internal controls, risk assessment and governance (Connolly et al., 2013). The adoption of accrual accounting, requirement to disclose risk management strategies and signoff by charity trustees on the

annual accounts have reframed the ways in which charities are being held accountable through the charity SORP.

For charities, changes in the governance structure and emphasis on providing a ‘true and fair view’ of operational activity placed them in a position where they had to make their financial and operational value visible through financial reporting. Charities had to be transparent in communicating not only how they are spending state and donor resources, but were also accountable for demonstrating what value they were creating for the public. In order to adapt to the changing environment, charities began to adopt professional organisational structures and practices. Such behaviour could be linked for wanting to maintain organisational legitimacy even if said actions are not related to organisational objectives. Such structures and practices are considered to reflect isomorphic qualities which are adopted only to appease external demands (DiMaggio & Powell, 1983). As Hyndman & Connolly (2011) argue, charities may take on such qualities as a response to pressures from the state, professional accounting bodies and/ or donors in order to ensure organisational survival.

Since its initial development, the SORP has moved on from just being concerned with matters of financial reporting to ones which takes a broad overview of transforming how charities are held also held accountable for their performance. In addition, since 1995, the SORP has been developed by the Charity Commission and not the ASC (later the ASB), as Charities Act 1993 made compliance with the standard mandatory. Key areas of change from its initial development have placed increasing attention on demonstrating performance and managing future risks. These changes arrived as charities were required to adopt accrual accounting in 1995. The adoption of this method acted as a ‘Trojan horse’ which allowed further accounting changes to take hold in the sector, namely in the form of risk management and holding actors responsible for reporting.

### 3.4.1 Accrual accounting

The 1995 SORP, developed by the Charity Commission, made explicit reference to private sector accounting concepts which included the accrual basis of accounting, consistency, going concern and prudence (Palmer & Randall, 2005). The most significant of these changes was requiring charities to prepare accounts on an accrual basis for charities whose income was greater than £100,000 (Charity Commission, 1995).<sup>80</sup> Previously charities could have prepared their accounts under the receipts and payments method as the 1988 SORP did not provide specific guidance between the two. For charities who qualified, providing an option for preparing accounts under either of the two methods was a significant deviation from private sector practice as for-profit organisations had to prepare their accounts in accordance with accounting standards which only allowed accrual accounting.

According to Hyndman and Conolly (2011), between 1994 and 2002, public sector departments were encouraged to adopt management and reporting systems which applied the principle of accrual accounting. Adoption of this accounting method was considered to be complex and non-accountants working in the public sector were expected to build sophisticated financial acumen typically reserved for accounting professionals. Transference of these practices permeated the charity sector through statutory funding relationships with government departments. Beginning with the public sector, charities were later expected to adopt accrual basis for accounting in the NPM era as they were expected to demonstrate stronger financial decision making and reporting skills.

While the push towards accrual accounting can be traced to the public sector in the early 1990s, the move towards rationalising accounting processes in the charity sector occurred in the early 2000s. This shift was accompanied with a belief that accrual-based accounting allows for better financial information and greater accountability to stakeholders (Hyndman, 2016). Concepts like accrual accounting and going concern required an

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<sup>80</sup> The income limit of a charity has since risen from £100,000 to £250,000 in order to prepare accounts on a receipt and cash basis (Commission, 2015).

intimate awareness and knowledge of an organisation's operations. Expertise in technical accounting concepts paired with a myriad of new rules regarding how accounts should be managed and how to record transactions (e.g., revenue recognition and depreciation) had previously not been the norm. This is because prior to the 1995 SORP, charities previously had the option of maintaining their accounting under the cash receipts method.

Accrual accounting laid the groundwork for further reforming of how charities were to account for things in subsequent SORPs, such as, how to account for legacy income changed to be more in line with accrual accounting and prudence concepts; accounting for fixed assets was required to be treated as an asset and not an expense on the income statement to account for its long-term value to a charity. These changes were brought into play in order to facilitate a true and fair view of a charity's holdings. However, the 'true and fair' view of accounting is also defined in the narrow sense as the financial statements communicate a specific reality to its users, ones shaped by those who helped develop the rules. The shift towards accrual accounting is thought to have brought more rigour and structure with how charities accounted for their activities. There were now more rules regarding how to recognise income and costs and assets and liabilities, more disclosures that charities have to contend with. These shifts have been received positively by those within and external to the sector as it has been considered to make charities more accountable for their activities (Connolly et al., 2013).

A key factor of the move towards accrual accounting was in how the financial activities of a charity could now be represented. Charities were required to generate a balance sheet through which its net assets could now be represented. This insight facilitated the link between charities and the Charity Commission's regulatory capacity as it provided a window into the 'health' of the charity, over which the regulator could maintain oversight. Furthermore, accrual accounting also required the preparation of the income statement. By categorising activities – like fund accounting – to a certain extent, the Charity Commission could now maintain oversight over whether the charity's activities were charitable. While these changes lent insight into an organisation's activities, the crux of

the matter remains that accrual accounting, under the banner of accountability, allowed the state's efficiency rhetoric to permeate the sector, and provided a means for exerting control over a charity's performance and the activities they engaged in.

Accrual accounting allowed an increase of accounting dominance to enter the regulatory space, thus shaping how charities were to be governed by trustees, the regulator, donors, the state and wider public. For the user, accrual accounting provides a detailed insight into an organisation's financial activities as it accounts for income and expenses, even if cash may not have changed hands. The accrual basis was described as providing a "true and fair" view into the activities of a charity (Charity Commission, 2013d). On the other hand, the receipts and payment basis only provided insight into the cash movements of an organisation in a given reporting period. While the move towards accrual accounting was formalised in the 1995 SORP, in practice, compliance was also driven by donors who demanded adherence to this form of accounting as a condition (Charity Commission, 2013d).

Perhaps a key difference between the two accounting methods was the emphasis between short- and long-term performance and finances of an organisation. Under the accrual method, notions of assets and liabilities, distinctions between costs and investments, probability and timing of income and expenditures were all changes charities now had to contend with. The move towards maintaining both a balance sheet, or Statement of Financial Activities, and an income statement, required charities to increase their financial and accounting acumen in order to show how the charity performed in a year in a manner which went beyond just making visible cash flows.

Accrual accounting also allowed for further accountingisation for the sector to occur. In a way it can be seen to function as a 'Trojan horse' as it allowed differing concerns and changes to permeate the charity sector, particularly with regards to changes in internal control, risk management and how charities were to be governed. Accrual accounting has heralded significant shift in how the charity sector has come to be organised since the



post-WWII era. Examining the role professional values, including accounting, and practices have played in shaping the charity sector, Hwang and Powell (2009) examine the advantages and disadvantages of a shift within this space. They argue that the shift towards managerial forms of professional values and practices have come to fundamentally take over traditional forms of state regulation. While such a shift has made the body of professional knowledge more accessible to the public, it has also restricted access to those in possession of the specialised knowledge and skills, further establishing the value and demand for accounting expertise.

#### 3.4.2 Reserves and Risk management

Adoption of accrual accounting and making visible a charity's financial allowed for concerns with risk management to take hold in a charity's financial reporting. The 2000 SORP required trustees for the first time to disclose their reserves and risks management strategy in the annual returns (Charity Commission, 2000). Unlike previous SORPs, the 2000 SORP explicitly codified the trustees' responsibility in relation to risk management. In section 31(g) of the standard, the SORP stated that trustees must include "a statement confirming that the major risks to which the charity is exposed, as identified by the trustees, have been reviewed and systems have been established to mitigate those risks' in the annual TAR (Charity Commission, 2000, p. 14).

Risk according to the Charity Commission's guidance on risk management for charities was "uncertainty surrounding events that may have a significant impact" (Charity Commission, 2010, p. 3). The regulator highlighted those risks facing charities could be either financial and/or non-financial in nature and could pertain to areas which included governance, operational or financial risks. According to the Commission, regardless of the kind of risks a charity faced, "the ultimate impact of risk is [sic] financial in most cases" (Charity Commission, 2010, p. 4). While the regulator gave examples of commonly found risks, it placed the responsibility for identifying and managing risks on the trustee. A key risk trustees were expected to manage was threat to their financial viability which was to be managed through maintaining reserves.

Trustees were required to disclose the level of reserves they held and why, and the risks their charities faced and the steps taken to mitigate or manage them (Palmer & Randall, 2005). Central to this change was a concern to ensure that charities were managing their finances in a way which balanced the short-term needs of the charity with long term survival in midst of a resource scarce environment. For reserves, such a disclosure provided insight into how charities manage the risk of future uncertainties with the task of fulfilling charitable objectives. The responsibility of maintaining and determining the reserves and risk policies came under the widening responsibility of the charity trustee. The SORP deliberately did not provide prescriptive guidance in determining these policies, recognising that the circumstances of each charity varied. However, this meant that trustees, in a voluntary capacity needed to possess sophisticated financial skills in order to bear the responsibility of predicting and preparing for future financial, regulatory and operational risks.

The expectation and responsibility placed on trustees for managing risks can be seen as a way of managing the regulator's own risk. As a regulator responsible for a large heterogenous sector, the regulator can be seen to have delegated the task of risk management to the charity trustee. The trustee here is expected to be the expert in the management of the charity, both in terms of the nature of the operation's and also in the running of an organisation. This, in theory, remains vital as the trustee is expected to have the expertise and knowledge required to *identify* risks, and also the business-like savviness to manage the risk.

By holding charity trustees responsible for risk management, to a large extent, the sector experienced a 'riskification of charities.' In a sense, the vehicle of the SORP through which the risks are managed serves as a condition of possibility to tighten the links between the trustee and the regulator, and thus the broader state. Trustees can be seen as becoming agents for the state whose agenda is to simplify the risks and threats present in an uncertain world, and specifically, in an unpredictable sector which is known for its

diverse activities. However, as Power points out, attempts to management uncertainty remain “inherently paradoxical” as not all risks make themselves known (Power, 2004, p. 59). Nevertheless, much of the government’s agenda since the mid-1990s has been about making “know[n] the unknowable” through the use of rational, managerial practices and control systems. However, these practices and systems can remain illusionary.

In a way, the emphasis on risk, and the expectation placed on trustees to manage it is to enable charities to be less susceptible and vulnerable to external changes. Reflecting on the shifts and changes from the NPM sector, one of the key risks facing charities at the time was lack of access to adequate funding where its very survival hinged on statutory and other external forms of funding (Scott & Russell, 2001). The irony is that the process of identifying, managing and disclosing risks in theory is meant to push charities to avoid situations like when they were vulnerable and dependent on the state’s forms of funding.

#### 3.4.3 Holding charity trustees accountable

According to the law, charity trustees are held legally responsible for the management and administration of their respective charities (Charities Act, 2016). The 2005 SORP stated that trustees have a fiduciary to report a charity’s activities in the form of annual accounts which are submitted to the Commission. However, the 2014 SORP made this responsibility explicit. This SORP required trustees to include “a statement that the responsibility for preparing the report rests with a charity’s trustees who must approve it”, and it required all trustees to give their sign-off in the TAR (Charity Commission, 2014, 2015b, p. 4). Through the formal declaration, trustees were held accountable for their duty regardless of their awareness or comprehension of their role. This requirement clearly places the burden of responsibility in a visible, direct manner on trustees. In this capacity, the sign-off by trustees acts as a very important regulatory device.

In principle, the requirement to sign-off may reduce the ambiguity trustees have for their role in terms of their awareness of the roles and responsibilities. However, in practice, that may not always be true based on the Charity Commission’s research which sought to

ascertain whether trustees remain aware of their roles and responsibilities, and found the results to indicate a weak understanding (Charity Commission et al., 2017). Nevertheless, the sign-off remains a change focused on strengthening the Charity Commission's capacity to at least construct the means through which it can be seen to regulate at the macro level. Trustees are the linchpin of the charity governance regulatory field. They play a vital role as a condition of possibility for the Commission to be able to regulate the sector. As illustrated in section 3.3.1, prior to the development of the first SORP, considerable government and non-government led reviews focused on the role of the Charity Commission and its role as a regulator. Within the policy and academic fields, the Commission's oversight over the sector has time and again found to be weak and ineffective, and their resource challenges have been. As a regulatory tool, the SORP can be argued to have been largely about building regulatory capacity in order to enable the Commission the means with which to maintain scrutiny over a charity's activities and accounts in a standardised manner. The trustee, however, plays an essential role in making it possible for the Commission to discharge its duty.

While compliance and awareness of this role may vary within the regulatory space, these changes have pushed the charity sector deeper into the self-regulatory space where the charity trustee is posited with the prime responsibility of steering a charity's compliance within the governing sphere (Moran, 2003). Such a change has allowed the space for tightening of the relationship between the regulator and the trustee, where it allows the former to feel in control over the governance of the sector. It is this sign-off which further cements the role of the trustee as a key actor within the charity governance space. As a body of standard, the SORP remains not just about providing a set of rules for charities to comply with in their financial reporting. Rather, the SORP has opened up the role for more accounting to permeate in how charities operate and are regulated.

### 3.5 Discussion & Conclusion

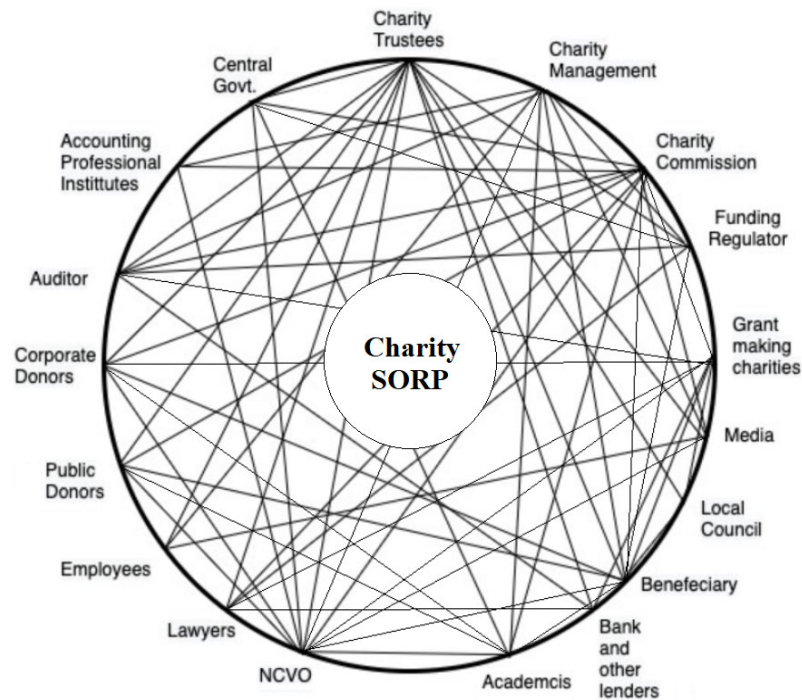
Charity reform up until the early 1990s was a slow, laborious process. After the 1960 Act, despite numerous state and sector reviews, shifts in political agendas and cases of

financial abuse, the state still took more than 30 years to respond to demands pushing for major charity reform through legislation. This chapter provided a historical account of how the SORP came to emerge as a set of accounting guidelines which reconstituted charities' financial governance through financial reporting. This chapter also argued that a demand for accountability by actors and institutions within the charity, standard setting and the government arenas led to the emergence of charity accounting standards. Through the use of arenas, this chapter sought to demonstrate that it took more than concerns related to fraud and financial maladministration by charities to lead the development of SORP. Rather, the ASC and the Conservative Party were instrumental in furthering their agendas and interest through pushing for charity accounting standards. The state shifted its welfare service responsibility to the charity sector, and was motivated to protect its resources. The ASC was motivated to maintain legitimacy and control over the standard setting process, protecting the accounting profession from government intervention and creating growth opportunities for the profession.

Current charity accounting literature links concerns with fraud and financial mismanagement serving as a catalyst for the emergence of the first SORP, a process which took about forty years. This chapter does not deny the role these concerns. However, by going further back in history to the post-war period, this chapter has demonstrated that the SORP story is bigger than the above concerns. By building the sector's regulatory capacity, SORP has also played a key role in helping distinguish charities from other organisations. This chapter has demonstrated the multi-factorial role of the charity SORP. It showed how the SORP was used to enhance financial governance and respond to demands for financial accountability.

This chapter highlights that amidst the myriad of activities and occurrences over four decades, the SORP's emergence is reflective of long project which shaped the building of the sector's regulatory capacity. Key to understand here is that through this process the SORP has enabled the formal regulation of the charity sector by the Commission, and informal regulation by the wider stakeholders. As a regulatory device, it sits in middle of

the various actors and institutions (see **Figure 3.2**). It has made possible for new connections and relationships of accountability to be forged between a wide array of stakeholders who can now compare and evaluate performance and activities of charities. Going beyond the role of just acting as a body of standard, the SORP, unlike commercial accounting standards, plays an essential role in crafting the identity, regulation and evaluation of the overall sector.



**Figure 3.2** – Charity SORP sits at the heart of the field (Source: Researcher)

The development of the SORP has also been key in defining the modern-day charity. Organisations seeking charity status in the UK, according to the Charity Act 2006, must demonstrate how their charity exists for the purpose of the public's benefit (Charities Act, 2006). The charity SORP made the standardisation and comparability of financial statements possible, and made it seem that it allowed users of annual accounts an insight into a charity's financial activities. This insight was made possible through a reliance on the internal management controls system of the charity which is responsible for producing financial information. Unique to the SORP story is that as the sector was experience external financial reporting reforms, this period also coincided with internal financial

management systems reforms as the sector was responding to demands set in place by statutory funding bodies during the rise of the contract culture.

As a body of standards, the SORP's power goes beyond the realm of accounting standards as it plays a vital role in how charities are governed. However, while the SORP plays an essential role in how charities are defined and regulated, through practices adopted or inspired by the commercial sector, it has also placed the 'charitableness' of charities at risk. The SORP has created challenges for the charity sector, as it blurred the boundaries between public and private organisations through the transferal of private-sector accounting and accounting entity definitions. It served to place core charitable values at threat. The next chapter, Chapter 4, will illustrate the tension between a concrete body of rules and ambiguous notions used for defining charities. It will examine how accounting plays an essential role in the value infusion process, but that it also places those same values at risk. While the SORP has placed a charity's identity at risk, accounting practices of quantification have also been co-opted to demonstrate a charity's public benefit or charitableness. However, while the SORP has played a significant role in standardising financial reporting, it has not contributed to standardising and making comparable accounting practices used for demonstrating a charity's public benefit.

The adoption of the SORP was also believed to help charities demonstrate the effectiveness and efficiency of their use of resources. However, numbers alone cannot capture how efficient or effective a charity may have been in their activities, as accounting can only measure what is quantifiable. Future research should analyse how the development of the charity led to the rise of idiosyncratic performance and impact measures. These measures are not affiliated with accounting standard setters nor the state, yet they have come to be institutionalised and have driven the allocation of resources and public confidence in the sector.

The case of charity accounting is meant to highlight what standardisation looked like in a sector noted for its diverse values and objectives. This analysis is especially relevant today

when debates around a charity's impact and the benefit they bring to the public continues in legislative and sector conversations. These discussions are part of the broader conversation on exploring what a charity is, who can be a charity and how they should operate. In this context, accounting's role as a social practice is made evident as it helped support the changing priorities of the stakeholder, in particular the state, as it continued to be shaped by endogenous and exogenous forces.



## Chapter 4: How have the shifting notion of public benefit reshaped how accounting practices are used to define charities in England & Wales?

### 4.1 Introduction

According to the Charity Commission of England and Wales, a charity is an organisation created “for the public benefit” whose objectives are charitable in nature (Berliner, 1982; Charity Commission, 2013e, p. 5). Until the early 2000s, most charitable objectives were *presumed* to be for the public benefit. However, the passing of the Charities Act 2006<sup>81</sup> removed this presumption. This Act now requires all charities to *explicitly* demonstrate how their activities, not just their objectives, are for the public benefit (Mills, 2016). In making what was previously implicit, now explicit, the changes in the legislation’s language jargon was considered to be “radical”; a definition established in statute for the first time in over 400 years (MacLennan, 2007, p. 12).

This chapter is principally concerned with the examination of how the notion of public benefit has come to reside at the heart of what it means to be a charity, and how it has been shaped through a process of negotiations and contestations between the state, regulator, courts and the wider charity sector. This chapter makes two arguments which help illustrate the intersection of two stories: regulatory and accounting. First, the concept of public benefit remains, throughout the history of the law on charities since the 17<sup>th</sup> century and up to the present, unsettled and contested within a regulatory space.<sup>82</sup> At the regulatory level, the notion of public benefit remains complex because of the contradictory way in which it has been defined in case law. Furthermore, from a legislative perspective, this complexity has led to ambiguity due to the state’s desire to

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<sup>81</sup> Charities Act 2006, ss 2(2). Much of this Act was consolidated into the Charities Act 2011. Along with the 2006 Act, the 2011 Act had also consolidated the Recreational Charities Act 1958 and the Charities Act 1993 (Cabinet Office, 2011).

<sup>82</sup> As a metaphor, regulatory space helps conceptualise the broader space within which actors and institutions reside, and how their interactions occur and create change, in particular, accounting change. According to Hancher and Moran (1989), regulatory space is “an analytical construct that is defined “by the range of regulatory issues subject to public decision”” (as cited in Young, 1994, p. 84). The role of power here plays a key role in constructing the boundaries of a space which is shaped “by the political and legal setting, history, organisations and markets” (as cited in Young, 1994, p. 84).

maintain the notion's flexibility in order to allow it to reflect changing social times. Second, at the accounting level, this chapter argues that, technical accounting practices have been relied upon to accommodate the ambiguity and complexity of the process for regulating public benefit.

This chapter seeks to dispel the taken-for-granted nature of the notion of public benefit used to demarcate charities from non-charities in England and Wales. While the law specifically defines charities using the notion of public benefit, it does not define the notion itself. In practice, the notion lacks precision which has contributed to its remaining largely ambiguous and complex. The definition of a charity demands attention, as much of the regulatory framework governing charities is tied to the charity status (Morgan, 2010). This is particularly of concern to accounting scholars and policy makers as accounting standards and financial reporting remains essential to a charity's regulatory framework. Given the reliance placed on the notion, the insights obtained from studying public benefit can help explain how an ambiguous notion is relied upon by the state, regulators and the wider public, as a key mechanism for identifying and governing charities.

The notion of public benefit is an important statutory concept which resides at the heart of determining what a charity is. It remains the primary object of analysis for this chapter. Through an examination of primary and secondary archival sources, this chapter provides historical insight into its nebulous and contested character which has been developing a body of case law for over 400-years. The large body of case law has made reliance on this notion by the regulator and the state complex, as it has only contributed to furthering the ambiguity on how to operationalise public benefit in practice. This chapter examines four seminal court cases to elucidate the contradictions present in charity case law (also known as common law) which has been relied upon when giving meaning to the definition of charity, and public benefit. The discussions of these judicial cases will focus on the distinct dimensions of "publicness" within public benefit in order to demonstrate how these continue to be politicised and contested. The case of *Independent School Council v*

*Charity Commission (2011)*, in particular, demonstrates the struggle to define and control the narrative of what public benefit is. Examining the history of public benefit, and the struggles the regulator and independent schools faced, provides insight into the negotiated territory where different voices (e.g., the state, regulator and charity sector) fought to control and shape the narrative for how to define public benefit.

Second, this chapter argues that technical accounting practices have helped manage the ambiguity of public benefit by providing means to demonstrate a charity's impact in concrete ways. These practices have helped lead the change from financial accounting and accountability to impact reporting. This shift helped charities manage the ambiguity when trying to operationalise public benefit at the organisational level. This is in contrast to the ambiguity present in the law as The Charities Act 2006 did not statutorily define *how* charities could demonstrate their public benefit. This proved challenging, particularly for those organisations situated on the fringe between the charity and non-charity sector. These charities, which included fee-charging independent schools, were required to work harder to defend their public benefit in order to protect their charitable status. Here, technical accounting practices and procedures can be seen as lending a language to help charities communicate and operationalise their public benefit, despite the regulatory complexity. For fee-charging, independent schools, this action goes beyond merely complying with a regulatory requirement. Rather, embedded within this shift is also a desire to protect their charity status from existential threats. Through the use of accounting, this chapter will once again show how the state, regulator and charities are inextricably linked as they negotiate and test the boundaries of their legitimacy and power.

Through an examination of how the regulatory and accounting spaces intersect, this chapter seeks to make two contributions. Empirically, this chapter demonstrates the problematic nature of public benefit to show that a notion meant to legally define charities, and demarcate it from non-charities, is one which remains complex and elusive. Second, while academic and legal scholars have delved into the history of public benefit, this chapter is one of the few attempts which examines the historical evolution, and situates it

within the paradigmatic shifts where accounting played a key role in transforming the charity sector. This chapter undertakes such an examination in order to elucidate how accounting practices have helped transform the disparate activities of a charity into evidence of their public benefit. By making this contribution, this chapter dispels a commonly held opinion that the accounting and organisational shifts of the 1980s triggered an interest in the public benefit debate. Rather, this chapter shows that the attention on determining what is charitable has predated this conversation by many decades. This debate, while nuanced in nature, shows a shift away from just focusing on a charity's objectives to one which came to hold them accountable for their activities.

This chapter is organised in seven parts. It begins with an examination of the literature in the areas of public benefit and value. Section 4.3 discusses the charity law regulatory framework which has been shaped by over 400 years of judiciary rulings. This body of law was relied upon by the courts and the regulator to define charities prior to the 2006 Act. Section 4.4 analyses three seminal court cases where the courts and regulators had to grapple with the ambiguous and complex notion of public benefit in order to determine the charitableness of the organisations. Section 4.5 examines the desire for the charity sector to protect their identity in the face of external operational and regulatory threats in the sector. This section provides a brief overview of the Charities Act 2006 followed with a critical discussion of the ISC's Charity Tribunal case, and its implications for the regulation of charities. Section 4.6 examines the intersection between the accounting and regulatory facets of public benefit which has helped contribute to creating smaller, fragmented stories of public benefit occurring at localised levels of society. Section 4.7 concludes with a discussion and provides suggestions for future areas of research.

## 4.2 Part I Literature Review

### Literature Review

The issue of defining charities has increasingly demanded statutory attention in a number of countries since the mid-1990s. The definition of charities has been debated between 1996 and 2005 in many countries, including Canada, New Zealand and South Africa

(Harding et al., 2014). This matter has also been of particular concern in England, Wales, Scotland and Northern Ireland. Since 2005, the various jurisdictions which make up the U.K have passed legislation which include statutorily defining charities in some form (Harding et al., 2014). Unlike England and Wales, which have their own charity sector regulator, many countries rely on their respective tax authorities to maintain regulatory oversight of charities (Harding et al., 2014). For more than a hundred years, the Charity Commission of England and Wales, the charity sector regulator, had been tasked with the regulation and administration of charities (Harding et al., 2014; National Archives, 2009). In recent years, there has been a shift in the regulation of charities within the U.K. where both Scotland and Northern Ireland, along with statutorily defining charities have also established a charity sector regulator (Harding et al., 2014).

### *Public Benefit, an object of analysis*

While the notion of public benefit lies at the heart of a charity's definition, the law does not define it (Charities Act, 2016). What is meant by 'public' and 'benefit' remains the responsibility of the Charity Commission to define, a task not without its complications. In an era concerned with notions such as value, impact and benefit, the meanings and understanding of such abstract notions remain complicated. What is meant by these notions, who decides their meanings, and who gives voice to measuring performance, all remain interesting issues to problematise. These notions remain dynamic and fluid as they travel through time, capturing and representing broader social values. While these notions can be lauded for their dynamism, their power truly lies in their ambiguous character as its shape can reflect the interests of actors in power. It is through engaging in a deeper introspection that tensions, debates and negotiations occurring below the surface level are revealed.

The notion of public benefit has come to command increasing attention since the mid-1990s. Over the course of the past few decades, there have been an increase in government and sector-led reviews and commissions which have gone on to form the basis of legislative reform (Cabinet Office, 2002; Deakin, 1996a). Within the academic space,

legal scholars have examined public benefit and its implications for the law (Garton, 2013; MacLennan, 2007); they have remained critical of its application and its nebulous nature (Bentwich, 1933; Brunyate, 1945; Hackney, 2008); and they have critically examined the growing prevalence of its use in a judicial setting (Mills, 2016). Focusing on the latter, Mills (2016), delves into the origins of how public benefit came to play a key role in a judiciary setting by examining the historical body of case law. His analysis contributes to our understanding in how public benefit really only came to be explicitly relied upon by courts as a way of determining the charitableness of an organisation less than 150-years ago (Mills, 2016). He argues that the emergence of public benefit in the courtroom was dependent on a number of factors. While this chapter also studies the history of public benefit, it critically examines the role accounting, regulatory and operational shifts have played in situating the notion within the modern regulatory framework for charities.

Social policy scholars have also examined the history of public benefit. Gareth Morgan, examined the history of public benefit (Morgan, 2012), why the charity status matters (Morgan, 2010), how charities have complied with the public benefit reporting requirement (Morgan & Fletcher, 2013), and the role it plays in being used to maintain the charitable status of independent schools (Wilde et al., 2016). When discussing the 2006 Act's statutory definition, Morgan (2010) argues that "much of the uncertainty is now being removed" with the 2006 Act as the "definition of 'charity' is now enshrined in statute (not just in case law)" (Morgan, 2010, p. 216). He maintains that there now remains no uncertainty as to whether an organisation with charitable objects can be considered a charity. While it is recognised that the 2006 Act was the first time a definition of charity could be found within a statute, this thesis argues that despite the statutory definition, the notion of public benefit remains ambiguous and does not distinguish charities from non-charities. However, charities nonetheless have to comply with the notion in order to maintain their status. As such, they draw on accounting practices and measures in order to demonstrate their charitableness. Drawing on the case of independent schools, this thesis demonstrates how the definition of charities remains dynamic and fluid, and that there does remain uncertainty at the macro-level as to whether charities, particularly fee-

charging charities like independent schools, are organisations who can be considered charitable. Nevertheless, this chapter demonstrates how through the use of accounting practices, charities operationalise and aim to demonstrate their public benefit at the grass-roots level

Morgan (2012) undertakes an historical examination of how public benefit played a key role in the reformation of the charity sector. He limits his analysis to a twenty-year period beginning in 1996 and argues that the Deakin Commission (1996) was the main impetus behind the statutory change relying on public benefit to define charities in the Charities Act 2006. While Morgan examines some of the key shifts within this narrow time frame, his analysis does not take a critical view of why the Deakin Commission came about and how it was shaped by historical debates and events in the post-World War II period. This chapter argues that the NPM era was characterised by a rise in accounting standards, practices and performance metrics, and that these changes served to threaten the identity of the charity sector. The NPM era and the ongoing judicial debates about public benefit help explain the regulatory change which occurred in 2006.

Hopwood (1990) draws attention to the power which resides in abstract concepts that remain distant from its technical practices. He maintains that the ambiguity of concepts, within the realm of accounting and outside, allows for the technical practices of accounting to take hold. Such practices have been used to bring specificity to ambiguous notions, such as value for money, that often remain distant to its conceptual creation. Nevertheless, the specificity that accounting practices bring to these notions allow it to play a key role within political and managerial discourses (Hopwood, 1990). Unlike accounting and its specificity, the notion of public and its related ambiguity is not easily defined in academic spaces.

Steccolini tries to problematise the study of accounting in the public sector. She considers “publicness” in an abstract form and its relationship to the context of public sector accounting in a post-new public management era (Steccolini, 2019). Steccolini reminds

us that all organisations have an element of publicness to them, and what creates variation is their “ownership, funding and control” (Steccolini, 2019, p. 261). That in order to consider the publicness of an organisation, one must do it through the lens of “public goals and interests, than to [sic] the organisations and concrete spaces where the related activities take place” (Steccolini, 2019, p. 263). This abstraction helps us better understand the shifts that public benefit experienced as its transformation was aided by adoption of rational market practices and the NPM era. She also alludes to the challenges in developing an understanding of what is meant by ‘public’ in order to measure performance and value, when such matters are deliberated and managed at a micro-level between individuals and organisations. However, as Miller and Rose argue, accounting processes and operational ways give visibility to the values and interests of the stakeholders involved (1992). As such, the challenges Steccolini alludes to can be managed, perhaps not well, through the use of accounting processes and practices.

Mazzucato (2018) describes public values to take into account aspects which include what citizens are entitled too, and the state’s obligations to those within its jurisdiction. Value, she argues, are like stock holdings, they are never stable nor can they be defined. She maintains that understanding what *is* valued is a dynamic process which is constantly debated between the state, private interests and society. By not defining ‘public’ or ‘value’, Mazzucato argues that determining the essence of these notions requires a “lively debate”, but that despite the lack of ease present, one should still not prioritise economic interests over what is good for the public (2018, p. 271). These different bodies of literature help remind us that despite attention placed on notions of ‘publicness’ or ‘benefit’ (in the form of value), these notions remain abstract and hard to conceptualise in a consistent manner.

The notion of public benefit remains a topic of interest within the accounting, social policy and legal space. This chapter seeks to contribute to the existing body of literature to examine how public benefit has helped define the modern-day charity, and what role accounting has played in facilitating this interpretation. The challenges remain in getting



a sense of what is meant by ‘public’. However, this chapter is not concerned with defining these notions. Rather, this chapter is concerned with these notions, in particular the ‘public’ aspect of public benefit, as an object of analysis. Such a framing allows an opportunity to capture how this notion has changed and been shaped by wider socio-economic and political forces, and how it remains dynamic within the accounting and regulatory space.

#### 4.3 Charity Commission, the gatekeeper

Charities in England and Wales are granted their charitable status by the Charity Commission for England and Wales.<sup>83</sup> In parliament, their role has been viewed as one of the earlier attempts to establish a formal mode of supervision over the charity sector (House of Lords, 2017). However, the regulator was limited in its capacity to fulfil this purpose for much of their history, as the courts held the power to initiate action and intervene in matters related to charity administration (Hodgson, 2012; National Archives, 2009).

For over a hundred years of its existence, the Charity’s Commission’s management and oversight of charities had been fairly limited in scope and unstructured. This changed in the post-World War Two period with the passing of the Charities Act 1960. Described as “the first truly modern system of oversight”, this act widened the regulator’s remit and responsibilities over charities (House of Lords, 2017). The Act required charities to register with the regulator, gave it powers to investigate charities, and extended its jurisdiction over other forms of charities (Hodgson, 2012). While the regulator’s powers and responsibilities gradually grew in the period following the 1960 Act,<sup>84</sup> its purpose since the time of its formation has been seen to manage “great anxiety about the state of

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<sup>83</sup> Charities in Scotland seek charity status from the Office of the Scottish Charity Regulator (Scottish Charity Regulator, 2021). Charities in Northern Ireland seek charity status from the Charity Commission for Northern Ireland (Charity Commission for Northern Ireland, 2014). .

<sup>84</sup> Over the course of their history, the Charity Commission lobbied the government to widen their powers. Over time their oversight responsibilities came to include ability to direct use of funds to manage a charity, and reform of education and other types of charities (Hodgson, 2012).

charities and the misuse of their funds” (Hansard, 1981b, p. cc451). In this regard, the Commission’s mission has not deviated significantly from its original purpose which included deterring abuse and granting charities their charitable status. However, the scope of its responsibilities in order to fulfil this has widened.

Ostensibly, the primary reason charities are regulated is to protect their charitable status, and protect public resources from abuse, such as, fraud, financial mismanagement and tax evasion (Charity Commission, 2013c). Cases of abuse were viewed to not be charitable in nature, and were problematised as not being for public benefit by the government. Charity status provides access to numerous benefits, which include legitimacy to attract external funding, protection of assets to ensure they are only used for the public benefit, and significant forms of tax relief (Morgan, 2012; NCVO, 2018).<sup>85</sup>

#### 4.3.1 Defining charities: an onerous task

##### *Charity Law*

The earliest examples of defining a charity in England and Wales can be traced to the preamble to the *1601 Statute of Elizabeth I* (Morgan, 2010). While not statutory in nature, this preamble contained a list of activities which was considered by the state to be charitable in nature, and has formed the basis of charity law (Charities Bill - Explanatory Note, 2005) (see **Appendix B** for an excerpt of the preamble). The list was not considered to be exhaustive, and has over the course of history expanded to include other cases through case law (Pearce, 2019). This body of precedents, which has taken on law-like status, has been considered by academic scholars, legal practitioners and parliamentarians to be dense and confusing (Bentwich, 1933). The 1891 case of *Commissioners of Income Tax v Pemsel*, also known as the Pemsel case, is described as the “starting point for modern charity law” (Hackney, 2008, p. 348) as it provided a judicial definition for

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<sup>85</sup> According to the UK’s Her Majesty’s Revenue & Customs, the tax relief provided to charities in 2019-2020 was approximately £4 billion (HMRC, 2021).

charities based on case law (O'Halloran et al., 2008).<sup>86</sup> Lord Macnaghten, the presiding Law Lord on the case,<sup>87</sup> took the expansive Victorian-era statute and condensed it into four broad categories (Hackney, 2008; Mills, 2016). These categories were: for the relief of poverty, for the advancement of education, for the advancement of religion and for other purposes beneficial to the community not falling under the previous headings (Bentwich, 1933). The Pemsel case was specifically concerned with the “benefit” requirement of charity law, and not the ‘publicness’ of aims (Hackney, 2008, p. 348). It did not deal with the public aspect which charities still needed to demonstrate that their aims were accessible by the public of a sufficient size.

For more than 110 years until 2006, these four purposes have served as a framework for both the Charity Commission and the courts in determining charitable status.<sup>88</sup> Arguing in favour of a statutory definition of a charity, barrister and scholar Norman Bentwich maintained that the current body of case law made it “impossible for a lawyer, much less for a layman, to say with any confidence” what a charity is in the legal sense (Bentwich, 1933, p. 522). Similar sentiments have been expressed by judges (Brunyate, 1945) and parliamentarians (Hansard, 1972). This was a concern because it made it difficult to define a charity in practice based on the extensive body of case law. As this chapter will show in sections 4.4 and 4.5, courts, the regulator and the government have difficulty with defining public benefit.

Until 2006, when determining charitable status, charities with objectives relating to poverty, education or religion were largely *presumed* to be for the public’s benefit (House

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<sup>86</sup> Until 2006, this categorisation of charities was the only legal definition which was applied when determining charitable statuses (Brunyate, 1945; House of Lords, 2017).

<sup>87</sup> Law Lords of the House of Lords were part of the highest appellate court in the United Kingdom for all civil cases. They were considered to be the supreme court of appeal until 2009 when their juridical mandates were transferred to the Supreme Court of the United Kingdom (UK Parliament, 2009).

<sup>88</sup> While public benefit has been a consideration when determining whether a trust is charitable a not, the “first express judicial” of public benefit was noted in 1862 (Mills, 2016).

of Lords, 2017).<sup>89</sup> Charities seeking status under one of these headings were presumed to have aims for the benefit of the public; however, they still needed to demonstrate that those aims were of a public, not private, nature and that it was accessible by the public (Hackney, 2008). They needed to merely prove that their charitable objectives, as per their governing documents, were related to one of the three objectives- education, poverty and religion. With regards to these three objectives, the application of the law was largely concerned with how a charity's objectives were constructed and that they were said to be for the public benefit, rather than what the substance of their activities were (Brunyate, 1945). When assessing the publicness of the charity's aims, access by the public and for the public were factors to consider when assessing the direct and indirect benefits of a charity's activities. For example, in the case of fee charging, independent schools, while fee-paying students directly benefitted from the charity's aims, the public at large benefitted from the educational objectives.

Charities seeking status under the fourth objective were required to go further. They were required to demonstrate *how* their activities were charitable in nature, *how* they were accessible by the public and *how* the aims were for the public benefit (Brunyate, 1945). The determination of charitable status under the fourth objective has largely been shaped by case law. This cases contained under this objective gave rise to new charitable objectives under the Charity Act of 2006 when the list of objectives expanded from four to thirteen (Hackney, 2008; Mills, 2016). The estimated number of judicial cases which deal with the matter of public benefit number around 70.<sup>90</sup> Within this body of rulings, the

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<sup>89</sup> When examining the origins of the public benefit requirement in the 19<sup>th</sup> century, Mills argues that the public benefit requirement was not historically relied upon as a presumption. He examines how judges only began explicitly relying upon the notion of public benefit to determine the charitable validity of a year less than 150 years before it became a statutory requirement in 2006. Refer to (Mills, 2016) for a detailed analysis into the history of public benefit origins.

<sup>90</sup> There is an absence of a cohesive list of the number of judiciary cases which have dealt with the notion of public benefit. An estimate of how many related cases are in existence was retrieved from the Westlaw UK, an online information legal service, using the key words "public benefit" and "charit!" to determine how much case law is available in this area in England and Wales (Westlaw UK, 2021). In addition, one of the recent judiciary cases on public benefit was also consulted. The Independent Schools Council v Charity Commission for England and Wales Attorney General v Charity Commission for England and Wales [2012]

fourth purpose has been the most problematic to interpret owing to its ill-defined nature, which has been argued to have prevented simplifying how a charity's public benefit is to be determined (Brunyate, 1945). In the House of Lords, when the definition of charities was discussed, this body of charity case law was described as "complex and confusing" as it relied on centuries of judicial decisions (Hansard, 1972, p. cc402).

### *Judicial over legislative action*

The period following the second World War renewed attention to what role charities should play in British society.<sup>91</sup> Amidst this renewed focus, government reviews and parliamentary debates also considered the matter of how charities should be defined. The 1952 Nathan Report, whose recommendations largely went on to become part of the Charities Act 1960 advocated for charity law reform. Regarding the definition of charities, this report suggested that charities should be defined in statute using Lord Macnaghten's definition of charities while maintaining the body of case law. A small minority of critiques within the parliament viewed the committee's recommendation as a lost opportunity to try and bring more clarity to the matter of defining charities (Hansard, 1953). While the complexity of the task was recognised, the Commission's recommendation was still observed as maintaining the status quo, rather than bringing any substantial changes. The minority opinion was that the same challenges would continue to contribute to "a fruitful subject of dispute and doubt, and possibly of litigation" with regards to how charities are defined (Hansard, 1953, p. cc 821).

Despite the opposing debates, parliament elected to not reform the definition of charities in the 1960 Act as it deemed the task of trying to simplify over hundreds of years of case law to be too complex. When revisiting the definition of "charity" House of Lords debates more than 17 years after the 1960 Act, Lord Harris of Greenwich reiterated the

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Ch. 214 cites around 80 cases, the earliest of which is from 1700. As such, the estimate derived from Westlaw appears to be reasonable in nature.

<sup>91</sup> The matter of defining charities predates the 1950s; however, much of the discourse attracted the interest of courts and legal scholars (Bentwich, 1933; Brunyate, 1945).

government's position to avoid modernising the definition "on the ground that it was impracticable to devise any "new" definition which would not be new in substance as well as in form."

Here, the state can be seen to delegate its legislative responsibility for operationalising how charities were to be determined to the courts (O'Halloran et al., 2008). The lack of legislative intervention illustrates the state's desire to avoid responsibility for defining charities because they wanted to maintain the flexibility the courts lent to the process. However, the broad nature of the definition and the history of precedents also made the task challenging for the courts whose contradictory rulings, as the upcoming section will demonstrate, worked to further complicate the notions of public benefit.

The definition of charities continued to be shaped in a judiciary setting. However, in practice, the definition of charities was also shaped by charities themselves as they have the responsibility for demonstrating their public benefit. The definition of charity remains important as the Charities Act 1960 required charities to register with the Charity Commission. Amongst other regulatory reforms, this Act also widened the Commission's powers to include investigating charities and stripping trusts not deemed charitable in nature. As such, the matter of how charities are defined remains an issue of import as it guides the actions of the Commission who largely holds the responsibility for granting charity status.

The matter of a charity's status demands consideration as it pushes it into a regulatory space where the boundaries of its activities are largely shaped by the judicial powers of the courts. The regulatory space is what commonly helps craft the boundaries of organisations. However, as the discussion of the four seminal cases below will illustrate, the boundaries of what is considered to be charitable, is largely confusing, and at times contradictory which keeps the boundaries around the definition porous and resistant to regulatory control.

#### 4.4 Legal quirks cause confusion

##### 4.4.1 Baffling, elusive, arbitrary and artificial

The presumption of benefit in a charity's objectives was firmly established by Lord Macnaghten's ruling on the Pemsel case (Hackney, 2008). The distinction of note is that the public aspect of the notion of public benefit is still the responsibility of the charity to prove. As mentioned previously, for charities with objectives related to education, religion or poverty, their benefit was presumed to be charitable in nature. Organisations seeking charity status for any other purposes were required to demonstrate how their objectives were for the benefit of the public, *and* that it was accessible by a public of a sufficient size. This notion is one which continues to capture the courts, parliament, regulator and the broader charity sector's attention, and the cases of *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC297 and *Baddeley (Trustees of the Newton Trust) v Inland Revenue Commissioners* [1955] AC572 in particular highlight this. The former case is the "best known case" for examining the "public" aspect of public benefit in education-related trusts seeking charity status (Hackney, 2008, p. 348). The latter helps further challenge and contradict what is understood by 'publicness'. These cases illustrate the nuanced complexity present within charity law. This complexity represents significant economic and existential ramifications for the charity sector, as denial of the status results in the loss of fiscal benefits and legitimacy.

##### *Oppenheim v Tobacco Securities Trust Co Ltd*

The 1930 case of *Oppenheim v Tobacco Securities Trust Co Ltd*. (Oppenheim case) was characterised by the courts as "difficult", as it illustrated the "illogicalities" present in charity trust law.<sup>92</sup> The trust was set up to provide for the education of children of employees or former employees of the British-American Tobacco Company Limited (BAT Co). The company's employees, both current and former, exceeded 100,000.<sup>93</sup> In considering the appeal, the House of Lords ruled that the trust was not charitable as it did

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<sup>92</sup> (*Oppenheim v Tobacco Securities Trust Co Ltd* [1950] UKHL 2 (13 December 1950) AC297, 1950)

<sup>93</sup> *Oppenheim v Tobacco Securities Trust Co Ltd* [1950]

not satisfy the public benefit requirement. While the educational objectives of the trust were presumed to benefit the public, the trust still had to explicitly make clear how those aims were accessible by the public, the Law Lords ruled that the trust's benefits were not accessible to the public, as only employees of the company were in a position to benefit. (Hackney, 2008). As such, the benefits were considered of a private nature. The presiding judge over the case, Lord Simonds stated:

“The question is whether that class of persons can be regarded as such a ‘section of the community’ as to satisfy the test of public benefit. These words ‘section of the community’ have no special sanctity, but they conveniently indicate first, that the possible (I emphasize the word ‘possible’) beneficiaries must not be numerically negligible, and secondly, that the quality which distinguishes them from other members of the community, so that they form by themselves a section of it, must be a quality which does not depend on their relationship to a particular individual”.<sup>94</sup>

The ruling Law Lords maintained that the trust was for the advancement of education; as such, the trust's aims were considered to benefit the public. However, in considering the public nature of the trust, the Law Lords ruled that the charity failed to sufficiently meet this requirement. They contended that while there is no definition of what can be constituted as “a section of the community”, the beneficiaries of a trust cannot be limited in number, nor should there be a form of personal connection between them. The Law Lords characterised this as the ‘personal nexus test’, In this particular case, while the expected number of beneficiaries were more than 100,000, all of them were related through virtue of their current or former employment at BAT Co. As such, despite the number of beneficiaries, the trust's benefits were considered private in nature, and not public.

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<sup>94</sup> Oppenheim v Tobacco Securities Trust Co Ltd [1950], page 2



The Oppenheim case did two things for the public benefit debate. First, it highlighted the complexities and contradictions the courts faced when trying to determine what public benefit, and thus, a charity is. Interestingly, if the aim of the trust was to alleviate poverty, a different result is likely to have been reached. For trusts in this manner the consideration behind the nature of “public” differed as the law allows there to be a connection between the beneficiaries and the trust (Jones, 1974). For trusts seeking charitable status under the objective of alleviating poverty, the beneficiaries could be connected to each other. Lord MacDermott, one of the Law Lords, helped illustrate this further. He contended that had the trust aimed to educate children of the poor or blind, then that would have satisfied the charitable requirements.

More importantly, the case also highlighted the nuanced complexity of the law which could alter a ruling based on a shift in wording. In this case, the trust’s charitable status was rejected as its benefits were considered to be of a private nature. The focus on the nuances of the law when assessing the publicness of a charity by way of the ‘personal nexus test’ were in particular criticised within the courts. Taking an opposing stance, Lord MacDermott argued “that the ‘personal nexus’ test was ‘baffling and elusive’, ‘arbitrary and artificial’”.<sup>95</sup> He was critical of the distinction being made between employees of a particular company versus employees who reside in a particular locale who also work for the company. The court itself recognised that a trust seeking to advance the education of children of employees employed in the tobacco sector in a given physical locale, then the trust would have been considered charitable in nature. This would have been the case even if the size of the beneficiaries would have been “appreciably smaller”.<sup>96</sup>

Lord MacDermott’s view was also supported by members of parliament who argued that the public nexus test should not be a key determinant when considering a charity’s public

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<sup>95</sup> Oppenheim v Tobacco Securities Trust Co Ltd [1951], page 9

<sup>96</sup> Oppenheim v Tobacco Securities Trust Co Ltd [1951], page 10

benefit (Hansard, 1953). The Oppenheim case was again revisited in parliament when the Charities Bill was deliberated, and the matter of how a charity should be defined was debated. In the House of Lords, the mass consensus deemed the task of defining charities in statute to be far too complex a task as the corpus of law dealing with the issue of a charity's definition had evolved in case law for hundreds of years. The Lords determined that the current practice of relying on case law remained satisfactory, if not perfect, save for a few cases. Referring to the Oppenheim case as one the "borderline cases" where the law proved challenging, Lord Silkin, highlighted the "absurdities" and urged parliament to reduce the "difficulties, complexities and contradictions" present in charity case law. He argued that the gap between a charity's governing document and its actual activities were contributing to valid trusts with charitable objectives in substance being left without status (Hansard, 1960, col. 587). However, as mentioned in the previous section, the definition of charities remained unchanged when the Charities Act 1960 was passed.

The Oppenheim case was later viewed as a way to deter companies and others from setting up charitable trusts which took advantage of fiscal privileges associated with charitable benefits at the expense of taxpayers (Jones, 1974; Webb & Akkouch, 2017). However, in theory, companies seeking to take advantage of charitable status would only need to circumvent the wording of the law to establish a charitable trust benefiting their employees.

#### *Baddeley (Trustees of the Newtown Trust) v Inland Revenue Commissioners*

The 1955 case of *Baddeley (trustees of Newton Trust) v Inland Revenue Commission (IRC) AC 572* captured the attention of both the parliament and the charity sector. This case once again questioned the nature of "publicness" of charitable aims in the court. The trustees of the Newton Trust were left two parcels of land which were to be used for religious and recreational purposes, respectively. The trust's aims were for "the promotion of the religious, social and physical wellbeing" of the members of the Methodist Church

residing in the county of Essex.<sup>97</sup> The trustees' application to seek charitable status in order to benefit from tax relief was denied by the IRC, and was later appealed in the House of Lords (Atkins, 2016). The Law Lords had to consider whether the trust's objectives were charitable, and whether those objectives were for the public benefit. This appeal was important for a large number of charities whose charitable status was set up in a similar manner, thus placing their status at risk.

Given the recreational aims of the trust, its charitable objects were considered under the fourth Pemsell heading which was for trusts that were to benefit the community for purposes other than education, religion or poverty. As such, the Law Lords felt that the expectation of conferring public benefit was greater under this heading as “*all* members of the public had then to be capable of benefiting” (Jones, 1974, p. 64). The Law Lords concluded that the trust did not satisfy the public benefit requirement. They maintained that as the trust's benefits would only be accessible to a limited number of individuals who resided in Essex *and* also had to be members of the Methodist Church, that the benefits were not widely accessible. This, according to Viscount Simonds, resulted in a situation where the “intended beneficiaries are a class within a class.”<sup>98</sup> As the intended beneficiaries were a class (belonging to a specific geographic area) within a class (belonging to a specific religion), then the trust could not be ruled charitable in nature. Due to these factors, and that the Law Lords deemed the trust's three aims to be too vague and general, they upheld the IRC's decision and denied the trust charity status.<sup>99</sup>

This ruling once again shined the spotlight on the notion of “publicness” and what is meant by a “sufficient section of the public”. Despite their rulings and not surprisingly, the Law Lords did not specify what would constitute as a sufficient size of the public. In this, both the *Baddeley* and *Oppenheim* rulings help highlight the contradictory nature of

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<sup>97</sup> *Baddeley (Trustees of the Newtown Trust) v Inland Revenue Commissioners* [1955] UKHL 1 (17 February 1955), 1955, p. 1

<sup>98</sup> *I.R.C v Baddeley* [1955], page 5

<sup>99</sup> *I.R.C v Baddeley* [1955], page 3

the law which defies consistency. Whereas in the previous Oppenheim ruling, Lord Simonds stated that beneficiaries must not be “numerically negligible,” in *Baddeley* he stated that the number of beneficiaries can be limited in nature (Chan, 2016; Jones, 1974). The tradition of relying upon a doctrine of precedents (Mills, 2016) made the task of determining what aims were sufficiently “public” in nature challenging. It meant that even when contradictory, unless the issue at hand was unavoidable, the courts preferred not to overturn past decisions, which Lord Simonds referred to as cases of “respectable antiquity”.<sup>100</sup>

The *Baddeley* ruling had far-reaching consequences for the charity sector. Members of the House of Lords estimated that the charitable status of thousands of trusts would be placed at risk as their governing deeds were set up in a similar manner to the *Baddeley* trust (Hansard, 1958a). Following the court’s ruling, Parliament passed the *Recreational Charities Act 1958*, which statutorily recognised trusts with recreational aims as charitable. This Act retroactively reinstated the status of charities with recreational purposes whose status were previously at risk due to the *Baddeley* ruling.

The passing of the 1958 Act highlights the relationship between the state and the courts. As mentioned previously, over the course of the charity sector’s history, the state had largely delegated the responsibility for interpreting and passing rulings on charity status to the courts. Such a move was not accidental. Rather, it reflects a conscious decision by the state, as the task of statutorily defining charities was considered to be too complicated. This stance remained despite those in favour of modernising the definition of charities arguing that not taking action would further “a maze of caprice, fantasy and historical humbug” (Hansard, 1958b, p. c332). Nevertheless, the 1958 Act shows how the state consciously resisted calls to modernise the definition of charities, and continued to do so over the course of the next few decades (Hansard, 1971). Their response was considered to be piecemeal in nature, as it did not alleviate the challenge courts, the regulator and the

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<sup>100</sup> Oppenheim v Tobacco Securities Trust Co Ltd [1951], page 4

charity sector faced when trying to define charities. Rather, the fragmented response further added to the haphazard development of charity law for over 400 years.

#### 4.4.2 The law as a source of frustration

The previous section was concerned with the “public” nature of public benefit. Both the cases illustrate how the aims of the trusts were deemed to not be for the public benefit. In the Oppenheim case, as the trust was for the advancement of education, and under one of the first three Pemsel headings (i.e., advancing education or religion, or alleviating poverty) the benefit was presumed. In the Baddeley case, the state’s action through the 1958 Act recognised that recreational aims were considered to benefit the public, and were thus, considered charitable in nature. However, as this section will outline, reliance on the presumption of benefit has not always been in the public’s best interests.

#### *Perverse effects of public benefit*

The case of the Unification Church, commonly referred to as Moonies, gained traction in attracting the collective ire of the parliament, courts and the public. This case illuminates the tensions between the state and the charity regulator where both were forced to grapple with what was deemed to be a controversial, and unwieldy body of charity law. The case of Moonies helps explore the gap between how the law, through the regulator, defined public benefit through a focus on the objectives of a charity, and what was considered to be ‘public benefit’ by the state and the public who focused on a charity’s activities.

Originally established in the United States of America, the Unification Church was granted charity status in the UK in 1968 for the purposes of advancing religion (Hansard, 1981a). The charity status for organisations with objectives related to religious purposes were *presumed* to be for the public benefit under the 1891 Pemsel ruling. However, as early as 1975, the church’s activities came to be criticised and were increasingly viewed as being harmful to the public in many ways. The church’s activities were derided for taking advantage of vulnerable citizens, engaging in political propaganda, and misappropriating its followers and also the taxpayers’ resources for the personal gain of

the church's founder. In addition to the church, the Charity Commission was also criticised for their lack of action in dealing with the grievances submitted by the public against the charity, and by the concerns raised by parliament. Charities at the time were found to go more than five years without having their accounts reviewed by the regulator (Mackie, 1975). Beginning in 1975, MP Paul Rose, on multiple occasions over a period of few years, accused the Charity Commission for maintaining a lax attitude when reviewing and vetting charities to ensure their activities remained charitable (Rusbridger, 1981). He argued that failing to investigate the charity's activities encouraged:

“a number of bizarre and bogus bodies which purport to be religious cults [who] benefit from the laxity of the law relating to charities” (Hansard, 1975b, col. 678).

Despite the concerns raised in parliament, the Commission maintained that the church's charity status remained in accordance with the law, and as such they could take no further action. This stance proved unpopular with parliament. The Commission also attracted criticism from other groups. In the mid-1970s a series of government and non-government bodies once again examined the body of law on charities. These bodies included the: Charity Law Reform Group (CLRG) (1974), the House of Commons Expenditure Committee (1975) and the Goodman Committee (1976) (Mackie, 1975).<sup>101</sup> These reviews found that the Commissioner was failing to adequately regulate and maintain scrutiny over the sector which allowed fraudulent and bogus organisations to register as charities and take advantage of charitable benefits, acts which were considered to abuse the public's resources and thus were not considered to benefit the public.

The scope of these examinations also considered the matter of how charities should be defined and proposed ways to define it in status, and the administration functions of how to govern a charity. The recommendations of the different reviews ranged between the

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<sup>101</sup> These reports examination have been previously discussed in Chapter 3, as its recommendations held implications for the emergence of the charity SORP (see section 3.3.1 in Chapter 3 for further details).

CLRG calling for a “radical reorganisation” of the law by proposing a new organisational type and definition for charities, to the Goodman Committee’s proposal which called for replacing the 1601 Preamble’s definition of a charity in “simple and modern language” (Hansard, 1977, col. 149; Mackie, 1975). The Goodman Committee also emphasised the notion of public benefit to play a central role in how charities should be defined. Around the time the various reports were being published or prepared, Michael White, a journalist for the Guardian, predicted that despite the interest in the subject matter, the likelihood for reform remained low. He reported that despite the challenges faced with the definition of a charity, there were numerous stakeholders who were keen to maintain the status quo by taking no action. To take action was viewed, according to him at least, required balancing “so many tenacious interests as ancient foundations, public schools, churches, the universities even – all of which could become involved in reform” (White, 1975) so what?. The decision to take no action is how parliament chose to proceed. The proposals from the CLRG, House of Committee’s Expenditure Report and the Goodman’s Committee were rejected by the parliament who chose to maintain the status quo by not unsettling the body of case law amassed on how charities were to be defined (Hansard, 1977).

Perhaps in response to these criticisms, the Charity Commission’s 1976 annual report emphasised its regulatory capacity and limits. The Commission stated that a regulatory point of view, inclusion in the charity register does not indicate that the regulator is “satisfied about the integrity of the trustees, the efficiency of the management or the methods by which it pursues its objects” (excerpt from the Charity Commission Annual Report (1976) as cited in Rusbridger, 1981). According to the regulator, under the Charities Act 1960, it can only investigate charities whose objectives are believed to not be charitable in nature (Hansard, 1981a; Seton, 1981). Therefore, the Commission maintained that its powers only extended to investigating the objectives of a charity, and not their activities.

The case of Moonies and the Commission's stance continued to be widely debated as the church's activities drew widespread concern and anger by the government and the public. Following a court-upheld Daily Mail investigation which characterised the church as a cult, the jury on the case concluded that the church's activities were political, and were harmful to its followers (Hansard, 1981a). The libel suit in tandem with the ongoing complaints received by the government pushed members of parliament to take action (Hansard, 1981a). A House of Commons motion signed by 140 members of parliament called for the removal of Moonie's charity status (Hansard, 1981a). However, to their frustration, the MPs efforts continued to be thwarted by the Charity Commission. The regulator maintained their above stance. In response, they stated that the court's opinion of the church's political activities did not impact the church's actual charity status:

“After careful consideration the Commissioners remain of the opinion, in the light of the information available to them, that these objects are exclusively charitable in law and that the two institutions have not ceased to be charities. Accordingly, there are no proper grounds on which they can be removed from the Register” (Charity Commission's statement quoted in Hansard, 1981a, col. 698).

While the Commission did not deny the perverse nature of the church's activities, they stated that because Moonies aims were for advancing religion, their charity status was in accordance with the law. Nevertheless, parliament wanted the regulator to act swiftly in investigating the charity's activities and removing their charity status. The regulator's refusal to act in accordance with parliament's expectation drew the government's ire. The Commission's laissez-faire position was heavily criticised in parliament who accused them of acting ignorant of their regulatory powers, and by the media (Hansard, 1981a; Oliver, 1981; Seton, 1981). Nevertheless, the regulator remained firm in stating that addressing the issue of an investigation would have to be the responsibility of the High Court or for legislation by Parliament” (Oliver, 1981). Arguably, the regulator's seemingly implacable stance could be said to have been shaped by parliament's action, or



lack thereof. A topic of debate in the past, parliament's decision to not reform charity law and modernise the definition of what is a charity could be argued to have restricted the regulator's ability to exert more power and influence over the charity sector.

Despite the ongoing concerns related to charities whose activities were considered harmful to the public, the government remained opposed to charity reform. According to Sir Patrick Mayhew, the Minister of State at the time, "the Government do not consider that there is at present a need for changes in the law on charitable status or in the administrative practices relating to charities" (Hansard, 1981b, p. cc 456). The case of Moonies was once again revisited when the 1989 White Paper, *Charities: A Framework for the Future*, a Charities Bill, was debated in the House of Lords. However, despite concerns expressed over the harmful activities of "undesirable religious cults" the government did not take further action as "[I]t was not the Government's [sic] way to proscribe beliefs...people had a right to make a choice on what religions they pursued. They also had a right to make the wrong choice" (Anonymous, 1989). Here, the tension between maintaining public expression while protecting the public's benefit is clearly visible, and one which seems to be a complex, unsolvable dilemma for the state.

This case demonstrates the challenges the state and the regulator experienced with charity law, particularly with how charities were defined. Once again, parliament was forced to face the challenge of defining charities within an unwieldy legal framework. By choosing to rely on the body of case law, parliament could be seen to have struggled with the limitations of the law and its risk to the public. The rigidity of the law, and the risk it now posed to the public was further realised when the Attorney General, like the Charity Commission, also declined to take action against Moonies after reviewing the law. They also cited the existing law on charities and stated that any legal action on behalf of the state would not be successful in courts as the church's aims for advancing religion were presumed to be "truly and exclusively charitable in English law" (Hansard, 1988, p. cc 974).

The Oppenheim, Baddeley, and Moonies cases illustrate the rigidity of the law and the challenges faced when considering the “publicness” and the “benefit” in the notion of public benefit. Moonies could register as a charity because their aims were presumed to benefit the public. However, that presumption masked harmful activities in substance, which in reality put the public at risk. The law, as maintained by the government, focused on the form of how charities were registered as per their objectives, rather than allowing for a focus on the substance of their activities. The case of Moonies helps illustrate that perversely what should have been for the public benefit, or was presumed to be for the public’s benefit was in fact found to be harmful. With Oppenheim, there were different concerns which also focused on the form, or objectives of the charity. The trust could have actually benefited a portion of the public (i.e., children of over a 100,000 employees); however, because the courts ruled their benefit to be of a private nature their charity status was denied. This is not to say that the courts were incorrect or should be criticised in their judgment. Rather, it helps provide an appreciation for the complex and contradictory nature of the law, and the challenges faced in interpreting and applying it in a manner which benefits the public.

#### 4.5 Demarcating charities through public benefit

Throughout the 1970s and into the 1990s debates around a charity’s definition were occurring within and outside the parliament. However, they did not result in legislative changes. Despite concerns that bogus and fraudulent charities were taking advantage of the charity status, and misappropriating public resources, the law remained untouched. As the previous section illustrated, parliament remained resistant to undertaking any form of significant reform to charity law, which included changing the definition of charity. However, this status quo shifted as Parliament statutorily defined charities in the Charities Act 2006, fifty years after it was first recommended in the 1952 Nathan Report. This section illustrates how: a changing relationship between the charity sector and the state, the charity sector’s ‘identity crises and renewed interest in the impact made by charities, in particular independent schools, all contributed to triggering regulatory and operational changes between the 1980s and the 2000s. The below discussion will highlight how the

state, the regulator, and public sentiment as expressed in the media all played a role in bringing about charity reform.

#### 4.5.1 Relationship between the state and charity sector tightens

The 1980s signalled significant operational and regulatory changes in the charity sector. This era, commonly characterised as the new public management era, prioritised the efficiency rhetoric of the Thatcher government; promoting the use of market values and procedures (Deakin, 1996b). The policy changes of this decade occurred in the form of funding changes as the government placed greater responsibility on charities for the delivery of social welfare. These policy changes brought about significant operational changes as charities were expected to demonstrate accountability and transparency through adopting financial management systems and complying with reporting on financial performance. Key shifts during this period included an increase in welfare service provision contracts between the charity sector and government departments, and the emergence of charity accounting standards (Morris, 1999).

A period characterised as the “contract culture”, the rise in service contracts has been described as fundamentally shifting the trajectory of the charity sector in both operational and legal terms (Morris, 1999). Whereas charities were traditionally funded through grants, their funding came to be increasingly tied to contracts in a move which marked a significant shift in the relationship between the government and charities (Deakin, 1996a). A marked characteristic of the contract relationship between central government departments and charities were involved the use of financial performance measures and conditions in a manner which reflected a ‘purchaser/contract’ relationship (Harris, 2010). Unlike grants, in a contractual arrangement, charities had to deliver “identified outputs” (Morris, 1999, p. 1). In order to receive statutory funding, charities had to demonstrate that its performance and activities met the terms of the conditions of the contractual

relationship which were determined by the respective funding bodies, whether it be the state or non-state funding bodies.<sup>102</sup>

A central tenet of the NPM era included an interest in organisations, including charities, demonstrating value for money (VFM). The Conservative government at the time was concerned with measures and evidence of cost-efficiency, and these concerns came to be reflected in how value was defined. The operationalising of VFM was accompanied with the implementation of management control systems and performance measure assessments as a result of contract conditions. During this period, charities were also competing with the private sector for similar government contracts thus increasing the competitiveness of the climate charities were expected to perform in (Deakin, 1996b). This included submitting tenders and bidding for contracts with the state which valued short term performance, like demonstrating cost efficiency (Leat, 2005). During this period, short term performance came at the expense of long-term performance and the opportunity to create sustainable impact. In parallel to the managerial and operational changes occurring in the sector, charities were also increasingly coming under pressure to demonstrate their accountability to the government and other funding bodies.

The demands for accountability were occurring at a time when the sector was experiencing significant growth. As mentioned in section 3, one of the Commission's key responsibilities included granting charitable status and maintaining oversight over the sector's activities in order to ensure they were charitable. However, the rapid increase in new charities seeking status was said to have strained their limited resources (Charity Commission, 1982). According to their 1981 annual report, the regulator experienced an increased demand for their advice in relation to reviewing governing documents for

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<sup>102</sup> Non-state funding bodies, grant organisations, trust foundations or corporate donors, were viewed as an alternate source to statutory funding both by the state and the charity sector (Leat, 2005). The role of non-state bodies has increasingly been relied upon as statutory funding has declined over the years (NCVO, 2019c).

proposed charities they were asked to advise on.<sup>103</sup> While not all charities were granted a status, the sector nonetheless grew. In 1981, there were 139,289 charities in the sector compared to an estimated 100,000 in 1971, representing a growth of nearly 40% over the course of the decade (Charity Commission, 1982; Hansard, 1971). The sector continued experiencing growth, and was estimated to number 161,376 in 1987 (Charity Commission, 1988).

The matter of how charities should be held accountable continued gaining prominence as the government increasingly focused on the issue of fraud and financial mismanagement in the charity sector. Three key government reports examining the regulation, governance and activities of the charity sector all focused on this issue, and how the governance of the charity sector was in dire need of reform. The Woodfield Report (1987),<sup>104</sup> the National Audit Office (1986-1987) and the Committee of Public Accounts (1987) all recommended that how charities are governed needed to be reformed through legislation. The reports' findings found that the charity register was unreliable and out of date, and that the Commission remained unaware of the sector's activities. This state of affairs made the monitoring and supervision of charities thus increasing the risk of financial abuse in the charity sector (NAO, 1987). The reports also found that submission of annual accounts remained low, as such, there a lack of knowledge on whether charities were functioning properly or if the income was being used "efficiently and effectively for the relevant charitable purpose" (NAO, 1987, p. 2).

The collective recommendations of the reports included proposals for legislative reform which required charities to submit annual accounts in compliance with the charity SORP to the Charity Commission, an overhaul of the central register of charities by computerising the records, requiring charities to confirm their charity registration and

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<sup>103</sup> According to the Commission's annual report they had advised and consulted on 689 deeds of instruments (governing documents) for proposed charities in 1971. In 1981, that figure has increased to 2,378 (Charity Commission, 1982).

<sup>104</sup> This report is formally known as the Efficiency Scrutiny of the Supervision of Charities and was presented to the UK Home Secretary and the Treasury.

expanding the Commission's powers in order to enable it to better monitor the sector. Accounting standards were recommended in order to maintain supervision over charities, and to enable investigations of a charity's accounts in a standardised manner in the event of suspected fraud and other forms of abuse (NAO, 1987; Woodfield et al., 1987). A publicly-available central register was recommended in order to maintain monitoring and control of charities so charities could be held accountable for their activities (NAO, 1987). The report's recommendations came at a time when the sector was rapidly growing. This growth meant that the Commission would struggle, with its limited resources, to keep up with the government's expectations of how they should monitor and supervise the sector. Nevertheless, the proposed reform changes went on to become part of the Charities Act 1993.

The report's recommendations, serve to highlight the increasing links between the notion of public benefit and accounting standards and practices, and the role the latter played in tightening the links between the state and the charity sector. Accounting practices and standards were problematised by the state as a way to manage concerns of fraud and financial mismanagement *in order to* maintain public benefit and protect the public's resources from being abuse. As chapter 3 discusses, compliance with charity accounting standards shifted the manner in which charities were held accountable for their activities by the government, the regulator and other stakeholders.<sup>105</sup> This compliance narrowed the focus of how charities were held accountable by the state and the regulator to matters of financial accounting. These changes occurred in tandem with internal operational changes, as charities were also required to implement accounting management systems which would support the production of 'reliable' financial statements. Through adapting to the new contract regime and ways in which a charity was held accountable, charities came to be seen as less like 'a charity' and more like commercial organisations (Deakin, 1996a). The emphasis placed on financial performance, standards and systems in the charity sector served to blur a charity's identity. Ironically, the increasing prevalence of

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<sup>105</sup> Refer to Chapter 3 for further insight in the operational and regulatory changes the charity sector experienced in relation to the emergence of charity accounting standards.

financial accounting in the sector meant to protect the public's resources reignited the debate around the definition of charities and what benefit they can offer to the public.

However, not all government publications at that period in time were focused on addressing issues of fraud and financial mismanagement. Some remained focused on linking the notion of value for money with the impact generated in the form of outcomes and outputs, rather than just focusing on cost efficiencies. When discussing the relationship between spending money through contracts and seeking value for money, the government's *Next Steps* report from the Efficiency Unit were critical of only tracking flow of resources rather than seeking ways to determine "good value" in terms of both outputs (i.e. building more hospitals) and outcomes (i.e. improving education) (Jenkins et al., 1988, p. 26). Nevertheless, unlike the issue of financial reporting, the discourse around impact reporting did not gain traction for at least another decade.

#### 4.5.2 Public benefit, a notion meant to demarcate charities

The three cases of *Oppenheim*, *Baddeley* and *Moonies* highlighted the amorphous nature of public benefit. The very nebulous character of public benefit is precisely what makes regulating it a challenge as even the courts failed to pass judgments which at some point did not contradict each other. Despite this characteristic and the complexity present in relying on a body of law hundreds of years old, the notion of public benefit once again captured the charity sector's attention as it sought to hold on to their identity. This renewed interest came at a time when the operational and regulatory changes of the NPM era threatened the charity sector's identity as they were seen to resemble the for-profit sector. When seeking to defend their identity, the notion of public benefit was relied upon as a way to demarcate charities. Public benefit was now being drawn on to defend a charity's activities, rather than just their form.

#### 4.5.3 Defining charities in terms of public benefit

The *Commission on the Future of the Voluntary Sector in England*, commonly referred to as the Deakin Report, was commissioned by the National Council for Voluntary

Organisations (NCVO) (Deakin, 1996a).<sup>106</sup> This report was commissioned at a time when the relations between Conservative government and the charity sector were declining (Kendall, 2000). This report included an examination of relations between the charity sector and various levels of the government, the funding climate, relations with the commercial sector and the definition of charities. It highlighted that the charity sector at the time differed greatly from when the first definition of charities was provided in the 1601 Preamble. As such, it called for charity reform in order to modernise the sector and equip it to evolve with changing times. The report specifically drew attention to the funding and accounting reforms, and how the regulation of charities meant greater compliance with new rules. It also argued that while the sector had experienced significant changes, how the sector was identified had remained stagnant.

The Deakin Report noted that the charity sector's role in public life demanded attention as there were, in general, increasing "concerns about standards in public life, which has found expression in successive reports of the Nolan Committee...vigilance of the media on the lookout for abuses of privilege and 'double standards'" (Deakin, 1996a, p. 43). According to the responses of the charities it consulted, the Deakin Report highlighted concerns over government policies which had favoured the contract culture (Deakin, 1996a). The report described the shift to have pushed for "tighter accountability" as charities had to compete for statutory funding and had to demonstrate that their operations were efficient (Deakin, 1996a, p. 50). Efficiency was defined in accordance with the governments, such as demonstrating value for money, which was contextualised in the manner of cost efficiency. These policies were seen to threaten the sector's independence and identity, and also their survival, as the survival of charities remained dependent on the state for funding (NCVO, 1996).

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<sup>106</sup> The NCVO is an umbrella organisation which supports and advocates on behalf of the charity sector in England. It considers itself to be the authoritative "voice of the charity sector" lobbying on behalf of charities in all matters pertaining to government policy and advocacy (Dunham, 1984; NCVO, 2021c, 2021a)(NCVO, 2021a) The organisation, under its previous name of National Council for Social Service, had commissioned the 1976 Goodman Report. In reviewing these reports, the charity umbrella group had been advocating for a modernisation of the charity's definition for many decades.



Of the report's 61 recommendations, a key proposal included modernisation of the definition of charities which placed the notion of public benefit at the heart of the definition (Deakin, 1996a; Maier, 2005). It sought to use this notion to delineate charities from non-charities as the former had begun resembling for-profit organisations in their activities and operations. This report was considered to be influential as many of its recommendations went on to shape regulatory changes, and the relationship between the state and the charity sector, especially with the change in government from the Conservative Party to the Labour Party (Cook, 2015; Morgan, 2012). This report was also considered to be a driving force behind pushing forward the agenda for how charities should be defined. The Deakin Report recommended the government widen the list of charitable objects, and to define it in statute using the notion of public benefit. The report advocated this change to allow the sector to evolve with changing social and economic times. The charity sector was being tasked with increasing responsibilities for social welfare provision which contributed to also increasing the diversity its activities and growth of new organisation types i.e. social enterprises (Deakin, 1996a). It required a change in government and the political party, which were receptive to the charity sector, before many of the Deakin Report recommendations were implemented (Maier, 2005).

The Deakin Report's recommendations gained traction under the Labour Party, which rose to power in 1997. The change in political party marked a turning point for the relationship between the charity sector and the government, which was described as having deteriorated under the Conservative Party (Kendall, 2000; Toynbee & Walker, 2010). While the new government continued the service contract trend, the relationship with the charity sector was more constructive and was described one of "partnership" which included supporting the charity sector in building administrative and operational capacity (Kendall, 2000).

Under the new government, the prime minister commissioned the Cabinet Office to examine the legal and regulatory framework governing charities. The report, titled *Private*

*Action, Public Benefit*, was published six years after the Deakin Report in 2002. Among its many recommendations, it also supported the Deakin Report's to modernise the definition of charity in law, based on the principle of public benefit (Cabinet Office, 2002). The report also expanded on how charities, particularly fee-charging charities, should demonstrate their public benefit and the resulting impact of their activities. Here, notions of accountability and transparency were transforming. When discussing ways in which a charity could demonstrate their accountability and transparency, the Charity Commission stated:

“[M]ost charities set themselves targets for the year which may be related to finance or to activities. Monitoring achievements against these targets and reporting on progress is an important aspect of accountability that enables interested parties to judge how well the charity is doing” (Charity Commission, 2004, p. 27)

Whereas previously a charity's accountability was closely tied with the practices of financial reporting and performance, charities were now being pushed to demonstrate their value through the impact they were expected to create. The impact, which would help show a charity's public benefit, was to be assessed by the Charity Commission according to Cabinet Office. These recommendations were accepted by the Government included in the draft Charities Bill. In 2004, the Joint Committee made up of cross-party MPs and members of the House of Lords examined and debated the Charities Bill and its proposed reforms. The Charities Bill included a proposed definition for charities which was based on a list of purposes considered charitable and for the public benefit (The Draft Charities Bill, 2004).

#### 4.5.4 Removal of the presumption of public benefit does not remove the complexity

When deliberating the Charities Bill in 2004, the Joint Committee examining the proposed reform found conflicting views on the matter. The members of the Committee opined that the “Bill does not contain any new statutory definition of public benefit; it provides that

judgements about public benefit will continue to be based on principles determined by the courts; and it assumed that the Charity Commission will continue to decide how to apply the public benefit test” (The Draft Charities Bill, 2004, p. 19). On one side of the debate, organisations lobbying on behalf of the charity sector such as the NCVO or Association of Chief Executive for Voluntary Organisations (ACEVO), and the Home Office, maintained that all charities, existing and new, must demonstrate how their activities served the public benefit. They argued that by removing the presumption of public benefit and bringing about legislative change, the Charity Commission could and should be able to assess the public benefit of charities.

The Charity Commission disagreed with the above views. Specifically drawing on the case of independent schools’ public benefit, the Charity Commission stated that the removal of the presumption would result in *no impact* on schools. They reminded the Joint Committee that the issue of public benefit would remain a matter for the court, and not one determined by legislation under the proposed changes (The Draft Charities Bill, 2004, p. 22). The Charity Commission’s stance was also echoed by others within the legal and academic field. In the evidence submitted to the Joint Committee, there were lawyers and academic scholars who also stated that the removal of the presumption would not impact the existing body of case law, which in effect functioned as “declared law” (The Draft Charities Bill, 2004, p. 22). As such, the change in legislation was not expected to bring about significant change to charities, whose aims were already considered charitable in law.

The conflicting views by the regulator and the Home Office were described by the Joint Committee as placing the Bill in a “ludicrous position of promising to bite on the public benefit bullet without having any teeth to do so” (The Draft Charities Bill, 2004, p. 22). However, facing pressure from the Home Office on their stance, the Commission compromised and stated that it would carry out public benefit checks on all charities, including fee-charging charities such as independent schools. It stated that it would assess

the charities' public benefit in accordance with the practices of the court and the regulator's guidance (The Draft Charities Bill, 2004, p. 27).

#### 4.5.5 Charities Act 2006- a radical change?

The Charities Act passed in 2006 was considered to be a major piece of legislative reform (MacLennan, 2007; Morgan, 2012). This Act, for the first time in the legal history of charities provided a statutory definition for charities. It defined a 'charity' as an institution established for charitable objects which were for the public benefit.<sup>107</sup> A charitable object, or purposes, was one of the thirteen purposes the act deemed "exclusively charitable" (MacLennan, 2007) (see **Appendix B** for a list of the thirteen charity purposes and historical definitions).<sup>108</sup> Prior to the passing of the Act, the notion of public benefit had been used as a guiding principle by the courts, particularly under the fourth Pemsel heading, it was now made into a statutory requirement. A key feature of it included removing the presumption of public benefit from the first three Pemsel headings, and widening the list of charitable objectives from four to thirteen. Charities were now required to explicitly demonstrate that both its objectives *and* activities were for the public benefit (MacLennan, 2007). As such there was an expectation to deliver value and ensure that taxpayers resources were spent in a way which benefited the public.

The Act did not define what was meant by the notion of public benefit. Parliament, in debates leading up to the passing of the Act, noted that to statutorily define public benefit "would create inflexibility in an area where charity law needs to move with the times" (The Draft Charities Bill, 2004, p. 31). It tasked the Charity Commission with the responsibility for determining the guidance on public benefit and assessing whether charities met this criterion.<sup>109</sup> The Act also established the creation of a Charity Tribunal to allow for an independent process to appeal the Commission's decisions, and instil a way to hold the regulator accountable (MacLennan, 2007). Ensuring that a charity's aims

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<sup>107</sup> Charities Act 2006, s 1(1) of part 1

<sup>108</sup> Charities Act 2006, s 2(1)(b)

<sup>109</sup> Charities Act 2006, Part 2: Chapter 1 (schedule 1B)

and activities were for the public benefit was one of the ways to ensure that charities were responsibly utilising public resources. The responsibility for ensuring that charities remained accountable in order to maintain public confidence fell on the charity trustee. The charity trustee was now required to demonstrate in the annual report that they are aware of the guidance and had taken it into consideration.<sup>110</sup>

For much of the charity sector's history, the courts had largely given meaning to the notion of public benefit when assessing the 'charitableness' of a trust. This continued following the passing of the 2006 Act (Hackney, 2008). The Act has been described by the government as one which has fundamentally changed the nature of charity law by removing the presumption of public benefit (Hackney, 2008). By some, the Act was described to be a "radical change" as it defined charities for the first time (MacLennan, 2007, p. 12). However, legal scholar, Hackney argued that the Act did not bring about such a change. He maintained that because the Act did not provide further clarification or insight with regards to what public benefit means, nothing fundamentally had changed. The notion of public benefit continued to be based on case law. Hacking also argued that despite the Charity Commission developing, or "giving new meanings" to public benefit in practice, they still lacked the statutory authority to make this guidance binding. His views echoed the Commission's from when the Charities Bill was debated in 2004. As such, Hackney maintained that with regard to the definition of charities, the Act did not bring about any fundamental change.

Hackney's proclamation highlights the complex nature of the law and the myriad of challenges which can be experienced in trying to ascertain what a charity is and who has the authority to determine this. These are challenges which have been resolved as the notion of public benefit proceeded to unsettle the regulatory powers and responsibilities of the Charity Commission, and created anxieties for charities. Perhaps in law, nothing *had* fundamentally changed when the presumption of public benefit was removed.

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<sup>110</sup> Charities Act 2006, s 4(6) of part 1

However, in practice, the public benefit debate ignited an interest in what differentiates charities from non-charities. Within these debates, there was a focus on the value, or the impact a charity makes through their activities. The debates around a charity's public benefit, or impact gained momentum as the charity status of independent schools was debated within and outside the charity sector.

#### 4.5.6 Independent Schools: exclusive or publicly accessible?

The charity status of independent schools has over the decades attracted the parliament and public's attention;<sup>111</sup> however, their charity status attracted considerable interest and was widely debated under the Labour government.<sup>112</sup> The Cabinet Office's Report, unlike the Deakin Report, specifically singled out schools and private hospitals and clearly stated that these charities should be required to demonstrate that their benefits were widely accessible by the public. Specifically focusing on independent schools, the report stated that any fee-charging charity would need to ensure that the fees "are affordable to large sections of the population...[and] that they provide access for those who would be excluded because of the fees" (Cabinet Office, 2002, p. 41). The report contextualised 'access' to the services by making "significant provision" for those who could not afford the fees. The report recognised that the public benefit of charities was not being assessed and should be reviewed by the Charity Commission as part of its proposed legislative reforms in order to ensure that charities were fulfilling its charitable aims. A report by NCVO examining charity law reform and the definition of charities stated "the indirect

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<sup>111</sup> In the early 1980s, the activities of independent schools were viewed to not be widely accessible, and those not in the public's benefit. When recommending that charities should be assessed based on their public benefit, the 10<sup>th</sup> House of Commons Expenditure Committee report stated that there remains "widespread public feeling today that charitable activities should not be manifestly devoted to privilege or exclusiveness. We would therefore expect that our new test of "purposes beneficial to the community" would only admit to charitable status those institutions which manifestly devote the education they provide towards meeting a range of clear educational needs throughout the whole community" (as cited in The Draft Charities Bill, 2004, p. 27)

<sup>112</sup> Previous manifestos of the Labour party also specifically focused on the charity status of independent schools. In 1982, the Labour government had pledged to phase out the charity status of independent schools. According to Neil Kinnock, the Labour Party's education spokesperson at the time, independent schools were a way to "maintain a socially segregated and financially privileged school system subsidised by public funds" (Berliner, 1982).

public benefit of education will no longer be treated as a trump card” when determining charitable status” under proposed reforms (NCVO, 2001, p. 33).

Debates as to whether or not charities provided public benefit continued at the parliamentary level, the charity sector and the public at large. According to media coverage in the Guardian, independent schools took to raising awareness of how they continued to engage with state schools, and the bursaries and scholarships they offered (Curtis, 2003a). In reviewing the matter of fee-charging charities, and in focusing specific attention on independent schools, the Joint Committee scrutinising the Charities Bill in 2004 proposed that “independent schools should be stripped of charitable status and offered favourable tax treatment only where “quantified public benefits” can be demonstrated” to a sufficient section of the public (Millar, 2004). The Committee maintained that the benefits wealthy independent schools, which were charities, enjoyed “incompatible with any common sense view of what it means to be a charity” (The Draft Charities Bill, 2004, p. 20). Describing the state of affairs in the Guardian, the government had “threatened to strip independent schools of their charitable status if they do not prove their worth in the community” (Curtis, 2003a). In response to the increased scrutiny, the Independent Schools Council,<sup>113</sup> in 2003 published a report titled, *Good Neighbours*, in order to raise awareness of the work schools engaged in with local state schools and in the community. In addition, they highlighted that they spent £219 million a year on varying forms of scholarships and bursaries. In recent years, independent schools have also claimed that they have saved the government £3.5 billion annually by educating children who would have otherwise needed to be educated in state schools. In a forty-year period, the savings by the independent school sector had seemingly grown by roughly 89%.<sup>114</sup>

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<sup>113</sup> The ISC is an umbrella organisation representing independent schools in the United Kingdom (ISC, 2021a). Of the independent schools the Council represents, about three-quarters are registered as charities (Fairbairn, 2019). As of 2016, half the independent schools in England were registered as charities (Fairbairn, 2019). These schools can vary in size where schools classified as small, by the ISC, can have as little as 50 students to larger schools having an attendance of over 2,400 students (ISC, 2020).

<sup>114</sup> The practice of quantifying the value the taxpayer saves due to independent schools can be traced back to close to 40 years ago. In 1982, when dealing with criticism about their charity status and how their

Despite the views noted above, those critical of independent school's charity status have not been able to unsettle the status quo. Historically, the charity status of independent schools has been supported by those in power. For those in favour of the charity status, there was consensus that independent schools brought considerable value to the public with their aims despite charging fees, as the quotes show below,

“I hope and trust that no Government in the future will remove the charitable status from independent schools (especially those not privately owned) which gives them a financial advantage. I know that there are differences of opinion on this subject; but there can be no doubt of the value of these schools, and if they cease to exist the added cost to the taxpayer would be very high” (Hansard, 1971, col. 368).

“No doubt that is because it is in the interests of the community. I do not see why that advantage should be withheld from the public schools, where the quality of education is in the main unquestionably excellent and where many scholarships, bursaries and other awards are available for children from families that could not afford to pay fees. They have been available for a long time and I guess that more are available now than ever before” (Hansard, 1981b, col. 457)

However, critics of the school's charity status argued that,

“It is nonsense for private fee-paying schools—including Eton and Winchester, and Gordonstoun in Scotland—should be regarded as charities and be able to reap enormous tax and rate benefits from the

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activities were not charitable in nature, independent schools highlighted that in exchange for their charity status and related benefits, they saved the taxpayer £400 million each year by educating children who would have otherwise needed to be educated by the state (Berliner, 1982).



taxpayers and the ratepayer. Children attending those schools are almost invariably from wealthy families. They are certainly not from families in the bottom quarter of the income groupings. For those children to be subsidised by the taxpayer and the ratepayer is an indefensible obscenity (Hansard, 1981b, col. 451)

At the heart of these debates lies the “publicness” of the independent school’s aims, and how accessible they are. Due to the fee charging nature of the schools, their benefit is limited to those who can afford it. The schools’ limited access to its benefits has been criticised for furthering socio-economic inequalities (Wilde et al., 2016). It is this aspect of the law which has been described as antiquated. Independent schools came into existence at a time when the state did not provide for education; however, with the state having made provision for schools, the state of education had evolved (O’Halloran et al., 2008). It is the fee-charging aspect of the schools which accounts how why they straddle the boundary between for-profit and the charity sector due to the fee-charging nature of their operations. It is in remaining on the fringes of the sector’s boundary that requires they work harder to demonstrate their public benefit.

#### 4.5.7 Charity Commissions publicly challenged over their public benefit guidance

Politically, the removal of independent schools tax benefits<sup>115</sup> (Merrick, 2017) or charity status (Adams & Proctor, 2019) has been part of recent election manifestos of main political parties. While neither of these pledges came to fruition, the charity status of independent schools remained one of interest, and was one of the first ones investigated by the Charity Commission following the 2006 Act and the regulator’s release of the public benefit guidance in 2008. The Commission’s first set of guidance following the Charities Act 2006, *Public Benefit and fee-charging (2008)*, stated that “offering free or subsidised access is an obvious and, in many cases, the simplest way in which charities

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<sup>115</sup> While the tax benefit independent schools receive is often discussed, there is no estimate available which provides insight into the economic impact of which would arise from ending the charitable status of charity schools (Fairbairn, 2019).

can provide opportunities to benefit for people who cannot afford the fees” (Charity Commission, 2008, p. 12). They defined the school’s public benefit to include scholarship and bursaries. The Commission’s guidance was made up of two principles and seven sub-principles making up the notion of public benefit. The second principle maintained that a charity’s benefit must not be restricted by ability to pay and that people living in poverty must also be able to access the benefit (refer to **Figure 4.1**).

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|--|--|
| <b>Principle 1:</b>  | <b>There must be an identifiable benefit or benefits</b>   |
| <b>1a</b>  | It must be clear what the benefits are   |
| <b>1b</b>  | The benefits must be related to the aims   |
| <b>1c</b>  | Benefits must be balanced against any detriment or harm  |
| <b>Principle 2:</b>  | <b>Benefit must be to the public, or section of the public</b>   |
| <b>2a</b>  | The beneficiaries must be appropriate to the aims  |
| <b>2b</b>  | Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted: <ul style="list-style-type: none"> <li>• by geographical or other restrictions; or</li> <li>• by ability to pay any fees charged</li> </ul> |
| <b>2c</b>  | People in poverty must not be excluded from the opportunity to benefit   |
| <b>2d</b>  | Any private benefits must be incidental  |
| Each of a charity’s charitable aims must satisfy these principles. |  |

**Figure 4.1** The Charity Commission’s public benefit principles (2008)

The Commission undertook public benefit review assessments of 12 charities which included five independent schools (Charity Commission, 2009a). Of the five schools assessed, the Commission concluded that two schools did not satisfy the public benefit requirement because they either did not offer any scholarships or bursaries, or the level of subsidy offered was considered to be of a token, minimal amount (Charity Commission, 2009c, 2009d). For the two schools, the Commission concluded that the schools’ aims were not fully accessible to the public, and it excluded those who could not afford the

fees. From reviewing all five of the assessments and their public benefit guidance, the Commission had defined the school's public benefit in financial terms which included scholarship and bursaries. It did not give priority to any of the other activities the schools engaged in when assessing their public benefit. Furthermore, the regulator also did not specify how much was enough with regards to the giving of scholarship and bursaries. One of the school's, who did pass the public benefit test, had set aside 5% of their income for scholarship and bursaries (Charity Commission, 2009b), but another who had allocated 1% did not satisfy the requirement (Charity Commission, 2009c). This ambiguity did not become any clearer after the Commission re-assessed the public benefit of the two schools who had not initially satisfied the requirement.

The regulator's conceptualisation of public benefit is clearly evident in their assessments. By defining an acceptable demonstration of public benefit to be in the form of scholarship and bursaries, the Commission was viewed as having framed a narrow boundary around the notion which relied on measurable, verifiable forms of quantification. This form of quantification would have made it possible for the notion of public benefit, at least in the case of independent schools, to have been governable in a standardised form. For other kinds of charities, such as private hospitals which were also under the banner of fee-charging charities, the practices of financial accounting would have also framed how public benefit would have been defined and governed within narrow, parameters of accountability.

### *Independent Schools Commission v Charity Commission*

Following the release of their findings, the Independent Schools Council challenged the Commission on their findings in 2010. *The Independent Schools Council (ISC) v The Charity Commission [2011] UKUT 421* was the first time the two facets of what constitutes public benefit were contested and distinguished in a judiciary setting since Charities Act 2006 made demonstrating public benefit into a statutory requirement (Mills, 2016). The Council argued that the regulator had overstepped their duties as a regulator by directing *how* charities' can meet their public benefit. They argued that the

regulator should have limited their role to only assessing whether charities' have satisfied the public benefit requirement, and through the judiciary review, their aim was for parts of the public benefit guidance to be removed (Fairbairn, 2019). The discussion of this case will focus on the politicisation and contesting of the notion between the regulator and a unified group of independent schools.

In 2011, the Charity Tribunal upheld the ISC's motion with regards to the Commission's guidance on public benefit. It concluded that, charities, and not the regulator, have discretion for determining their public benefit activities (Fairbairn, 2019).<sup>116</sup> The role of the regulator is to assess whether these requirements have been satisfied. In addition, the Tribunal also ruled that independent schools must deliver more than a token level effort in making their aims accessible to those who otherwise may not be able to afford it. However, their ruling did not specify the parameters of what they meant by token level. The Tribunal further concluded that the public benefit of each school will be assessed individually as the realities of the school may vary from one another.<sup>117</sup> Following the Tribunal's ruling, the Commission indicated that they will revise the guidance on public benefit. In line with the ISC's motives, the Commission also withdrew their guidance related to fee-charging charities which stipulated that the benefit from a charity "must not be unreasonable restricted by ability to pay any fees charged" (refer to **Figure 4.1**, principle 2b). The Charity Commission's guidance on *Public Benefit and Fee-Charging* along with principle 2b was deleted in the revised guidance published (Morgan, 2012).

While this case did not provide insight as to what is meant by "public", it highlighted the limits placed by the law on the regulator's powers when trying to govern charities through the notion of public benefit. Despite the 2006 Act, case law continued to define the boundaries of what public benefit would be. While the Charity Commission had the

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<sup>116</sup> Refer to (*Summary of Decision by Upper Tribunal (Tax and Chancery Chamber) in (a) Judicial Review Proceedings Brought by the Independent Schools Council and (b) an Attorney General's Reference Regarding the Public Benefit Test for Charitable Independent Schools Following the Charities Act 2006*, 2011) for further details.

<sup>117</sup> ISC v Charity Commission, 2011

responsibility to develop guidance on the nation, it had no statutory powers to enforce it. In the ISC case, the Commission sought to manage the complexity of their task by defining public benefit, in a narrow, financial sense. Had they been successful, this would have further opened up space for accounting, through financial reporting, to be relied upon as a governing mechanism. Furthermore, such a move could have helped make assessing the notion of public benefit more auditable for it would have made it tangible and quantified. However, ISC pushed back on the Commission's efforts.

In fighting to keep control of the narrative of what can constitute as public benefit, independent schools emerged as curators of what can or cannot be excluded. They contributed by further destabilising the notion by maintaining diversity and discretion for determining what shape public benefit is to take which ranged from offering scholarships and bursaries, lending teachers to the state school sector, providing access to specialised courses to making the school's facilities available to the local community (Department of Education, 2018b). It is this very diversity that makes the task of the regulator that much more challenging as it has to constantly evolve and adapt to new forms of charities as they emerge, with those charities engaging in a variety of activities.

This case provides insight into the active resistance brought forward by the ISC, an organised membership body with resources at their disposal who came together to challenge the regulator. The collective force of the ISC responded to the regulatory changes in an aggressive manner by not only lobbying the regulator, but by also making them withdraw and reissue the guidance on public benefit. This response was in stark contrast to the response of the charity sector in the face of accounting reform changes which accompanied the development of the charity SORP.<sup>118</sup> Both the charity sector and the regulator are seen to engage in a battle of wills where each is fighting to have the right to control the narrative to determine what public benefit is to be in a struggling regulatory environment.

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<sup>118</sup> Refer to Chapter 3 for a history of how the SORP emerged, and how it played a key role in reforming the regulation and governance of the charity sector

Post-legislative scrutiny of Charities Act 2006 proved contradictory. A review by the Cabinet Office of the Act concluded against providing a statutory definition of public benefit, and maintained that the notion should continue being developed through case law (Hodgson, 2012). These conclusions were in stark contrast to the Public Administration Select Committee's report who clearly stated that defining charities and what is meant by public benefit should be determined through legislation. Much of PSAC's criticism was focused on highlighting the complex nature of public benefit, and the lengthy and costly regulatory challenges it has resulted in. The report described the notion of public benefit, as "critically flawed", an "administrative and financial disaster for the Charity Commission", and ones which now "touch upon [the] controversial and political questions concerning charitable status" (PSAC, 2013b, pp. 24, 31, 55). The challenges with the regulation helped pave the way for accounting to practices to take on a prominent role for helping regulate the sector.

#### 4.6 Accounting for public benefit

The ISC case elucidates the challenges faced when trying to regulate independent school charities via the principle of public benefit. The Upper Tribunal ruling maintained that schools, and not the regulator, held the right to determine their public benefit. This ruling contributed to maintaining the vagueness and uncertainty of public benefit. By holding the power, independent schools could set the parameters for how the notion would take shape, thus taking the control to define it away from the regulator. From a regulatory perspective, the lack of control made it challenging to govern the sector on the basis of public benefit. The diverse ways in which the notion could be defined worked to further contribute to its malleability as a regulatory principle, made it elusive to control and one which defied the boundaries of standardisation. Control, standardisation and definition played an important role in maintaining regulatory capabilities.

All charities, including independent schools are required to annually disclose how their activities were for the public benefit in the Trustees' Annual Return (TAR) submitted to

the Charity Commission (Charity Commission, 2013e). The reporting of their activities needed to be accompanied with the impact made. In responding to the polarised views of independent schools' charity status, the government, specifically the Department of Education (DfE), had become involved in ensuring that the schools remained for the public benefit.<sup>119</sup> The department began a review of the ways independent schools could demonstrate their public benefit through activities which could signal their impact (Department of Education, 2016). While the Charity Commission's efforts at trying to shape public benefit were resisted, the state was seen to intervene in setting new benchmarks for schools to meet in order to retain their charitable status (Fairbairn, 2019).

In addition to publishing a list of activities in which independent schools could engage in, the DfE and ISC entered into a "joint understanding" whereby independent schools would partner with state schools, sponsor academies or set up a state school, or offer fully funded bursaries to students in financial need (Department of Education, 2018b). The joint understanding required the participation of both small and large schools, however the nature of activities the schools would be expected to engage in depended on their capacity and capabilities. Essential to this partnership also included demonstrating and communicating the independent school's impact.

Independent schools were expected by the government to do more in order to justify their charity status. According to the DfE, independent schools could award more scholarships and bursaries. However, it also approved a range of other activities the schools could engage in based on their capabilities and capacity of resources, to allow for variation in size and income of schools. They could make available their school facilities, set up teaching partnerships with state schools or sponsor an academy school where independent schools would provide their expertise. For small independent schools, DfE made available

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<sup>119</sup> The government had also worked to support independent schools with ways through which they could demonstrate the public benefit. In 1997, the government has set up independent and state school partnerships in order to encourage greater symmetries between the schools (Curtis, 2003a). These partnerships include independent schools opening up their facilities, and accepting more students from the state schools sector (Curtis, 2003b).

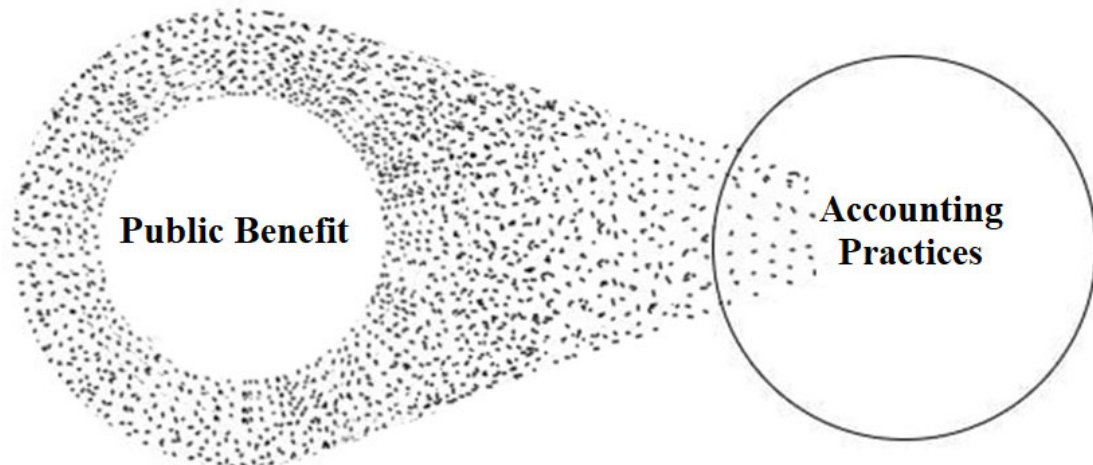
other options. The activities small schools could engage in provided giving direct support to state schools by sharing their teachers, training teachers or allowing state school students to attend courses on minority, specialised subjects not offered in the state schools.<sup>120</sup> The key here is to note that the school seem to be the ones determining which activities they can engage in, and not the state nor the regulator, as their engagement is dependent on their available resources.

The levels of engagements between the schools and the state illustrate the pressures the independent schools were under as worked to protect their charity status (Fairbairn, 2019). The technical practices of accounting have played an essential role in helping facilitate this aim. The activities agreed upon between the DfE and ISC do not function as neutral, stagnant practices. Rather they worked as clear performance metrics used by the regulator and the government to assess the school's impact. The practices of counting, measuring and valuing which helped form the basis of quantification were limited in its capacity to help charities, and schools in particular. While schools could select activities in order to demonstrate their public benefit, the practices of quantification result in calculating outputs, and not always the outcome, or the impact made in the annual returns. **Figure 4.2** illustrates this relationship. The activities which show public benefit can be considered to be innumerable. The dots within and surrounding the public benefit sphere represent this. In the case of independent schools, they are able to engage in a variety of activities which they deem to further their public benefit. However, the schools are restricted in their freedom as not all activities can be captured and quantified in through accounting practices. As such, the activities selected by independent schools are chosen *precisely* because they allow them to satisfy critics and the regulator demands for public benefit.

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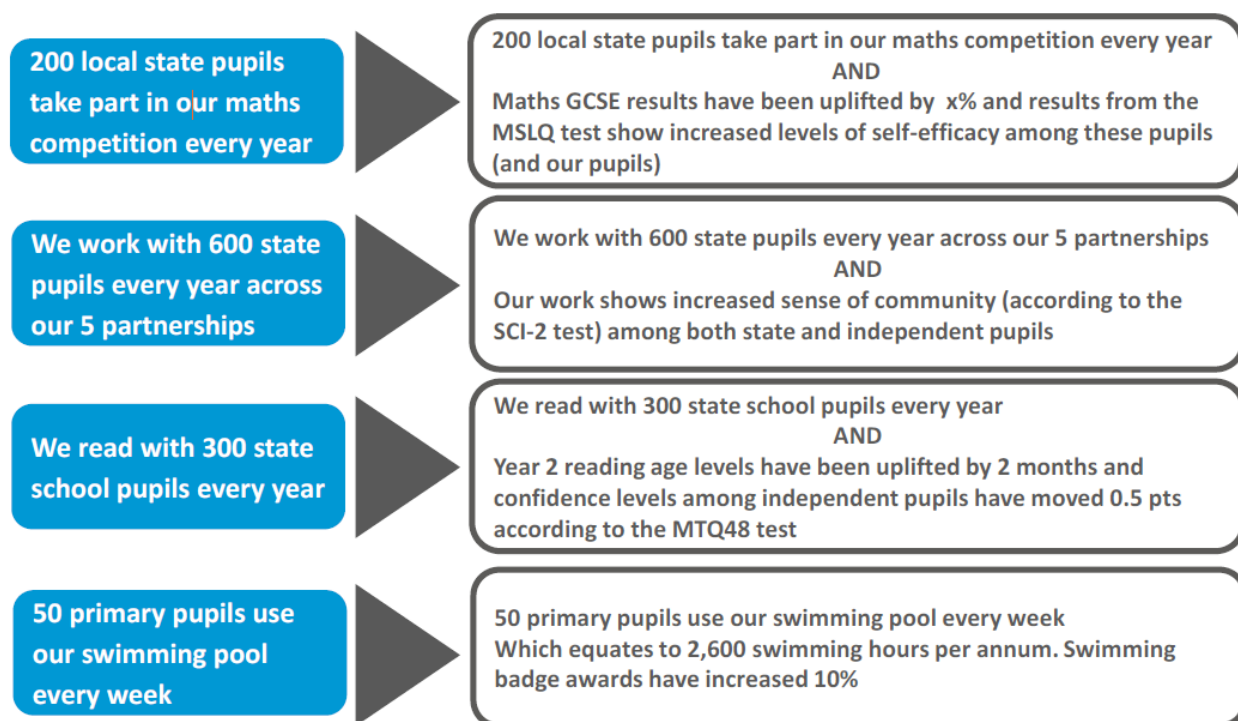
<sup>120</sup> Refer to page 5 of the *Schools That Work for Everyone* report by the DfE (Department of Education, 2018a) or page 3 of the ISC's *toolkit to Help Evaluate Independent-State School Partnerships* (ISC, 2021b).





**Figure 4.2** – The relationship between public benefit and accounting practices (Source: Researcher)

The tension between the figures produced through quantification and what is demanded of them contributes to the complexity of impact reporting, because it lacks precision and defies standardisation in practice. Impact reporting is communicated through narrative reporting which relies on crafting the story which charities want to tell. While quantification plays a role here, the process of storytelling further lends to the diversity present in impact reporting as each charity can narrate a different story. Examples of performance metrics given by the ISC help illustrate these challenges (refer to Figure 4.3). On the left are activities schools may engage in. Here practices of quantification are relied upon in order to calculate the output of the activity. These outputs can typically be verified even if the quantifying practices itself are not standardised for the wider sector. Nevertheless, these practices can still function as ‘best practices’ in local settings, like in the case of schools. The right side of the figure outlines what the charity believes to be the impact of the activity which can be quantified. In many cases the impact, the connections between the output and the outcomes are ones forged by the school. When communicating public benefit, schools are increasingly pushed to focus on the latter, and not just on outputs in order to defend their charity status.



**Figure 4.3:** Example of independent schools impact statements<sup>121</sup> (Source: ISC, 2021b)

Technical accounting practices provide an interface, and facilitate communication, between organisations and their stakeholders, in this case independent schools and the regulator, the state and the wider public. Particularly in the case of independent schools, giving an account of their activities transcends the mere reporting of numbers. However, impact reporting has been described as challenging in the charity sector because of the time and monetary resources which go into determining what the impact should be, and then evaluating it (McConville, 2017). It can draw on a range of financial and non-financial measures which include communicating outputs, narrative descriptions of the result and case studies. Reporting on impact can also go beyond financial reporting. It can be communicated through a charity's website, pamphlets and donor reporting (Hyndman & McConville, 2018a).

<sup>121</sup> Motivated Strategies for Learning Questionnaire (MSLQ) and Mental Toughness Questionnaire (MTQ48) are soft skills metrics used by the education sector to assess students' motivation and mental flexibility (ISC, 2017).

In the case of the schools, the ISC noted that “very few schools are effectively measuring their partnerships” with the state schools (ISC, 2021b, p. 1). Lack of impact reporting is also perceived to reflect badly on a charity which can be viewed as less legitimate or effective (McConville, 2017). For schools specifically, failure to communicate impact was of concern because of the possibility that the state could intervene and require schools to undertake proposed activities through legislation, or it could propose laws which allowed the removal of their charity status.

While the state’s threat was remarked to be unpopular as it singled out only independent schools, the threat to the schools’ charity status remains.<sup>122</sup> The irony to be noted here is when the ISC had challenged the Commission’s public benefit guidance, which had defined public benefit in the form of scholarships and bursaries, they were critical of the regulator’s attempt to set “hazy benchmarks” for use in assessing the school’s public benefit (PSAC, 2013b, p. 21). However, the state, through the DfE, can be seen as pushing independent schools to demonstrate their public benefit in very specific, measurable ways which still include awarding scholarships and bursaries (Fairbairn, 2019).

The actions of the state following the Upper Tribunal ruling on who maintains the right to determine highlights the regulatory limits of the Charity Commission. This is especially evident as the regulator lacks statutory power to enforce its public benefit guidance, which was still determined by case law (Hackney, 2008). However, the reality that public benefit defies standardisation at the regulatory *may* change following the DfE’s intervention over time. The list of benchmark activities in which schools are required to engage help drive the narrative of what is considered to be appropriate public benefit. While it shows the limits of the regulator given that the state ultimately holds the power to enact change, it also highlights the varying expectations of public benefit from different charities. Furthermore, the state’s involvement highlights both the dynamic nature of public benefit

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<sup>122</sup> The state’s proposal to enact legislation which would dictate the activities required of independent schools to demonstrate public benefit in specific ways did not meet legislative approval. The risk of passing such legislation was seen to unfairly single out independent schools, and also, it was viewed as too prescriptive in nature (Fairbairn, 2019; Hansard, 2015).

which is negotiated by various actors, and the limits of the law. In a way, it also shows that while on a regulatory level reporting on public benefit may currently defy standardisation, at the local, organisational level there still remains a push for standardisation.

The post-2006 world has demonstrated how public benefit has moved away from a focus on objectives towards one which is concerned with the substance, or the organisational activities, of a charity. This shift has pushed organisations, especially those who straddle the boundary between the charity and the for-profit sector to redefine themselves in a bid to further defend their *charitableness* using the ambiguity of the environment they reside in to their advantage (Edelman, 1992). However, given the nebulous nature of public benefit within the independent school sector, arguably, there are multiple public benefit conversations (i.e., efficiency ratios such as funding cost ratios,<sup>123</sup> Social Return on Investment Ratios (SROIs)) taking place at various levels of society (McConville & Cordery, 2018). These conversations are taking place between the charity, its beneficiaries, employees, volunteers, trustees and the wider public. Over time, stakeholders such as the UK government, the charity SORP Committee, and Charity Commission, have encouraged charities to report on their performance and the impact of their activities. While conversations about how to improve impact reporting are occurring, charities continue to maintain power and discretion over the disclosures (McConville & Cordery, 2018). This is primarily because public benefit currently remains elusive to standardisation and control which makes it resistant to regulation (Wilde et al., 2016).

#### 4.6.1 Fluidity of public benefit a source of power for charities

The government in particular remains interested in the impact, or the public benefit of a charity's activities because they remain the second largest source of income to the sector (NCVO, 2019c). Each year, charities, including independent schools, have to determine and communicate the impact of their activities and how they are for the public benefit,

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<sup>123</sup> This ratio divides donations by costs.

even if they are not direct recipients of funding from the state. In contrast, charities, like social welfare charities, remain confident in their public benefit do not have to work so hard to defend it, nor is the disclosure a source of concern. Their accountability to the public for demonstrating public benefit remains different to the expectations made of independent schools.<sup>124</sup>

Within the independent school sector, accounting practices have helped provide a way for schools to communicate the ways in which their activities are for the public benefit. These activities also highlight the key role the state plays, and the powers it draws on to shape what it constitutes to be ‘charitable in nature’, at least in the case of the schools. However, in a way, the state’s role could arguable also be considered to be weak in face of the Tribunal defeat, and ultimately the schools still maintain power in order to determine what their public benefit is, even if the state has to ‘approve’ the benchmark activities.

The case of the ICS v Charity Commission, the battle of who determines public benefit highlights that the notion meant to demarcate charities, isn’t one which can be relied upon. As a notion it remains dynamic, fluid and contested, and it is this fluidity that helps redraw and reshape the boundaries of what constitutes a charity. This fluidity also creates space for the technical practices of accounting to help manage the ensuing complexity within the regulatory space by providing a level of concreteness. However, while accounting practices help ground the notion at the organisational level, in a regulatory space, the notion of public benefit remains ambiguous.

How public benefit is reported defies standardisation because of the heterogeneity present in the sector’s activities and objectives. However, it is a sector, which is regulated by the

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<sup>124</sup> Examining the publicly available annual reports of Royal National Institute of Blind People (RNIB) and Eton College, provides a stark contrast between the public benefit disclosures of the two charities. The RNIB’s *Statement of Public Benefit* within their 2020 TAR, is fairly limited in scope and does not detail the specific activities the charity has engaged in within this disclosure (RNIB, 2020). Eton College’s public benefit disclosure in their 2018 TAR, however, is nearly four pages long and provides greater insight into their engage with the local community, research, their scholarship and bursaries programs (Eton College, 2019).

Charity Commission in a homogenous manner. At least in theory, as the resource capacity of the Commission has been found to be limited despite the expansion of their responsibilities. The Charity Commission's limited regulatory powers and the impossible task they have in regulating a nebulous notion which defies control has become more evident and remains subjected to criticism. Examining the UK's civil society strategy, charity think-tank New Philanthropy Capital accused the Commission of being "too focused on financial stability and organisational survival at the expense of whether charities are having an impact for beneficiaries" (Yeowell, 2018). The think-tank urged for a "toughening up of annual impact reporting" which pushes charities to focus on and demonstrate their impact in order to ensure that the public benefits from those activities.

Despite the presence of a list of benchmarks for one type of charities within the sector, the responsibility for assessing public benefit for the thousands of charities remain a cumbersome task when faced with resource challenges and a growing sector (House of Commons UK, 2013). Nevertheless, the issue of impact reporting remains of interest, both for the regulator, the charity sector and wider stakeholders. Impact reporting as a form of performance measurement remains on the SORP Committee's agenda, the body which develops and publishes guidance on the charity sector's accounting standards (Pigott, 2019).<sup>125</sup> It is one which has attracted the attention of a whole host of organisations which provide consulting services to charities for researching, measuring and evaluating the impact of their activities, in a way lending the appearance of 'independence' to the process which defies standardisation as there is no 'one size fits all' option.<sup>126</sup>

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<sup>125</sup> The impact agenda is not just applicable to charities. The commercial sector is also under increasing pressure to report on "their financial, social and environmental impact when calculating their overall profitability" (Thomas, 2019). The focus is shifting more towards who value are organisations generating for the wider public.

<sup>126</sup> Examples of organisations attending to the issue of impact accounting in the UK include New Philanthropy Capital, Institute of Fundraising, Charities Finance Group, NCVO (NPC, 2012).

#### 4.7 Discussion & Conclusion

Since the 1980s, charities have been reformed into organisations which are expected to deliver benefit, or value, to the wider public. With this transformation, charities once considered “sacrosanct” in terms of their charity status, have to now undergo public scrutiny (Mullholand, 2016). Following the 2006 Act, O’Halloran et al., found that the notion of public benefit “now assumed a position of strategic legal significance” within the government’s social policy agenda (2008, p. 40). This shift is in stark contrast to the frustrations expressed by the courts less than half a century ago when Lord Simonds, in the *IRC v Baddeley Case (1955)*, declared that public benefit is “the most difficult of the many difficult problems in this branch of the law”.

Examining the history of public benefit, this chapter has shown that the notion remains elusive and resistant to control. However, these traits in a policy notion are not surprising. Keeping the notion flexible allowed it to shift and reflect changing socio-economic values. As the study of the above four cases demonstrated, at the regulatory level, public benefit fails as a notion used to demarcate charities from non-charities. Furthermore, any possibility of distinguishing charities becomes blurred with the introduction of accounting standards, practices and systems, as charities’ operations come to resemble those of their commercial counterparts.

Chapter 3 of the thesis examined the historical emergence of charity accounting SORP, and how it came to play a key role in the subsequent reformation of charity governance through financial and managerial accounting. Through compliance with accounting standards, following the 1995 SORP, charities could now be regulated by the Charity Commission. The contract culture also drove financial management reforms in how a charity conducted its operations. These reforms at the regulatory and government level facilitated the transformation of charities into accounting entities (Cornforth, 2012). However, the irony is that in evolving into accounting entities, charity sector’s identity came to be blurred and unsettled. The accounting reforms triggered the public benefit debate, since charities began to look and function like commercial organisations. To an

extent, the accounting entity created as a result of accounting system is unable to account for a notion such as public benefit, as it can only capture financial flows and activities- things which are measurable, verifiable and comparable.

While accounting reforms contributed to triggering the public benefit debate in the charity sector, they also helped operationalise the notion at the organisational level. At this level, the accounting practices of counting, valuing and measuring helped charities concretise the ways in which they can demonstrate their public benefit. So public benefit is now defined *by* accounting practices in a way which may look more like accounting *for* public benefit. Demonstrating public benefit becomes more about doing it in specific ways which are accepted by the state, regulator and the broader public in order to appease their concerns. The tribunal case of *The ISC v The Charity Commission* highlights this. Prior to the case, the schools did not expend much energy and resources to collectively demonstrate the impact of their activities. However, following the ruling, considerable time and resources are spent by the ISC to determine best practices which quantifies a school's output and the impact of their activities. These measures are used by the ISC to defend the schools' charity status. However, they remain in tension with the regulator's agenda. While the metrics relied may be defined in the specific context used by the independent schools, they nonetheless challenge the regulation of public benefit because they lack comparability.

As a notion, public benefit remains a high-level concept which remains ambiguous and fluid concept. However, the practices and techniques of accounting respond to this ambiguity in a way which gives it shape and allows charities to demonstrate their compliance with the notion. However, the practices do not help to concretise the notion in a way in which public benefit is standardised so that it can be regulated. What remains interesting through examining the history of public benefit and the ISC case, is that the legal ambiguity does not paralyse the operational practice. In practice, accounting helps respond to that ambiguity by giving public benefit a shape in order to manage the existential threat schools face as their charity status continues to remain at risk. However,



the practices of accounting are not enough to minimise such threats. In the case of the schools, accounting practices do not quite address the moral-grounded social and political debates which decry the principle of allowing fee-charging organisations to be considered charities. This distance between the accounting practices and the debates are evident as the schools work very hard to demonstrate their public benefit and through a host of measures. These practices provide a dynamic area of study, as they become caught in debates, contestation and changes by schools who are trying to protect their charity status from outside threats. The contested and evolving domain of accounting reforms act as a condition of possibility by providing the charity sector with the means to demonstrate public benefit, in a way which was not possible at the time of cases like *Oppenheim* and *Baddeley*. However, they also contribute to public benefit's fluid nature as it makes regulating and differentiating charities difficult.

The malleable nature of the notion has several implications for both the Charity Commission and charities, such as independent schools. The former found themselves saddled with a responsibility which was described in a House of Commons review as both “onerous” and “resource intensive” in trying to regulate a sector using a vague notion (House of Commons UK, 2013). Independent schools, in contrast, accessed greater levels of freedom in demonstrating their public benefit rather than it being restricted to a narrow financial definition in relation to scholarships and bursaries. Following the *ISC* case, the schools successfully resisted the regulator's attempt to conceptualise public benefit in what they considered to be narrow, financial terms. Unlike the cases of *Oppenheim*, *Baddeley* and the *Moonies*, through the use of accounting mechanisms, public benefit did not remain a notion only situated at the regulatory, abstract level. As a result of accounting reforms, charities were able to rely on an accounting infrastructure in order to substantiate and shape the public benefit narrative. For independent schools, one of the possible challenges with maintaining control over how to define public benefit was trying to ascertain whether they had done enough to sufficiently demonstrate their public benefit. However, since the law does not define the notion, this tension has not disappeared since neither independent schools nor the Commission have been able to determine the limits

on what is considered acceptable. As such, this uncertainty contributes to the dynamic and fluid nature of the notion.

The uncertainty created when trying to determine and regulate public benefit becomes an important consideration in relation to the role of charity trustees. Trustees are tasked with the fiduciary duty of ensuring that charities' objectives and activities remain for the public benefit. However, as Chapter 5 will illustrate, in practice, concerns around the abstractness of public benefit are crowded out by more concrete concerns which relate to matters such as, accounting and finance. Worries related to public benefit demand time and resources when it is being contested. Thus, for the charity trustees interviewed, at a practical level, the notion of public benefit remains a pervasive worry in the background, a worry which is dealt with during periods of crisis or scandals. In contrast, matters of compliance with charity accounting standards, ensuring adequate cash flows, and controlling expenses are issues which demand greater time and resources by trustees.

Accounting practices, as mobilised by independent schools, can be considered to shape the notion in a democratic manner where charities choose what to measure, demonstrate and disclose. There is a preference, by the state and its citizens to keep the definition of public benefit open and flexible, thus maintaining the democratic nature of the notion. However, in a liberal society, no one is free to choose. In the case independent schools, the power they draw on to determine their public benefit is brokered by the institutional accounting profession who have shaped the framework by which society is regulated through accounting standards, systems and practices. The accounting practices of impact measures which the schools can rely on are already a result of interrelationships between various actors and institutions who have developed the usefulness of these measures situated widely within the neoliberal agenda.

On one hand the possibilities for choosing what activities to undertake in order to demonstrate public benefit remains endless. However, this possibility is tempered by the quantifying practices of accounting. These practices also serve to make the task of

regulating charities by their public benefit challenging, as it gives them the ‘freedom’ in comparison to the Charity Commission, power to determine their public benefit narrative. Through relying on the social and organisational nature of accounting, public benefit takes on new meanings and gets repurposed in line with the impact agenda. Various attempts have been made at defining it by different actors. Lawyers define it by relying on a body of case law, accountants define it in order to further the impact agenda, while the state repurposed the notion with the value for money agenda. These different attempts and behaviour by different actors, often with their own specific agendas and interests, further highlight the reality of public benefit, and the role it plays as an *empty signifier* where the notion gets repurposed and reflects changing social shifts.

This chapter helps demonstrate the evolving problematisation of the notion of public benefit. It does not propose a blueprint for charity law reform using the notion of public benefit. Instead, it seeks to unsettle and make distinct how a notion meant to help regulate a sector remains elusive and undefined. The cases this chapter draws upon are all distinct, yet they each illustrate the complexity and arbitrariness of the law, and also the practical reality which gets operationalised despite the legal characteristics. The ISC case, similar to the Oppenheim and Baddeley cases, shows the challenges the regulator and courts have faced when trying to determine what a public of “sufficient size” is, and what is meant by benefit. Unlike the Oppenheim case, the ISC case did not limit the size of the public who were said to widely benefit from the advancement of the education offered. However, through charging fees, it excluded members of the public who could not afford the fees. In another example, the Moonies case illustrates the perverse nature of the law in relying upon the presumption of public benefit in the case of religious charities. All four cases discussed have helped highlight the complex nature of public benefit. The challenges identified in these cases, rather than abating with the passage of time, have remained constant.

The above discussions, particularly in section 4.5 and 4.6, highlight the regulatory and accounting realities that independent schools and the regulator now have to content with

following the 2006 Act. In a way, the intersection of these two realities help operationalise the notion of public benefit. Accounting practices and systems have lent the language to help manage the complexity of public benefit. However, the irony is that the field or body of accounting itself is fraught with these challenges (Hopwood, 1990). Nevertheless, accounting mechanisms provide charities the use of a scaffold in order to manage the uncertainties created by how they can and should demonstrate their public benefit. In the case of independent schools, they use different accounting mechanisms to reshape or reconfigure their activities in order to demonstrate the impact of their activities which goes beyond just delivering education to students. This furthers the argument that while accounting mechanisms manage the ambiguity by drawing on operational and managerial practices at the organisational level, the regulatory story remains an unfinished project which continues to remain ambiguous, and open to interpretation. The regulatory story of public benefit reflects the makings of a Sisyphean task. It is one which requires a lot of work and attention as it remains a remains a project which will never be truly finished.

The challenges with standardising the notion of public benefit contrasts with the charity SORP. Unlike public benefit, the charity SORP has been instrumental in standardising a charity's external financial reporting and their internal management controls systems in order to enable the former. Public benefit, on the other hand, continues to be reinterpreted in legal and societal spaces (Cordery & Morgan, 2013). Within this space, accounting helps further enable what Hopwood calls the "segmentation of accountabilities" (Hopwood, 1990, p. 80). There are localised public benefit stories happening at varying levels of society where the notion is negotiated in different spaces to make it workable. It is this process which perpetuates the myth of public benefit, as, despite attempts to bring it under regulatory control, it remains out of reach. To an extent, the charity SORP helps make the field of charities 'legible'<sup>127</sup> in a standardised manner where only activities which can be carefully measured and calculated are included in the financial statements.

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<sup>127</sup> The idea of 'legibility' is influenced by James Scott (1998). In his book, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*, Scott examined the ways standards were created and used by the state in an attempt to make its society legible in a simplified manner, in order to control and manage its citizens and the environment.

Public benefit, on the other hand, works to unsettle the field's legibility with its diversity as it resists the state and the regulator's attempts at simplifying the heterogeneity of the sector in order to exert control. Using the notion of public benefit, what this chapter has sought to do is make evident that no one has the power to truly determine what public benefit is, as it is constantly being negotiated by the stakeholders. This notion remains one which means different things in different spaces, *because* the law has allowed it to remain malleable so it stays a manifestation of changing public values which helps maintain its flexibility.

This paper focuses more on what public benefit *is*, rather than *how much* of it is enough. Future research should examine the ways in which charities, in particular fee-charging charities like independent schools, determine the parameters of what they determine their public benefit to be, how that has changed over time, and how it compares to other charities. While the notion is not currently auditable, the comparability will help provide insight into the narrative charities construct for themselves in order to defend their status. The primary and secondary data reviewed both indicate that over time, charity reporting will continue to be shaped by the impact agenda. Therefore, such a research study will help problematise the transformation of impact reporting and how it has been shaped by differing stakeholders and their interests.

## Chapter 5 Exploring the juxtaposition between the juridical construction and the lived reality of the charity trustee in England & Wales

### 5.1 Introduction

As chapters three and four illustrate, the charity sector, like many British sectors, has undergone a management revolution over recent decades (Batsleer, 2005; Rochester, 2013). This paradigm shift brought with it an influx of management systems, practices and procedures transposed from the for-profit, corporate sector to the charity sector, a sector where “[p]rofessionalism and voluntarism sit uneasily together and are both found wanting” (Dartington, 2005, p. 221). The present-day taken for granted managerial culture within the charity sector has been shaped by the broader socio-economic and political climate which includes policy makers such as the Charity Commission, the charity sector’s regulator for England & Wales; sector specific journals and magazines; trustees and consultants (Batsleer, 2005). Characterising a commercially driven professional logic as “dancing with the enemy”, charities, regardless of size, have taken on activities and behaviours which align with the language and culture of management (Batsleer, 2005, p. 228).

Since the 1980s, trustees have played a key role in the regulatory apparatus governing the charity sector (Harris, 2013). The law posits that a charity trustee holds the responsibility for maintaining oversight over the general administrative and management control of the charity (Charities Act, 2016). In practice, trustees are expected to balance the regulatory expectations with the needs of the charity which can require becoming involved with the executive function of the organisation. As such, trustees straddle a delicate balance between acting as quasi-managers and keeping sufficient distance in order to maintain oversight over a charity’s operations. The role of the modern-day charity trustee in England and Wales highlights the above tensions within the regulatory landscape.

This chapter explores the evolving role of the modern-day charity trustee in England and Wales, and investigates how trustees make sense of their role and responsibilities in an

increasingly regulatory and bureaucratic environment. By exploring the lived reality of how trustees fulfil their duties, the chapter's findings make it apparent that trustees often deliver a less than perfect performance when compared to the abstract construction of the role by the Charity Commission. Nevertheless, as this chapter outlines, even by imperfectly or incompletely fulfilling the role, trustees provide a vital role to the Charity Commission, as a tool for governing and maintaining legitimacy over the regulation of the charity sector. This chapter makes two arguments. First, with respect to the everyday lived reality of trustees, it challenges the conventional wisdom coming out of academic and policy literature which suggests that the level of responsibility trustees face can make their role an impossible job to do (Harris, 2001). This chapter argues that while burdensome, trustees develop various techniques to navigate the contradictory tensions of their role to make the job manageable.

The second argument concerns why, although overstretched, the regulatory state remains deeply invested in maintaining the role of trustees. The UK governance climate today is largely characterised by self-governing organisations and actors. This new climate has drawn on the participation of non-governmental actors to take responsibility for monitoring and maintaining surveillance over organisations and individuals in an evolving regulatory landscape (Moran, 2003). This landscape is characterised by the decentralisation of a state-led regulatory regime in favour of a pro-competitive regulatory regime (Hood, 1995a; Moran, 2003). This shift has expanded the scope for new types of regulating organisations and actors in a predominantly self-regulating, risk-focused environment (Hutter, 2006).<sup>128</sup> Here, this chapter argues that by perpetuating a myth that the trustees both understand and carry out their roles, regulatory bodies can officially maintain the illusion that the charitable sector is being governed effectively. Through such an approach, this chapter aims to explore the juxtaposition, or the gap which exists,

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<sup>128</sup> According to Moran, the notion of self-regulation is hard to define as it goes beyond being something merely mechanistic and procedural in nature. Rather it encapsulates a “regulatory ideology mobilized to legitimize any number of particular institutional arrangements” (Moran, 2003, p. 67). Such arrangements work when the responsibility of regulating and being regulated is undertaken and shared by institutions and other actors (Moran, 2003).

between the juridical construction and the lived reality of the charity trustee in which their role is inextricably linked with maintaining the legitimacy and illusion of the sector's regulatory system. The juridical process remains situated at the abstract, regulatory level which typically remains in accordance with the law. On the contrary, exploring the lived reality seeks to access the social, fragmented realities as experienced by the charity trustees.

This chapter draws its analysis from forty semi-structured interviews, primarily held with current and former charity trustees working across a range of organisations located in London, United Kingdom.<sup>129</sup> The findings from this analysis provide a deeper understanding of how trustees make sense of their roles and responsibilities. More importantly, it offers an opportunity to analyse how they cope with the demands of the role and the anxieties they may face. Academic scholarship has described the role of trustee, as constructed in policy, as seemingly impossible to carry out (Harris, 2001, 2013). However, through speaking with a sample of charity trustees, a spectrum of responses was collected which challenged the impossibility of the role. This chapter argues that the role has been made possible to fulfil by real trustees who respond to contradictory pressures by drawing on various degrees of accepting the role or 'satisficing'.<sup>130</sup> However, this chapter also draws attention to trustee's who tried to manage their responsibility but eventually found the role *impossible to fulfil*, and as such, reject the responsibilities through exiting the role. As a result of these strategies, there remains a gap between what policy-makers desire and expect, and what actual trustees may be capable of delivering. Nevertheless, this chapter finds that in spite of such a gap, or perhaps because of it, the Charity Commission is dependent on trustees in order to regulate the charity sector. It finds that despite trustees fulfilling their role imperfectly,

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<sup>129</sup> See Chapter 2 for a discussion of this chapter's methodological approach

<sup>130</sup> In order to make a role feasible to undertake, an actor selects and accepts parts of the role which they are able to those charitable activities the best of their ability. In theory, such a process is similar to the concept of 'satisficing'. A term coined by Herbert Simon, an economist and psychologist, 'satisficing' is described as the process where "people don't do the ideal job, but the doable job" when faced with complexity and burdensome tasks (March and Simon (1958) as cited in Bowker & Star, 2002).



their role remains an important cog in the overall regulatory mechanism governing the charity sector.

This chapter makes three contributions. First, it contributes to a much richer and nuanced understanding of a key aspect of charitable governance, the charity trustee. By opening up the black box of the ‘trustee’, we can now have an appreciation for the multiplicity of challenges facing trustees and how they manage them. Such an understanding is particularly useful for policy makers, as the study of charity trustees can further understanding into how trustees can be recruited, retained and relied upon as a governing mechanism. It speaks to debates which take a critical view of trustees as playing an inadequate role, and provides insight into a facet of their reality. While this study captures the experiences of a small subset of the wider population of trustees, it nonetheless brings an awareness of how trustees experience their role.

Second, the chapter provides a better understanding of the everyday coping mechanisms for overworked bureaucrats, as well as, it shows how regulators maintain institutional legitimacy. It contributes to the body of literature which examines the role of trustees and the challenges they face in the role (Dartington, 2005; Harris, 2001). This chapter takes this body of work further by providing insight into *how* trustees transform the abstract conception of the role into something feasible in practice by drawing on strategies of accepting, strategically rejecting or fully rejecting the role and its responsibilities. This facilitates a better understanding of the intersectionality and tensions present between the abstract user constructed by policy makers and real human actors. Joni Young (2006) explores the constitution of abstract actors in how financial standard setters and accounting academics construct the ideal financial statement user. Her examination found that the abstract user was necessary for maintaining the legitimacy of the financial reporting regulatory system. Real users within this space were viewed as “multiple, conflicting, inconsistent, uneducated [sic]” (2006, p. 596). Young’s work contributes to an understanding of the abstract actor, and how their construction perpetuates the creation of a myth where they are deemed to be aware of their role and responsibilities. This

chapter does show that real trustees are not always aware of their role; and that this lack of awareness plays a role in recruiting trustees in order to maintain the appearance of a regulatory system. The chapter explores the myth of the trustee by following real actors and studying how they enact a role situated at the intersection of its abstract construction and the concrete situations they experience. It contributes to this existing literature by exploring how such a myth shapes the day-to-day practices and experiences of the trustee, while also illuminating the distance present between the abstract and real role in order to make this role feasible to fulfil.

The chapter is structured in five parts. Section 5.2 begins with contextualising different views on charity governance before reviewing the literature on trustees and the theoretical considerations influencing this study. Section 5.3 describes the role of the Charity Commission and explores the abstract, policy-constructed role and responsibilities of charity trustees. It also examines why the Charity Commission relies on charity trustees despite them imperfectly carrying out the duties, and the role these individuals play in maintaining its regulatory capacity. Section 5.4 explores the lived reality of trustees and how they perform their roles in order to discharge their fiduciary duties. This section also examines the varying techniques trustees draw upon in order to manage these responsibilities. Section 5.5 concludes with a discussion of the larger impact of this study.

## 5.2 Literature Review and theoretical consideration

### *Organisation of charity governance*

Non-governmental organisations, including charities, have come to play an active role in the regulatory sphere, a space historically occupied by the state (Hutter, 2006). As charities play a greater part in the delivery of social welfare service, how they are governed has demanded increasing attention in policy and academic literature (Harris, 2013). Occupying a “non-state, non-market public space”, the study of charities, should be undertaken in order to explore ways in how the diverse sector with broad societal aims is being governed by regulatory actors and institutions. This investigation should go beyond hastily and unproblematically adopting corporate sector practices aimed at increasing

shareholder value (Harris, 2013). While the state plays a role in the broad governing of charities, this responsibility is shared with the Charity Commission, National Council for Voluntary Organisations (NCVO) and other key institutions within the sector. More importantly, it is also shared with charity trustees<sup>131</sup> who were tasked with demonstrating accountability. Here, the responsibility for governing was shared between those being governed and those required to govern. Actors being governed now had the responsibility for knowing and operating within the parameters of the state and its regulatory system. As such, constructing and positioning responsible and competent actors, or subjects, remains key focus of the regulator, and more broadly the state, in order to maintain a self-regulatory regime.

This chapter is specifically interested in the role of individuals who have the responsibility for governing charities. It responds to the call by Harris to further examine the purpose of third sector organisations, and Cornforth's (2012) to examine structures and practices which enable the governance of charities. Charity trustees sit at the heart of the governance of charities. This analysis remains important as charities continue to be ascribed greater responsibilities by government departments and non-state donors, and thus, are expected to respond to greater calls for accountability and transparency.

### 5.2.1 Literature Review

#### *Critical examination into the scholarship of charity trustees*

The role of trustee necessitates academic interest given the responsibility placed on these actors to ensure that charities meet their objectives, and that they remain transparent and accountable to their wider stakeholders. This is especially important, as the role of trustees continues to be placed under great scrutiny. Recent scandals are but a few examples which have spurred regulatory and policy interest in the role of a charity trustee (Brindle, 2018; Singh, 2017). Failings in a charity's operations due to financial mismanagement or weak

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<sup>131</sup> In the legal, fiduciary sense, any individual appointed as members of the board are considered to be charity trustees. In practice, charity trustees can be known as "trustees, directors, committee members, governors or something else" (Charity Commission, 2018b, p. 2).

safeguarding controls bring trustees' roles under scrutiny without it being critically examined. While trustees' negligence has been focused on in the aftermath of scandals, who they are, how they understand their role, in what capacity they fulfil their role and how they behave has not always been well understood in academic literature and by policy makers. This chapter is not concerned with examples of respectable or deviant behaviour by trustees (Douglas, 1970 in Hacking, 1999). While such matters are of concern for stakeholders, such as, regulators and donors, the motivation behind this exploration is rooted in understanding the lived reality of charity trustees. The purpose of such an examination is to enable insight into how trustee make sense of their roles and responsibilities, and how they seek to fulfil it in relation to their process of sensemaking.

Charity trustees are described as having the “ultimate responsibility for what the organisation does” (Dartington, 2005, p. 208). In line with the law, trustees are unpaid volunteers who must work to further the objectives and aims of the organisation in line with its intended purpose without directly benefiting from their role (Dartington, 2005). Given their role as stewards of a charity, board of trustees came to demand much academic interest between the late 1980s and early 2000s as charities came to play a greater role in service welfare delivery.<sup>132</sup> This body of literature has examined volunteer recruitment, motivation, their contributions, why they continue to volunteer and the challenges they may face.

Harris examined the rise of the contract culture and the shifting public policy climate in the UK, and impact it had on charity trustees of voluntary governing bodies between years 1996 and 1997 (Harris, 2001). This study analysed the social policies of the 1990s which led to the rise of the contract culture in the charity sector, and the impact they had on the functions and responsibilities of voluntary boards. Through speaking with charity trustees, Harris found that the shift in the welfare service provision through contracts to the charities risked the independent nature of the charity sector, and the willingness of trustees

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<sup>132</sup> Refer to Harris (2013)

to serve on boards. “Competition for resources, monitoring and accountability demands, complying with legislation and regulations” all served to place a burden of responsibility on a group of volunteers (Harris, 2001, p. 181). Harris cautioned against the changing environment and argued that the increase in responsibilities, requirement of specialist expertise (i.e. accounting and finance) and accountability demands “may have the perverse effect of *discouraging* [sic]” involvement by charity trustees, a group “on which the very survival of the voluntary sector depends” (Harris, 2001, p. 181). According to Harris, the social policy agenda of the 1980s and 1990s had created an environment which posed a threat to the recruitment of charity trustees who would be willing to take on a burdensome, regulatory role in a voluntary capacity.

Harris built on her past work by undertaking a review of the critical issues and set out a research agenda for charity governance, and in particular, charity board governance (Harris, 2013). She argued that by the study of charity boards remains critical in order to manage the risk of charity governance structures being overshadowed and overlooked as corporate and public sector governance models come to be imposed. Failure to do so increased the risk of building “inappropriate expectations about such matters as public accountability, efficiency and effectiveness” (Harris, 2013, p. 110). She specifically argues that further research should be undertaken into the role of governing bodies as they are “instruments of internal and external accountability” who navigate a labyrinth of relationships with a wide group of stakeholders in a voluntary capacity (Harris, 2013, p. 109).<sup>133</sup>

Dartington (2005), examined the roles and responsibilities of charity trustees as noted in the NCVO’s policy report, *On Trust*. This report was commissioned in response to demands for building a better understanding of management of charities and what the responsibilities of trustees are. As charities were increasingly engaging in delivery key social services, policy makers and academics sought to further examine the role of charity

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<sup>133</sup> The role of trustee is seen as “being the point of final accountability,” for a wide range of stakeholders which include funders, donors, clients, suppliers, media and regulator (Harris, 2013, p. 103).

boards. Dartington's examination brought together policy and academic literature as he provided a cursory insight into board motivations, the legal, financial and managerial skills and competencies they should have, and challenges they faced. Dartington highlighted that charity trustees often had their own agendas and motivations which remained at odds with the needs of the organisation. He drew attention to one of the common challenges faced by charities where there remained a tension between how the low skilled, programmatic work trustees wanted to be actively involved with and the high-level expertise and skills charities wanted access too. However, Dartington also highlighted the tensions between trustees who became too involved with the management of the charity, rather than remaining active only at the governance and strategy level. As this chapter will show, these are tensions continue to occur in the present, and contribute to the anxieties trustees face when trying to fulfil their role.

Clary et al., (1992) investigated volunteer motivation of boards in the U.S, and proposed strategies for building better recruiting practices, managing volunteers and retaining them.<sup>134</sup> <sup>135</sup> The authors also argue that the volunteer needs and motivations need to be satisfied in order to retain their involvement as turnover can be costly. That as long as volunteers remain motivated and fulfilled by their work, they will continue to engage with the respective organisation. Also focused on not-for-profits in the U.S,<sup>136</sup> Widmer (1985) found that altruistic and professional reasons, followed with satisfying social needs, underlined the main reasons trustees joined charity boards. Marsden's (1996) small-scale study which interviewed charity trustees in the UK found that trustees were more motivated by altruism than professional motives. These findings help examine the

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<sup>134</sup> The authors surveyed approximately 1,000 volunteers in the United States, findings of which were used in developing a theoretical framework of motivation from a psychological perspective. Their findings classified volunteer motivations into six brackets which included social, values, understanding, career, esteem and protective factors. Refer to Clary et al., (1992) for further details.

<sup>135</sup> The volunteers surveyed by Clary et al., included board trustees along with other kind of volunteers. All study participants were pooled in the same sample population, as such conclusions cannot be made with regards to just trustees.

<sup>136</sup> Similar to charity law in the United Kingdom, non-profit organisations in the United States are required to also have board of directors (Widmer, 1985).

tensions between what trustees are motivated to deliver and what is expected of them by the regulator and charities. This chapter will demonstrate how gaps between the role expectations and delivery occurred, and how trustees either found ways to manage this gap, often by ignoring the expectations placed on them, or by rejecting their roles and leaving.

When examining challenges boards of trustees may face, the chair-CEO relationship and related conflict have captured the interest of researchers. Harris, (2013) argues that board of trustees are dominated by staff and are “reduced to a passive, reactive role within individual agencies”. When examining the interdependent relationship between boards and their executive, she drew insight from Middleton’s work on U.S boards to emphasise “[f]or many important decisions, the board is the final authority. Yet it must depend on the executive for most of its information and for policy articulation and implementation” (Middleton, 1987 in Harris, 2013, p. 106). Examination of this relationship has often been analysed in terms of roles and powers which continue to be negotiated between chairs and CEOs (Cornforth & Macmillan, 2016).

Beyond recognising the role and some of the challenges trustees face, the above body of research does not critically examine how trustees make their role feasible to undertake, and why the role plays a critical role in the governing of the charity sector by the regulator. While these pieces of work provide insight into certain facets of charities and the relationships that are housed within it, such as board-CEO relationships, they do not problematise the importance of the trustee role for maintaining the regulatory capacity of the Charity Commission, and the broader sector. Examining trustee’s motivation for why they joined as a call to better understand why trustees remain in the role does not capture the complex reality within which they are expected to and make it possible to fulfil their role. Furthermore, current literature has neglected to take into account the macro, institutional context which shapes, constrains and regulates the voluntary role. This chapter, however, seeks to go beyond an understanding of why individuals are motivated to become trustees to examine how they make this role feasible.

### 5.2.2 Theoretical considerations

#### *The mythical nature of the 'trustee' role*

Given the rise in self-regulating modes of governing in the current regime, the role of the individual actor plays an important role. This chapter seeks to unsettle its taken-for-granted nature. Joni Young's critical examination of how financial statement users came to be constructed by accounting standard setting institutions and academics helps us explore this more. The purpose of a financial statement is to be useful to its users in their economic decision-making. As such, the role of the user is seen to play a critical role in the development of financial standards in response to socio-economic and political pressures. However, Young highlights that standard setters rely on the abstract idea of the *rational user* by assuming their needs. This group of users all share the same characteristics and needs, which ignore the complexities of diverse user groups. In fact, for the standard setter, 'real users' pose a threat to the standard-setting process, as their needs vary in complexity and are diverse.

Young's study alters "our perception so that we can see how an idea we thought was given (or natural) is instead taken or chosen from a myriad of possibilities" (Young, 2006, p. 581). Her examination helps us explore the tension in the charity sector, between the abstract role of the charity trustee *constructed* by the regulator and key players, and the "flesh and blood" humans" (Hacking (1986) as cited in Young, 2006). Young's work is situated at the level of discursive construction where accounting standards-setters and academics actively construct the role of the abstract user. The aim of this study is to draw in the lived reality of users, or trustees, in order to provide insight into the tensions and disconnect between the abstract construction of the role and the day-to-day experience.

Young's analysis of the abstract user builds on Hacking's work. Hacking helps provide insight into how actors act. He proposes that in understanding human actors, the descriptions ascribed to them help determine, or guide, their behaviour, actions and deeds. He argues that "who we are is not only what we did, do and will do but also what we



might have done and may do. Making up people changes the space of possibilities for personhood...but our possibilities although inexhaustible are also bounded” (Hacking, 2002, p. 229). Expanding on this further, Hacking describes this process of being as *dynamic nominalism* where “a kind of person came into being at the same time as the kind itself was being invented...they emerged hand in hand” (Hacking, 2002, p. 165). This is not to say that how one acts is purely dependent on how one is described, rather that the actions are interlinked and often shaped by the descriptions given to them. It is also important to note that these descriptions do not originate in isolation from their social environment, but rather, it is where they emerge.

Young’s analysis is concentrated on the ‘making up’ of users within the very specific realm of standard setting. While this chapter does not delve into the historical construction of the role of charity, Hacking’s notion of dynamic nominalism goes beyond Young’s analysis. He helps provide insight into a complex and nuanced reality wherein which actors reside. For it is within this reality that the mechanisms of governing and regulating rely on the ideal, standard notion of user. That the standard ‘user’ as constructed in law is needed as a condition of possibility for a field of organisations, institutions and actors to function in. Hacking’s work enables insight into how actors to some extent conform themselves to their descriptions and labels where they become performative. In the case of charity trustees, this level of performativity remains weak, as there remains a gap between the abstract construction of the role and the real experiences of the trustee.

Similar to Hacking, Meyer & Jepperson (2000) are also concerned with the “making up” of actors. They focus on the cultural construction of the (western) “modern-day actor” who can be in the form of an individual, an organisation or the state. According to the authors, the modern actor acts as a relay for others in a wide array of roles, both in a personal and professional capacity, draws its legitimacy from the rationalised structures relied on by the modern state. This chapter does not examine the historical, social construction of the trustee’s role. Rather, it examines the present-day, lived reality of how trustees perform within the institutional context of the role as created for them in order to

enable the regulation of the sector. As such, how this role has been imbued with an accounting and legal logic helps provide an appreciation of the regulator and wider stakeholders aspirations reflected in how trustees are regulated, even if these logics may not be reflected in the actual realisation of the role.

The academic examination of the social construction of actors helps us consider the possibilities of how governance came to be individualised in the charity sector, and specifically came to be connected to the role of trustee. This agentic shift was emplaced within a broader societal shift towards greater accountability and transparency which helped further the construction of trustees through modes of standardising individual and organisational lives. While the reality can be different, and is different, as the chapter will illustrate, the role of the trustee as constructed in law and by policy makers nonetheless shapes and moulds the behaviours and experiences of individual trustee regardless of how they conform or reject it.

Focusing on the macro construction of a charity trustee, its policy origins reflect the idealised descriptions and values of the Charity Commission and other policy makers. The above body of literature helps provide insight into understanding how these idealised roles came to be constructed and situated within a body of rules and regulation. It is this idealised policy-based role which furthers the cultural construction of actors in ways which includes how it intersects with other practices of corporate governance. Here the transfer of values, practices and systems from the latter to the charity sector can be appreciated as trustees with related commercial expertise, regulators, donors and the state come to prioritise the corporate governance model. However, the above body of literature does not provide an understanding of how trustees experience their role.

By examining the lived reality of charity trustees, this chapter goes beyond the constructed role of the standard, homogenous individual who understands their role and will act in accordance to the expectations. It draws influence from Meyer & Rowan's (1977) notion of rationalised myths, or *organisational myths*. They argued that organisations adopt

rational structures from their institutional environments in a bid to further their legitimacy and enhance survival. Many of these formal structures are a result of structures thought to promote efficient and effective organisation performance. These structures, or ‘rules’, do not always appear to have a direct link to organisational outcomes, but there remains an expectation that those complying with them demonstrate “responsibility and avoids claim of negligence” to the external environment (Meyer & Rowan, 1977, p. 344). In a way, when constructing the role of a charity trustee, policy makers including regulators, perpetuate a *regulatory myth*.

The regulatory myth relies on able actors and institutions, possessing the expertise and resource capacity needed to regulate the sector. The governing of charities relies on trustees who have the time and professional expertise needed in order to maintain oversight over their respective organisations. There is a reliance, by regulators and wider stakeholders on the myth that a trustee is fully aware of their role and will fulfil it as envisioned in how it was constructed, in order for the regulatory mechanism within which it is situated to continue and for the regulator to maintain legitimacy. The governing of charities also relies on the Charity Commission regulatory expertise and capacity required in order to maintain oversight by conducting reviews and investigations of charities to ensure their activities remain charitable in nature. Such a myth does not have space to consider the reality faced by these actors and institutions. This chapter will discuss and expound on the gap between the aspirations and expectations contained in the myth, and the lived reality of the sector’s capacity as experienced by charity trustees which impact the Commission’s reality.

### 5.3 Charity Commission

Since the Charities Act 1960, the Commission’s powers have been expanded to enable them to maintain regulatory oversight over charities. In reviewing the regulatory role of the Charity Commission ten years after the passing of the 1960 Act, a sub-committee within NCVO stated,

“It is not part of the Commissioners duty to satisfy themselves that an organisation will be able to achieve its expressed purpose and will be efficiently administered. Their primary concern is to see that the purposes of an organisation as set out in its governing instrument are charitable in law, and they are not entitled to look much beyond that...” (Robson, 1971b).

The Commission’s duty did not extend to assessing the administration and management of charities, their legal functions included “encouraging the development of better methods of administration”, which was done through publishing reports, guides and organising conferences targeted at charity trustees (Robson, 1971b). Over the course of 80 years, the Commission has continued these practices (Charity Commission et al., 2017). Following Charity Act 2006, the Commission’s role has expanded to increase awareness and understanding of public benefit requirement in addition to focusing on increasing public trust and confidence in charities, promoting compliance with the law by charity trustees, encouraging effective use of charitable resources and enhancing accountability by charities to the wider public (Hind, 2011).

The Commission’s legal responsibility also does not entail directly assessing the efficiency of charities, and thus its trustees. However, it has in the past been criticised by charities as focusing too much on “financial stability and organisational survival at the expense of whether charities are having an impact for beneficiaries” in a bid to promote dialogue around efficiency (Yeowell, 2018). Nevertheless, the regulator’s role is tied with shaping the role of trustees in way that reflects a desire to assess their effectiveness and efficiency. This desire is shared by government departments, grant making institutions and donors who were interested in ensuring the security of their monetary resources and that charities provide value for money.

Currently, a charity’s performance is assessed through the processes of regulatory compliance by the Commission. Financial reporting and submitting annual accounts sit at

the heart of this process. Part of the Commission's duties entail ensuring that a charity's activities are charitable in nature and for the public benefit. However, this issue becomes challenging in a sector home to more than 165,000 charities (Charity Commission et al., 2017). As previous chapters have highlight, the Commission has frequently struggled with fulfilling their resource mandate due to limited resources. The regulator's ongoing resource constraints have played a constant role in its post-war history. A 2013 NAO report titled, *The regulatory effectiveness of the Charity Commission*, the regulator's resources had declined by 40% between 2007 and 2014, however their responsibilities remained unchanged (NAO, 2013). Lack of adequate resources were deemed to increase the risk of serious concerns and abuse going undetected by the Commission.

A key concern of the NAO was the role of the regulator's activities eroding public confidence and trust in the charity sector. The report also stressed that "there is a gap between what the public expects of the Commission and what it actually does" when managing and detecting cases of abuse. Despite facing resource constraints, the Commission is still expected to maintain oversight over the sector. Its oversight role is described as playing a critical role for wider public's trust and public confidence (NAO, 2013). In managing the public's expectations and its own limited regulatory capacity, the Commission relies upon charity trustees so it can aim to fulfil its own purpose. However, by speaking to charity trustees and seeking to understand how they make sense of their roles and responsibilities, trustees also find themselves in a similar position to the regulator. Where the Commission seeks to manage the gap in the public's expectation by relying on trustees, the trustees interviewed also face limited resources and find themselves struggling with responsibilities they are expected to fulfil. These tensions, and what they mean for the Commission's regulatory capacity will be further explored in this chapter.

### 5.3.1 The abstract role of the trustee as constructed for regulation

The charity sector is estimated to represent £18.2 billion, or 1% of the nation's GDP (NCVO, 2019e). However, this figure has been argued to be significantly understated. A

review of the charity sector's contribution and value placed the sector's contributions closer to ten times more at £200 billion in social value, or around 10% of GDP.<sup>137</sup> These resources fall under the legal purview of charity trustees who hold all legal and operational responsibility. The charity sector is estimated to be home to 700,000 charity trustees who on average hold 1.35 board appointments (Charity Commission et al., 2017).<sup>138</sup>

Since the 1980s, trustees have been expected to become *quasi-managers* who are responsible for managing their charity's financial and administrative operations in a climate where they could be subjected to "tight, even intrusive, monitoring and regulation" (Harris, 2001, p. 173). As the delivery of welfare provision expanded from the state to the charity sector, so did the responsibilities of charity trustees (Harris, 2001). This shift has been described by both policy-makers and academics as increasingly challenging and burdensome for trustees (Harris, 2001; NCVO, 1991). The significance of this is that trustees are expected to be responsible for a significant portion of the nation's resources on a voluntary basis, at times remaining unaware that they hold such a responsibility.

While the terms of the law have remained the same since the Charities Act 1960, how this role has been formalised and the responsibilities ascribed to it in practice have undergone significant changes. Currently, the Charity Commission's *The Essential Trustee* sets out the eligibility requirements and duties expected of charity trustees (Charity Commission, 2018b).<sup>139</sup> The publicly available, forty-page guide was further distilled and broadly

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<sup>137</sup> Pro Bono Economics (PBE), a charity with the objective of assessing the impact and value of the charity sector in the UK undertook a review assessing the charity sector's contribution to the UK economy. They concluded that the contributions of the sector were "severely underestimated" which can leave the sector "vulnerable to policy neglect". They attributed the difference between their estimated value of the sector's contributions and the ONS to be a result of taking into account the value of: official volunteers, informal volunteers, what they consider to be spill over fiscal and wider economic benefits (Cipriani, 2020)

<sup>138</sup> The 2017 Charity Commission, *Taken on Trust*, survey found that approximately a quarter of trustees sit on more than one board. Based on an average of 1.35 boards per trustee, the Commission estimated that there are 700,000 active charity trustees involved in the governance of charities. Previously the Commission had believed there to be 850,000 trustees involved in the sector (Charity Commission et al., 2017).

<sup>139</sup> The current guide was originally published in 2012 and most recently updated in 2018

summarised into six main duties of a trustee (2018a) (see **Figure 5.1**). In substance, the guide is more in line with the principles-based regulation commonly found in the financial services world.<sup>140</sup> It requires trustees to exercise their judgment, and draw on their relevant skills and expertise in carrying out their duties.



**Figure 5.1** Six main duties of charity trustees. Source: (Charity Commission, 2018a)

In taking a broad view of a trustee's duties, trustees and their co-trustees are expected to work together to ensure they are familiar with a charity's purposes and objectives, to determine that a charity fulfils its strategy, to be accountable for a charity's activities, and to understand how a charity's strategy and activities are for the public's benefit (Charity Commission, 2018b). Within this setting, Harris (2013) further contextualises the

<sup>140</sup> According to Black et. al, principles-based regulation is a shift "away from reliance on detailed, prescriptive rules and relying on more on high-level, broadly stated rules or principles" (2007, p. 191).

functions of a trustee as: being the point of final accountability; being the employer; formulating strategy and related organisational policy; securing monetary and non-monetary resources; and acting as an intermediary, or what she refers to as a ‘boundary spanner’, between a charity and its external environment (Harris, 2013).

A review of the trustee’s guide revealed that the Charity Commission’s conception of skills trustees should possess was similar to those required for running a small business effectively. These aspirations captured the regulator’s attention when reviewing the role of charity trustees to make it more effective in the early 1990s.<sup>141</sup> This review highlighted that “[m]any charities and voluntary organisations require some of the sophisticated management skills – e.g. finance, marketing, personnel, strategic planning – of successful businesses” (NCVO, 1991, p. 38). Trustees are expected to undertake and manage personal and liability risk in addition to devoting considerable time and expertise (Charity Commission, 2018b). These expectations have only intensified over time. The combination of these risks and demands on time have been known to act as potential deterrents as trustees are expected to steer charities in an increasingly competitive environment (Harris, 2013).

The motivations of those who become trustees vary from being altruistically motivated to having an interest in developing professional skills and expertise (Dartington, 2005). For those motivated by latter interests, charity trusteeships have also been positioned as a “stepping stone” to becoming a NED. In a webinar hosted by the ICAEW, charity accounting specialists and executives highlighted the parallels between the role of a charity trustee and NED (Gibson et al., 2011). The session targeted at encouraging taking on trusteeships clearly stated that ‘volunteering’ was not about getting involved in carrying out the activities of the organisation like “stuffing envelopes”, rather it was about drawing on “professional skills” and expertise to make meaningful contributions as

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<sup>141</sup> In 1991, the Charity Commission and the NCVO set up a *Working Party on Trustee Training*. The purpose of this working party was to increase the effectiveness of charity trustees and management committees (NCVO, 1991).



“custodians of the governance process” (Gibson et al., 2011). The relationship between charity trusteeships and NEDs has on other occasions also been remarked upon and encouraged as a way of increasing the effectiveness of a for-profit board (Higgs, 2003).<sup>142</sup>

The role of a NED, in practice has also posited them to be “custodians of the governance process” (Higgs, 2003). The responsibilities of a NED are seen as setting “strategy, corporate policies, overall direction, mission, vision,” and they are viewed as being a “source of advice and council” (Adams et al., 2010, p. 64). In this regard, both the role of a charity trustee and NED are similar. However, therein lie key differences between the two roles primarily around the issue of liabilities and independence. The role of a NED is more structured when compared to the charity trustee, the latter whose role is more flexible and meant to be closely aligned with the needs of the charity. It is not uncommon for charity trustees to get more involved with the organisation’s operational and strategic activities which can include hiring executive and staff, running programs and managing a charity’s resources (NCVO, 1991). With charities, trustees may be more involved with executive whereas NEDs will maintain a distance between their role and executive-led activities. As such, for NEDs the accountability is clearly defined and remains at a scrutiny level. However, for charity trustees, this level of independence can be blurred as there is an understanding and expectation that they can get involved with executive activities based on the needs of the charity. With charities, trustees are also held liable for personal and organisational liability (NCVO, 1991). While there are ways to manage these risks through taking out indemnity insurance or structuring charity’s in specific organisational structures (Charity Commission, 2018b), the role of trustee remains more involved and resource demanding when compared to a NED.

The ICAEW recruiting webinar positioned the role of charity trustees as responsible for setting strategy, monitoring performance, appointing and determining executive pay, and

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<sup>142</sup> Following high-profile corporate scandals in the early 2000s, the Department of Trade and Industry (DTI) commissioned a review of the role and effectiveness on NEDs which was led by Derek Higgs and published in 2003.

scrutinising risk management processes and controls (Gibson et al., 2011). Furthermore, it encouraged trustees against getting involved in the day-to-day management of charities, and to adopt an oversight role more in line with NEDs. This example illustrates a shift towards a more professionally-skilled trustee and away from the idea of an amateur charity trustee who may not possess a commercial discipline. These skills came to be valued as trustees had to respond to a changing socio-economic and political climate. As trustees of charities, they were expected to demonstrate value for money and be held responsible for their charity's performance through use of performance metrics.

These responsibilities have become characteristic of trustees as the welfare-shift<sup>143</sup> required them to take on responsibility for “managing large scale service provision for vulnerable people and carrying accountability for complex budgets and major-fundraising” (Harris, 2001, p. 173). Core business skills continue to be promoted widely within the charity sector. Since the early 1990s, there have been a proliferation in the organisations disseminating guidance pertaining to charities, and in particular the role of trustees. In addition to the Charity Commission, institutional bodies (such as NCVO, Small Charities Coalition, Directory of Social Change and Institute for Chartered Accountants for England and Wales), academic institutions<sup>144</sup>, law and accounting firms are all active participants in holding training courses, seminars, conferences and publishing guidance and leaflets communicating the roles and responsibilities of trustees. Since 2008, the Cass Business School's Centre for Charity Effectiveness has been developing guidance aimed at supporting charities and its trustees in “running an effective organisation” as part of their *Tools for success: doing the right things and doing them right*<sup>145</sup> series (Ash et al., 2012).

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<sup>143</sup> See Chapter 3 for a discussion of the welfare state, and how the state shifted away from their role as the main welfare provider since the 1980s

<sup>144</sup> Charity-related postgraduate studies are now offered by a range of academic institutions within UK which include the above mentioned Cass Business School, Birmingham University and University of Wales to name a few (Hoare, 2013)

<sup>145</sup> Split into eleven subject areas, the guides focus on a broad spectrum of matters which include: financial management, legal compliance, human resources, developing a financial and organisational strategy,

The Charity Commission's *Essential Trustee Guide* is publicly available on their website. While it is expected to be part of every trustee's induction process upon joining a board, awareness of the guide's existence continues to remain poor. Since the mid-1960s, the Charity Commission has continued to periodically publish trustee guidance to support trustees in discharging their fiduciary duties. Nevertheless, awareness of the role continued to be poor. In a parliamentary session in 1992, Lord Morris of the House of Lords stated,

“when most people accept the post of trustee they are not aware, and there is no wide public knowledge, of the depth of the responsibilities that trusteeship now requires” (Hansard, 1992, col. 367).

The Charity Commission's and NCVO's review found that nearly a third of trustees surveyed were unaware of their legal position and related responsibilities (NCVO, 1992). Despite the passage of time, this lack of awareness continues. When detailing the results of their awareness campaign following the 2014 consultation process of the guide, the Charity Commission stated that 114,173 individuals had viewed the trustees' guide (Green, 2016). While it is not clear whether the individuals viewing the guide are trustees, it is a figure far below the nearly three-quarters of a million charity trustees voluntarily active in the sector.

The implications of the above are significant. In practice, a principles-based approach demands a higher level of expertise and skills as the responsibility for interpreting and applying the rules is placed with users (Black et al., 2007). In the case of charity trustees', the responsibility for navigating and complying with the rules falls on them. While there are risks and challenges to such an approach, the risks to trustees can involve having a poor awareness of their responsibilities, and inadequate skills. At a time when greater

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financial management systems, operational management, performance measures and risk management (Ash et al., 2012)

responsibilities are being placed on trustees, and they are being required to manage a great portion of the nation's resources, lack of awareness of their responsibility can threaten to weaken the overall governing of the charity sector. However, a lack of awareness of the role, may also contribute to individuals' willingness to take on this role. The role of trustee as constructed in the guidance materials is both time and labour intensive, and can be considered as taking on another job, but in a voluntary capacity. As such, a lack of awareness of the role may make it possible for individuals to become trustees where they are intrinsically motivated to get involved rather than deterred from taking on an administratively cumbersome role.

Seeking to preserve the diversity of charity trustees in terms of experiences, the Charity Commission, inadvertently or perhaps even deliberately, can be seen as further enabling this lack of awareness of the role. The regulator has clearly stated that they do not intend to require trustees to undergo mandatory training despite there being evidence of poor awareness of the role.<sup>146</sup> Elaborating on the matter, the regulator stated that, "[T]here is a risk that any system of mandatory training would...[create]... a barrier for a wide diversity of people to be able to volunteer as trustees" (ACEVO, 2015). While diversity of trustees may certainly be impacted, perhaps the regulator may not want to discourage individuals from taking on a trusteeship if they realise the high burden of responsibilities and liability risks which accompany the role.

The guidance on trustees prepared by the regulator and intermediary organisations highlight that the role is a big undertaking. Furthermore, it seems that the administrative burden placed on trustees can and has made the task of regulatory compliance much more challenging (Harris, 2001). In examining the role of charity trustees and boards in general, Harris illustrated the challenges and tensions trustees have felt as there have been greater demands placed on their time and resources. Findings of her research study suggested that

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<sup>146</sup> In 1995, NCVO published the results of a survey of charity trustees they had undertaken in the report titled *Building on Trust* following the 1992 report *On Trust*. This survey found that two-thirds of the trustees had not received any form of training or induction when they first joined their respective charity boards (Sargant & Kirkland, 1995).

trustees often experience “high levels of anxiety because of the rapid growth of their agencies, insecure funding and onerous accountability demands” leading some to either avoid thinking about their responsibilities or consider quitting (Harris, 2001, p. 179). According to a review of the voluntary sector by the Charity Commission and the NCVO they also recognised that charity trustees were having to take on greater liabilities. In this review,

“The challenges facing trustees in this new culture are considerable. Their liabilities will be increased, yet their actual involvement in managing their organisations could decrease. Their professional staff will be taking the lead role in contract negotiations and contract management and there will be a danger that trustees are simply left to rubber stamp their decision...” (NCVO, 1991, p. 10).

In order to navigate the changing climate, the regulator and the NCVO both recognised that charities will be seen and expected to run as not-for-profits with the added complexity of working towards a social mandate. However, the irony seems to be that the regulator itself has repeatedly been identified as overburdened by the scope of its responsibility both in terms of its mandate and because of dwindling resources,<sup>147</sup> yet this burden has been passed on to individual trustees who may be ill-equipped to shoulder it in trying to fulfil an impossible job. The increase in the regulator’s responsibility has been in parallel with state’s shift away from its responsibility for welfare provision. As the state passed this responsibility to the charity sector, it relied on the Charity Commission to step in and maintain oversight over the resources in the charity sector.

Given the increase in responsibilities and limited resource capacity, the Charity Commission relies on the idea of a homogenous trustee in order to be seen as fulfilling

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<sup>147</sup> The Commission’s operational budget has continued to decline since the mid-2000s raising debates about the sustainability of charity regulation and the possibility of charging charities to fund the regulator (Cooney, 2016).

their own task of regulating and monitoring the sector. This is where the regulator, and the wider environment, have increasingly relied on the idea of professionally skilled trustees who are expected to shoulder the burden of the role even when research evidence has highlighted that to continue doing so risks trustees feeling overburdened and possibly unable to undertake the role.<sup>148</sup> Arguably, the idea of such a trustee in regulation serves as a condition of possibility required for the Commission to carry out its duties. This role is constructed by the Commission which are communicated through scripts in the form of guidelines (i.e., *the Essential Trustee Guide*), trainings and co-opting the participating of charity umbrella groups who help permeate the role's expectations within the sector. The key characteristics of the abstract role requires trustees and the overall charity board to have expertise in areas which include accounting, finance, legal and risk management (Ash et al., 2012). Following the discussion of the shift towards recruiting professional trustees, the next section will demonstrate how the role of the trustee in practice may be unable to be fulfilled as envisioned by the regulator. This discussion will problematise why, and importantly how, the trustee still plays an important role in maintaining the Charity Commission's legitimacy as a regulator.

### 5.3.2 The role of the trustee in maintaining regulatory capacity

Following key scandals, trust and confidence in the charity sector has steadily been on the decline for the past fifteen years before beginning to improve in 2020 (Charity Commission, 2018c, 2020; Royle, 2020). Poor trust and confidence in the sector can indicate that the regulator is not fulfilling its mandate, as an essential part of their role is maintaining the public's trust and confidence. According to the Commission, a critical element which helps maintain trust and confidence in charities is to demonstrate that donated resources are used for furthering charitable objectives, and that they make "quantifiable public results" in the form of "proven impact" (Charity Commission, 2018c, p. 3). Given the regulator's resource constraints, the role of the trustee plays a critical role

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<sup>148</sup> The *Building on Trust* survey highlighted that the expertise often required of trustees in the form of legal, managerial and financial may result in trustees feeling overburdened and incapable of undertaking the role if they are not adequately supported (Sargant & Kirkland, 1995).

for building and maintaining the regulator's legitimacy and capacity. Through compliance requirements of a charity's annual return and the notion of public benefit, the responsibility for demonstrating impact lies with the trustee.

The role of the trustee makes it possible for the regulator to discharge their mandate especially at a time when their responsibilities and powers are being expanded. Prior to the 1980s, the Commission was viewed as playing the role of a 'friendly advisor,' as trustees were able to turn to them for "advice and information on any matter affecting the charity" (Hill, 1974, p. 13). However, while they are obligated by the law to support charity trustees and to develop guidance for them in terms of communicating their responsibilities, the Commission is also required to maintain its independence in order to regulate them (Robson, 1971b). They maintain distance through requiring charities to submit their annual accounts, review and approve charity registrations and carry out investigations as needed in order to maintain oversight over trustees. In addition, the Charities Act 2016 has also given them powers to disqualify and remove trustees from their roles if and when they are found to be negligent in their duty (Charities Act, 2016). The distance between the regulator and the trustee is also required due to the Commission's resource challenges. In a way, the Commission could be argued to 'outsource' their regulatory responsibilities to the trustee in order to maintain its oversight role. However, as the following section will illustrate, the trustee's operationalisation of the role is not always aligned with its abstract construction.

#### 5.4 Lived reality of the charity trustee

When discussing the social responsibilities of a business, Milton Friedman emphatically argued that "[o]nly people have responsibilities... "business" as a whole cannot be said to have responsibilities" (Friedman, 2007, p. 173). According to Friedman, a business is an "artificial person" with "artificial responsibilities," and individuals, be it proprietors or executives, are fundamentally responsible for it. As discussed earlier, in the case of charities, the law deems a trustee fundamentally responsible for its activities. The role of the charity trustee as constructed remains an abstract reflection of the ambitions and

aspirations of policy makers. It does not, and cannot, capture the idiosyncrasies of the role in reality, as real trustees remain varied in nature. Through speaking to charity trustees, this section will explore the different degrees of acceptance or rejection, and how trustees manage to make this role possible to undertake.

Through conversations with charity trustees, the upcoming section examines how a role made burdensome and demanding, or nearly impossible, as per its policy construction has been made feasible to undertake in practice. This section will begin with a discussion of how they understand and make sense of the role in their own terms. Within this discussion, the trustees themselves highlight the challenges and anxieties they face when carrying out their responsibilities. The role as imagined by policy makers does not take into account the heterogenous nature of the charity sector where organisations vary in income, the number of people employed, and the broader objectives and operations. Not surprisingly, trustees also hail from diverse backgrounds and bring with them different skills, expertise and motivations. While the challenges trustees face has been written about and acknowledged both in policy and academic literature, the subsequent discussion will demonstrate the varying degrees of acceptance and strategic rejection, drawn on in order to make the role feasible, or where they completely reject the role. By strategically rejecting aspects of the role, trustees seek to make the role ‘doable’. This discussion will seek to examine the tension present between the abstract construction of the trustee role and what is expected of real actors from a regulatory perspective, and what real actors can deliver. In exploring this tension, one begins to see how the formal expectations and aspirations of the role at a policy discourse level intersect with the individuals situated at the field-level.

#### 5.4.1 Trustees make sense of their role

The role of trustee, unlike a NED, is a voluntary role. It is often undertaken in tandem with other professional and charitable work, which can and do place further demands on a trustee’s time and available resources (Harris, 2001). When speaking to the trustees interviewed, much of their understanding of the role did align with how it was envisaged



by the Charity Commission in the trustees' guide. These areas related to compliance, maintaining oversight over the executive, and monitoring performance. This understanding reflected the standardised design of the role. Given that a significant majority of those interviewed had some form of management training or NED experiences this was expected. This section seeks to shed light on the lived reality of trustees and the tensions, challenges and anxieties they may experience while carrying out their responsibilities.

### *Compliance driven*

Charles, who is a trustee of over twenty charities and is also the CEO of a medium-sized, social welfare service charity, described the role of trustee as being driven by compliance and risk management. He recalled a time when he met a trustee who was unaware that they had been a trustee in the legal sense for three years. Charles found this to be a common occurrence in small volunteer led and run charities. The advice he shared to help the trustee build a better sense of their responsibility was one more commonly found in for-profit organisations. In sharing the exchange, he recalled:

“Well, then he starts asking questions. He literally starts reeling off questions, "So, what does that mean for me?" But, "Make sure you do your basic stuff. Are you filing returns? Are you holding regular meetings in line with your constitution? Are you keeping proper records? Have you got any risk assessments in place?" Well, of course none, none of any of it, really, you know? "Do you have insurance?" So, you know, "Have you got trustee indemnity insurance?" All of those sorts of issues, really.”  
(Charity Trustee 13/06/2018).<sup>149</sup>

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<sup>149</sup> IR02 (2018, 13 June), Charles, Interview transcript, Charity Trustee

In contemplating Charles's view, it is difficult to differentiate whether he is referring to a charitable or a for-profit organisation. This is not surprising, but is rather a function of broader governance which carries through different sectors. Charles's understanding of a trustee's responsibilities is situated firmly within the institutional framework the Commission and wider stakeholders expect trustees to function in. He is a trustee of nearly two dozen charities in the health service sector, and these roles are undertaken in addition to his fulltime job as a CEO. While the trusteeships were in his areas of expertise, they nonetheless commanded a significant portion of his time. According to Charles, each role demanded roughly six hours of his time per month. As such, having an almost 'template' like understanding of what your responsibilities are helps Charles manage his time and vast responsibilities.

While there are no limits on the number of trusteeships someone can undertake, the number of trusteeships Charles holds can be considered to be an outlier, and not the norm. In order to manage these trusteeships, Charles shared that he relied on a network of actors and institutions. At his place of employment, Charles relied on his executive and administrative team who supported him in meeting his responsibility in finance, administrative and human resource-related matters. While this type of reliance was not commonly found in the sample of those interviewed, for Charles, support from his staff played an essential role in helping him fulfil his responsibilities. Furthermore, he also regularly attended professional training courses and maintained memberships with a number of charity membership organisations focused on areas of fundraising and human resource. Reliance on a range of actors and institutions helped Charles manage the risks and complexities of being a trustee. This reliance helped give him a measure of control over his duties, and allowed him to remain compliant with his understanding of the role.

Charles's views were also widely shared with others interviewed, both trustees and those who worked closely with trustees. According to John, a company secretary in a super major charity supporting children within the social welfare sector, the responsibilities of

a charity and its trustees was simple- “comply or explain”.<sup>150</sup> His role in the charity was to ensure that trustees were aware of changes to the rules and guidelines by the Charity Commission and other respective regulators the charity was accountable too. It was also John’s responsibility to have a strong understanding of where the charity could and should comply, and where it had a good reason to abstain. His role required a strong awareness of the guidelines and rules, both for himself, and for ensuring trustees remain aware and compliance. Awareness of rules is key here, for if you don’t know, then you don’t know. If you lack awareness of your responsibilities and don’t know that you are required to comply with a series of rules, then regardless of what is expected of you by policy makers and the law, one will remain unaware. This was illustrated in Charles’s example.

John’s role as a company secretary, and his responsibilities to the trustees highlights the difference between small and medium charities, and larger charities. His role is one more commonly found in larger charities, primarily because of the administrative costs associated with such a role. Not all charities can afford such a role or invest in ensuring compliance with rules and regulations. According to Megan, a trustee of a large charity who provided loans to vulnerable people in Africa, “we don’t have the money to buy them rigor”<sup>151</sup> when discussing the charity’s compliance, specifically in the area of financial accountability. However, particularly with charities with income over £100 million, there is greater policy and public scrutiny over their activities.

Roles like John’s are part of an infrastructure that are meant to support trustees in complying with both, the law *and* sector best practices. These best practices can take on ‘rules-like’ status, and include examples such as the charity sector’s Charity Governance Code released in 2019 (Charity Governance Code Steering Group, 2019).<sup>152</sup> This code sets out principles of what it considers to be “good governance” in areas which include

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<sup>150</sup> IR3 (2018, 14 June), John, Interview Transcript, Company Secretary

<sup>151</sup> IR5 (2018, 25 June), Ed, Interview Transcript, CEO

<sup>152</sup> This code was developed by large charity umbrella groups and received consultation comments and opinions from over 200 charities.

accountability, transparency, leadership and risk management. According to Ed, a CEO of a large grant-making charity, the code is meant to help direct charities on how they should govern themselves. He further stated that whilst the code is non-regulatory, compliance with the code is still expected in the sector. He shared that the code is “so influential that now your auditors pretty much expect that you put in a statement of how you comply with the code”.<sup>153</sup>

Marcus, a current NED and a former audit partner, was board chair of a major charity within the housing sector and a member of the audit committee for another major charity focused on medical research within the health sector. Similar to Charles, John and Ed, Marcus’s understanding of his responsibilities was also grounded in a series of compliance requirements, which included awareness in the form of financial accountability. His background as a former audit partner and work in the corporate sector can be seen as playing a key role in shaping his understanding of what responsibilities are expected of a trustee,

“First of all, are we meeting the objectives of the charity? Are our charitable objectives clearly understood by us, by management and are we fulfilling them? Secondly, are we, in doing that, or to the extent to which we’re doing that or not doing that, are we safeguarding the assets properly? We therefore have proper accounting systems, proper internal controls. Is there clear accountability? Those are the sorts of things that I focus on and in my more recent role as a chairman, is the board doing its role properly?...

...Are they addressing the right issues? Have we got the right balance between executive and non-executive? Because the interesting thing about a charity is that the executives are not on the board, which in a

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<sup>153</sup> IR6 (2018, 27 June), Megan, Interview Transcript, Trustee

company, the chief executive is a board member, nearly always, it doesn't have to be but nearly always is. [A]nd therefore, the executives who are there all the time have got to be allowed to manage and the board has to oversee and guide but not stray into detailed management because actually that's not our role and we can't do it. It's confusing to executives if the board look like they're managing, that's almost a copout, it's inviting things to fall between the cracks, between the executives and the non-execs." (Board Chair, 08/05/2019)<sup>154</sup>

The responsibilities outlined above again are similar to what is commonly found in for-profit organisations and closely reflect Marcus's background in the corporate sector as a NED. He articulates a tension that charity trustee's face when seeking to maintain an oversight role similar to NEDs. However, unlike NEDs, who share the responsibility of their duties with executive directors,<sup>155</sup> trustees are *solely* responsible for the management and administration of charities. Sarah Atkinson, in her capacity as the former Director of Policy & Communications at the Charity Commission, echoed this when she stated that "the buck stops with you [trustees]" (Atkinson, 2016). According to Sarah King, a consultant with experience in the charity sector, a NED's responsibility is "much clearer cut" in comparison to the charity trustee, who has to remain flexible and adaptable to the charity's needs (Noble, 2016). Unlike a NED, a trustee is also the employer who is held legally responsible for the activities of the charity's executive. It is this responsibility that poses a tension for trustees where "there is always the danger that one [trustee] becomes too involved in day to day management" (Noble, 2016). As such, the burden of responsibility is greater for charity trustees and can be a source of anxiety as ultimately, trustees, not executives, are legally responsible for a charity.

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<sup>154</sup> IR18 (2019, 08 May), Marcus, Interview Transcript, Chair of board and NED

<sup>155</sup> Companies Act 2006 does not distinguish between executive and non-executive directors and considers a director to be anyone "who exercises real power within the company, particularly in relation to decision taking" (Companies Act 2006, 2006, p. s. 250).

This tension is acutely experienced by Elaine, a board chair of a public school who has served on numerous boards, both as a charity trustee and a NED. When describing her responsibilities, Elaine highlighted the multi-faceted role of a school governor and how closely tied it is to a NED. Her experience on a charity board has been greatly influenced by her past experience as a NED, and it is a role which she draws consider parallels from as a chair of a charity board. While Elaine's charity did not appear to be registered with Companies House the charity did not appear to be a registered company. When initiating new trustees to the board, Elaine would,

“Remind people when they're joining, every year, that we're not only there as a charity with trustees, but we're there as non-executive directors of a trading organisation because our trade is education...

...it's like any NED role, you need to check it out for yourself and you can check it out. I meet parents or parents send me emails, I come to some of the school events, I talk to the [students], I visit [the charity], so I don't always make an appointment. I say to other members of the council, “Come in, test it out.” In terms of safeguarding, I undertake, because I'm the safeguarding lead for the council, but I was that before I was chair, I undertake a detailed audit over two days, like I do observations, I have chats with the [students], if I see a cleaner, I talk to them” (Board Chair, 15/05/2019)<sup>156</sup>

In carrying out her duties as a trustee, part of Elaine's responsibilities includes maintaining a broad oversight role. When describing her duties, through speaking to parents, students and staff, and the audit process, Elaine sought to keep herself apprised of the organisation's activities. Her motivation for doing this involved maintaining comfort over the dialogue between executives and board member's regarding the

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<sup>156</sup> IR20 (2019, 15 May), Elaine, Interview Transcript, Chair of board and NED

organisation's activities. However, how she goes about gaining comfort seems atypical of a NED who carry out their duties by typically relying on experts, both internal and external. Unlike a NED who would be able to rely on management because of the systems and controls in place, Elaine has to work harder and play a more active role in order to maintain her level of comfort with a charity's executive and the overall organisation's performance. While Elaine relied on the annual audit process and recurring school inspections, she still took it upon herself to manage her personal risk by actively maintaining knowledge of the executive and staff activities.

The tension between maintaining comfort over a charity's activities without getting actively involved in the day-to-day management of a charity is recognised by trustees with NED backgrounds. However, such tensions come to the fore differently with trustees who may lack similar experiences and/or are trustees of charities which require more active involvement.

### *Helping out*

There are trustees who may be intrinsically motivated to give back and seek to make worthwhile contributions to the work of the charity, contributions which go beyond administrative and bureaucratic duties. The case of Farah highlights the tension and anxieties experienced as a trustee. Farah is a former trustee who worked full-time in an administrative role at a large professional services organisation. She first became a trustee in the 1990s of a small charity which funded medical research and provided support services to affected beneficiaries. At the time, she became involved in organising some of the charity's core programming activities, namely in the form of a conference for the beneficiaries of the charity:

“[I] could oversee the conference, I could help with recruiting speakers, getting the venue, just managing the whole day, organising the programme. So, they wanted practical [support]. It wasn't overseeing the whole work of the charity, it was actually doing this and growing the bits

they had because the charity, by then, was about six years old or something...

...in a way, I didn't know what formal responsibility a trustee really had, it almost felt like we were just there to help out" (former Charity Trustee, 27/06/2019).<sup>157</sup>

Farah went on to further share her experience and her time on the board of trustees. As a first-time trustee, Farah found her role to become increasingly demanding of her time and energy. She had also become frustrated with what she considered to be a lack of support by her fellow board members. She felt that instead of enabling the charity to carry out its activities, some board members hindered it. Recalling a time when that happened, Farah recalled her frustrations with a fellow board member:

"I don't know what he ever did except comment on things and say, "Why are you doing it like that?" and be really unhelpful, and he was just awful. Some people just did nothing, they just sat there and you almost worked around them, you thought 'look, you're a waste of time, so here are the people who can do something'. I'm somebody who wants to do something practical, so I'll do this and we'll try and ignore you and work around you" (former Charity Trustee, 27/06/2019).<sup>158</sup>

Farah's recollection of her time on the board calls attention to the irony present in the situation. While Farah found her fellow board member's behaviour disagreeable, the irony is that in practice, the respective board member was carrying out the role as constructed in policy. The fellow member, who attracted Farah's criticism, was in fact maintaining an oversight role, one of a 'critical friend.' In their capacity as a trustee, they were mindful

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<sup>157</sup> IR29 (2019, 27 June), Farah, Interview Transcript, former Charity Trustee

<sup>158</sup> IR29 (2019, 27 June), Farah, Interview Transcript, former Charity Trustee



of their role by questioning and probing the executive's and the board's activities in line with the role outlined by the regulator's guides. This example exemplifies the tension present in the role of a trustee between the motivations which led them to undertake the role, and what is expected of them. Farah was motivated to make what she considered to be meaningful contributions which led her to being actively involved in the charity. For Farah, this meant organising activities in a capacity akin to a volunteer, rather than maintaining an oversight, scrutiny role of a trustee as constructed in policy. The blurring of the role between that of an executive and a board was also experienced by another trustee active in another part of the charity sector, however for a different reason. Lee, a charity trustee of a major charity focused on providing education to the vulnerable youth, also found it hard to separate the role of the trustee with that of the executive,

“The role of the trustee and the role of the executive aren't different. The role of the board, all of the textbooks will tell you and all the guidance from the Charity Commission will tell you the role of the board is about strategy, it should be strategic... [However] it can be very difficult to shift between one and the other...when I first moved from the executive role to the role [of a trustee], I did find that difficult and still do actually.

Having worked as a CEO of a large grant-making charity in the area of scientific research, now retired from his professional career, Lee was a trustee of several charities. Having experienced both the role of the executive, and now a board trustee, he expressed the challenge found in maintaining a broad and strategic oversight role as expected by the Charity Commission and other policy makers. He found this particularly challenging in past trustee roles, as he felt that the respective charities were not always following best practices from the sector. This wasn't a result of them engaging in instances of gross mismanagement. Rather, Lee could not reconcile the operational decisions made by the executives with the decisions he would have taken if he had the option. Given his awareness of the roles and responsibilities of both the board and the executive, he realised that to get involved in executive decision-making would create tensions with his role of a

charity trustee and he chose to resign. However, he was also concerned about the operations of the organisation, because as a trustee, his liability and responsibility over the management and administration of the charity remained high. Interestingly, both Lee and Farah chose to resign from the board, however for different reasons. For Farah, the demands of the executive role in a voluntary capacity of the trustee became too much to bear. For Lee, the urge to get involved in executive decision making warred with his understanding of the role of the charity trustee, and what was expected of him as a board member.

After resigning from the board, Farah re-joined the board a decade later. She shared that after establishing contact with the charity at a networking event, she was encouraged to join the board after speaking to the current board chair at the time. She reflected that during her absence, the charity had adopted a more commercial, entrepreneurial discipline which also reflected the entrepreneurial background of the chair and CEO at the time. She shared that she was pleased with the changes at the charity and that it was now much more professionally run which allowed the charity to grow and access new modes of funding. She also highlighted new reporting practices at the charity which quantified management's activities, a new PR strategy which raised the charity's profile in media, and the recruitment of trustees with commercial expertise in accounting, law and the actuarial sciences. These were skills and activities which the charity had not engaged in when she had first been a member of the board.

As a member of the board second time around, Farah welcomed the changes which led to the expansion of the charity. The growth in programme activities and recruitment of professional expertise- both on the executive team, contributed by intellectually challenging Farah as a charity trustee, and provided her with an opportunity to expand her skillset while giving back to her community. The changes she valued as a trustee, however, were the same changes which led to her resigning from the board when she became the chair of the board and became more aware of the risks and responsibilities of the role. It was as a chair that Farah first came into contact with the formal roles and

responsibilities of being a charity trustee as set out by the Charity Commission. She described how becoming aware of it:

“Terrified me when I saw that [trustee guide], I thought ‘oh my God’, and it was almost picking up that, second time I was a trustee, and I knew that we had certain liabilities for the accounts, and it did start to worry me...I used to struggle reading the accounts information, I had a session once [sic] with the chartered accountant to help me understand it and it all made perfect sense. And then you sort of look at it a month later and you think: ‘God, what does that mean?’ if you’re not looking at these all the time... “my God, do I know all of this? Am I doing all of this at times?”

Well, I don’t think I am because during the day I’m in my day job and I haven’t got time to think about all of this or look at all of it. I’m doing my best to contribute to a charity, but don’t expect me to be doing this as a full-time job” (former Charity Trustee, 27/06/2019).<sup>159</sup>

Farah was motivated to join the board of the charity as she was interested in its objectives and wanted to make a positive contribution. However, her experience as a trustee, and in particular as the board chair, left her feeling overwhelmed and inadequately skilled, causing her to resign from the role. She found the legal and financial responsibilities to be burdensome and the risk associated with the role to be too high. Farah’s experience as a trustee provides a nuanced insight into the tensions present in the role of trustee, particularly because Farah had returned to the role of trustee after a decade of absence, first as a board member and later as a chair. Over time, as a trustee for the second time, and later chair, Farah realised that she did not possess strong financial and accounting skills, and had to heavily rely on the CEO for assurance. Her experience on the board, and her desire to make a meaningful contribution is not an anomaly in the sector known for

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<sup>159</sup> IR29 (2019, 27 June), Farah, Interview Transcript, former Charity Trustee

its altruism. Her experience of feeling burdened and overwhelmed also remain common for trustees who do not possess a strong business acumen.

In Farah's case, she wanted to volunteer as a trustee and focus on the aspects of the role she enjoyed, which was to get actively involved in the charity's programme activities. The administrative and compliance requirements of the role did not appeal to her, and in fact, she was surprised to learn about what the legal expectations of the role were after becoming a chair. Tensions between what charities desire from their trustees, has been found to be at odds with what trustees, despite their skills set, are motivated and willing to offer (Marsden, 1996; Puffer, 1991). The tensions between the organisation's needs and what individual trustees can offer has also been noted by policy makers (Harris, 2013). The NCVO and the Charity Commission's 1992 report of the *On Trust* working party examined the role of trustees with the purpose of making it more effective as part of a broader desire to address concerns around the management of charities in England (NCVO, 1992). It found that trustees were more inclined to get involved and contribute to a charity's mission, but were "reluctant to offer firm direction" or managerial support (NCVO, 1992, p. 27). This review found that the increase in financial and legal responsibilities placed on charity trustees made recruiting board members challenging for charities.

The gap between what trustees would like to offer to a role and what the regulator demands threaten the governance of the charity sector from a regulator perspective, as the Charity Commission and other stakeholders rely on the idea of trustees with specialist commercial skills to sit on boards and maintain oversight (Harris, 2013). Nevertheless, the regulatory aspirations do not always take root. At the beginning of both her board experiences, Farah was motivated to get involved with the activities of the charity. However, as a board chair, she rejected the role and the responsibility for maintaining oversight over charity's executive and operations. She found this expectation too demanding as she felt that she did not have the expertise not the confidence to fulfil the role. Farah is an example of a trustee who experienced the role as one which was

impossible to fulfil because of the accountability demands, need for financial expertise and the legal liability involved.

In contrast to Farah, Minerva – another charity trustee interviewed – drew comfort from the systems and controls, and the high level of professional acumen demanded of a charity board. Minerva, a retired lawyer, had extensive experience as a NED and a charity trustee which spanned couple of decades. According to her, there were no differences between the role of a NED and a charity trustee.

“You’re a non-executive, whether you’re a trustee or a director, it should be the same. You’re not running the organisation; the executive and senior management are running the organisation” (Charity Trustee, 17/05/2019).<sup>160</sup>

For Minerva, the executive’s role is to manage the activities and operations of a charity, and the board’s role is to remain at a distance in order to maintain oversight. Minerva was very clear that as a trustee, or a NED, that she does not get involved in the day-to-day activities of the organisation. She stressed that she was very firm about maintaining an advisory role in order to be able to monitor and scrutinise the executive’s activities. While she spoke about there being no significant difference between the role of a charity trustee and a NED, it is important to note that Minerva consciously accepts trustee roles where the charity is fiscally healthy, and where she can maintain clear boundaries between the role of the trustee and the executive, similar to a NED. Sharing her thoughts regarding charity boards which required greater involvement by trustees:

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<sup>160</sup> IR21 (2019, 17 May), Minerva, Interview Transcript, Charity Trustee

“I would be very nervous about a trustee body that was really executive...that can’t afford to employ anyone...Not something I would touch, I just wouldn’t” (Charity Trustee, 17/05/2019).<sup>161</sup>

Analysing the above quote, it can be inferred that through the kind of roles she will accept, Minerva does realise that, depending on the charity structure, there can be differences between a charity trustee and a NED. To manage her risk of liability and personal risk along with her own anxiety, it appears that she will only accept trusteeships on boards a charity’s organisational structure, processes and controls closely resemble commercial organisations and her own NED experiences. Given Minerva’s past experiences, her role as a NED has trained her to maintain oversight over the organisation. According to her, the role of the board member is to help and support a charity’s management. As such, getting actively involved in a charity was something she avoided as it risked jeopardising her independence. In a sector largely made up of small and micro charities,<sup>162</sup> Minerva managed her anxiety about the blurring of executive and board roles by only taking in trustee roles on charities which better reflected her NED experiences and maintained the systems and structures she was more familiar with. These are systems and structures not commonly found in small charities, which are often only led by trustees.<sup>163</sup> While the sector is largely made up of small charities, a small percentage (less than 4%) of charities control the vast majority (approximately 82%) of the sector’s income (NCVO, 2019a). These large voluntary organisations have been perceived to be more like “quangos or private corporations than other voluntary organisations” (Batsleer, 2005, p. 227).

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<sup>161</sup> IR21 (2019, 17 May), Minerva, Interview Transcript, Charity Trustee

<sup>162</sup> Micro (72,521) and small (58,115) charities make up roughly 82% of the total number of charities in England and Wales (NCVO, 2019a).

<sup>163</sup> According to a 2014 NCVO survey examining charity executive pay in the sector, 91% of registered charities have no paid staff and are entirely run by volunteers (NCVO, 2014a).

### *Assessing financial performance*

A key part of a trustee's responsibility includes monitoring, and assessing the financial performance and health of the charity (Charity Commission, 2018b; Sargant & Kirkland, 1995). The financial health of any organisation plays an integral role in determining how it carries out its activities. Financial resources drive an organisation's future sustainability in terms of which goals and objectives can be operationalised. In the case of charities, financial health is also tied with the organisational and personal liability risks trustees take on when accepting the role, whether they are aware of them or not. While trustees have ways of mitigating financial and organisation risks, such as drawing on the option of indemnity insurance, they are still held responsible if something goes wrong due to poor decision making or negligence.<sup>164</sup>

The systems and processes which enable the monitoring and assessing of a charity's operations are largely driven by the for-profit sector. Presently, trustees with professional experience also bring with them their own sets of skills and expertise to the role, in many cases, acting as conduits of best practices from the commercial sector to their respective charities. However, there has been evidence which points to the challenge charities face in accessing and recruiting trustees with financial and accounting skills.<sup>165</sup> A gap between the expertise charities seek and what is available poses challenges for a charity's ability to survive and grow in face of external pressures. Over recent decades, donors and government departments driving large funding programmes through service contracts have been demanding greater levels of professionalisation in charities. Charities looking to access external funding have had to adopt formal finance and accounting functions and demonstrate their performance through the use of performance metrics (Rochester, 2013). Reliance on formalised functions and accounting metrics have largely shaped Kay's

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<sup>164</sup> According to Charities Act 2016, trustees held responsible for wrongdoing in a charity can be disqualified from the role and holding future trustee rules, and/or charged with criminal negligence (Piper et al., 2020).

<sup>165</sup> The Charity Finance Group and Small Charities Coalition undertook a study of 323 charities with annual incomes less than a £1 million. This study examined their financial management and concluded that small charities "face significant difficulties with effective financial management" (Ainsworth, 2013).

experience as a trustee of a major charity which seeks to protect the rights of vulnerable children:

“There are qualitative and quantitative measures, so typically there are the results, you look at the management accounts, you look at the actual revenue targets, you look at the performance ratios. So, there are key performance indicators which are observed once a quarter, let’s say, every time typically you have a quarterly board meeting, you will review the performance of the charity each time...So, there is a kind of fairly forensic, quantitative approach and separately to that, around the boardroom table, you are able to challenge and question management...

[I also] draw a lot of comfort from the fact that I used to sit for five or six years on the audit and finance and risk committee at [charity]. I would sit around the table with the finance team, with the internal and external auditors and with the CEO, and there are two or three other board members who are on the audit committee. These are the longest meetings, they’re four or five-hour meetings and you do get into the weeds a little bit... [as] the trustee board reliance on the audit and finance committee is quite high to make sure the numbers are right. But look, we have internal audits, external audits, so again you have your external look at what’s going on...this is no different than running a company, that’s the whole point and actually the reason that I draw a lot of comfort, and I use [charity] as an example of a very professionally run charity, is that they have all these procedures and controls in-place” (Charity Trustee, 17/05/2019).<sup>166</sup>

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<sup>166</sup> IR22 (2019 17 May) Kay, Interview Transcript, Charity Trustee



For Kay, there is no difference between running and managing a charity and a for-profit company. Given her career as a banker and the size of the charity, her experience in both her professional and charity roles seem to be linked. Kay's professional experience and training in banking and finance has played an essential role in shaping her expectations, and the kind of procedures and controls she requires to be in place at the charities she is involved with. These are part of a system which allow her to assess the financial performance of the charity which better reflect her professional experience. She succinctly stated that she draws comfort from procedures and controls in place, and it is likely that she relies on them as a way to managing personal reputational and liability risk. For trustees like Kay, while she may be motivated to devote personal time and energy to charitable causes, she will not be involved with a charity where there are little to no systems and controls of financial management and oversight. For her, comfort with the internal organisational of the charity is more important than her intrinsic desire to give back in a meaningful way.

Like Kay, Kate also believes that running a charity is similar to running a small business. However, unlike Kay who was a trustee of a major charity with an income between £10 million and £100 million, Kate was a trustee of a medium-sized charity whose income was in the range of £100,000 to £1 million. According to Kate, the skills demanded of a charity trustee were similar to those required in managing a small to medium enterprise. Her understanding of the role was very much grounded in having a strong awareness of financial accountability. For Kate, maintaining oversight required a strong understanding of the cash inflows and outflows of the charity in order to protect the assets of the charity,

“Well, you're leading the board and managing the board, you're chairing meetings of the board. All of this is in order to ensure that you have good oversight of what is happening in the charity. Where's the money coming from? How is it being spent? How is it being accounted for? Have we got the right systems to make sure they're recording it? All that sort of thing.

So general management of a very small business, like any small business.” (Board Chair, 24/07/2018)<sup>167</sup>

Craig, another trustee and chair of his board’s Finance Committee, also applies a similar commercial discipline in his role when assessing the performance of the charity, and thus its executive. A lawyer with a background in finance, Craig was a trustee of a major charity whose income ranged between £10million and £100million. Drawing on parallels from his commercial background, Craig and his fellow trustees measured the executive’s performance through relying on operating surplus metrics:

“You tell us how many children you think you can get on each seat, one on each seat, how many seats you can fill every year going forward... Out of that we will work out the budget, you tell us how much surplus you think you should make. Independent schools should make eight to twelve percent” (Chair of Finance Committee, Charity Trustee, 09/07/2019).<sup>168</sup>

Craig and his fellow board members expectation of the surplus was informed by ‘best practice’ prepared by the Independent Schools Association’s<sup>169</sup> guidance which determines the average surplus spread amongst schools within the association’s membership. While such an approach seems fairly disciplined and structured, Craig recalled that access to financial information and the ability to make informed decisions had not been possible when he first joined the board three years ago:

“When I joined the charity, the bursary area, the governing body and all of the interactions was very dysfunctional...[t]he quality of data

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<sup>167</sup> IR8 (2018, 24 July), Kate, Interview Transcript, Trustee

<sup>168</sup> IR33 (2019, 09 July), Craig, Interview Transcript, Chair of Finance Committee

<sup>169</sup> Independent Schools Association is a membership umbrella organisation representing independent schools (ISA, 2021).

information, KPIs, was non-existent. So, we were given a P&L [profit and loss statement], no balance sheet, and the P&L was significantly out of date, it was done termly. I come from a business where everything is done monthly...

I think the thing that surprised me most, at the end of that [board] meeting, somebody, I think it was the then Bursar said...we need to find a new finance committee member who will be chairman. I said, well, it can't be me, I won't do it.

Anyway, they did ask me to do that, and within one meeting I became chairman of the finance committee, in a very worrying way, and knowing my personal liability...we're [now] in a much, much better place and everyone feels a lot more comfortable" (Chair of Finance Committee, Charity Trustee, 09/07/2019).<sup>170</sup>

Building trust regarding the charity's financial and operational performance was important for both Craig and Kay. Given the personal liability risks and their own professional experience, trustees like Craig are very aware of their role and that they remain the point of final accountability. For Craig, building comfort involved receiving reliable and timely financial information presented in a manner with which he was accustomed, in order to manage the risk of potential losses. An absence of reliable information threatened his ability to maintain an oversight role over the charity, thus leading to feelings of anxiety. Unlike Craig, Kay's personal liability risks were different as she was a trustee of a charity which was incorporated as a 'company limited by guarantee'. The legal structure of a company limited by guarantee allows for a trustee's personal liability risk to be zero or limited in nature, which are in many cases managed through insurance schemes (NCVO, 2014b). However, personal reputational risk still

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<sup>170</sup> IR33 (2019, 09 July), Craig, Interview Transcript, Chair of Finance Committee

remained one of concern if a charity was engaged in questionable activities.

The above discussion illustrates the ways in which trustees understand and carry out their responsibilities. Their understanding of the role is largely aligned with the Charity Commission's guidance in that they are to maintain oversight over a charity's activities. However, the recounting of experiences also provides an insight into the tension trustees like Craig and Kay face in trying to ensure their respective charities function like well-run accounting entity, with the familiar systems, controls and processes they are used to seeing in their professional roles.

In Craig's example, his discomfort with the systems in place when he first joined the board was acutely visible. It helps highlight the tension he felt between the demands made of him and the requirements of the expected role. Given his professional background, Craig is familiar with board roles which require maintaining distance from the operations. However, this distance was threatened in the absence of the systems, controls and processes he would normally be able to rely on when he joined the board and became chair of the Finance Committee. This example shows insight into the conflicts Craig experienced in his role between what his experience of a NED is and the demands of the role as a charity trustee. For Craig, change in senior leadership of both the board, chief executive and the finance director enabled a change in the charity where he and the board collectively worked in changing the financial systems and processes in a manner which they deemed to demonstrate 'good governance'.

The reliance on the board and executive plays an essential role as trustees seek to navigate between the abstract construction of the role and its responsibilities, and the reality of their experiences. While the responsibility of the role is shared with the wider board, there is still anxiety around whether boards are doing enough for their respective charities, and if they have the skills and capacity to do more. As shared by Joy, a charity trustee of a

small charity, “we don’t know what we don’t know”.<sup>171</sup> This state of affairs is not uncommon for those with managerial responsibilities. However, in the case of trustees, this tension is felt acutely and carries greater risks. For Earl, a former school governor, with extensive NED experience:

“It’s that exposure to what you don’t know in these kinds of roles, which is the same for management really, but if you’re on the hook for it in a non-executive or trustee position, you always have the question, ‘am I doing enough?’” (School Governor, 30/04/2019).<sup>172</sup>

As a NED, directors are expected to keep distance between their role and the activities of the organisation. The role of a NED is one of maintain oversight and supporting the executive in an advisory capacity. However, as a charity trustee, this distance may not always be possible given the needs and demands of the charity, as such, trustees are expected to actively participate and get involved with the charity’s work. In such scenarios, there then remains a concern where trustees may need to ask ‘am I doing too much?’ When compared to a NED, the responsibilities of a trustee are not as clear cut. As such, the risk with the latter role is getting actively involved in the activities of the organisation at the expense of the ability to maintain oversight.

#### 5.4.2 Degrees of acceptance and rejection

In practice, the previous section demonstrates how trustees understand their role and continue undertaking the responsibilities despite the anxieties they may experience. It also highlighted that trustee themselves are aware that they may be fulfilling this role imperfectly. There is a sense of frustration as their motivation to do good wars with anxiety that they are not doing enough, or not doing the job of the trustee well. How this

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<sup>171</sup> IR16 (2019, 07 May), Joy, Interview Transcript, Trustee of a small charity, sits on Compliance sub-committee

<sup>172</sup> IR15 (2019, 30 April), Earl; Interview Transcript, former school governor and NED

role has been constructed is akin to a full-time job, demanding, and in many instances, more time and energy than trustees would willingly give to a voluntary role. The upcoming section identifies and proposes ways in which trustees make their role feasible in practice. Drawing on trustees' responses, three themes emerged in terms of how trustees manage the burden of responsibility through accepting the role and its demands, or by satisficing in order to make it doable. By rejecting some aspects of the role, trustees highlight the tensions present between the ideal role constructed by the regulator, who relies on this abstract conception in order to maintain the image of their regulatory capacity, and the reality as experienced by the trustee who cannot conform to the ideal. This chapter's findings also draw attention to trustees who find the role *impossible to fulfil*, and thus, respond by rejecting the role and resigning.

#### *Accepting the role and responsibilities of a trustee*

As shown in the case of Marcus, Minerva and Kay, their experience in the commercial sector and as NEDs has greatly shaped how they expect charities to be organised and structured. Familiarity with the processes and controls mimicking the corporate governance model helps make the role of trustees manageable. According to Minerva,

“It's important that [a charity's] stuff is managed properly. This is where governance has become quite interesting, that if you sat on a board or a charity in the old days, you had to get to know the underlying subject matter, whatever it was, whether it was education or law or housing or whatever.

These days, particularly in bigger companies, your role in governance is much more about process and procedure and accountability and financial management, which is a mindset that can go across different sectors,

particularly if you're regulated and in a regulated sector" (Charity Trustee, 17/05/2019).<sup>173</sup>

The above quote illustrates how views and expectations as to how organisations should be governed have evolved. This conception of governance is very procedural and requires a distance to be maintained between the actual activities of the organisation and the systems which enable them.

"Initially, I was involved with a lot of micro decisions, and there were a lot of micro decisions that I felt were inappropriate...but my approach very much [since then] has been, we've set these high-level parameters, off you go, you're the expert, I know nothing about schools or teachers... I don't check whether we're hiring the best maths teacher, I don't set the parameters for that, but I do set what the budget should be." (Chair of Finance Committee, Charity Trustee, 09/07/2019).<sup>174</sup>

Joanna, another charity trustee trained as a lawyer, also shares this procedural, systems-driven view of how charities would be governed:

"For a lawyer, governance is easy in one way because it's what we do, we make sure systems run by the rules, it's what we always have done and rules are important and applying rules and working within them is just what we do" (Charity Trustee, 28/05/2019).<sup>175</sup>

These are trustees who accept the administrative, compliance driven nature of the role. The role of a charity trustee also becomes easier to fulfil given their legal and/or accounting backgrounds. In a way, the backgrounds of the trustees, in particular their

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<sup>173</sup> IR21 (2019, 17 May), Minerva, Interview Transcript, Charity Trustee

<sup>174</sup> IR33 (2019, 09 July), Craig, Interview Transcript, Chair of Finance Committee

<sup>175</sup> IR24 (2019, 28 May), Joana, Interview Transcript, Charity Trustee

training, matches what the role requires at a general, regulatory level. In a sector known for its heterogeneity, the systems and processes in place help manage the complexities of the work and the risks associated with the role. This is especially relevant when there are competing demands on a trustee's time in the form of professional or personal commitments (Harris, 2001).

### *Doing the doable job*

The role of the charity trustee brings with it numerous duties mainly rooted in compliance, operational, and financial management. The skills and expertise demanded of a trustee are similar to what is demanded of business entrepreneurs; however, as trustees they are also required to preserve their independence in order to maintain oversight of the role. Given the many demands of the role, trustees find ways to make it feasible to take on the role. This section proposes the notion of strategic rejection as a way trustees seek to manage the many complexities of the role. This notion draws influence from the concept of 'satisficing' where actors "don't do the ideal job, but the doable job" when faced with a complex, burdensome role (March and Simon (1958) as cited in Bowker & Star, 2002). As such, trustees will focus on aspects of the roles they are able to deliver on and maintain comfort over, and 'reject' aspects of the role they are unable to attend too.

Malcolm, a charity trustee of a large charity with a professional background in finance, was aware of his limited capacity in terms of what he could give to the role. While Malcolm is motivated to give back because he is interested in the charity's activities and objectives, the administrative, compliance aspect of the role is something he tolerates. As such, he has kept matters of compliance at bay by distancing himself from fully understanding what the role and responsibilities of a trustee are:

"I think too much responsibility in terms of legal liability puts people off, so there has to be balance between ensuring people have a responsibility that keeps them straight, as it were, but doesn't burden them too much, because you are asking people to do something for nothing..."



...We're doing our best to help the management team make responsible decisions and do their jobs, but being embroiled in compliance and legal would be a massive turn-off. I don't feel that at [charity XXX], I feel I have some responsibilities and I do my best, but I don't feel overloaded with legal compliance" (Charity Trustee, 08/05/2019).<sup>176</sup>

Marcus has strategically maintained a buffer between what he wants to contribute to the role. The above quote highlights the tensions caused by legal and accounting-driven demands. These demands are between legal compliance and liability on one hand, and financial expertise and accountability on the other. Through speaking with him, he was much more interested in the programmatic activities of the charity and its output. He was much more interested in learning about what the organisation was accomplishing in the form of the pre-determined key performance indicators. When pressed for time before a meeting, he also shared that he devotes his attention to the financial reports of the charity.

While he is familiar and able to navigate accounting and legal concerns given his professional background, Marcus has chosen to not directly deal with them. In doing "something for nothing," Marcus has carved out boundaries between what he can offer to the role which does not always match the demands of the role. He has made this role feasible by strategically navigating what duties to accept and what to reject. Marcus's ability to make the choice to not focus on legal compliance matters is supported by his reliance on the wider board membership to ensure that matters related to finance, risk and other administrative matters are dealt with appropriately. It is through distributing responsibility that makes this role possible to undertake. Through speaking to charity trustees, this form of reliance is very common and helps manage the burden of responsibilities, though the overall responsibility in the legal and theoretical sense remains undiluted. This form of reliance contributes to widening the gap between the lived and

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<sup>176</sup> IR18 (2019, 08 May) Marcus, Interview Transcript, Charity Trustee

abstract role, as regulatory guides remain focused on the individual trustee, and not their role within the wider board membership.

Grace, a trustee on a large charity board, said that she grudgingly accepted the administrative and compliance responsibilities of the role, which she referred to as:

“What I call ‘the weight of responsibility’. So, the things that sit on your shoulder because you’ve taken that role on, and they are fiduciary, financial, so that’s a burden and it’s not, in truth, for somebody like me, something that drives me or that I seek out or that I want. In fact, to be truthful, I positively don’t want it, but I know that that goes with the territory. So, I see that strand and I bite the bullet and accept it and I see the other strand, which is the strand that excites me and allows me to take on a role, which is that I can actually maybe help, maybe make a difference, maybe add some value to that institution” (Charity Trustee, 20/06/2019).<sup>177</sup>

Grace explained that despite having trained as an accountant at the start of her career, she is no longer attuned with financial matters. For her, accepting the responsibilities is something she does in order to be able to make a difference to the role. However, in practice, she is unable to execute on all her responsibilities. Thus, like Marcus, Grace relies on her fellow board members. As a consultant, Grace relies her fellow board members and their skills to ensure that the charity carries out its financial and risk management activities appropriately. Grace’s experience is not uncommon. While she recognises the importance of being on the board and accepts it, she still finds a way to eschew aspects of the role which do not capture her interest. Hedley and Rochester refer to what Grace calls “the weight of responsibility” as a “necessary chore” (Hedley and

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<sup>177</sup> IR27 (2019, 20 June), Grace, Interview Transcript, Charity Trustee

Rochester, 1992 in Dartington, 2005, p. 213). However, during periods when the charity was undertaking significant financial projects, her reliance on others gave her cause to worry. Grace's approach to the role is of note. Recalling a time when she was particularly anxious, Grace stated:

"I did have worrying moments during the whole process of the big refurbishment...simply because I can be very conscious of [that] I have fiduciary duties because of the role I've taken on, but oh my gosh, right then, for a couple of years, they were major financial ... I mean it was just so huge. We were taking decisions that really could make or break the future and the sustainability of [the charity] so I worried about that in that patch of time..."

"...pushing it under the carpet, I didn't think about it every day and so I did manage to park it" (Charity Trustee, 20/06/2019).<sup>178</sup>

Grace recalled that even during times when she grew particularly anxious and was reminded of her fiduciary duty, she managed her anxiety and worry by choosing to ignore. However, even by 'pushing it [worries] under the carpet', Grace was able to cope with her worries because of the reliance on the board. In making the job doable, the process of satisficing Grace experienced was not without its worries.

### *Rejecting a burdensome role*

For some trustees, this role has in fact proven *impossible to fulfil* as seen in the cases of former charity trustees, Farah and Lucy. Lucy, a former trustee of a major charity explained,

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<sup>178</sup> IR27 (2019, 20 June), Grace, Interview Transcript, Charity Trustee

“I resigned [from the board] because I think it’s so appalling. I think it’s so bad, and I got into so many confrontations on the board, where they’re trying to do something and it’s incorrect- and I step up and go, that’s incorrect, you can’t do it this way, you’ve got to do it this way, or you can’t do that” (former charity trustee, 08/07/2019).<sup>179</sup>

“I don’t ever want to be a trustee again because I found the responsibility terrifying, particularly when you’ve got a full-time job anyway, and then trying to deal with people in an office where they don’t work for you...I think they [boards] must be full of people with ideas but don’t necessarily know what they’re doing, because I wasn’t stupid and yet I felt I didn’t know what I was doing a lot of the time. You’d think I’ve got a certain amount of experience from work, but unless you’ve got the treasurer is an accountant and you’ve got an HR person, then you’re bound to run into problems, I think. I think you’re constantly in fear of what problems you might run into.” (Former charity trustee, 08/07/2019).<sup>180</sup>

Lucy and Farah’s experience bring to the fore the high levels of responsibilities and risks trustees are expected to shoulder and the important role reliance on others play in helping make this role feasible. For Lucy, her discomfort and rejection of the role in general stemmed from feeling unease with how the board carried out their duties. As an accountant, she found that the boards she sat on were not carrying out their duties. In Lucy’s case, given her professional background, she did possess the expertise required by the abstract role; however, the structures within the charity and the skills of her fellow board members made the position untenable for her. The lack of understanding of the role by the overall board and Lucy’s own awareness of the risks made it impossible for her to

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<sup>179</sup> IR32 (2019, 08 July), Lucy, Interview Transcript, former Charity Trustee

<sup>180</sup> IR29 (2019, 27 June), Farah, Interview Transcript, former Charity Trustee

continue. Ironically, for Lucy, the absence of ignorance made the role of the trustee too risky and unbearable to undertake.

The absence of ignorance may have also generated the fear to which Lucy refers to, a fear for her own self given the risks attached to the role. The law holds the trustee responsible for a charity's activities (Charities Act, 2016). Trustees can be held legally liable, however, while instances of where they are charged remains low, the risk to their reputation remains. As an accountant, Lucy keenly feels the risks to her professional code of conduct and her career in general. Discussing the loss of reputation as an object of fear, Power examines the relationship between fear and reputation within the context of risk management. He states that with in the practice of risk management "lurks a deep fear of the possible negative consequences of being responsible and answerable" (Power, 2004, p. 60). For Lucy, the responsibility for being held responsible for her conduct in a space where she lacked support, trust and control over the people and activities of the organisation proved to be too risky of an undertaking.

In Farah's case, she tried to fulfil this role twice. She left the role the first time as she found it to be demanding of her time and energy. However, taking on the role of the trustee for a second time, she felt that she lacked the business skills needed to carry out the responsibilities. Feeling the absence of these skills, and becoming aware of the associated risks made her lose the desire to continue in the role. Like Lucy, Farah also found herself unable to rely on staff and her fellow board members. The ability to rely on the board and the executive is a vital part of the role, and plays a key role in mediating a trustee's experience. The sharing of the burden with fellow trustees remains essential to the role, especially in light of the limited time and resources trustees are able to give to a voluntary role. It is almost as if once reliance on the staff and reliance on the board becomes inexhaustible, the impossibility of carrying on with the role becomes more of a reality.

For Farah, there also remained a tension between how she wanted to fulfil the role and what the abstract role demanded. Despite learning about the formal role and

responsibilities, she did not appear to internalise the role of the board and understand her responsibilities in relation to maintaining oversight and scrutiny over the executive's activities. As she pointed out earlier, she found it challenging to manage staff at the charity because she did not believe them to “work for you [trustees],” when the role as constructed in policy posits the as employers of the charity (Harris, 2013).

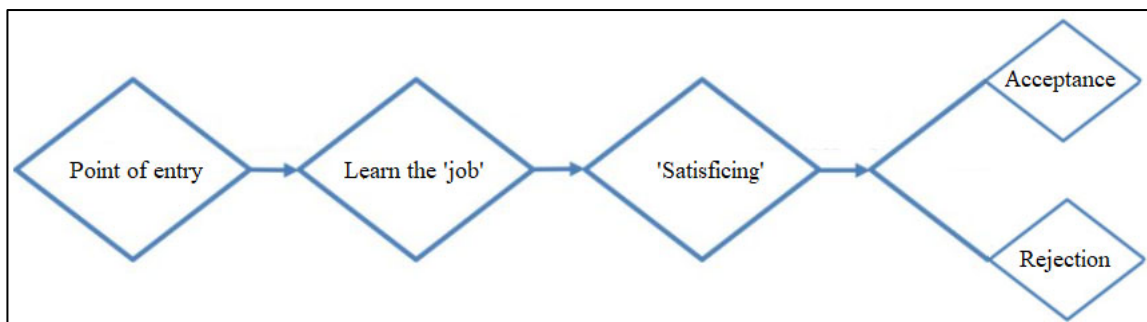
Farah's experience is particularly useful in illustrating the process by which one becomes a trustee, and how they learn to fulfil the role of the trustee ‘on the job’. Her journey highlights the sequential process of awareness which begins at the point of entry to the role of a trustee. That at the point of entry, they are ignorant about the impossible nature of fulfilling the responsibilities of the role as envisaged in policy. Like Farah, many trustees are simply not informed of their new administrative and compliance-driven responsibilities, and remain unaware. It is at this juncture that trustees, like Farah, can be fairly ignorant about the roles and responsibilities. This sentiment was also anonymously expressed by a charity trustee in The Guardian's Voluntary Service Network's blog series. According to this trustee:

“I'm also fairly sure that many charity trustees aren't entirely clear what they're supposed to be doing – especially when they start. The best way to learn how to be a trustee is clearly to become one” (Anonymous, 2016)

Darlington also draws attention to the NCVO's and Charity Commission's conception of the three-stage life-cycle of trustees as described in their 1992 review, which examined the role of trustees. Trustees were seen to begin their role as an “energetic ignoramus” who “make every conceivable mistake” and then “leave as an exhausted expert” (NCVO, 1992 as quoted in Dartington, 2005, pp. 213–214). With the passage of time, one can begin to see how trustees draw on various mechanisms for coping with the role by ‘satisficing’ where they pick and choose aspects of the role they can fulfil, and reject parts which are deemed to be cumbersome and unwieldy, or they completely reject the role. In

making the role feasible, trustees with a NED or commercial background seem to feel better equipped with managing the parameters and constraints of the role.

Trustees appear to learn the job as they go along. In trying to contextualise this process, there seem to be four stages involved in how a trustee learns what their role is to be (see **Figure 5.2**). It begins by an individual accepting the role at the point of entry. Whether a trustee is aware of the formal legal obligations at this stage does not yet play a key role. Though, a trustee who has been initiated and trained will experience these stages in a different manner to one who is completely new to the role, like Farah once was. Once an individual has ‘become’ a trustee, they begin to get involved with the board and the charity. During this process, the trustee learns the ‘job’, their responsibilities and expectations through experience. Even if someone is aware of the legal responsibilities, they still learn the job through doing it. The specific demands and expectations made of their time and resources cannot be captured in legislation.



**Figure 5.2** – ‘Life’ of a charity trustee. (Source: Researcher)

In order to manage their duty, trustees learn ways to satisfice and make the job doable. This can include consciously (i.e., through reliance on executive or experts) or subconsciously (i.e., ignorance, lack of awareness) drawing on ways to manage the job. Trustees own background and expertise can impact their experience, and how they make sense of it. Their training and knowledge can get activated at different points of time. This processual flow of their reality only serves to highlight the temporality of the role as maybe trustees are not constantly thinking or worrying about their responsibilities. Rather,

their attention gets activated as different activities of a charity may make different demands on their time and knowledge. Furthermore, trustees are not constantly evaluated, so how they learn the job and find ways to make it manageable may not trigger any worries or concerns. These experiences vary widely amongst trustees, and this journey of realising the realities of the role can lead to different outcomes. Through obtaining first-hand experience, trustees at any point of their service can decide whether they wish to continue with the role, thereby accepting the responsibilities and duties they can undertake. Trustees can also decide that they wish to reject the role as they feel that they can no longer fulfil and cope with the role. It should be noted that acceptance in the early stages of the role does not mean that a trustee will not reject the role in the future. Such a possibility remains if the trustee deems the role to become burdensome and challenging.

## 5.5 Discussion & Conclusion

The fallout of recent charity scandals has highlighted the challenges regulators face in reforming and maintaining the sector's regulatory system. Without the cooperation of charity trustees, such a system would appear to be meaningless. A cross-party report by members of parliament, who examined the regulation and governance of the charity sector, unequivocally stated that, "[N]o system of regulation can substitute for effective governance by trustees" (Neville, 2017). This chapter has shown that what the state and the regulator deem to be effective governance, as reflected in the policy construction of the role, often remains distant with the reality experienced by trustees. The juxtaposition between the abstract, idealised role and the reality of the trustee creates a gap which drives the "impossible job" notion as previously described by academic scholars. The Charity Commission relies on the 'black box' idea of the trustee in order to maintain illusion of the Commission's regulatory capacity, and keep the cogs of the governance ecosystem moving.

This chapter has demonstrated that while conventional wisdom within academic and policy circles deems the role of trustee as impossible to fulfil, charity trustees interviewed do work in a manner in order to make the role feasible. That in reality, trustees rely on



varying degrees of acceptance or satisficing, in order to fulfil their duty and make the role doable. Trustees rely on charity's executive, their fellow board members and external experts to maintain comfort over the activities of the charity. Professional, commercial expertise and skills have also played a role in managing the complexities of the role. Charities with familiar accounting processes, controls and systems also helps them focus their time and resources to areas which they deem to be significant while allowing them to maintain a measure of distance between themselves and the executive function where possible. The notion of satisficing plays a key role in helping provide an understanding of how a trustee's understanding of the role grows and how they seek to manage regulatory expectations with what they are able to give to the role. However, not all trustees find themselves able to undertake the role. Some of the trustees interviewed emphasised feeling burdened and overwhelmed, or that they found the role to be too risky, which led to their rejecting of the role completely.

This chapter has drawn attention to the tensions present between the abstract construction of the role of trustee and the lived reality. It finds that these tensions are similar to the tensions Young found in the field of standard setting. In the case of charity trustees, real trustees demonstrate how they resist legalisation contained within the abstract role to a certain extent. While there are accounting and legal systems and structures which shape their behaviour and actions, the trustees interviewed still brought their own individualities to the role which included reliance on others, only joining boards whose structures they were familiar with or rejecting the role. These forms of individualities, and exercising of agency remain in tension and challenge the confines of the abstract role situated at the 'artificial' or juridical level.

This chapter's examination of the juxtaposition between the juridical construction and the lived reality of a trustee has demonstrated that trustees, even when undertaking the role imperfectly, play an integral role in allowing the Charity Commission to maintain their role and legitimacy as the sector's regulator. In a way, the Commission maintains strategic ignorance with regards to how trustees fulfil their duty in practice. Perhaps, in order to

manage their own complexity and burdens of the role, the regulator may prefer information asymmetry in order to maintain the image of its own governing ability and the sector's ongoing regulation. This understanding makes visible the needs and interests of policy makers who seek to maintain their legitimacy through an idealised notion of users and the environment within which they are expected to operate. The gap between the two roles isn't to suggest that how trustees fulfil their duty is decoupled from the constructed role. As the above interviewees demonstrate they do have an understanding of the role, however, they chose to manage and act in a way which allows them to carry out this role. Thus, they are not ignoring the expectations of the role, but they are trying to adjust their behaviour in order to still do the role. Gaining an insight into their experience highlights that reality remains messy and imperfect.

By offering insight into the lived reality of trustees, the findings of this chapter highlight how trustees learn to manage the role through gaining first-hand experience, and that how this process evolves is not always aligned with regulatory expectations. This experience is shaped by prior expertise and skills. However, as shown, professional, commercially-driven expertise can make the role possible and impossible at the same time. A professional background can in theory equip you with the skills and expertise required to fulfil the demands of the role, however, it also increases the awareness of the risks and limitations involved. The policy construction of the role more or less serves the purpose of allowing the regulator to maintain the illusion of its regulatory ability, and delegating its duty by developing and making available the prescriptive guidance, rather than increasing awareness of the role. Through delegating, the regulator tries to manage the risk of blame if and when a charity is found to be engaging in poor and questionable activities. As such, the regulator is motivated to substantiate their role by projecting an abstract notion of the trustee on real actors; however, reality is that the abstract role remains a myth- one difficult to fulfil.

This chapter has shown that the governance of charities is situated in a system which relies heavily on part-time volunteers which contributes to the paradox of trusteeships. The

paradox is that the creation of these independent, part time roles are supposed to make everything work which leads to tension in practice as this chapter shows. In a way, the trustees are strongly subjectivised because they have legal obligations. However, in another way they are weakly subjectivized because they fulfil the role in part-time capacity, and may not always be aware of the extent of their trustee responsibilities as per the law. This chapter did not examine the process of how trustees have come to be subjectivised. How trustees come to be subjectivised through rational systems and practices of accounting is a fruitful area for future research.

This chapter draws on the experiences of a small subset of a large and diverse population of trustees, and as such broad generalisations cannot and should not be made. Nevertheless, the findings do allow an opportunity to increase awareness of how trustees experience their role, and an appreciation for the multiplicity of the challenges and burdens they face. Future research should also delve deeper into the lived realities of trustees from when they first undertake the role of trustees on a longitudinal basis. Such a study would allow insight into how actors transcend and internalise, or don't internalise, the aspirations of the role.

Debates around whether governing bodies are suitable for the purposes of actually governing charities remain ongoing (Singh, 2017). When examining the purposes of governing bodies and their roles in the early 1990s, Harris shared the provocative opinion expressed by a senior member active in the charity sector, that “management committees are really bullshit” (Harris, 1996, p. 149). While these debates persist, the role of a trustee remains critical for the Charity Commission, as even an imperfect trustee enables the regulator to maintain the ongoing regulatory system. Despite the distance present between the abstract and real users, the latter remain integral to the overall governing process for the regulator who relies on abstract, ideal trustee in order to maintain its illusion of regulating even if the trustee's actual realisation of the role is not aligned with it. This chapter makes it evident that one of the main purposes of this idealised role is to make it

possible for the regulator to continue existing in their regulatory capacity. Such a state of affairs is not unique to the charity sector and is universally true for all regulatory systems.

## Chapter 6 Conclusion

This thesis has shown that accounting, whether it be in the form or standards, practices or even systems, has served as a conduit. As a conduit, accounting mechanisms has allowed the aspirations, agendas and interests to travel between stakeholders. It is not an objective, neutral tool or source of information, per se. This thesis has shown that ‘accounting’ is not just about accounting and the mundane practices which are relied upon to make visible organisational and institutional realities. Far from mundane, these practices reveal curated realities which feed into the broader discipline and governance system of society. In the case of the SORP, this body of standards did not just provide means for charities to report on their financial accounting. Its purpose was beyond that. Rather, the SORP facilitated the means through which the field of charities was made legible and could now be acted upon by broader stakeholders, in particular the state.

The story of the SORP’s emergence has largely been viewed as a way of addressing the quality of financial reporting. However, its impact has been instrumental for building the Charity Commission’s regulatory capacity which provides a framework for the entire governance framework of the sector. Subsequent changes to the SORP have added to the initial framework, and these developments will continue to occur, especially in light of the impact agenda and greater responsibilities are placed on charity trustees.

### 6.0 Research questions revisited

In Chapter 1, this thesis introduced the overall research question as follows:

(I) How have accounting reforms helped transform how a modern-day charity is defined in the United Kingdom?

This thesis addressed the broader question through a series of sub-questions. Chapter 3 asks, ‘*How did the emergence of charity accounting standards come to play a central role in building the regulatory capacity of the Charity Commission in England and Wales?*’

Chapter 4 asks ‘*How has the shifting notion of public benefit reshaped how accounting practices are used to define charities in England and?*’, and Chapter 5 asks ‘*How do charity trustees make sense of the juxtaposition between the juridical construction of the role and their lived reality?*’ Chapters 3 to 5 addressed this research question by examining key facets of the broader accountingisation of charities which were shaped into accounting entities, and whose transformation continues in the present day. This examination was situated within a study of the broader socio-political and economic context which helped shape the boundaries of the charity sector as we presently know it.

Drawing on a historical examination influenced by a genealogical approach, Chapter 3 traced the emergence of accounting standards in order to show how financial reporting has led to both internal and financial accounting reform for charities in the UK. It explored how the requirement to comply with financial reporting standards served as a condition of possibility which helped enable the ongoing financial management reforms through the adoption of accrual accounting. This shift was a crucial change which allowed concerns and matters related to risk management to play a central role in the broader accountingisation of the sector

Continuing with a historical examination, Chapter 4 explored how the shifting notion of public benefit, a central and statutory component of how charities are defined, has reshaped how charities are defined, as per the law but also through accounting practices, in England and Wales. It addressed the overall research question by exploring the contested history of how the courts, regulator and charities have struggled to operationalise the notion of public benefit. Through this examination, this chapter illustrates the role accounting practices, through performance measures and financial reporting, have played in helping enable charities with the means to demonstrate how their objectives are for the public benefit.

Chapter 5 drew on archival and interview data to build an understanding of how charity trustees- key governance actors- fulfil their fiduciary duty. Through speaking with them,

the chapter examined how they understood their roles and responsibilities, and how they made their role feasible to operationalise. The findings and contributions to the broader literature from the above three core, substantive chapters are set out in section 6.1 below. Delving into the past allows a nuanced view into the construction of the charity sector as a field, and how closely interlinked the reforms of the past are to the present. This thesis illustrates the importance of not taking events and decisions made in the past for granted, in order to analyse and study how they have served as important conditions of possibility for present-day reforms to occur.

### 6.1 Key contributions

The key contributions of this thesis are empirical and policy based. The empirical contribution of this thesis furthers a critical dialogue. It problematises the role accounting standards and practices continue to play in shaping how charities are governed, and how it has expanded the Charity Commission's regulatory capacity. This thesis provides an original, rich and detailed narrative through an investigation of key archival materials. These materials helped provide a strong foundational understanding of the historical shifts which have largely been forgotten or were left unproblematised. Central to these shifts is a concern with the role charities are to play in the welfare state. This occurred in parallel with concerns over how to define charities. The thesis then illustrates how these historical shifts, over time, came to be conflated with concerns related to accountability, in particular concerns with financial accountability and worries about whether charities were performing in a manner which was for the public's benefit. These historical shifts have played a fundamental role in shaping the direction of how charities, and the sector as a whole, have formed and been governed since the Second World War. The empirical understanding gained from speaking to charity trustees builds on the archival studies. This provided a nuanced understanding into the aspirations and interests of those in power have been integrated into the role, which has shaped the relationship of accountability between charities and state, regulator and other stakeholders through the means of financial and impact reporting.

The strength of this thesis lies in its empirical contributions which drew from 40 field interviews and a large body of archival research. These contributions played a key role in enabling conceptual leaps by providing a broader understanding of the macro social and organisational shifts. The study of empirical accounts is undertaken in order to glean insights and to further develop academic scholarly work. It helps facilitate the conceptual understanding of the events and relations surrounding field of analysis, which have helped contextualise abstract theory through the study of real practices.

### **Chapter 3**

This chapter illustrated the relationships between three key actors- the state, the accounting standard setter and the charity sector regulator- situated within three arenas. This chapter explores the differing aspirations and interests of the arenas, and its subsequent intersection which led to the development of the first charity accounting standard. By traveling back to the post-World War II period in order to study the emergence of charity accounting standards, this chapter makes three key contributions. It challenges a commonly held narrative that the aim of the standards were to address concerns pertaining to instances of fraud and financial management or diverse accounting practices (Connolly & Hyndman, 2000; Palmer & Vinten, 1998). It argues instead that the origins of the standards can be initially tied to the state's aspirations to build knowledge and awareness of the sector's activities and resources, albeit through a financial lens, in order to determine the role charities would play in the welfare state. The policies of this period helped form the basis of the sector's present-day accounting regime.

The second contribution this chapter makes is to show how the development of the standard was a way for the accounting profession and standard setter to maintain their legitimacy and control over the standard setting process, and protect the profession from government intervention. Through an examination of the standard setting process, this chapter provides a different perspective on the origins of the standards in order to argue that the SORP story did not start in the neoliberal shift of the 1980s, but that it is also a



story which predates it by at least twenty years. By tracing the social and institutional context, this chapter demonstrates how broader macro policy changes permeated the charity sector as the state's priorities shifted towards strengthening its economic position amidst a global recession. In pursuing an 'efficiency agenda', the state's policies at the time led to two major developments for the charity sector. In requiring charities to demonstrate their 'efficiency,' the state triggered an internal management reform in charities leveraged through funding relationships. This reform occurred in parallel to the external financial reporting reform which led to the development of the first SORP. This shift was further enabled by the accounting profession, which was relied upon by the state to play a greater role in bringing private-sector practices to the public sector, and later the charity sector.

Finally, this chapter deepens our understanding of how past accounting reforms, focused on internal financial management and external financial reporting, served as a condition of possibility for ongoing accounting reforms which followed the development of the first SORP in 1988. It also demonstrates how the SORP became a conduit for further accountingisation to take place through a shift towards accrual accounting, encompassing greater concerns about risk management. By exploring this history, this chapter contributes to our understanding the role financial reporting has played in defining charities. The SORP today is not just about shaping financial governance and demonstrating accountability. It has also become an important mechanism through which a heterogenous field of charities are regulated in a homogenised manner. To this effect, the SORP paradoxically raises more tensions. Through the framework of financial reporting, it led to the blurring of the lines between charities and for-profit entities, as operationally and in terms of organisational structures, charities came to resemble the latter.

## **Chapter 4**

By exploring the intersection of law and accounting, this chapter contributes to an understanding of how accounting practices and financial reporting mechanisms have been used in an attempt to manage the complexity and ambiguity in how charities, in particular those situated on the boundary between the charity and commercial sector, could operationalise and demonstrate their public benefit. Through exploring the case study of the independent school sector, this chapter demonstrated that the inherent ambiguity of the notion of public benefit makes it a powerful concept and a fertile ground for political battles. The power lies with the side who can shape the narrative and boundaries of what it means to be a charity. In remaining an ambiguous and complex concept which defies a static definition, this chapter highlighted that the notion of public benefit continues to be contested and negotiated between charities, regulators and wider stakeholders of the charity sector. Its very dynamism makes the task of regulating charities through the notion of public benefit a challenging task as it remains resistant to standardisation.

The chapter explores how in 2006 the notion of public benefit became a statutory requirement that charities had to demonstrate in order to prove their charitableness. It contributes to an understanding of the relationship between a legal notion which remains ambiguous at the macro-level at which charities are regulated, and the quantifying practices of accounting, which help operationalise it at the grassroots level. It provides insight into how local institutions and actors, like independent schools, deal with the ambivalence of such vague notions when they are required by law to demonstrate how their activities provide public benefit. This chapter illustrates how these actors attempt to comply with the law and give the notion shape in practice through the use of accounting practices and impact reporting in order to stave off existential threats to their charity status.

The chapter further contributes to our understanding of how the notion of public benefit makes regulating charities a complex task. While accounting practices and mechanisms of impact reporting are increasingly relied upon to demonstrate compliance, these modes of compliance add further complexity to the task of regulating charities. In lending a level

of concreteness, accounting practices and modes of reporting make it that much harder to govern the charity sector through regulation because of the diversity they enable in how the notion of public benefit is operationalised. While the notion is challenging to standardise, this chapter helps provide an understanding of how charities, particularly those situated on the boundaries of the charity sector, work hard to maintain their charity status, and the role accounting practices and reporting plays in facilitating that.

Finally, in addition to highlighting the links between law and accounting, this chapter sheds light on the roles they each play respectively. Through an investigation of four court cases over a period of sixty years, this chapter demonstrated how the law, as a form of rulemaking through its history of precedent setting, furthers the ambiguous nature of the notion of public benefit. In examining accounting practices, another means of formalising practices of rulemaking, this chapter highlights how the notion of public benefit can be operationalised in a more concrete, if not standardised, manner.

## **Chapter 5**

This chapter examines the trustees' own processes of sensemaking in how they understand their roles and responsibilities. It makes three contributions. First, it contributes to a much richer and nuanced understanding of the key actor in the sphere of charity governance, the charity trustee. Drawing on 40 field interviews conducted with charity trustees, this chapter delved into the 'black box' of what it means to be a charity trustee. It explored the challenges trustees face in executing their role and how they go about managing them. Such an understanding is important, as the role of the charity trustee allows for the broader regulation of the sector to occur, and provides the charity regulator the means by which it can then appear to discharge its duty. Second, this chapter provides insight into how trustees can be recruited, retained and relied upon as a governing mechanism. Such an insight is critical, particularly for policy makers, at a time when broader academic debates position the role as impossible to undertake due to the duties ascribed to it (Dartington, 2005; Harris, 2001). By bringing an awareness of how charity trustees undertake this role,

this chapter examines the ways in which trustees cope with their responsibilities. Finally, this chapter contributes to furthering our understanding of the relationship between the abstract user as constructed in policy, and the real ‘flesh and bones’ actor. By exploring the intersections and tensions present between the role constructed in policy and real human actors, this chapter facilitates insight into how macro-level aspirations and interests, of the state and the regulator, imbued in the role through accounting standards and practices can take root at the grassroots level, and shape the real experiences of the trustee.

## 6.2 Research limitations

The research aims of this thesis were largely focused on the construction of financial governance as enacted through accounting standards, practices and actors, and how it has been shaped by the emergence of accounting standards and practices. These standards and practices have come to play a key role in the regulation of charities, and also how they are defined by the regulator and wider stakeholders through means of financial reporting and demonstrating public benefit.

This thesis drew on theoretical works, such as arenas and constellations (Burchell et al., 1985) and political economy to provide a conceptual framing for the investigation of how charity accounting standards emerged, institutional theory. It drew on social construction studies to help provide a conceptual lens when studying how charity trustees experienced their role, and how this role was constructed by macro influences. Nevertheless, while the aims of this thesis were enabled by theoretical works, its strength lies in its empirical contributions. I do recognise, however, that in pursuing largely empirical contributions, they may have come at the expense of making meaningful theoretical contributions. This limitation was similarly recognised by DeGannes, in her doctoral research which investigated the role executive remuneration consultants and committees played in designing executive pay governance in the UK. When discussing the trade-offs made between her empirical analysis and theoretical contributions, she states that “rich and

detailed empirical accounts came at the expense of stronger theoretical contributions to academic discourse” (DeGannes, 2018, p. 213).

Lastly, in examining the role key actors play in the governance of charities, this thesis largely focused its analysis on the charity trustee. While charity trustees are expected to play a key role in how charities are governed, the role of the charity regulator and other actors, such as charity’s executive and auditors, were not similarly problematised. However, these actors also play a role in maintaining the governance of the sector.

### 6.3 Future work

In furthering the study on the role accounting standards and practices have played in defining the modern-day charity, this thesis proposes three paths for future research. First, this study proposes undertaking a longitudinal study of a group of charities financial reporting practices by examining their financial reports over a 30-year period beginning in 1985. This period will allow an examination of the financial reports from before the development of the first charity SORP until 2015, the sixth edition of the standard. Such a study would allow an exploration of how notions of accountability have shifted in practice for charities.

According to the SORP Committee responsible for developing the body of standard, financial reporting for charities has two purposes. First, they are used for obtaining an insight into a charity’s activities. Second, they are also used as a means for evaluating and assessing a charity’s performance. Unlike the commercial sector, the SORP is not just about reporting on financial activities. Through examining how financial reporting has changed over the course of three decades, where there have been key social and political shifts, and what the impact of multiple iterations of the SORP have been, it would be useful to examine how the parameters of what accountability constitutes have changed.

Cornforth (2012, p. 4) argues that current studies of the board further a “narrow conceptualisation of non-profit governance that largely ignores the influence of the wider

governance system” and the actors located within it. Future research could draw on a mixed-methods qualitative study, which would include an ethnographic approach, to study charity boards and its relationships with the executive and other external actors. A study of the board would allow insight into investigating the grassroots practices of a charity board and any actors who may play a role in the governance of the charity. This study would illuminate how a board fulfils its duty in practice, and how this correlates with how trustees make sense of their roles and responsibilities. Central to such a study would be undertaking a trustee role on a board, and its finance and audit subcommittees. This is particularly important as shadowing a board would be challenging given the voluntary nature of the role, and allows for a closer opportunity to examine relationships with external actors as decisions are typically made within a subcommittee. When speaking to them, many trustees highlighted that the bulk of the decision making and deliberating over matters of concerns occurs within the sub-committees. While board approval is needed, the decisions in essence gets made at the level of the subcommittee.

An exploration of the board through an ethnography would provide a good opportunity to explore board dynamics between board members and how they interact with other actors, such as, the charity’s executives. In addition, it would help illuminate key relationships, if any, with external actors and the role they may play in the overall governance of the charity. These actors can include accountants, lawyers and consultants with specific and varying expertise (i.e., governance consultants). It is through observing the relationship dynamics that one can trace which relationships are critical to the overall governing of the respective charity.

Finally, another avenue for future research work should include an examination of the evolution of the Charity Commission, and the role they have come to play within the modern regulatory state. Given the widespread criticism of their role and the perceived ineffectiveness of the regulator, it is worth problematising the role they have historically played and are now expected to play by the state, the charity sector and society. Rather than taking their role as the regulator for granted, an exploration of how ongoing statutory

changes have expanded their role and how their resource capacity has evolved helps examine what the regulator can deliver on. The regulator has commonly been accused of “flagrant abuse” to go undetected in the sector, and maintaining inadequate scrutiny over thousands of charities with sector income turnover in billions (PSAC, 2013a). In comparison to the role of the charity trustee, the role of the Charity Commission has come under much scrutiny by the government and has actively been the focus of numerous regulatory changes since the 1960s. At least from a regulatory perspective, the role of the Commission has been shaped much more actively, unlike the role of the charity trustee. While the role of the charity trustee has also experienced significant change, much of the changes have occurred through non-regulatory measures such as guidelines, donor conditions and codes of practices. Given the critical role the regulator is expected to play in overall governance and regulation of the sector, it does beg the question what does the Charity Commission do for the charity sector, and the overall regulatory state?

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## Appendices

### Appendix A – List of archival materials

#### Charity Commission related archives

	Year
Charity Commission Annual Reports (select years)	1982-1990
Accounting by Charities SORP	1995
Accounting and Reporting by Charities SORP	2000
Transparency and Accountability	2004
Accounting and Reporting by Charities SORP	2005
Public Benefit Guidance	2008
Advancement for Education for Public Benefit	2008
Advancement for Education for Public Benefit – analysis of the law	2008
Advancement for Education for Public Benefit– summary of consultation responses	2008
Public Benefit and fee charging	2008
Public Benefit and fee charging – analysis of the law	2008
Public Benefit and fee charging – summary of consultation responses	2008
Public Benefit Assessments – emerging findings for trustees	2009
Public Benefit Independent School Assessment - Highfield Priory	2009
Public Benefit Independent School Assessment - Manchester Grammar School Foundation	2009

Public Benefit Independent School Assessment - Moyles Court School	2009
Public Benefit Independent School Assessment - Pangbourne College Ltd	2009
Public Benefit Independent School Assessment - S Anselm School Trust	2009
Public Benefit Independent School Assessment - Highfield Priory	2010
Public Benefit Independent School Assessment - S Anselm School Trust	2010
Charities and risk management	2010
Public Benefit - the public benefit requirement (PB1)	2013
Public Benefit - running a charity (PB2)	2013
Public Benefit - reporting (PB3)	2013
Accounting and Reporting by Charities SORP (FRS 102)	2014
Taken on Trust: The awareness and effectiveness of charity trustees in England and Wales	2017
The Essential Trustee - six main duties	2018
The Essential Trustee Guide (CC3)	2018

#### Government-related archives

	Year
Hansard Debates (House of Commons and House of Lords)	1945-2016
Nathan Report	1952
Charities Act	1960
Monitoring and Control of Charities in England and Wales (NAO Report)	1987

Efficiency Scrutiny of the supervision of charities (Woodfield Report)	1987
The Next Steps: Improving management in government (Efficiency Unit)	1988
Monitoring and Control of Charities in England and Wales (NAO Report)	1990
Private Action, Public Benefit	2002
Draft Charities Bill	2005
Charities Act	2006
Hodgson's Review of Charities Act 2006	2012
Charities Act 2006 Post-Legislative Scrutiny (Public Administration Select Committee (House of Commons) Report)	2013
The regulatory effectiveness of the Charity Commission (NAO Report)	2013
Follow-up on the Charity Commission (NAO Report)	2015
Stronger Charities for Stronger Society (House of Lords Report)	2017
Schools that work for Everyone Consultation Report (Department of Education)	2018
Joint Understanding between Department of Education and Independent Schools Council	2018
Charitable Status and Independent Schools (House of Commons Briefing Paper)	2019
Independent Schools (England) (House of Commons Briefing Paper)	2019

## NCVO Publications

	Year
The Beveridge Report	1948
The Goodman Report	1976
On trust: Increasing the effectiveness of charity trustees and management committees	1992
The Deakin Report	1996
For the Public Benefit? A consultation document on charity law reform	2001
Charity Law Review Advisory Group: final report and recommendations of NCVO's independent review of the Charities Act 2006	2012

## Judiciary Cases

	Year
Oppenheim v Tobacco Securities Trust Co Ltd [1950]	1950
Inland Revenue Commissioners v Baddeley [1955]	1955
The Independent Schools Council v Charity Commission [2011]	2011

## Non-Government related archives

Accountancy Magazine	1975-1995
The Guardian	1975-1995
The Times	1975-1995
Financial Reporting by Charities (Bird and Morgan-Jones Study)	1981

Accounting by Charities: A Discussion Paper (ASC)	1984
ASC Comment Letters on Accounting by Charities Discussion Paper	1984-1985
Exposure Draft 38, Accounting by Charities (ASC)	1985
Statement of Recommended Practice: Explanatory Forward (ASC)	1986
Accounting by Charities (SORP 2) (ASC)	1988
The Value of Independent Schools (ISC Report)	2019
Toolkit to help evaluate independent-state school partnerships (ISC Report)	2021

## Definition of charities over the past 400 years

### 1601 Statute of Elizabeth I (excerpt of the preamble)

“the relief of aged, impotent and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning and free schools and scholars of universities; the repair of bridges, ports, havens, causeways, churches, sea banks and highways; the education and preferment of orphans; the relief, stock or maintenance for houses of correction; marriages of poor maids; supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; the relief or redemption of prisoners or captives; the aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes.”

**Source:** Halsbury’s Laws of England, 2019, vol 8, para 46 (Pearce, 2019)

### Pemsel (1891)

“(1) the relief of poverty  
(2) the advancement of education  
(3) the advancement of religion; and  
(4) other purposes beneficial to the community not falling under any of the preceding heads”

**Source:** Halsbury’s Laws of England, 2019, vol 8, para 46 (Pearce, 2019)

### Charities Act 2006 (excerpt of 13 charitable purposes)

“... the prevention or relief of poverty; the advancement of education; the advancement of religion; the advancement of health or the saving of lives; the advancement of citizenship or community development; the advancement of the arts, culture, heritage or science; the advancement of amateur sport; the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity; the advancement of environmental protection or improvement; the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage; the advancement of animal welfare; the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services (and) ... any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of (the above).”

Source: Charities Act 2006, Part I, s2(2a-m)

## Appendix C - Interview Protocol

### **Introduction (keep brief)**

Introduce myself

Explain objective for meeting

Confidentiality

- Explain interview process (confidentiality, anonymity, right to withdraw participation, want to know about your perspective and that a copy of transcribed interview can be provided upon request)
- Sign 2 copies of consent forms

### **TURN DICTAPHONE ON**

### **Trustees (to be tailored to each interviewee where possible)**

- What do you do?
- Where do you draw support from?
- Why did you join the board? Have you ever declined an invitation to join a board, and if yes, why?
- How do you draw comfort over the charity's activities?
- Is there anything which surprised you about your work as a trustee?
- What worries you about your role?
- How much time are you able to give to your duties?
- What would make your role easier?

### **Cool-off**

1. Are there any other aspects which you would like to mention which have not been discussed?
2. Is there anyone else you think would be helpful to speak too?
3. Thank you for your giving up your time (wrap up). Switch off recorder

## Appendix D – Summary of Interviewees

#	ROLE	Charity Type <sup>181</sup>	NED Background (Yes/ No)	Time
<b>IR01</b>	Trustee	Medium	Yes	61
<b>IR02</b>	Trustee	Medium	Yes	69
<b>IR03</b>	Charity Executive- Company Secretary	Super Major	No	56
<b>IR04</b>	Trustee	Major	Yes	105
<b>IR05</b>	Trustee	Large	Yes	74
<b>IR06</b>	Trustee	Large	Yes	66
<b>IR07</b>	Trustee	Large	Yes	70
<b>IR08</b>	Trustee	Medium	Yes	81
<b>IR09</b>	Trustee	Major	Yes	55
<b>IR10</b>	Trustee (Chair)	Large	Yes	51
<b>IR11</b>	Trustee (Fundraising Chair)	Major	Yes	64
<b>IR12</b>	Finance Director (Bursar)	Medium	No	89
<b>IR13</b>	Trustee - Audit Committee Chair	Major	Yes	72
<b>IR14</b>	Trustee	Medium	Yes	26
<b>IR15</b>	Governor of School	n/a	Yes	64
<b>IR16</b>	Trustee	Small	No	70
<b>IR17</b>	Trustee	Large	No	41
<b>IR18</b>	Trustee (Chair)	Major	Yes	77
<b>IR19</b>	CEO (Head of School)	Major	No	25
<b>IR20</b>	Trustee (Chair)	Major	Yes	63
<b>IR21</b>	Trustee	Major	Yes	76

<sup>181</sup> See footnote 46 for NCVO's breakdown of the sector by income



#	ROLE	Charity Type <sup>182</sup>	NED Background (Yes/ No)	Time (minutes)
<b>IR22</b>	Trustee	Major	Yes	43
<b>IR23</b>	Trustee	Major	Yes	30
<b>IR24</b>	Trustee	Major	No	64
<b>IR25</b>	Finance Director (Bursar)	Large	No	61
<b>IR26</b>	Governor of School	n/a	Yes	60
<b>IR27</b>	Trustee	Major	Yes	37
<b>IR28</b>	CEO (Head of School)	Major	No	21
<b>IR29</b>	Trustee	Small	No	77
<b>IR30</b>	CEO	Large	No	60
<b>IR31</b>	CEO	Small	No	91
<b>IR32</b>	Trustee	Major	Yes	83
<b>IR33</b>	Trustee - Finance Committee Chair	Major	Yes	72
<b>IR34</b>	Trustee (Chair)	Large	No	102
<b>IR35</b>	Finance Director (Bursar)	Major	No	117
<b>IR36</b>	Trustee	Major	Yes	112
<b>IR37</b>	Trustee	Major	Yes	87
<b>IR38</b>	Trustee	Large	Yes	58
<b>IR39</b>	Trustee	Major	Yes	51
<b>IR40</b>	Trustee	Large	No	73

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<sup>182</sup> See footnote 46 for breakdown of the sector by income