



Risk framework

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Introduction

Background

The Charity Commission (the 'Commission') is the regulator of charities in England and Wales. It is an independent, non-ministerial government department with quasi-judicial powers. It is responsible for deciding if organisations are charitable and should be added to the register of charities (the 'register') and for maintaining the register. It operates within a clear legal framework and follows published policies and procedures to ensure that it is proportionate in its approach.

Charity trustees are trusted by the public to manage charities. Their duties and responsibilities are explained in the Commission's guidance.

The Commission's regulatory role focuses on trustees. If something goes wrong in a charity, the Commission expects the trustees to take responsibility for putting things right.

The Commission gets involved when it is concerned that trustees are not fulfilling their duties towards their charity. That may be either because the trustees do not understand their duties, or because they are not willing or able to meet them.

Where the matter is serious, the Commission expects trustees to have notified it by making a '[serious incident report](#)'. Where the Commission has to intervene, it expects trustees to work with it to resolve the issue.

The Commission may open a statutory inquiry in the most serious cases of abuse, which gives it certain statutory powers (which are referred to in 'Investigate, monitor and enforce'), when charities' assets, reputation, services or beneficiaries have been significantly harmed or are at serious risk of abuse or damage. Statutory inquiries aim to stop abuse or damage and put charities back on a proper footing for the future.

The Commission's role

Parliament has given the Commission 5 statutory objectives. These are to:

1. Increase public trust and confidence in charities.
2. Promote awareness and understanding of the operation of the public benefit requirement.
3. Promote compliance by charity trustees with their legal obligations in exercising control and management of their charities.
4. Promote the effective use of charitable resources.
5. Enhance the accountability of charities to donors, beneficiaries and the general public.

The Commission has a wide discretion to decide how to achieve its objectives and carry out its functions. Its decisions can be appealed to the First-Tier Tribunal (Charity) (the 'tribunal') and certain of its decisions may also be open to challenge in the High Court.

The Commission's [Statement of Regulatory Approach](#) explains that it can best fulfil its statutory objectives, with the resources at its disposal, by:

- concentrating on promoting compliance by charity trustees with their legal obligations
- enhancing the rigour with which the Commission holds charities accountable
- ensuring that the Commission upholds the definition of charity under charity law

The Commission will also seek to enable charities to make effective use of their resources and to comply with their legal requirements by the provision of appropriate guidance.

Protecting public trust and confidence in charity is at the heart of what the Commission does. Through its work the Commission will:

- ensure that charity trustees carry out their duties and responsibilities as required by law
- 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' operate wholly in pursuit of their charitable purposes
- promote high standards of governance and accountability by charities
- ensure the public has as much free access as possible to appropriate information about charities and their activities

The risk framework

The Commission's [Strategic Plan 2015-18](#) sets out its strategic priorities for this period; it includes priorities relating to risk.

This risk framework outlines:

- how the Commission operates and oversees risk-based regulation through risk assessment and management
- how it decides when and how to engage
- the possible outcomes of its engagement

This risk framework is used as the starting point by the Commission for considering and deciding on both proactive and reactive work. This includes developing policy and new guidance and, in some cases one to one regulatory engagement with charities.

This risk framework helps ensure the Commission's regulatory engagement with charities is proportionate, accountable, consistent, transparent and targeted as required by the Charities Act 2011. It sets out 3 questions that the Commission will answer before it takes action:

1. Does it need to be involved?
2. If yes, what is the nature and level of risk it is addressing?
3. What is the most effective response in the circumstances?

What the Commission does

Prioritise risk

The Commission's regulatory priority risk issues are:

- **fraud and financial abuse** - fraud and other financial abuse of charities (including abuse arising out of conflicts of interest), including money laundering
- **safeguarding**¹ - serious harm or risk of harm to beneficiaries and in particular vulnerable beneficiaries
- **terrorism** - misuse of a charity for terrorist purposes or to foster extremism (including charity links with or support for terrorism, financial or otherwise, and connections to a proscribed or designated organisation, person, or entity)
- **other significant breach of trust or non-compliance that impacts significantly on public trust and confidence in charity**

These priority risk areas are set out in more detail in the Annex. Under each of these priority areas the Commission has listed in the Annex examples of the indicators that it believes can potentially pose a risk to a charity. The Commission regularly reviews and updates its priority risk issues and monitors high risk issues as it analyses its casework and identifies changes in risks.

Assess and manage risk

The Commission's 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

The nature and level of risk, and how serious it is, affects what the Commission does. The Commission assesses this on a case-by-case basis. See 'what is the nature and level of risk it is addressing'.

The Commission cannot act as trustee and make decisions in the administration of a charity. The Commission seeks to provide appropriate and user friendly guidance to help trustees comply with their duties and responsibilities. See 'Provide regulatory advice and guidance'.

The Commission will not hesitate to use its powers to intervene when trustees do not act lawfully and reasonably²; the Commission has no power to intervene or overturn their decisions if lawful and reasonable. This is the case no matter how unpopular the trustees' decision may be. In these cases, there will be no issue of regulatory concern or interest to the Commission.

1 The Commission's role is limited to ensuring that charities have appropriate safeguarding policies in place and comply with them and to liaise with other agencies and authorities which have primary responsibility for safeguarding.

2 By acting reasonably the Commission means making decisions which are within a range of reasonable decisions a trustee can make, in the particular circumstances and acting in compliance with their trustees' duties.

If the Commission is satisfied that trustees have already taken appropriate steps to address points of concern, it may decide that no further action is required. However, where the nature and level of the risk demands it, the Commission will respond with strong and effective regulatory engagement.

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

In making its decisions about targeting its resources, the Commission takes into account:

- the priority risk issues referred to in the Annex
- the data, information and knowledge it gathers and receives as regulator from and about charities - including from the information charities include in the annual return and accounts, from the public in the form of complaints and from its work with other agencies
- its awareness of changes to the environment in which charities are operating
- its work to assess the type and nature of the risks affecting:
 - the sector
 - a particular sub-sector
 - a significant number of charities
 - public confidence in the integrity of charities more generally

Take trustee conduct and response into account

The risk assessment and outcome are both affected by the conduct and response of the trustees. The Commission deals differently with cases where damage has been done, to those where the risk is emerging and the full impact has not yet materialised. The Commission will consider the extent of the impact on, or damage to, public trust and confidence when deciding on its regulatory engagement.

Trustees who have acted honestly and reasonably

The Commission accepts that charities and trustees who are mostly unpaid volunteers will get some things wrong and make mistakes.

The Commission monitors the types of queries it receives and addresses minor issues of non-compliance by:

- developing and updating its online guidance
- signposting to other resources and organisations which can help with promoting good practice

Where trustees have acted honestly and reasonably and are willing to put matters right themselves, the Commission's engagement is likely to be limited to:

- directing them to relevant online guidance to resolve the mistake
- providing additional specific advice and guidance

Where the impact of their actions is significant, the Commission expects trustees to act responsibly, to follow the Commission's advice and guidance and to deal with the consequences of the breach without further regulatory intervention.

Trustees who have been careless or reckless

Where there are indications that the trustees have been careless or reckless, the Commission will scrutinise their conduct and examine what has gone on closely.

If the trustees are capable and willing to put matters right, the Commission expects them to do so; the regulatory outcome may include agreeing an action plan for a charity and monitoring to ensure this has been implemented.

There has been deliberate or wilful wrongdoing or abuse that cannot be stopped

The Commission will use its regulatory powers to remedy a breach or to minimise its impact where:

- there has been deliberate or wilful wrongdoing
- the trustees are willing to act but are unable to stop abuse of the charity themselves
- the trustees are unwilling to act themselves

It may compel trustees to provide information or to take specific protective action to protect their charity from, or to remedy, this abuse or to ensure ongoing compliance.

Register charities

The Commission is responsible for deciding if organisations meet the legal test for charitable status and are required to register. On application to register the trustees are required to make a declaration that they will comply with their responsibilities as set out in our guidance CC3 'The essential trustee'.

The Commission makes a formal assessment of all applications for registration on a case-by-case basis using this risk framework. In assessing registration applications, it considers a number of factors, including, in no priority order:

- whether each of the organisation's purposes is charitable and whether the applicants have demonstrated that the trustees will carry out its purposes for the public benefit
- whether the organisation has a complex structure
- who the trustees are and whether any are disqualified from acting as trustees
- whether the organisation satisfies other requirements for charities relating to matters such as its name, governing document, trustees, finances and regulatory risk issues, for example safeguarding in relation to charities working with vulnerable beneficiaries
- whether to monitor the charity after it has been registered to see whether any concerns the Commission expressed prior to registration have been addressed

At registration the Commission expects trustees to be clear about their charity's purposes and capable of complying with all the requirements of charity law.

This means that:

- the onus is on an organisation to demonstrate its charitable status – the Commission provides general online guidance to assist in this

- the Commission expects trustees to have satisfied themselves that their organisation is charitable and to have understood their role and responsibilities as trustees
- the Commission will focus more of its resources on novel and complex applications which involve issues that might affect charitable status or which test or develop the boundaries of charity law

Maintain the register

For reasons of accountability and transparency, the Commission requires charities to provide key public information, and to do so promptly.

It will:

- ensure the up-to-date register is freely available online
- display key information about charities' purposes and operation
- highlight on the register those charities which fail to comply with basic information requirements, such as filing annual returns and accounts, or which are the subject of a statutory inquiry
- make it clear to trustees that they have a duty to supply accurate and complete information
- routinely check a sample of accounts each year and take appropriate follow up action
- monitor trends in data it receives from charities

Engage as a regulator

The Commission deals 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

See 'Assess and manage risk'.

The nature and level of risk, and how serious it is, affects what the Commission does. The Commission assesses this on a case-by-case basis.

If the Commission decides to engage, based on the risks, its regulatory engagement can range from concluding the trustees have matters in hand to opening a statutory inquiry, which enables the Commission to use wide ranging powers. See 'Possible outcomes'.

Complex, serious, novel and higher risk issues are likely to trigger regulatory engagement with a charity.

The Commission does not get involved in internal disputes. Where an internal dispute does arise, the Commission expects charities to make serious attempts at a mediated settlement. It may intervene where regulatory intervention is appropriate, for example to ensure there is a validly appointed trustee body.

Investigate, monitor and enforce

The Commission has a range of statutory powers that it can use to stop abuse and protect charitable assets and beneficiaries. These include:

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

Where there are serious concerns of abuse in a charity, the Commission may open a statutory inquiry under section 46 of the Charities Act 2011.

The power to open an inquiry is discretionary. The decision to open an inquiry into a charity, or class of charities, is subject to review in the tribunal. A decision not to open an inquiry is not subject to review in the tribunal.

Inquiries can be both resource and time intensive for the charity under investigation and the Commission. The Commission will be clear about what issues it is investigating and will endeavour to conduct investigations in a timely manner.

The Commission is not a prosecuting authority³. The investigation of alleged criminal offences is the responsibility of law enforcement agencies.

The Commission works with other agencies, regulators, and government departments to help it pursue its statutory objectives, to complement its work and to avoid dual regulation. Where there is a problem within a charity that is being adequately addressed by another agency (or agencies) the Commission will work with them to add value.

The Commission may engage with the charity's trustees, beneficiaries and/or employees and with third parties, including legal advisers, independent examiners and auditors. The Commission works closely with independent examiners and auditors, in particular where there are allegations of fraud or financial abuse.

The Commission also monitors charities. Monitoring may include:

- corresponding with or interviewing trustees
- visiting the charity's premises
- inspecting the charity's books and records

This may result in providing the charity's trustees with regulatory advice, and ensuring the advice has been followed; opening a compliance case or, in the most serious cases, a statutory inquiry. Monitoring also includes following up on concerns or questions raised during the registration process.

³ The Commission may however ask others to prosecute offences on its behalf and may occasionally consider private prosecutions.

Promote the charitable resources objective

There are around one million charity trustees, most of whom are unpaid volunteers. They are often new to the role with little knowledge or experience of what being a charity trustee entails.

It is an essential part of the Commission's regulatory role, and a strategic priority, to encourage and enable trustees to run their charities effectively.

The Commission does this by:

- providing regulatory advice and guidance
- giving trustees permission to act where they would otherwise be precluded from doing so
- approving the use of charities' powers

Grant permissions or approve the use of charities' powers

It is the responsibility of trustees and their advisers to approach the Commission for permission if required. The Commission expects them to provide all relevant material from the outset. If they do not, the Commission is likely to reject the application at an early stage.

Trustees should use the Commission's general guidance available on [GOV.UK](https://www.gov.uk) to identify whether they require consent for a particular action. See 'Provide regulatory advice and guidance'.

The Commission will give authority where it is both necessary and where the trustees have no other mechanism for achieving the change.

This means the Commission:

- will not give 'comfort' orders where trustees have a power to act
- will limit its engagement to authorising exactly what it needs to authorise

The Commission applies the principle of proportionality when exercising its enabling powers. It uses streamlined processes, including online application forms whenever possible.

All 3 stages of this risk framework (see 'How the Commission decides when and how to engage') apply when the Commission is exercising its powers.

Provide regulatory advice and guidance

The Commission expects all registered charities to operate in accordance with charity law and to have regard to its published regulatory guidance.

The Commission will provide regulatory advice where it is appropriate and proportionate to do so.

Most regulatory advice from the Commission is now delivered through online guidance, including guidance aimed at particular types of charity.

It will give specific advice and guidance on a one-to-one basis to charities only:

- in circumstances where the guidance cannot be given online
- where the Commission is the only body which can give authoritative advice (apart from the court)
- where failure to give advice would have a serious impact on trustees' ability to comply with their legal duties to administer charities and therefore on public trust and confidence

The Commission expects trustees to follow any regulatory advice it gives and will follow up to ensure it has been acted on. If trustees do not follow advice they need to be able to justify with good reason why not.

Failure to follow advice previously given by the Commission, including through our published guidance is a factor that will affect the assessment of risk. It may be used as evidence if the Commission is considering further regulatory action.

How the Commission decides when and how to engage and possible outcomes

Stage 1: does the Commission need to be involved?

Before the Commission can decide whether it needs to become involved in matters affecting a particular charity, it needs to identify what the key regulatory issues are.

Sometimes the issues will be obvious. Sometimes the Commission may need to ask questions to confirm or identify what the issues are and whether there is a role for it.

The Commission will not necessarily look at all the issues raised with it about a particular charity. This is the case even if it decides to engage further on a specific matter based on the risks.

The Commission's starting point is to ask:

- does the issue fall wholly or partly within its remit?
- is it confident that the trustees are able and willing to resolve the issue themselves?
- 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 the Commission to engage?
- does it involve the use of a regulatory power that only the Commission can use?
- if not, are other public agencies better placed to act?

The Commission will not take the matter forward where:

- it is clear that an issue is not within the Commission's regulatory remit
- it is otherwise not necessary for the Commission to act

Stage 2: if yes, what is the nature and level of risk it is addressing?

This stage assesses the nature of the risk. It also seeks to determine (based on the information available at that time) whether the overall level of risk is low, medium or high.

The level and nature of the risks are affected by various matters. The key influencers are:

- the nature of the regulatory issue itself and how serious it is
- other factors which affect or modify the initial assessment, such as the amount of money at risk or the level of harm (see 'Modifying factors')

Some issues may start off as being relatively low risk but, when combined with a number of other factors, become high risk. Similarly, high risk issues may become lower risk if they are being effectively managed.

This process allows the Commission to achieve consistency, fairness and proportionality, in accordance with the principles of best regulatory practice.

The nature of the risk that the issue presents

The Commission is most concerned with addressing the regulatory priority risk issues referred to in the Annex.

Modifying factors

Risk is not just about what the issue is. Applying 'modifying factors' gives the Commission flexibility in its approach and response, depending on the circumstances of the case.

When dealing with regulatory concerns, additional factors the Commission also considers will be how the problem arose and how the trustees are dealing with the issue.

It uses the media, parliamentary and ministerial interest as indicators of public interest in a charity or charities and therefore relevant to its risk assessment.

However, this does not mean that the Commission's actions and decisions are improperly influenced by the media or by any parliamentary agenda. Nor does it mean the Commission will always examine an issue raised by the media. It will depend on how serious the issue is and what supporting evidence there is.

The Commission also has regard to other risk indicators, such as the potential risk indicators referred to in the Annex.

Some modifying factors can either raise or lower the level of risk depending on the circumstances.

For example, in some situations a charity being large in size might lower the risk because it should have the infrastructure in place to be able to resolve the issue itself. In other cases, a charity being large in size may raise the risk. This may be because the impact of the regulatory concern may be magnified through the scale of its operations.

The following are examples of modifying factors which the Commission believes are key in assessing the level of risk in a case:

- the capacity and willingness of trustees to remedy the problem themselves - see 'Take trustee conduct and response into account'
- the residual risk if they do not
- the profile, size and area of operation 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

Stage 3: what is the most effective response in the circumstances?

The Commission will consider the best way of resolving the case or issue given:

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

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

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

Possible outcomes

Where the Commission undertakes a regulatory engagement, the level of that engagement, and the outcome will depend on the circumstances of each case.

In registration work, the possible outcomes will be:

- the Commission registers the organisation as a charity
- the application is accepted and the charity is referred for monitoring
- the applicant withdraws the application
- the Commission rejects the application

In other regulatory work, the possible outcomes will be:

- signposting to online guidance
- signposting to another relevant body/regulator, better placed to deal with the issue
- updating the register to reflect changes or removing a charity from the register if it has dissolved or otherwise ceased to exist or operate
- working with the trustees and their advisers
- monitoring the charity
- highlighting on the register charities that do not meet their reporting requirements
- issuing an action plan to trustees
- other regulatory engagement, including in the most serious cases of regulatory concern the use of formal investigatory powers and the opening of a statutory inquiry

Annex: Priority regulatory risk issues and examples of potential risk indicators

