



Tackling abuse and mismanagement 2015 to 16

Annex 1: the Charity Commission's approach to tackling abuse and mismanagement

1. Our strategic approach

The Charity Commission's **statement of mission, regulatory approach and values** emphasises robust regulation and prioritises our work to promote trustees' compliance with charity law. It makes clear that we are enhancing the rigour with which we hold charities accountable. We also support and enable charities to carry out their work.

Over recent years, we have changed our approach to our compliance case work. We have used our enforcement powers more swiftly, robustly and effectively. We are outcome-focused and proactively monitor trustees' compliance with action plans we have set and orders we have made.

An important part of our new approach is becoming more proactive in identifying and acting on concerns about charities. For example, we have significantly improved our proactive risk-based monitoring of charities or groups of charities, carried out more inspection and compliance visits, and increased our scrutiny of charity accounts, by conducting themed reviews. This work is highlighted in a number of case studies included in this report.

2. The legal and policy framework for assessing concerns in charities

As an independent, non-ministerial government department with quasi-judicial powers, we operate within a clear legal framework and follow published policies and procedures to ensure that we act consistently with our statutory functions and duties in tackling abuse and mismanagement. Trustees are the people trusted by the public to manage charities. Their duties and responsibilities are explained in our guidance. If something goes wrong in a charity, trustees need to take responsibility for putting it right. We get involved when we are concerned that trustees are not fulfilling their duties towards their charity, either because they do not understand them or they are not willing or able to meet them.

Our published **risk framework** explains how we approach all of our work and helps ensure we are proportionate, accountable, consistent, transparent and targeted. It sets out 3 questions that we answer before taking action.

1. Does the commission need to be involved?
2. If we decide we do need to be involved, what is the nature and level of risk?
3. What is the most effective way of responding?

We prioritise issues that fall within 3 areas of strategic risk affecting charities: fraud, financial crime and financial abuse, safeguarding issues, and concerns about the terrorist abuse of charities. We have **published strategies** for dealing with these risks. Our regulatory alerts also cover these areas.

When we get involved in a charity, we may provide regulatory advice and guidance and engage with or visit the trustees to ensure they are following our guidance.

We may open an inquiry where there is a high risk to public trust and confidence in the charity, where there is evidence of misconduct or mismanagement, or where charities' assets, reputation, services or beneficiaries are at a high risk of harm or abuse. We may use powers we can only use in an inquiry where we need to act to protect money or direct action. The aim is always to stop abuse or damage and put charities back on a proper footing for the future.

3. Our compliance work

Most of our compliance work is conducted under our general powers as regulator. For example, we work by:

- giving regulatory advice and guidance both generally and in specific cases
- explaining legal requirements to trustees in a number of ways
- meeting individual charities to explain compliance issues which affect them
- seeking assurances and voluntary undertakings from trustees, setting action plans to ensure compliance going forward
- warning charities about the consequences of non-compliance
- carrying out inspection visits

In serious cases we may open a statutory inquiry in accordance with the power under section 46 of the Charities Act 2011. In the context of a statutory inquiry, we can make use of certain additional compliance powers, which follow.

3.1 Information gathering powers

These powers take the form of an order or direction to obtain information or documents or require named individuals to meet with the commission to answer its questions. We will only ask for information that is relevant to the case and our functions as regulator.

These powers allow us, among other things, to direct a person to:

- provide accounts and statements in writing
- provide us with copies of documents
- attend a meeting to give evidence or produce documents

In using these powers, we act consistently with the principles of best regulatory practice, including proportionality.

3.2 Temporary protective powers

Temporary protective powers enable us to protect charity property at risk for a temporary period while we continue investigating. These powers include:

- suspending a trustee, officer, agent or employee of the charity from their office or employment
- preventing a person who holds charity property from parting with it without our consent
- restricting the transactions a charity can enter into or the nature or amounts of payments that can be made without our consent
- appointing an interim manager to manage the affairs of the charity alongside or instead of the trustees

As required by law, we regularly review our use of these powers to ensure that they stay in place only for as long as is needed.

3.3 Remedial powers (also known as permanent protective powers)

Permanent protective powers enable us to implement long-term solutions to problems identified by an investigation. These powers can only be used in the context of an inquiry and to use them, we must be satisfied that there is, or has been, misconduct or mismanagement in the administration of the charity. As with all of our other powers, before using permanent protective powers we make sure that the legal test for each power is satisfied.

Permanent protective powers include:

- removing a trustee, officer, agent or employee of a charity who has been responsible for, contributed to misconduct or mismanagement in the charity or knew of it and failed to take any reasonable step to oppose it
- establishing a scheme for the administration of the charity
- directing specific action in connection with the charity's administration or its property

3.4 New powers

The Charities (Protection and Social Investment) Act 2016 received Royal Assent on 16 March 2016. It primarily amends the Charities Act 2011 but also makes changes to the remaining fundraising provisions in the Charities Act 1992.

The Act introduces a range of measures over a period of time to strengthen the commission's ability to protect charities.

- i. The following changes took effect on 31 July 2016:
 - extension of the suspension period for trustees from 1 to up to 2 years
 - allowing the commission to take into account in some circumstances, conduct of a trustee outside of a charity under investigation when exercising certain powers
 - power to continue with the process of removing trustees where the person leaves office after the commission serves notice of intention to remove them but before the order takes effect
 - power to remove disqualified trustees from office

- power to direct specific action not to be taken
 - power to direct the winding up and dissolution of a charity and the transfer of its assets to another charity with the same purposes
 - a clarification of the commission's ability to direct property to be transferred
 - a reserve power for the Minister for Civil Society to change the regulation of fundraising
- ii. On 1 October 2016, a discretionary power to disqualify individuals who are unfit came into effect.
- iii. A power to issue official warnings came into effect on 1 November 2016. At the same time, there will be new duties on trustees brought into force with regard to fundraising reporting requirements.

4. Automatic disqualification

Changes to the existing automatic disqualification regime are provisionally set to come into effect in April 2017. The Act will widen the criteria that automatically bar an individual from acting as a trustee. It will also mean that those trustees disqualified in relation to a charity, are also disqualified from holding an office or employment in the charity with senior management functions. This could cover for example, chief executive and finance director level appointments or equivalent.

Someone who is automatically disqualified is able to apply for a waiver. We are reviewing our waiver guidance and the process to apply for a waiver to make it clearer and easier to navigate, especially for charities working in the field of rehabilitation of offenders.

5. Working with other agencies

We work closely with other agencies to improve outcomes and avoid duplicating work. As we are a civil regulator, it is especially important for us to work with the police and law enforcement agencies when we suspect or find evidence of criminality. In turn, other agencies refer concerns about abuse and compliance with charity law to us. Agencies we work especially closely with include the police, HMRC, National Fraud Intelligence Bureau, the Insolvency Service, and the Department for International Development (DfID).

In 2015 to 16 we achieved our target of reviewing, refreshing or creating 3 new memorandums of understanding (MoU) with those partner organisations. In the new financial year we have already agreed or update a further 3 MoUs, including with the new Fundraising regulator. We exchanged information with other agencies through the formal statutory gateway in the Charities Act 2011 **2332** times in 2015 to 16 (2014 to 15: 2,131). While we are not a prosecuting authority, we work closely with law enforcement agencies to bring those who abuse charities to justice. This includes supporting police investigations by providing witness statements and giving evidence in court. We provided **29** witness statements in 2015 to 16.

6. Regulatory guidance and alerts

Our regulatory approach is reflected in the guidance we issue to trustees. For example, we have revised our core guidance on trusteeship, **The essential trustee: what you need to know, what you need to do (CC3)**, to make it clearer what we expect of trustees.

The **regulatory alert** is also an increasingly important compliance tool. We issue alerts to charities and/or the public when we become aware of a particular risk facing individual charities or public trust in charities. We may identify these risks through our case work, or as part of our wider regulatory work. We issued **9** alerts in 2015 to 16. These included alerts on:

- commercial partnerships
- the increasing risk of online fraud, including alerts about online extortion demands and mandate fraud

We expect trustees of all charities to read our alerts and follow our guidance so as to protect their charities against harm.