



Tackling abuse and mismanagement 2016 to 17

Annex 1: The Charity Commission's approach to tackling abuse and mismanagement 2017

1. Our strategic approach

Our regulatory approach is designed to meet the expectations of the Commission set out in the [Charities Act 2011](#) and in the [Charities \(Protection and Social Investment\) Act 2016](#). We concentrate on promoting compliance by charity trustees with their legal obligations, holding charities accountable, promoting public trust and confidence in charities, promoting trusteeship and the effective use of charitable resources and ensuring the integrity of the register of charities.

In our compliance work we use our enforcement powers 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 approach is about being proactive in identifying and acting on concerns about charities. For example, we carry out proactive risk-based monitoring of charities or groups of charities, inspection and compliance visits, and proactive scrutiny of charity accounts, through both themed reviews and individual casework. 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 [essential trustee 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.

The nature and level of risk it is addressing affects whether the Commission engages in relation to an issue and what action it takes to address it.

The Commission targets its resources at the highest risks to charities' beneficiaries, services and assets and where it thinks its intervention will have the most effective impact. It places an emphasis on preventing problems by its proactive work to identify and manage risks.

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

We can use some powers in compliance cases, if the legal tests are met, including some information gathering powers, the power to remove a disqualified trustee from office, the power to issue an official warning and a discretionary power to disqualify individuals who are unfit.

It may be necessary or appropriate in some cases to open a statutory inquiry under the power in section 46 of the Charities Act 2011. The purpose of an inquiry is to establish the facts. It is not in

itself a determination by the regulator of wrongdoing in a charity, except where we may have to immediately use our legal powers. The ultimate aim is to stop abuse, ensure trustees comply with the law and put a charity back on a secure footing for the future.

In the context of a statutory inquiry, we can make use of certain additional compliance powers, set out below.

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
- directing specific action not to be taken in the interests of the charity
- 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
- directing the winding up and dissolution of a charity and the transfer of its assets to another charity with the same purposes

We have used our compliance powers a total of 1099 times in 2016-2017.

Changes to the existing automatic disqualification regime are set to come into effect in 2018. 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 have reviewed 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.

4. Working with other agencies

We work closely with other agencies to improve outcomes and avoid duplicating work. Whilst the Commission vigorously protects its independence, effective collaboration and joined-up working is essential for effective regulation, particularly as we are a civil regulator and are not able to bring criminal proceedings ourselves. It is crucial 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, Action Fraud and National Fraud Intelligence Bureau (NFIB), the fundraising Regulator, the Insolvency Service, and the Department for International Development (DfID).

The Commission has built effective strategic and operational relationships with a range of other regulators, law enforcement agencies and government departments. We have 40 Memorandums of Understanding (MoU) in place with compliance partner organisations. We exchanged information with other agencies through the formal statutory gateway in the Charities Act 2011 2733 times in 2016-17. While we are not a prosecuting authority, we work closely with law enforcement agencies to bring those who abuse charities to justice.

5. 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](#), to make it clearer what we expect of trustees.

The [regulatory alert](#) is also an 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 6 alerts in 2016-17. These included alerts on:

- the risk of cyber attacks
- compliance with data protection law
- working with third-party fundraisers
- new fundraising rules

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