No charity for Charities

After multiple scandals expose the weaknesses of the regulator, it's time to license our cherished charitable sector primarily through the Central Bank, a superpower of muscular oversight

by Vanessa Foran

PROBABLY THE biggest weakness for registered charities is not that there are too many of them competing for your attention, or for the next photo-op with some celebrity influencer, or that there are too many of them unevenly filling in gaps in our health and community services. Nor is it their CEO salaries, pensions and perks, or staff payroll and administration costs that could be shared by amalgamations.

It is cash.

The cash that goes into the bucket being rattled; the cash that gets collected from raffle tickets; or the cash from the bake-offs and coffee mornings, the cardboard money boxes, the sponsorship cards, and the no-fanfare sealed envelopes.

There is no possible way of accurately recording a single cent of cash donations that can provide assurance: to the giver, the intended recipient, to the designated philanthropic purpose or to the public-at-large.

Registered charities should be barred from collecting and accepting cash that does not come with a fully traceable history and transaction process.

Instead of your tenner into the bucket outside the local shopping centre, why not volunteer around your local area instead, because you control how that donation of yours is spent, whereas you do not know where that tenner ended up.

Let us just say the sticker on the bucket said, "collecting for meals on wheels in Ballymacmoney". How can you be certain the meals on wheels in Ballymacmoney got your tenner? How can you be certain the tenner was spent on providing meals, and not say on lottery tickets for insiders? Assuming that it made it back to the count table at HQ.

How often has anyone checked the Register of Charities to ensure the number after the CHY identity on the raffle ticket bought in the pub is exactly what it is supposed to be, and as described? Or checked that a charity's audited accounts are sound, and their required returns are all up to date?

The Charities Act 2009 lists four types of charitable purpose:

1. **The prevention or relief of poverty or economic hardship**
2. **The advancement of education**
3. **The advancement of religion**
4. **Any other purpose that is of benefit to the community**

This list is very specific, considering the wide varieties of uses they get matched with for the 10,900 charities currently quoted by the Regulator.

For catchall 4: "Any other purpose that is of benefit to the community", the Regulator itself provides a list of what might qualify - anything from Animal Welfare, Conflict Resolution, Arts and Cultural to Environmental Sustainability. Even services to assist other registered charities.

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Ireland has come to rely on registered charities for all sorts of needs, day and night, and for every crisis, from helplines to roof repairs to donor services.

In Ireland we deploy a model called "welfare partnership" - the government funds this third sector that includes charities, foundations, trusts, social co-operatives, non-profit associations and other organisations, to deliver services on its behalf. It is the model used also in Germany, Belgium and elsewhere. The reason we have this model in Ireland is historical.

So 10,900 organisations in the State have a special tax status, and many also accept funding from the State, as well as other supports. That makes me, and you, a stakeholder in every one of them.

They come in all shapes and sizes, budgets and locations - from nationwide to a registered carer's front room. From the *mega* entities that can afford prime-time television advertising (to extract a tearful donation from

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the viewer perhaps) and a money-box for every household on the electoral register to the household names that also engage investment managers and advisory firms that are also familiar names, all the way down to the lad with a sticker on a bucket outside the county grounds.

Some have celebratory ambassadors and endorsements with a whole day in the calendar all but named after them. Some are registered lobbyists with political connections on their board and management, while most are maintained and kept afloat by family, friends, and neighbours.

For example there are 1,130 separate organisations delivering health services in Ireland, and 636 of those are registered charities. Over half.

Meanwhile, according to their 2019 financial statements submitted to the regulator, some 1,063 charities had annual income of over €1 million. A total of 2,623 charities reported income over €250,000 for the same year.

Just over half earned more than €100,000, while 30 per cent had income between €10,000 - €100,000, with the remaining 15 per cent reporting income of less than €10,000.

We can infer from this that annual incomes in the charity sector are in the billions.

Charities provide a far too valuable support network throughout the country to be at risk of reputational damage because of poor controls, poor governance and the Irish curse, greed.

Proper oversight, like the type that comes with sanctions and restrictions, will protect the sector, and indemnify it, in some way, against the inevitable next financial scandal.

The enforcement function of the Charities Regulator is based on proportionate risk-based regulation of charities.

Part 4 of the Charities Act 2009 provides investigative and protective powers to the Charities Regulator. This includes the capability to impose sanctions if a charity breaches certain obligations such as the requirement to keep proper books of account or to submit its annual report. It also gives the Charities Regulator the authority to appoint inspectors to conduct statutory investigations into the affairs of charities.

In May this year, gardaí began investigating claims by two men that they were sexually assaulted or exploited by Anthony Flynn, then CEO of Dublin's **Inner City Helping Homeless (ICHH)**, itself a registered charity. He subsequently committed suicide. Yet sadly Anthony is not the first Charity CEO to end his life tragically.

Just before his death, allegations were brought to the ICHH board's attention in August this year. The board's then chairperson was only made aware of the investigation, somewhat casually, during a phone call with a member of An Garda on another entirely different matter.

An independent special investigation, albeit internally commissioned, from a Senior Counsel, will report findings in due course to the ICHH board. A spokesperson for the Charities Regulator has said it is still engaging with ICHH on the issues that have already emerged.

Over the course of the last year or so, the Charities Regulator exercised its powers in a number of instances, which included:

- Directions to charity trustees under section 68 of the Charities Act 2009 to produce books, documents and other records;
- The appointment of inspectors under section 64 of the Charities Act 2009 to investigate the affairs of the following three registered charities:

Cabhrú Housing Association Services
ChildFund Ireland
Bóthar

Take for instance the **Catholic Housing Association (CHAS), now known as Cabhrú** and its unholy treatment of elderly and long-term residents at its Berkeley Road housing scheme in Dublin's North Inner City. A number of our older and more vulnerable citizens were simply, yet ruthlessly, evicted from their homes, their safe places, without any rights by an unscrupulous organisation shamelessly purporting to be a Catholic charity. The tenants were hoodwinked to vacate their homes under a rather curious demolition and redevelopment scheme. Yet no sooner were the differential rent-paying tenants gone than their former homes were converted into the inevitable student accommodation cash-cow.

Meanwhile questions are still seeking answers regarding the former CEO Miceal McGovern. These include how its board retained the services of a person who was previously restricted from acting as a director to provide CEO services for its organisation.

The regulator's report from its investigation into **ChildFund** highlighted the common themes of governance and finance, including excessive spending on restaurants, travel and accommodation. One incident involved its former CEO Michael Kiely, enjoying a five-star hotel in Dubai while travelling to and from Zambia.

The charity's finance and sponsorship director Elena Lorigan, included a family member with the convenient job title of Junior Ambassador on the at the expense of the charity which incurred €6300 on the beano.

This accountant finds it very hard to believe a Finance Director would not have a formal expense reimbursement policy and credit card usage procedure in place, even harder to believe a Finance Director would not oblige such a basic practice if they had.

Another children's charity, Waterford-based **Children's Group Link** is also now being investigated by Garda for twenty-year-old sex-abuse allegations.

Bóthar is the most notorious of the delinquents of 2020, perhaps because of its endearing ads and its widespread reach into classrooms. Or the handsome product placement within RTE's Glenroe, that made Bóthar a household name.

Its ruin entailed a lot more than just the usual employee corruption and theft from an employer. In addition to shockingly weak governance, oversight and the dominant influence of a whole-time CEO, money-laundering infringements immediately spring to mind from the news reports thus far. The fact is, that whoever benefited from the monies removed from the charity benefited from the proceeds of a crime, and with that said, you will now predict with confidence that the Bóthar scandal still has a long way to go and a lot more to unpack.

But it is not just a grubby story about the greed it cultivated, there is also the disaster it pulled

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Muscular oversight required.

down on a sector that relies on volunteers and voluntary donations, and the goodwill that motivates both those vital inputs.

Not just operationally with the services that need funding from the public, but also the capacity to maintain good compliance and healthy practices - as the governance of these organisations, usually recognised as their Non-Executive Directors, is voluntary. Usually.

There is also the breach of trust for all those who gave their time to engage in the activities that generate income. In the case of Bóthar a lot of that time came from minors, including hard cash in significant sums, and every single minute of manpower, and every single cent was volunteered by people who believed their time, effort and money was for a specific purpose.

For many years, the organisation was given a clean bill of health that any onlooker was entitled to rely on.

If I were someone who gave them a tenner, I would now ask for my money back. Because Bóthar cannot prove to me or anyone else that my €10 was not in one of the suitcases carried out of their registered offices.

The establishment behind the professional Charity sector should not just label this villain "a bad apple" and move on. It must correct itself and shoulder the responsibility for "bad apples" generally.

My belief is that we should get rid of the tax charitable status (CHY) altogether – and be a licensed Not-For-Profit (NFP) organisation instead.

Certainly the Charities Regulator itself has the required expertise and experience to consider whether the nature of an applicant's activities and purpose should qualify it as a charity. It can retain this core function..

However, what is needed is muscular oversight, a superpower for the sector, that guarantees the financial and transactional expertise and wherewithal that can and will follow the smallest crumbs in any currency, any payment method and from any source. An imperium of authority to conduct fitness and probity vetting, the monitoring of directors and senior management -equipped with mandatory powers of strict regulatory enforcement.

We already have the organisation with the infrastructure to vet, license, and monitor Not-For-Profit (NFP) enterprises, one that is already equipped and qualified, as well as organised to oversee the sector across the spectrum of activities , such as fundraising, anti-money laundering, financial reporting, governance and compliance, reporting and value-for-money, as well as – most importantly - impose sanctions that are not for the faint-hearted: the Central Bank of Ireland.

An applicant to the Central Bank for an NFP licence would be pre-qualified by the Charities Regulator, by way of an agreed minimum compliance standard. This is already a practice with the Central Bank for other licences in their gift e.g. Mortgage Brokerage.

Once an applicant successfully passed a Central Bank application process to be given an NFP license, it should immediately qualify for Zero VAT rating, no matter its activity or purpose.

As well as the 0% VAT status, it would have statutory obligations as to how it treats its finances, such as how year-end surplus must be identified clearly for a strategic or operational use, or carried as a prepayment to reduce funding needs for a following period.

These NFPs would be required to treat all receipts as income and provide the donor with a numbered receipt. That patron would then have an allowable expense for tax purposes from a registered NFP entity. It is one sure way to stop the coins slipping out of the cardboard boxes, and open top buckets.

If the Not-For-Profit is a payee of a State Agency, such as the HSE, there already should be an Engagement Letter or a Service Level Agreement system in place, and - one would hope – it would also be subject to Internal Audit and the Comptroller & Auditor General.

Likewise with grants, which already come with a range of qualifying criteria, conditions, and accounting regulations: submit a payment request as payments come due throughout the project/ scheme, at the stages agreed in the terms of the grant. The NPF would raise a numbered itemised invoice as the documented claim for services rendered or project delivered.

Acquiring monies under false pretences is fraud, especially for charities as they largely solicit money by appealing to our emotional side.

Knowingly operating incompetent structures and personnel needs to be treated as corruption.

I can see that this NFP registration would amount to over-regulation for the smaller or more local community-based charitable groups, which it must be said make up the bulk on the Charities Regulator roster. But again, we already have a regulatory framework to act as oversight for that type of entity. That should be a function for the local Garda Superintendent and Peace Commissioner.

Fundraisers for Summer Schemes, Parents Associations, Politicians, and Clubs for all shapes, colours, and postcodes should apply for permission from the Local Garda Superintendent for their non-membership income-seeking events and have the local Peace Commissioner as co-signatory. On the permission application the person or group should nominate an independent non-connected individual to verify the cash collected. It should only be counted by groups of three or more and of course should only be spent for the purpose for which it was collected.

The concept of non-connectedness, 'armslength', is especially important with smaller and more local fundraising. Canvassing anyone to support an event that seeks to raise cash to pay for your own kids' summer jobs, school tour, or to subsidise their tennis lessons can easily be qualified as filling your own pockets, so we should all seek to avoid that risk.

We should learn from the inefficiencies, maladministrations, sleazy scandals, the tragedies and the corruptions of recent years, and not wait for the next one to happen.

Let's bypass the statutory inquiries, the internal investigations and Big Four accounting firm reports, and the soundbite size outrage, and get on with making philanthropy practical, effective and honest.

But most of all transparent to all stakeholders, all Citizens.

Natural goodwill to charities must be sustained not taken for granted. Time's up on naïve goodwill to underregulated charities.