

UK Charity Commission

An overview

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1. UK CHARITY COMMISSION – FUTURE DIRECTIONS 2005 - 2008

1.1 Mission

- (a) Enabling charities to maximise their impact.
- (b) Ensuring compliance with legal obligations.
- (c) Encouraging innovation and effectiveness.
- (d) Championing the public interest in charity.

To promote the public's trust and confidence in charitable activity.

1.2 Delivery

- (a) Continually improving services, assisting charities to deliver by creating a single Charity Services Division.
- (b) Proportionate regulation:
 - (i) taking into account the issue, the risk involved to the charity and its beneficiaries and the capacity of the charity to comply;
 - (ii) only ask for information that is needed;
 - (iii) standardise information requirements;
 - (iv) increase thresholds to minimise the regulatory burden for smaller charities;
 - (v) focus where the risk is greatest.
- (c) Guide charities in complying with their legal obligations:
 - (i) emphasis on enforcement role;
 - (ii) separate guidance about what charities must do to meet legal obligations and what they should do to meet best practice;
 - (iii) encourage self-regulation in different parts of the sector.
- (d) Sharing knowledge and working together across the sector:
 - (i) creating Charity Effectiveness Division;
 - (ii) encourage innovation and collaborative working across the sector.
- (e) Enhancing trustees' knowledge and understanding:
 - (i) interactive email advice service;

- (ii) web-based discussion groups on particular issues or for particular types of charity;
 - (iii) improve induction of new trustees;
 - (iv) raise standards of governance in the sector.
- (f) Increasing public understanding and support for charities:
- (i) create Charities Information Division to help the public make better-informed choices about how they engage with charities;
 - (ii) enhance ability to conduct research;
 - (iii) report regularly on key trends and the state of the sector overall;
 - (iv) develop a Public Affairs function;
 - (v) hold public annual meeting where public can hold Commission accountable for its performance.

2. THE CHARITY COMMISSION AND REGULATION

2.1 Approach

Approach is to promote compliance with charity law

Regulates on behalf of those who give to and benefit from charities and on behalf of the wider society to:

- (a) ensure legal requirements are met;
- (b) charities equipped to operate properly and within the law;
- (c) charities are run for public benefit;
- (d) charities are independent;
- (e) trustee's take decisions free of control or undue influence;
- (f) detect and remedy serious mismanagement or deliberate abuse by or within charities.

2.2 Functions

The Commission is established by law as the regulator and registrar for charities.

It:

- (a) ensure compliance with charity law;
- (b) deals with abuse and poor practice;

- (c) enables effective legal, accounting and governance frameworks;
- (d) promotes sound governance and accountability.

The Commission gives advice on what the law requires and on good practice and aims to make a clear distinction between the two.

Information on charities is made public.

2.3 Assessment of Performance

The Commission assesses how well charities in general perform.

It does this by:

- (a) recognising new charitable purposes;
- (b) giving advice and guidance;
- (c) visiting charities to review their activities, constitutions and administration;
- (d) making legal schemes or orders modernising the constitutions of existing charities.

The Commission's compliance expectations are higher in the case of larger charities with paid staff and access to professional advice.

2.4 Intervention and Enforcement

Intervention and enforcement is undertaken by the Commission by:

- (a) evaluating complaints;
- (b) opening formal investigations on mismanagement and any other action which puts charitable assets at risk of loss, damage or misuse;
- (c) working in partnership with other regulators.

Misconduct is any act which the person committing it knew, or ought to have known, was criminal, unlawful or improper.

Mismanagement includes acts that may result in significant charitable resources being misused; a charity's reputation being seriously undermined; or in the people who benefit from the charity being put at risk.

The Commission has powers to intervene to protect charity assets or if formal investigations establish serious mismanagement or abuse.

Intervention will usually be:

- (i) to prevent misconduct or mismanagement from continuing or being repeated;
- (ii) removing those responsible;

- (iii) placing charitable assets under other control;
- (iv) ensuring the charity's assets are secure;
- (v) ensuring the charity will be properly administered in future.

2.5 Other Regulators

The Commission works closely with other regulators.

It is not a prosecuting authority but is authorised to work with the police, the Crown Prosecution Service and other authorities (eg Inland Revenue).

2.6 Charity Tribunal

A charity may appeal a legal decision of the Commission through the Commission's decision review process. Once the decision review process is exhausted and the Commission's 'final' decision is made (and published on the Commission's website), the opportunity to make an appeal to the Charity Tribunal normally becomes available.

The Charity Tribunal is part of the Tribunals Service, an executive agency of the Ministry of Justice.

The Tribunal provides a cheaper, independent route of appeal for charities which have exhausted the Commission's decision review process.

3. UK CHARITY COMMISSION GOVERNANCE FRAMEWORK

3.1 Structure

A body corporate with a non-executive Board consisting of the Member of the Commission which is responsible for its governance, and a Chief Executive responsible for its management.

3.2 Aims

- (a) To clarify the complementary roles and responsibilities of the Board and the Executive team.
- (b) To maximise the value to the Commission of the skills, knowledge and experience of its members.
- (c) To ensure that the Members of the Commission operate in accordance with best practice and in a way that commands the confidence of the Commission's stakeholders.

3.3 Vision, Mission and Values

The Commission is the independent regulator for charitable activity in England and Wales. It:

- (a) ensures legal compliance;

- (b) enhances accountability;
 - (c) encourages effectiveness and impact;
 - (d) promotes the public interest in charity,
- to promote the public's trust and confidence.

The Commission is vested with legal powers relating to:

- (i) registration of charities;
- (ii) giving advice and conferring regulatory consents;
- (iii) taking action where there is or may be mismanagement, including instituting inquiries, removing or suspending trustees, appointing interim managers and protecting charity property and / or other assets.

3.4 Legal Context

The Commission operates under the Charities Act 1993.

Members must collectively have knowledge and experience of:

- (a) the law relating to charities;
- (b) charity accounts and the financing of charities;
- (c) operation and regulation of charities of different sizes and descriptions.

At least 2 Members will have appropriate legal qualifications.

The Board is responsible for ensuring effective fulfilment of statutory obligations and the appropriate exercise of legal powers vested in the Commission under the Act; the overall strategic direction; and monitoring the performance of the Chief Executive, amongst other things.

Members are appointed through an open recruitment process for their generic governance competencies and their specialist knowledge, skills and experience.

3.5 Status and Independence

Non-Ministerial Government Department.

Part of Civil Service (Public Service is the Australian term).

Independent of Ministerial influence and the sector it regulates.

Quasi-judicial functions similar to those of the UK High Court.

Required to report to Parliament annually on its performance.

Minister for the Third Sector statutorily tasked with appointing the Chair and the Members.

Members required to act in the public interest. Provisions exist for the registration and declaration of interests and withdrawal from meetings prevent Members from being influenced, or appearing to be influenced, by their private interests.

3.6 Accountability

It is a corporate body and its legal powers are exercised by the corporate body.

Members are collectively accountable.

The Commission is held accountable to Parliament through:

- (a) tabling its annual report before Parliament;
- (b) annual auditing of accounts by National Audit Office;
- (c) periodic reports by NAO on economy, efficiency and effectiveness of use of resources;
- (d) periodic examinations by Public Accounts Committee of House of Commons;
- (e) review of complaints handling by Parliamentary Ombudsman;
- (f) High Court review of decisions made by Commission in exercising its legal powers (HC may overturn those decisions).

The Commission demonstrates accountability to its stakeholders by:

- (i) publishing its Service Delivery agreement with Treasury (ie how target will be met and performance improved);
- (ii) consulting with stakeholders on major new policies or operational practices;
- (iii) conducting Board meetings in public;
- (iv) publishing information regarding operation of Board, minutes of meetings and reports;
- (v) holding an annual public meeting to review performance;
- (vi) publishing Inquiry Reports
- (vii) internal review processes that allow decisions to be challenged without High Court intervention and giving reasons for the decisions to those affected by them;
- (viii) complaints process that includes independent review.

The roles of the Chair and the Chief Executive are designed to lead the Board and the Executive team towards the realisation of the Commissions goals and to ensure the Commission is accountable to Government, stakeholders and the public.

3.7 Principles of Good Governance

Collective accountability – the Board acts collectively in making decisions.

The Board pays particular attention to the following:

- (a) maximising the impact and effectiveness of the Commission;
- (b) identifying and managing risks and seizing opportunities;
- (c) listening and responding to stakeholders;
- (d) ensuring its independence;
- (e) ensuring prudent use of public funds; and
- (f) ensuring the Commission acts fairly, responsibly and ethically.

Established clear levels of delegated authority with operational guidance for the delegation of its powers to staff.

The Board will establish, where necessary, Committees or Task Forces with clear terms of reference to fulfil ongoing or time limited governance functions.

Annual performance evaluations of Board performance to examine impact and effectiveness.

Individual accountability by Members of the Commission to act in good faith and in the best interests of the Commission.

Members not to use position or information for personal or private benefit.

Members must register their interests and withdraw from meetings where required.

Members must not accept gifts, cash and must declare any permitted receipts of gifts, etc on hospitality register whether accepted or not.

3.8 Board Meetings

Board meetings are open and transparent – key decisions (on interpretation of charity law, Commission policy and other substantive issues) made in public.

Public may attend bi-monthly Board meetings.

Consideration given, following set guidelines, as to whether public interest disclosure outweighs public interest in withholding information.

Agendas, papers and minutes published on website.

4. RISK AND PROPORTIONALITY FRAMEWORK FOR THE COMMISSION'S COMPLIANCE WORK

4.1 Role

The Commission's Compliance and Support function is responsible for delivering compliance objectives involving regulatory work with charities where their assets, services or beneficiaries are at serious risk of abuse or damage.

Its role is to:

- (a) identify and investigate apparent misconduct or mismanagement in the administration of charities;
- (b) resolve difficulties;
- (c) provide support
- (d) intervene to protect the charity; and
- (e) use the Commission's legal powers.

Aim to provide streamlined and effective regulation while minimising the burden on charities.

The key driver is serious incident reporting. The Annual report requires charities to declare that they have reported serious incidents to the Commission.

4.2 Criticisms

2006 stakeholder survey revealed:

- (a) 50% of respondents thought opening fewer investigations is a positive step;
- (b) the Commission does not have a decisive system in place for when it will or will not intervene
- (c) the Commission needs to develop its risk framework to alert it to possible illegal and/or improper behaviour at an earlier stage.

Case-specific criticism:

- (i) Commission's response disproportionately tough;
- (ii) do not take into account charity's capacity to comply;
- (iii) inappropriately 'light-touch' approaches made.

4.3 Objectives

Commission's objectives to achieve statutory objectives in risk framework:

- (a) deliver timely, effective, proportionate and target compliance regulation;

- (b) ensure intervention is appropriate and reflects the seriousness of the problem;
- (c) identify charities facing problems at an early stage and provide support – move from reactive case work to proactive case work;
- (d) use information and intelligence about charities to inform how it allocates its regulatory resources;
- (e) build effective partnerships with other regulators, law enforcement agencies and sector bodies in support of risk regulation;
- (f) strong evidence-based approach, based on evaluations and research into how problems arise in charities;
- (g) ensure staff are well trained to implement risk-based regulation.

The Commission seeks to revise its approach so that it does not place an unacceptable regulatory burden on charities that would stifle innovation and adaptability. It seeks to respond flexibly and proportionately in deciding whether to take regulatory action against trustees.

It lists the most serious issues and areas of greatest risk for charities.

It employs levels of tolerance and identifies a number of 'zero-tolerance' issues.

The Commission's actions are prioritised and its resources are targeted to where the risks are highest. In serious cases it may open a statutory inquiry under the Charities Act 1993.

The seriousness of the issue, whether the risk is ongoing and the level of cooperation of trustees will be additional factors to be considered.

Outcomes are published on the website.

5. UK CHARITY COMMISSION ANNUAL REPORTING REQUIREMENTS

5.1 Summary of Requirements

Income in financial reporting period	Basic register information – Annual Update (Part A Charity Information)	Reporting serious incidents declaration	Financial information (Part B)	Summary information Return (Part C)
£10k or less	✘			
>£10k - £25k	✘			

Income in financial reporting period	Basic register information – Annual Update (Part A Charity Information)	Reporting serious incidents declaration	Financial information (Part B)	Summary information Return (Part C)
>£25k - £500k	x	x		
>£500k - £1M	x	x	x	
>£1M	x	x	x	x

Charities submit the information required to complete the relevant Parts of the register.

Trustees of charities with income exceeding £10,000 in their last financial year are required to complete and submit an Annual Return and a copy of the trustees' annual report and accounts. This must be done within 10 months of the end of the charity's financial year.

Charities with an annual income of £10,000 or less do not have to submit an Annual Return or a copy of their trustees' annual report and accounts but are required to keep their Register details up to date. To ensure that Register details are up to date and to confirm that they are still operating, the Commission asks smaller charities to submit an Annual Update form.

Charities have 10 months from the end of their financial year to file their documents. The Commission offers advice and guidance to help them to meet this deadline.

As part of a charity's entry on the Register the Commission will indicate whether latest due documents have been received or are overdue.

The Commission has a statutory duty to maintain an accurate Register of Charities and to remove any charities that have ceased to operate or exist.

Charities failing to provide evidence of their activity and existence by submitting accounts, Annual Returns or Annual Updates will be sent a series of reminders. If the Commission has not received overdue documents, charities may be removed from the Register.

5.2 Charity Summaries

The purpose of the Summary Information Return (**SIR**) is to provide the public with better information about the work of charities. It is designed to give a summary of a charity's aims, activities and achievements and to enable charities to explain the factors that have affected their performance during the year.

The SIR was introduced in 2005, following extensive development and consultation with the sector and in response to an earlier Government report (Private Action,

Public Benefit. Strategy Unit, September 2002), which identified a lack of accessible and relevant information about charities.

The SIR forms part of the Annual Return that charities with an income exceeding £1million have to complete and submit to the Commission.

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