

Tackling abuse and mismanagement

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

2014-15



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.

Over recent years, we have changed our approach to our compliance case work. The number of charities in inquiry has increased and 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 are proportionate in our approach to 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 should 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 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 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. The purpose of an inquiry is to establish the facts. 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 powers

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

- giving advice and guidance both generally and in specific cases
- holding general meetings explaining legal requirements to trustees
- meeting individual charities to explain compliance issues which affect them
- seeking assurances and voluntary undertakings from trustees
- warning charities about the consequences of non-compliance
- carrying out inspection visits

In the context of a statutory inquiry, we can make use of certain additional compliance powers, which fall into the following 3 categories.

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 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 have regard to 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 necessary.

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 and mismanagement in the administration of the charity. Before using permanent protective powers we make sure that they are necessary and proportionate.

Permanent protective powers include:

- removing a trustee, officer, agent or employee of a charity who has been responsible for or privy to misconduct or mismanagement in the charity or has contributed to it or allowed it to go on
- establishing a scheme for the administration of the charity
- directing specific action with regard to the charity's administration or its property

4. Working with other agencies

We work closely with other agencies to improve outcomes. 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, the Financial Conduct Authority, the Insolvency Service, and the Welsh Government. We also work with Ofsted, the Department for Education, the Higher Education Funding Council for England, and the Higher Education Funding Council for Wales. We exchanged information with other agencies through the formal statutory gateway in the Charities Act 2011 **2,350** times in 2014-15.

While we are not a prosecuting authority, we work closely with law enforcement agencies to bring people to justice. This includes supporting police investigations by providing witness statements and giving evidence in court. We provided **30** witness statements in 2014-15.

For example, an officer of the commission provided a witness statement in support of a civil cash seizure investigation, conducted under the Proceeds of Crime Act 2002 ('POCA'), and participated in the interview of a then trustee of the registered charity Worldwide Ummah Aid. The witness statement was used by the Metropolitan Police to support an application to forfeit the funds seized. This application was successful and the funds were forfeited under s.298(2) of POCA in October 2014. As a result of regulatory concerns about the management of the charity arising from the cash seizure investigation we had [opened an inquiry into the charity](#) in August 2014.

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 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 **6** alerts in 2014-15. These included alerts on:

- funding of non-charitable organisations
- the importance of reporting serious incidents
- public guidance to the public on giving safely to charities helping the victims of the humanitarian disaster in Gaza

Our alerts give regulatory advice and guidance under section 15(2) of the Charities Act 2011 and so we expect trustees of all charities to read our alerts and follow our guidance so as to protect their charities against harm.