



## Risk Framework

# Our regulatory approach to protecting the public's interest in charity – how we assess and manage risks

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### Our role

The Charity Commission is the regulator of charities in England and Wales. We are also responsible for maintaining the Register of Charities which includes deciding if organisations are charitable and should be added to the Register.

Parliament has given us five statutory objectives<sup>1</sup>. These are:

- to increase public trust and confidence in charities
- to promote awareness and understanding of the operation of the public benefit requirement
- to promote compliance by charity trustees with their legal obligations in exercising control and management of their charities
- to promote the effective use of charitable resources
- to enhance the accountability of charities to donors, beneficiaries and the general public

We have a wide discretion to decide how to achieve our objectives and carry out our functions.

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<sup>1</sup> Section 14 Charities Act 2011

## Key facts about charities

The charity sector in England and Wales is very diverse. Charities play a substantial and vital role in our society and enjoy a high level of trust from the public.

There are approximately 160,000 registered charities ranging from small local community groups though to the largest household names. About 13,000 of these charities work internationally. There are perhaps a further 80,000 small charities that do not have to register.

- registered charities own net assets worth approximately £125bn
- charities employ over 820,000 paid staff
- there are around 950,000 trustee positions – most of which are filled by unpaid volunteers (many more people volunteer for charities in other ways or support them through donations)
- charities receive significant fiscal benefits – tax repayments for charities including Gift Aid, rate relief, VAT, and stamp duty relief were worth £2.56bn in 2010/11

## Benefits of our work

The public has an interest in charities, in particular as beneficiaries, donors, volunteers and taxpayers.

Our work seeks to protect the public's interest in charity and ensure that, as the law requires, charities:

- consistently focus on those purposes for the public benefit which give them their charitable status
- act independently of any private, governmental or political interests

We aim to:

- assure the public that money intended for charitable purposes is used by charities in accordance with charity law
- assure the public that organisations with the status of 'charity' are legitimate, operate independently, and wholly in pursuit of their charitable purposes
- ensure the public has as much free access as possible to appropriate information about charities and their activities
- ensure that charity trustees carry out their duties and responsibilities as required by law
- promote high standards of governance and accountability by charities

## What we do

Our starting point is that:

- charities are publicly accountable for the funds they receive and privileges they enjoy because of their charitable status
- responsibility for administration and management of charities rests with trustees
- most trustees are doing a good job in promoting and making effective the work of their charity, and in meeting the needs of their beneficiaries, and that levels of abuse are relatively low

However there will be situations where we will need to engage with charities or the charitable sector if it is perceived that there are serious risks presented by trustee actions or risks affecting the sector or parts of the sector, or where it is appropriate for us to exercise our legal powers.

In carrying out our work we will follow the better regulation requirements in the Charities Act 2011. This means we will be proportionate, accountable, consistent, transparent, and targeted only at cases where action is needed.

We are also required by the Act to consider the need to use our resources in the most efficient, effective and economic way<sup>2</sup>. We will prioritise our actions to ensure that our resources are used to best effect. We will not intervene in individual cases where there is other action that we or others can take that will have a greater impact and will represent better value for money.

As the regulator of charities we:

### Assess risk proactively

We proactively assess the type and nature of risks affecting

- the sector
- a particular sub-sector
- significant number of charities
- the public confidence in the integrity of charities more generally

We place an emphasis on preventing problems. We do this by

- placing an emphasis on proactive, rather than reactive work, to identify and manage risks
- using information and knowledge, which we collect from a variety of sources (including for example, regulatory work; work with other agencies; and awareness of changes to the environment in which charities are operating) to understand the risks to charity property and beneficiaries, and to public trust and confidence in the sector. We keep these risks under review and use them to inform our priorities
- identifying risks early and providing appropriate and user-friendly guidance to address such risks

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<sup>2</sup> Section 16 (3) Charities Act 2011

**Example**

A change in the economic environment was having a significant impact on charities' income sources. We identified that some charities may face closure and that this posed a risk to charitable assets and beneficiaries. We considered the most cost effective way to respond. We developed short, accessible guidance on insolvency and managing resources in difficult times. We launched an awareness campaign to ensure we had the widest reach possible.

**Example**

The parliamentary programme highlighted a proposed bill that would have implications for some charities' independence and ability to carry out their purposes. We worked with the government team developing the bill to ensure it was in keeping with the charity law framework.

**Register charities**

At registration we expect that trustees are clear about their charity's purposes and capable of complying with all the requirements of being a charity. This means that

- the onus is on an organisation to demonstrate its charitable status and we will provide general web based guidance to assist in this
- trustees will be expected to have satisfied themselves that their organisation is eligible for charitable status and to have understood their role and responsibilities
- we will apply fewer resources to assessing charities with model or standard governing documents and will facilitate quicker registration in these cases
- we will focus our resources on those novel and complex applications which involve issues that might affect charitable status or which test or develop the charity framework

**Example**

We received a registration application from a parent teacher association using a model governing document agreed with us by the umbrella body for parent teacher associations. The application showed that the organisation's activities are directed to charitable purposes for the public benefit and all of the information we needed, including about the trustees, was complete. This type of registration we would process quickly.

**Example**

We received a registration application from a local bridge club with a purpose to advance amateur sport by promoting the game of bridge. To be charitable the applicant had to demonstrate that the playing of bridge is capable of promoting a person's health. We considered the evidence provided to us by the applicant and were satisfied that this had been demonstrated and that all other aspects of charitable status and public benefit were satisfied. The club was registered as a charity, the first of its kind to be registered.

## Provide public information on charities

As a key means of being accountable we require charities to provide key public information, and to do so promptly. We will:

- ensure the up-to-date Register of Charities is freely available online
- highlight those charities who fail to comply with basic information requirements
- place the onus on trustees to supply accurate information
- routinely check a sample of accounts each year and take appropriate follow up action
- monitor trends in data we receive from charities

### Example

We make available public information about all registered charities including details of income, spending, activities and accounts through our online Register of Charities. This ensures that registered charities are transparent and details about them easily accessible to the public. We also highlight those charities and their trustees that are late in submitting their accounts.

## Provide advice and guidance

All registered charities are expected to operate in accordance with charity law and have regard to our published regulatory guidance. We will:

- set out the principles by which trustees must manage and administer their charity, for individual charities to interpret according to their circumstances
- provide a range of web based advice and guidance that applies to most charities
- signpost charities to advice and guidance available from other organisations and endorse relevant professional standards
- set out the key legal requirements in respect of compliance with charity law
- work with sector bodies to generate generic advice or advice applicable to particular categories of charities
- provide individual advice to charities in circumstances where only we (apart from the court) can give authoritative advice, either under section 110 of the Charities Act 2011 or generally, and where failure to do so will seriously impact on trustees being able to comply with their legal duties
- give advice in complex charity mergers and restructuring
- give regulatory advice where there are serious concerns in the administration of a charity to support trustees to carry out their duties properly or where there is a serious risk of non compliance with legal requirements

**Example**

A charity is running a campaign against testing beauty products on animals. They use our online guidance to ensure that it fits within the charity law framework and supports their charitable purposes. However they have some questions about the images they propose to use for the campaign and approach us for advice. We refer them onto the Advertising Standards Authority which is responsible for regulating public adverts.

**Grant permissions or approve the use of a charity's powers**

When it is necessary for the Commission to grant a legal permission or use its powers<sup>3</sup>, the Commission will

- clarify the legal framework and principles applicable for each permission
- where possible provide streamlined processes for granting permissions, requesting information that is necessary for securing the permission
- where appropriate, enable charities to 'self-certify' or self-service their required changes - for example by making greater use of trustee declarations
- give permissions under section 105 of the Charities Act 2011 only in circumstances where the matter is outside the trustees' powers (and the trustees cannot confer power on themselves under section 280 of the Charities Act 2011) except in cases of trustee benefit, extreme controversy, conflicts of interest or where other very significant or momentous issues arise
- create cy-près schemes to amend a charity's objects under sections 62 and 69 of the Charities Act 2011 only where the trustees cannot amend their purposes under their own powers (with or without Commission consent), or amend their purposes under section 275 of the Charities Act 2011
- decline any request for a legal permission where there are no serious issues that would justify the exercise of our powers and it is being sought simply to provide reassurance

**Example**

A charitable company contacted us to ask for legal consent to change its articles of association so that it could employ a trustee. We referred them to our website where they completed an online form explaining the reasons for the change and consent was granted under section 198 of the Charities Act 2011.

**Intervene in serious cases, or where there has been non-compliance or abuse**

We deal with problems in charities in a number of different ways depending on

- what the problem is
- its severity
- the evidence to support it
- the impact it has
- what is required to resolve it

<sup>3</sup> By powers we include sections 69, 105 and 117 of the Charities Act 2011

We will use our powers proportionately according to the nature and level of the risk and our potential impact. Even where we have regulatory concerns and do take further action, it may not, in some instances, be proportionate for us to investigate a charity. Sometimes the best use of our resources, and the best impact, will be achieved by us focussing on providing corrective regulatory advice and guidance to put the charity back on a secure footing.

Our regulatory role focuses on charity trustees. There may be instances of abuse or criminality within charities, which we consider charity trustees are effectively handling themselves, such that our engagement is less likely to be warranted. If something does go wrong in a charity we expect the trustees to take responsibility for putting things right. Where the matter is serious we also expect trustees to have notified us by making a 'serious incident report'. Where we have to intervene, we expect trustees to work with us to resolve the issue.

We will not get involved in internal disputes. Where an internal dispute does arise we will expect charities to make serious attempts at a mediated settlement. We may intervene where it is necessary to clarify the trusteeship, or where other regulatory intervention is appropriate.

Where there are serious concerns of abuse in a charity, we may investigate and open a statutory inquiry under section 46 of the Charities Act 2011. We have a range of statutory powers that we can use to stop abuse and protect charitable assets and beneficiaries, including:

- information gathering powers which require us to obtain information or documents or require named individuals to meet us to answer questions
- temporary protective powers which allow us to protect charity property for a temporary period while we continue investigating
- remedial powers which allow us to implement long term solutions to problems often identified by an inquiry

We are not a prosecuting authority and the investigation of alleged criminal offences is the responsibility of law enforcement agencies. We work with other agencies, regulators, and Government departments to help us pursue our objectives, or to complement their work and to avoid dual regulation. Where there is a problem within a charity that is being adequately addressed by another agency (or agencies) we will not substantively engage except insofar as we can add value, or have specific positive impact on the administration of the charity, or the sector, which is outside the other agency's remit.

### **Example**

A charity's trustees reported a serious incident to us about an alleged fraud committed by the charity's treasurer. The police were responsible for the criminal investigation into the fraud and we exchanged information with them under our legal gateway and then continued to engage with them throughout the investigation. However, we also needed to engage direct with the trustees to address regulatory concerns about the charity's lack of financial controls and monitoring procedures. We ensured the trustees understood their legal duties, gave them corrective advice about strengthening their internal financial policies and procedures to prevent the incident happening again and ensured they took steps to recover the misappropriated funds.

### Example

Concerns were raised about the quality of care in a care home, including that these came about as a result of poor governance and management by the trustees. Other agencies had lead responsibility for determining whether there was an issue about the quality of the content of education or care, not the Commission. Even though allowing a poor standard of care would be a failure by trustees of their duties, the other agency took the lead and investigated the matter. Whether or not we needed to take action about the poor governance and management then depended on whether the trustees refused to accept the findings and take corrective steps. We may need to come in and ensure the trustees better managed governance going forward and if necessary appoint new trustees who would.

## How we decide when and how to engage

Some of our work affects all charities, some a particular group of charities and some is targeted at individual charities. We have a common framework for determining when and how to get involved in proactive programmes of work, as well as when and how to react to individual cases.

We will base our assessments on our analysis of the information that we gather, hold or receive.

### Stage one – Does the Commission need to be involved?

Our starting point is to ask:

- Does the issue fall wholly or partly within our remit<sup>4</sup>?
- Does it involve the use of a regulatory power that only we can use?
- Are the trustees able to resolve the issue themselves?
- Are other public agencies better placed to act?
- Is there Commission guidance publicly available that will resolve the issue?
- Is the issue potentially of such significance that it is in the public interest for us to engage?

### Stage two – if yes, what is the nature and level of risk we are addressing?

When we do get involved, the nature of our regulatory action will be informed by:

- **the nature of the risk that the issue presents** – we are most concerned with addressing those risks which:
  - impact on the integrity of charitable status and its privileges, including the use of abusive tax arrangements
  - challenge the protection of charitable assets, services or beneficiaries or all of those
  - impact significantly on public trust and confidence in charity and the reputation of charity generally

<sup>4</sup> Is it a matter that falls within our jurisdiction as the regulator of charities operating within England and Wales? Is it a matter directly relevant to the furtherance of our statutory objectives? Is it within our functions and duties to act?

- **the level of the risk**, as affected by:
  - the capacity for trustees to remedy the problem themselves
  - the residual risk if they do not
  - the profile and size of the charity
  - the charity's compliance record
  - the impact on beneficiaries or charitable assets
  - any wider impact or implications for charities generally or for a particular group of charities
  - where the issue is part of a wider trend, whether for the charity or a sub sector or charities generally
  - the complexity of the issue, and whether it might set a precedent
  - any wider public interest considerations
  - other matters which our experience or knowledge tell us warrant action in the public interest

### Stage three – what is the most effective response in the circumstances?

We will consider the best way of resolving the case or issue given

- what guidance already exists
- whether our involvement will have a significant impact on resolving the issue
- the extent of any negative impact our involvement will have on the charity
- the risks and impact of not acting
- the resource implications

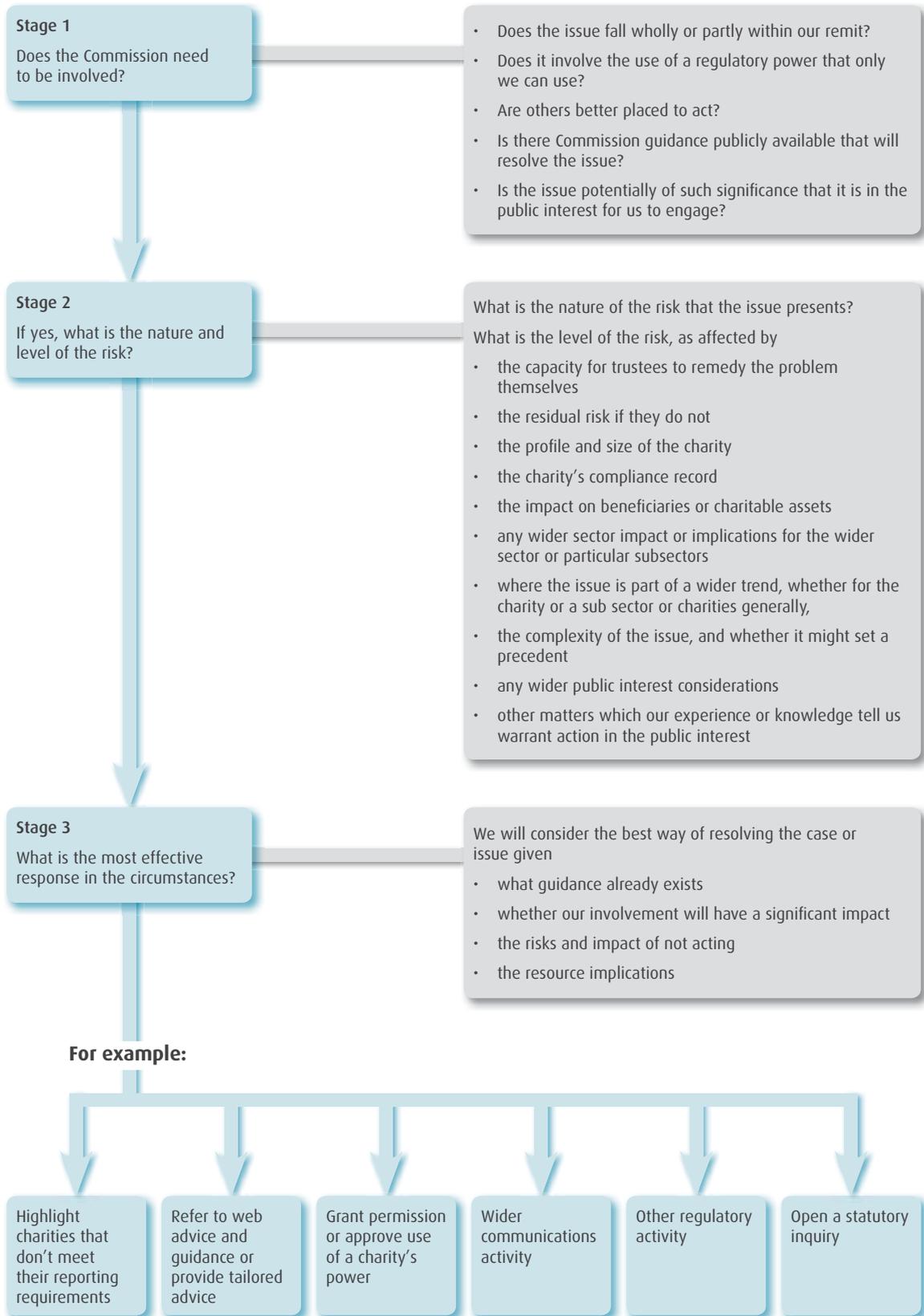
An increased level of involvement with a charity or on an issue does not necessarily mean that something has gone wrong. It may simply mean that the risk assessment has identified the potential impact to warrant greater regulatory involvement or scrutiny.

We will periodically review our level of involvement for particular cases or pieces of work. We will also keep under review whether others are better placed to engage or take an issue forward.

In the most serious cases of regulatory concern we will determine whether to use our formal investigatory powers and open statutory inquiries. Because of the potential resource implications for us, and for the charity, we will only enter into such engagements where necessary, and in a limited number of cases.

*Statutory inquiries into charities: Guidance for charities and their advisors (CC46)*

## Our regulatory approach to protecting the public’s interest in charity – how we assess risks and manage resources



## Complaints and concerns about charities

We will assess complaints and concerns about charities that are reported to us against the framework set out above, to determine which cases to engage with, and what form that engagement will take.

We do not act as a complaints service looking at all complaints on behalf of complainants. We assess and identify if there is a regulatory issue or concern and if it satisfies the test above we may become involved. We may refuse to take up a concern, if we judge it not to be in the public interest to use our resources investigating or resolving it.

Our legal decisions are appealable to the First-Tier Tribunal (Charity) and Courts.

As a public body, we are subject to public law principles that set standards for administrative decision-making, human rights, equality, and discrimination law, and the Freedom of Information Act 2000. We also adhere to the Data Protection Act 1998 in our treatment of personal data.

Our website explains how [complaints about the Charity Commission](#) will be dealt with.

## What we do not do

We do not:

- give advice to individual charities in situations where they can access the information they need from the guidance on our website or elsewhere
- get involved where a member of the public disagrees with decisions made lawfully by the charity's trustees, no matter how unpopular those decisions may be
- engage in internal or external disputes that are the responsibility of trustees to resolve
- engage in issues that do not pose a serious risk to a charity's status, assets, services or beneficiaries
- deal with incidents of poor service from a charity where there is no general risk to its services, its beneficiaries or its resources
- get involved in issues that are the responsibility of another statutory or supervisory body
- deal with issues relating to a disagreement about the terms of delivery of a contract or level or quality of service provided by charities
- get involved where legal proceedings are being taken by another party against a charity except in circumstances where we need to consider giving legal permission or formal advice to the trustees

### Example

A complainant approaches us with an issue regarding a charity that they believe to be in breach of planning regulations. The complaint relates to planning issues and not charity law or risk to charity assets. We signpost the charity to web guidance which explains that it is not an issue for the Charity Commission to deal with, and that it is for the relevant planning authority to consider.