

Charities Back on Track

Themes and lessons from the Charity Commission's compliance work

2009-10



The Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. The Commission's objectives are set out in the Charities Act 2006. Our aim is to provide the best possible regulation of charities in order to help them increase their effectiveness. It is also part of our role to help enhance public trust and confidence in charities.

There are approximately 180,000 registered charities in England and Wales. Most charities have to register with the Commission, although some charities are not required to. All charities whether they are registered or not must prepare annual accounts and make them available on request. The duty to file accounts and the Trustees' Annual Report with the Charity Commission applies to all registered charities whose gross income exceeds £25,000. Registered charities with an annual income of over £10,000 must submit an annual return to the Commission.

The Commission provides a wide range of advice and guidance to charities and their trustees, much of which is available on the Commission's website, and can often help both dealing with and preventing problems. The Commission has powers to intervene in the affairs of a charity where things have gone seriously wrong.

The Commission is a risk-based and proportionate regulator. We target our resources where the risks are highest and where they are most likely to have the greatest impact. We engage with charities in a way which will make most difference to them and those who benefit from them. Our overall approach emphasises the provision of regulatory guidance and advice, the promotion of good practice, and ensuring that charities and their trustees comply with their legal obligations.

More information about the Commission together with a range of published guidance for charities can be found on our website www.charitycommission.gov.uk, or by contacting Charity Commission Direct:

enquiries@charitycommission.gsi.gov.uk

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A. Foreword

The Commission is the only government body with regulatory oversight of all charities subject to the law of England and Wales. We therefore have a unique overview of the sector, including of the range of problems that can occur in charities.

The charity sector is strong and flourishing and continues to enjoy high levels of public trust and confidence, as demonstrated by results of the most recent Public Trust and Confidence Survey.¹

The overwhelming majority of charities on the Commission's Register of Charities are well managed, effective organisations able to make a positive difference to the causes they work for. As this report demonstrates, in comparatively few cases are the problems so serious that they require a full investigation. Of the 180,000 charities registered in England and Wales, only 180 or 0.1% were subject to investigations opened during the period covered in this report.

However, there is room for improvement in the sector. The Commission remains concerned at the number of charities put at undue risk of abuse or harm as a result of weak governance and poor management. We are still seeing too many basic mistakes. It is clear that many charities still need to get the fundamentals right. Larger charities should be leading the way in this and are important role models to smaller charities. Failures by trustees to properly govern charities, poor financial management, lack of financial controls and inadequate accounting, record keeping and reporting continue to be problem areas. Charities' effectiveness in safeguarding vulnerable beneficiaries also remains an area of risk.

We also believe that trustees may still not be fully reporting serious incidents occurring within their charities to the Commission, despite an increase in the number of reports we received. Our view is that

there is significant underreporting given the overall number of registered charities and the concerns that are being identified from other sources.

This report includes real case studies from the Commission's compliance work for this year, outlining the relevant issues trustees can learn from the situations and problems the cases highlight. It is important trustees learn from the mistakes other charities have made, so that they can be better equipped to protect their own charities from undue harm.

It is trustees' responsibility to protect their charities and ensure they comply with the legal requirements. We provide a wide range of guidance on our website to help trustees to discharge their legal duties. We recommend trustees take time to read and make use of this guidance. If they do, it will go a long way to help prevent problems arising in the first place and reduce the risk of harm and reputational damage and ensure that their charities are effectively managed. As a consequence, the sector will remain strong.

As well as providing a resource for trustees, we also want this report to contribute to improving public understanding of the Commission's investigatory work and our role in protecting charities from abuse and harm. For this reason, we have included key facts, figures and analysis about the whole range of the Commission's compliance activity during the period. This allows us to provide a broad perspective on the extent and range of problems affecting the sector which we hope both the sector's and the Commission's stakeholders will find useful.

Kenneth Dibble
Executive Director, Legal Services and Compliance

¹ http://www.charity-commission.gov.uk/About_us/About_charities/initial_analysis.aspx

B. Summary of the year

This report highlights the key themes arising from the Commission's compliance and investigatory work during the period between 1 April 2009 and 31 March 2010.

This work is the responsibility of the Commission's Compliance Division, which carries out the Commission's statutory function to identify and investigate apparent misconduct or mismanagement in the administration of charities. It is also responsible for working with charities where their assets, services, beneficiaries or reputation are at serious risk of abuse or harm. More detail about compliance work is available on the Commission's website.

Based on our experience of investigatory and compliance work over recent years, and as set out in the *Risk and Proportionality Framework for the Commission's compliance work*, our assessment is that the most serious issues and areas of greatest risk for charities, in no order of priority, are:

- significant financial loss to the charity;
- serious harm to beneficiaries and, in particular, vulnerable beneficiaries;
- threats to national security, specifically terrorism;
- criminality and/or illegal activity within or involving a charity;
- sham charities set up for an illegal or improper purpose;
- charities deliberately being used for significant private advantage; and
- where a charity's independence is seriously called into question.

Concerns involving these and other issues come to us from a variety of sources, including from:

- charity trustees and employees;
- charity beneficiaries;
- charity donors;
- the general public;
- other regulators, and law enforcement and other government agencies;
- statutory whistleblowers, including charities' auditors and independent examiners;
- MPs and Assembly Members, the media and local communities; and
- our own monitoring work.

The work of the Compliance Division takes a number of forms, which are listed below, together with key headline figures about the extent of our activity during the financial year 2009-10.

B1. Assessments

All concerns of a serious nature raised about individual charities are referred to our Assessment Unit. These include serious concerns raised by members of the public or those connected with charities with Charity Commission Direct, the Commission's first point of contact.

The Assessment Unit applies the *Risk and Proportionality Framework for the Commission's compliance work* to decide whether we will examine the matter further and what the most appropriate course of action is. This may lead us to carry out an investigation or monitor the charities involved.

Most problems in charities can usually be resolved at the assessment stage by trustees, with the help of the Commission's regulatory advice and guidance. However, where serious concerns exist we may need to examine or investigate this further (see below).

This year, the Commission opened 2,434 new assessments and completed 2,615 assessments.

This compares to 1,504 assessments opened and 848 closed during the same time last year (2008-09).

The increase is largely due to our proactive monitoring work which identified, through automated data checks on charity trustees, a significant number of people disqualified from acting as trustees, which in turn required follow-up work in the form of assessments.

The total income of all the charities subject to an assessment during this period amounts to £13.9 billion, almost 25% of total sector income. This illustrates our risk-based and proportionate approach, which focuses our work on areas where the risks are highest, and our effectiveness in overseeing a significant proportion of the sector's assets.

Over 60% of assessment cases into serious concerns in charities were raised with us by external sources. Over half of these were from other regulators, law enforcement and government agencies, as well as from trustees themselves through reporting serious incidents in their charities to the Commission.

Some of the key causes of concern featuring in assessment cases include:

- serious failings in trusteeship or governance involving non compliance with trustee duties and responsibilities and breaches of trust arising in over two thirds of cases;

- concerns about the safeguarding of vulnerable beneficiaries in 11% of cases;
- issues of fraud and theft in 9% of cases;
- serious financial and fundraising concerns in 7% of cases; and
- concerns about a charity's campaigning and/or political activities in 1% of cases;

More information about the kind of issues and problems dealt with in our assessments are set out under **key themes** and you can find more detailed information about the way assessments are conducted in section D1.

B2. Investigations

The most serious concerns requiring further detailed examination are taken forward as investigations. Most are dealt with as investigations called **regulatory compliance cases**. The risk may be more limited and can be resolved in the end by providing regulatory advice and guidance to trustees, perhaps setting out what steps may be required of trustees to resolve the problems in an Action Plan, without the need to intervene immediately by using our legal powers. Where we think it helpful to other charities, or where it is otherwise in the public interest, we may publish a regulatory case report when these cases conclude. Further information about when we publish these and the criteria we use is on our website.

In cases of significant risk and serious regulatory concern we may investigate these through conducting a **statutory inquiry** under section 8 of the Charities Act 1993. The decision to open a statutory inquiry will be based on a number of factors, including evidence or serious suspicion of misconduct or mismanagement in the administration of the charity and/or risk to property.

The criteria we use are set out in our *Risk and Proportionality Framework for the Commission's compliance work*. We usually publish on our website a report called a **Statement of Results of Inquiry** into these cases when they are concluded.

All investigations are supported by multi-disciplinary teams, including our accountants and lawyers.

The number of new investigations we started remained at a similar level to the last two years.

This year, the Commission opened 180 new investigation cases, of which 9 were statutory inquiries.

We completed 121 investigation cases in total, of which 15 were statutory inquiries.

That compares to 2008-09, during which we opened 168 investigation cases, of which 19 were statutory inquiries.

The impact of our investigation work included:

- directly monitoring a total of £521 million of the charity sector's income through either statutory inquiry or regulatory compliance cases;
- directly protecting £29.56 million of charity assets at risk through those investigations;
- publishing 15 inquiry reports on our website;
- publishing 5 regulatory case reports on our website;
- 20 cases where the impact of our involvement protected vulnerable beneficiaries;
- 50 cases where the impact of our involvement protected the reputation of individual charities;
- 35 cases which helped protect the reputation of the sector;

- 19 cases successfully resolving significant conflict of interest issues;
- 43 cases where we provided regulatory advice and guidance in investigation work to ensure the charity's governance improved as a result of our engagement;
- 8 cases where we addressed serious concerns about charity fundraisers; and
- 11 cases where an internal dispute in a charity was successfully resolved and the charity is properly functioning again.

B3. Enforcement action

Our enforcement work includes regulatory action taken during investigations into individual charities. We can take enforcement action against charities in a number of ways using Orders and Directions (see Annex 6), which can include appointing interim managers to charities. We also maintain, on the Register of Removed Trustees, a list of individuals who have been removed from the office of charity trustee by an Order made by the Commission or the High Court on the grounds of misconduct or mismanagement in the administration of a charity, and who are consequently disqualified from acting as a trustee of a charity.

During 2009-10 we used our statutory compliance powers on 514 occasions, including use of our information gathering powers.

Charities that fail to provide evidence of their activity and existence and do not submit annual accounts, annual returns and updates will either be removed from the Register of Charities or referred to Compliance for enforcement action.

We carried out enforcement action on 110 charities referred to compliance for not submitting annual accounts. This targeted enforcement action resulted in ensuring:

58% of those charities submitted accounts ensuring transparency in respect of a total of £20,554,846 charity funds;

32.5% of the charities were removed from the Register of Charities as further evidence materialised that they were no longer operating or ceased to exist; and

8.75% of the charities were referred for further investigation.

Our co-operation with other regulators, law enforcement and other agencies increasingly results in effective enforcement action and case outcomes, including through the exchange of information under section 10 of the Charities Act. The effectiveness of the Commission's growing visibility as a regulator, and of its information sharing, is demonstrated by the big increase in incoming referrals. During the year we saw:

446 exchanges to the Commission (last year's total 111), and 729 exchanges from the Commission (last year's total 641).

During the course of or as a result of our Compliance work and our collaborative work with other agencies during the year, we know that there have been 25 successful convictions for fraud and theft involving individuals connected to charities. Of these 25 convictions, 14 of these individuals were trustees of charities.

Some people are disqualified by law from acting as a charity trustee or trustee for a charity, including anyone falling into the criteria in section 72 of the Charities Act 1993. It is a criminal offence for a person to act as a charity trustee or trustee for a charity whilst disqualified.

Our work cross-matching databases held by the Insolvency Service and other agencies also identified 940 individuals appearing on the Register of Charities as trustees, and being subject to Bankruptcy Orders or Individual Voluntary Arrangements which had not been discharged, or disqualified as a Company Director. This led to us verifying this information further and ensuring appropriate steps were taken by the individuals and charities concerned to ensure disqualified individuals were no longer acting as trustees.

More information about this is provided in section E1.

B4. Monitoring charities

As a modern regulator, regulatory oversight is an important part of our role. We monitor charities where we have concerns that there is serious non-compliance, or believe that there is a significant risk of serious non-compliance within the charity. The regulatory supervision and monitoring of charities we carry out is done in a proportionate and targeted way. It includes appropriate and targeted scrutiny of accounts, making sure that actions trustees have promised to carry out have been completed, and carrying out compliance visits to charities.

During 2009-10, we opened 306 compliance monitoring cases and completed 141 cases.

B5. Using our knowledge effectively

To regulate a diverse sector as efficiently and effectively as possible, we need to develop strong strategic and operational relationships with a range of other regulators, law enforcement and other government departments and agencies. This is essential for detecting, deterring and preventing

abuse from taking place in charities and rectifying problems when they arise. It ensures our work is not duplicated and, where we do engage, it is effective.

We use the knowledge we gain to undertake proactive detection in key areas, continually assessing key strategic risks and amending operational priorities accordingly.

An important part of our role is to help charities protect themselves by raising awareness of the risks they face and legal compliance requirements. This year we launched our *compliance alerts and warnings page* on our website to raise awareness about particular risks, scams and frauds facing charities starting with two alerts about scams relating to Haiti Earthquake Appeals and fraudulent direct debit payments. We also produce and publish clear guidance to help trustees safeguard their charities and ensure they keep pace with developments in reporting requirements. Our published regulatory case and inquiry reports set out relevant issues for other charities arising from our investigations.

B6. Reporting serious incidents

It has always been good practice that trustees of all charities report serious incidents to us. Since 2007, it has been a legal requirement that trustees of charities with an income of over £25,000 must declare in their annual return that they have already reported serious incidents to us and, if not, to do so then. Serious incidents might include the issues set out earlier in this summary such as theft or fraud within a charity and vulnerable beneficiaries having been put at risk.

During 2009-10, we received 451 Reports of Serious Incidents.

Whilst the number of serious incidents reported to us has increased from 255 in 2008-09, we believe that many serious incidents are still not being reported to us by charities. There is a clear value in trustees reporting serious incidents to us, such as fraud and theft. It enables us to focus our resources on where the risks are highest and allows us to provide assistance at the earliest opportunity when problems do arise in charities where this is needed. It also means that we can maintain an overview of the type and nature of serious incidents that are occurring in the sector. This is important so that we can make charities aware of the common risks to look out for and alert charities where action needs to be taken.

We carried out eleven investigations during the year following a report of a serious incident where we had serious concerns. Three of these related to serious incident reports made to us in 2009-10 and eight related to reports made in the previous year. The vast majority of concerns were addressed by providing regulatory advice and guidance in our Assessment Unit without the need to intervene further.

You can find more information about Reporting Serious Incidents in section D2.

B7. Key themes

In this year's report we have carried out more analysis so that trustees can see the range of issues of regulatory concern arising in charities that we are detecting. We report later on:

- the general profile of the new concerns coming to us which are considered by our Assessment Unit (see section D1);
- the main concerns identified in our investigations (Annexes 2-4);

- the results of our accounts scrutiny work (see section E1); and
- our handling of Reports of Serious Incidents, whistleblowing reports, and other complaints (see sections D2-4).

Here we highlight the key themes arising from our statutory inquiry reports and regulatory case reports published during the year.

Trustee duties and responsibilities

Trustees must comply with their legal duties in the administration of a charity and run it solely in the interests of the charity - taking reasonable steps to assess and manage the risks to their charities' activities, beneficiaries, property, work or reputation.

Serious failings in trusteeship or governance featured in approximately two thirds of our 2,615 assessment cases. Many straightforward or lower risk governance issues are dealt with by advice from specialists in our Charity Services Divisions without the need for our Compliance Division to become involved. However where those failings and non-compliance issues are more serious they are dealt with by Compliance. Our recent work included, in particular:

- serious governance issues, breaches of governing document, conflicts of interest and unauthorised benefits – 930 (36%)
- serious non-compliance and other regulatory issues, including concerns raised by other agencies – 449 (17%)
- serious failures of trusteeship and governance, such as acting outside objects, as a result of internal disputes, and alleged general misconduct by trustees – 186 (7%)
- failures to properly discharge trustee duties and responsibilities – 150 (6%)

Failings in trusteeship or governance often come to light during the course of our investigations. These typically involve inadequate management controls, no or ineffective management of conflicts of interest, failures to identify and manage situations where trustees are benefiting inappropriately from charities, and failures to control the activities of dominant individuals. This often leads to non-compliance in other areas and breaches of charity law as well as damage to the reputation of the charity.

Financial mismanagement

As the results of the recent Public Trust and Confidence Survey² show, sound financial management of charities is an increasingly important factor in determining people's trust and confidence in charities. It is therefore vital that charities are properly accountable to donors and the public about how they raise and spend funds. We continue to develop and update our guidance to charities on how to protect themselves against fraud and other types of harm.

For the first time we can report that the total value of the fraud and theft reported to us, through Reporting Serious Incidents and whistleblowing reports, was £21 million against a total income of £1.74 billion for these charities. While this represents a relatively small proportion of the income of the entire charity sector (£53.4 billion), our view is that there is significant under-reporting in this area. The fact that financial mismanagement, fraud and theft take place in charities is of significant concern for the Commission as well as the public and others who donate money and place trust in the sector.

² http://www.charity-commission.gov.uk/About_us/About_charities/initial_analysis.aspx

Issues of fraud and theft featured in:

- 245 assessments (9% of the total);
- 17 of 106 completed regulatory compliance cases (16%);
- 9 of 180 new investigation cases opened in the year (5%);
- 175 out of 451 Reports of Serious Incidents (39%); and
- 21 out of 53 whistleblowing reports (39%).

While serious financial crime in charities only happens in a relatively low number of cases, it does happen. There have been a number of recent cases where charity trustees, and others connected with charities, have been convicted of criminal offences involving charities. In one case connected to a series of convictions between October 2009 and August 2010, an individual removed by the Commission from his position as trustee in the charity was found guilty of a number of fraud-related criminal offences and was sentenced to over three years' imprisonment. This case relates to a total of nine individuals connected to charities which made fraudulent grant applications and used the good name of charity to do so.

Concerns about financial mismanagement are not confined to fraud and theft. Our assessment work showed that in a further 205 cases (8% of the total) there were other concerns about financial mismanagement including alleged misapplication of funds, accounting and financial issues, and fundraising problems. Completed investigation cases also highlighted the prevalence of concerns relating to accounting issues, allegations of fraud, trading and fundraising.

Our scrutiny of the accounts of 236 charities, which were the subject of our targeted compliance monitoring work, also revealed evidence of problems in connection with financial management in 138 cases (58%). This included:

- high support or administration costs;
- low expenditure on the charity's purposes;
- high staff costs;
- poor financial controls;
- inadequate accounting and record keeping;
- failure to submit annual accounts and returns; and
- failure to comply with the requirements of the Charities Statement of Recommended Practice ('SORP').

A new chapter of our toolkit of guidance Protecting Charities from Harm, to be published later in 2010, will help remind charity trustees of their legal duties. This will include how they relate to due diligence through the 'know your' principles for a charity's donors, partners and beneficiaries. It will also cover monitoring and accounting for the end use of charity funds, guidance on mitigating and managing the risks from a range of financial crime, and good practice in raising, storing and moving funds.

Vulnerable beneficiaries

Trustees of charities who work with children and vulnerable adults have a duty of care to safeguard their charities and take responsibility for these beneficiaries. It is so important that they develop, implement and monitor safeguarding procedures to protect them.

While there are other agencies which lead on safeguarding issues in certain charities – such as local authorities, the Care Quality Commission, the Child Exploitation and Online Protection Centre (CEOP), and the Independent Safeguarding Authority – not all charities’ activities are regulated by such agencies. In addition, the Commission has a distinct and important role to play as the only agency that will be able to check if someone of concern is a trustee of another charity. In some cases we may need to take steps to ensure no harm comes to beneficiaries of the other charity where such connections exist.

The effectiveness with which charities safeguard their beneficiaries continues to be an area of risk because of the potential impact this can have and the damage to a charity’s reputation if an event takes place that the trustees could have prevented. Some of the concerns we saw related to actual, suspected or alleged abuse of beneficiaries, but more often the concern was about the extent to which charities have **any** effective safeguarding policies or practices in place. The Commission will be updating its guidance on safeguarding in the next year, to help trustees understand what they need to do in this area.

Concerns about the safeguarding of vulnerable beneficiaries this year featured in:

- 289 cases dealt with by our Assessment Unit (11% of the total): in the vast majority of cases the Commission was able to provide regulatory advice and guidance without the need to conduct an investigation;
- 3 out of 15 statutory inquiry reports (20%);
- 22 out of 106 closed regulatory compliance cases (21%);

- 44 out of 180 new investigations, one of which was a statutory inquiry (24%);
- 187 out of 451 Reports of Serious Incidents (42%); and
- 2 out of 53 whistleblowing reports (4%).

Political activities and campaigning

It is a fundamental principle that charities must remain independent from party politics. Lawful campaigning and political activity can be carried out by a charity but it must be to support the delivery of its charitable purposes. A charity cannot make political donations or give support to a political party. Trustees of charities engaging in the political arena must also take care to protect the charity’s independence and reputation.

Charities can of course carry out political activities which support their charitable purposes. However, they must work within these rules and this is of particular importance in the run-up to elections and other key political events (such as party conferences). As this report examines our work between April 2009 and March 2010, issues arising during the pre-election period up to the May 2010 General Election are not fully included in this report. However, concerns were raised during this period and the Commission received a number of complaints about political activities by charities. There were some incidents of concern and non-compliance; although most of these were resolved by our Assessment Unit providing regulatory advice and did not need to be formally investigated further.

During the period covered by this report, in respect of serious concerns about a charity's campaigning and/or political activities, the Commission:

- assessed 22 cases;
- completed six investigations (two statutory inquiries and four regulatory compliance cases);
- published two statutory inquiry reports; and
- published four regulatory case reports (see section C6).

Some important reminders for trustees arising from these cases are that:

- while a charity can try to influence the policies of political parties in the interests of beneficiaries, they must not assist a political party to get elected;
- the requirement for political neutrality extends to a charity's trading subsidiaries;
- charities are responsible for upholding the perception, as well as the reality, of political independence; and
- the results of a charity's policy research must have sufficiently wide dissemination.

C. Illustrative case studies

In the previous section we highlighted some of the key themes arising from our compliance work this year. This section examines the themes more closely through case studies, most of which are taken from our published statutory inquiry reports or regulatory case reports³.

Each case study sets out the source of concern, gives a summary of the Commission's investigation and highlights the action we took to help the charity get back on track. We include guidance for trustees on how to avoid similar situations occurring in their charities. Full details about these cases are given in each report, available from our website or on request.

C1. The importance of good governance – public benefit

Charities involved in promoting the arts through exhibitions should ensure that exhibits are as accessible as possible to the general public. However generous founders are in setting up and funding charities, care must always be taken in managing conflicts of interests and ensuring any private benefits are legitimately incidental to the achievement of the charity's purposes. The more closely involved the founder is in a charity, the more important transparency and ensuring there are independent trustees will be.

The Andrew Lloyd Webber Art Foundation (registration number 1015648) (statutory inquiry)

This charity was registered in 1992 with the aim of advancing public education in the arts generally, and in particular in the field of painting. It achieved this by lending paintings which it owns to public galleries and exhibitions. Since its registration, the charity has benefited from donations from the founder of over £28m.

The Charity Commission had provided advice to the charity about transactions involving the charity's founder (who was one of the charity trustees until September 2009) and the management of conflicts of interest that arise from these. In 2003, we strongly recommended that the charity consider appointing additional trustees with no personal connection to the founder to strengthen the charity's governance. The charity took professional advice about this issue. The trustees followed this professional advice when deciding not to change its structure at that time.

The Commission became aware in 2008 that the charity's founder had earlier been challenged by HM Revenue and Customs. This challenge involved the amount paid to the charity as a licence fee for the painting 'St Cecilia'.

This challenge raised concerns for the Commission regarding the governance of the charity: in particular, relating to the accessibility of paintings, any private benefits to the founder as a result of the licence agreements with the charity, and the way in which conflicts of interests within the board of trustees were being managed arising from these transactions with the founder. These factors raised concerns as to whether the charity was operating as a charity for the benefit of the public.

³ For an explanation about the different types of investigation, statutory inquiries and regulatory compliance cases, please see section B.

In considering public benefit, the Inquiry's finding was that there were clear benefits that flowed from the charity's activities and that these arise for members of the public who view the charity's paintings whilst on public display at galleries and exhibitions. For arts charities, the starting position should always be that the paintings are on permanent display subject to legitimate constraints, such as the ability of a gallery or other venue to house the painting and any maintenance or repair work that is required to preserve the integrity of the painting(s). Overall the Inquiry was satisfied that the charity was operating for the public benefit.

The charity's governing document allowed the charity to enter into transactions where one (or more) of the trustees has an interest subject to certain conditions. The transactions included the sale and loan (under licence agreement) of the charity's paintings to the founder.

However, whilst the trustees took expert advice from an independent art consultant about the galleries and exhibitions that the painting may be displayed at, the Inquiry found that the trustees should have given greater consideration to finding alternative means of displaying its paintings and advancing the education of the public. Examples of ways of achieving this include proactively identifying other venues to display the paintings, increasing the content on the charity's website or identifying other education activities.

Although the founder paid a fee set by an independent expert and met the insurance costs, in practice he was the only person who was the recipient of the private licence arrangements. This, together with the number of transactions involving the founder, created a perception that he benefitted personally from the charity in a way more than legitimately incidental to the achievement of its objects.

Notwithstanding that the trustees followed professional advice when deciding not to appoint independent trustees, the Inquiry was critical of this decision. The composition of the trustee body, such as it was at that time, given the number and nature of transactions with the founder, meant that the trustees would never be able to demonstrate clearly that they had exercised the power to enter into the licences in the best interests of the charity. The Inquiry found that the risk of challenge to the trustees' decision making could have been better managed.

Issues for other charities

To be a charity, an organisation must have exclusively charitable purposes and be established and operating for the public benefit. Charities can provide private benefits to people other than their beneficiaries so long as those benefits are incidental. Private benefits will be incidental if it can be shown that they directly contribute towards achieving the charity's objects and/or are a necessary result or by-product of carrying out those objects.

Trustees are encouraged to be innovative and creative in finding ways to further a charity's objects for the public benefit. For charities that own artwork the trustees may wish to consider, in addition to public display, showcasing their paintings on the charity's website. That might include photographs, information about the history and origins of the paintings and/or the artist, reference to any other works by the same artist and a summary, by the trustees, of the significance of the paintings that the charity owns.

Trustees are responsible for the overall management of the administration of their charity. They should always act collectively when taking

decisions. A charity is entitled to the independent and objective judgement of each of its trustees, acting solely in the interests of the charity and they must not put themselves in a position where their personal interests conflict with this duty. The onus is on charity trustees to be able to demonstrate that they have acted solely in the interest of the charity. A trustee's primary duty is to act in the best interests of the charity and, in the interests of transparency, to be able to demonstrate that they have done so.

Generous philanthropy is invaluable for the public and for charities. However, charities that have close relationships with their founders do have to pay particular attention to ensuring the management of those relationships is transparent and any conflicts of interest are properly managed. This is crucial to ensure that public trust and confidence in the charity is upheld and confidence in the charity and its independence is maintained. Perception is as important as reality.

C2. The importance of good governance – managing conflicts of interest

Charities should manage conflicts of interest properly and transparently. There are particular risks where trustees are related or closely connected, and where the activities of a dominant trustee are not adequately checked and managed by other trustees.

Essex Islamic Trust (1043627) (statutory inquiry)

The charity was registered in 1995 with the aim of advancing the education of British Muslims and promoting the Islamic faith. The charity achieved these aims by running prayer sessions and education classes. All the charity's trustees belonged to the same family: in 2003, the Commission provided the charity with advice and guidance about how to manage the potential conflict of interest this represented.

In August 2006 a member of the public raised concerns that a property bought with charity money was registered in the name of the Chair of the charity and there was no reference to the charity at the Land Registry. A regulatory compliance case was opened to find out whether the property had been purchased with charity funds. This uncovered a serious lack of clarity in the charity's accounts, especially in relation to the charity's properties, and for this reason the Commission opened a statutory inquiry in September 2007.

In addition to investigating the poor record keeping of the charity, the Inquiry aimed to establish whether charity money had been used to buy a property; whether the trustees had received any unauthorised benefits from the charity; whether the charity was being administered by all the trustees collectively; and whether any conflicts of interest were being properly managed.

The Inquiry found that the property was owned by four members of the same family, including the three trustees, but that there was no evidence charity money had been used to purchase it. However, the trustees had decided that the charity should rent the property and therefore the trustees benefited from the rental income of at least £39,000. This arrangement was not authorised by the charity's governing document or the Commission. Following the concerns raised with them the trustees stopped receiving payments in rent from November 2007.

The Inquiry found that the charity's accounting and record keeping were poor and that a large amount of money had been withdrawn and not accounted for. The Inquiry also found that because the charity trustees were all members of the same family and because decision making was dominated by the Chair, there was no independence in the charity, which reduced its ability to manage any conflicts of interest. The charity failed to appoint any independent trustees, despite advising the Commission on more than one occasion that it would do so. The Inquiry found that the trustees had not considered to any degree whether the decision to use the funds of the charity to rent the property amounted to a conflict of interest.

During the final stage of the Inquiry, when the Commission was considering what course of action to take, the trustees decided to dissolve the charity. For this reason, there was no further action for the Inquiry to take and it was duly closed. The charity was removed from the Register of Charities.

Issues for other charities

Every charity needs an effective trustee body which has control over the administration of the charity and acts as a whole, especially because all trustees are equal in responsibility. Trustees who simply defer to the opinions and decisions of one of the charity trustees are therefore failing to carry out their duties to the charity. If one trustee deprives a charity of the benefit of the considered judgement of the other trustees, this is an example of poor governance and may amount to mismanagement in the administration of a charity.

A charity is entitled to the objective judgement of its trustees, exercised solely in the interests of the charity, and unaffected by the prospect of personal advantage to themselves. Charity trustees must not put themselves in a position where their personal interests conflict or are likely to conflict with their duty to act in the best interests of the charity. The onus is on the trustees to be able to demonstrate they have acted solely in the interests of the charity. Trustees must ensure that their management of the charity is transparent. Minutes of meetings must record any potential conflicts of interest, and the steps taken to manage them. Unless there is a provision in the charity's governing document or an established policy on managing conflicts, the trustees should remove themselves from taking part in such decisions.

Conflicts of interest are more likely to occur when there is only a small number of trustees and when trustees are related or closely connected, and where trustees enter into transactions between them and the charity. The Commission strongly recommends that if members of a trustee body are related to each other, they should take the appropriate steps to manage any such conflict including by appointing a sufficient number of independent trustees.

The law states that trustees cannot receive any benefit from their charity in return for any service they provide to it or enter into any self-dealing transactions unless they have the legal authority to do so. This may come from the charity's governing document; if there is no such provision, a charity may apply to the Commission or the Courts. Further information is available from *Trustee expenses and payments* (CC11).

Where there is self-dealing there is also a need to ensure transparency. The best way that this can be achieved is through making and keeping up to date records as well as involving fellow trustees in the process and recording this in a formal manner.

C3. Failures in fundraising

Trustees must make sure that they comply with the law when it comes to fundraising. Any agreement with a professional fundraiser or commercial participator should be legal and managed in the best interests of the charity. Aggressive fundraising techniques are not acceptable.

Dedicate Limited and Raise a Smile (1102509 and 1108489) (statutory inquiries)

These charities were registered in 2004 and 2005: for the purposes, respectively, of the relief of disabled persons and of sick children. We conducted concurrent statutory inquiries, because there were close links between the people involved in the charities and in their subsidiary trading companies. The trading companies were principally engaged in fundraising through the sale of advertisements in the charities' publications.

The Commission received complaints from members of the public and from Trading Standards about the operation of these trading companies, including concerns that fundraisers were demanding payments from businesses for adverts that had not been ordered; and that the companies, in fundraising for other charities, were not complying with the fundraising regulations, in particular by not saying how much the charities would receive.

Given the persistence of the serious concerns, and the trustees' non-cooperation, the Commission opened statutory inquiries to consider, in particular, the limited charitable activity, the management of the fundraising businesses, adherence to the fundraising regulations, and conflicts of interest.

The Inquiries found that the companies raised in excess of £2m but less than 1% of funds were passed on to the charities. Substantial funds from the fundraising activities were in fact passed to a number of companies under the control of people associated with the charities – for goods and services – but it was not possible to establish the full extent in what was a complex web, on account of inadequate record-keeping by the charities. Moreover fundraising practices were not compliant with the fundraising regulations.

The Inquiries worked extensively with HMRC, the Companies Investigation Branch of the Department for Business, Innovation & Skills, Trading Standards officers, and other regulators. The Inquiries used a number of the Commission's statutory powers, including restricting transactions on the charity's bank accounts and preventing further fundraising activity.

Following the Inquiries the charities and their subsidiary companies were dissolved and removed from both the Register of Charities and the Register at Companies House. The Insolvency Service undertook its own investigation and HMRC appointed a liquidator to recover £255,000 owed to the public in relation to Gift Aid and VAT.

Issues for other charities

Effective charitable work depends on securing adequate resources. In many cases this depends on effective fundraising. As fundraising is one of the principal influences on the public's perception of charity, the methods used and the integrity of the fundraisers is crucial to public confidence. It is very important that trustees manage and control fundraising effectively, efficiently, and economically. The highest standards need to be adopted, and systems for protecting the money raised need to be put into place.

Fundraising practices themselves are self regulated. The Fundraising Standards Board oversees an independent scheme for fundraising, encouraging high standards to help increase public confidence in charitable giving. It deals with public complaints about fundraising activity which breaches the industry's code of practice. The Institute of Fundraising is the professional body for fundraisers. It has produced model forms of contract for use with professional fundraisers and commercial participators.

All professional fundraising must comply with fundraising regulations based on the legislation in the Charities Acts 1992 and 2006 and the Charitable Institutions (Fundraising) Regulations 1994.

Where trustees decide to raise funds by employing a professional fundraiser or by entering into a promotion with a commercial participator, they

need to follow the relevant statutory provisions and regulations. More help can be found in *Charities and Fundraising* (CC20) which was updated in June this year.

The Commission's regulatory concern is limited to ensuring funds raised for charitable purposes and in the name of charity have not been misappropriated or are otherwise at risk, and that trustees are carrying out their legal duties and responsibilities as regards fundraising arrangements.

The purpose of establishing a trading subsidiary is normally to raise funds for the charity and its effectiveness in doing this should be monitored. Trustees of charities with trading subsidiaries need to be aware of their responsibilities, in particular they need to remember, in all decisions made in regard to a trading subsidiary, that the interests of the charity are paramount. The interests of a trading subsidiary's directors, creditors or employees must all be secondary to those of the charity.

Charity trustees are under a legal duty to co-operate with the Commission and the Courts have been very clear about this. Whether they do so or not may be a relevant factor in assessing whether misconduct or mismanagement may have taken place in a charity and considering whether any regulatory action is proportionate.

C4. Ensuring good financial management

Good financial controls in charities are basic essentials for all charities. This includes implementing and managing proper systems for the collection, holding and application of charity funds and ensuring a charity's financial position is monitored. Trustees must also keep proper records of all financial transactions and produce clear and accurate accounts.

(1) African Development Agencies (ADA) (297950) and Hackney African Organisation (HAO) (288997) (statutory inquiry)

These charities, registered with the Commission in 1987 and 1984 respectively, were both set up with the same aims: to promote the benefit of the community, and in particular that of the African community and other ethnic minorities, by various means. ADA was a company and HAO an unincorporated organisation.

In 2004, the Commission received an allegation that funds recovered for the charities had not been passed over to them. The charities had taken legal action against the London Borough of Hackney for the alleged non-payment of grants to the charities. One of the trustees, Dr. A, who had been Chair of both charities since inception ('the Chair'), acted in the court case on behalf of himself and the other trustees of HAO. HAO in turn acted as agent for ADA in respect of those aspects of the court case relevant to ADA. The court case concluded with a substantial sum of money being recovered for the charities which by the time they were paid over came to £609,740 (including interest). These funds were paid by the court into the personal bank account of the Chair and the bank statements from this account obtained by the Commission showed that the Chair did not pass on the funds received from the court to either charity.

The Commission opened a statutory inquiry into whether these funds had been received by the charities, whether the funds had been applied for charitable purposes and the conduct of the Chair.

The Commission found that the funds recovered in the court case were charitable funds due to the charities. However they were not received by the charities but were instead, at the Chair's request, put into a personal bank account in his name and this left the funds unaccounted for.

The Commission could not be satisfied that these funds were properly applied for the purposes of the charities. The use of the funds, seen through the Inquiry's analysis of the relevant bank statements, did not support the Chair's claim that the funds were due to a third party; there was no transfer of funds to this organisation. Further, the Chair's explanation of the use of the funds and who they belonged to were inconsistent and unsupported by any documentation or records.

The Commission concluded that the Chair's conduct made him unsuitable to be a charity trustee of ADA. He failed in his legal duty as a trustee to keep clear and accurate records of both charities' property in respect of the funds recovered from the court case, and in his legal duty as a trustee to produce accurate annual accounts for the charities.

As a result of the Inquiry, in 2006 the Commission suspended the Chair as a trustee, agent and officer of both charities and in 2007 removed him as a trustee of ADA. As a result he was no longer a trustee of HAO.

The Commission referred the matter to the police who decided to take no further action. The Commission considered taking action to recover the funds, but found that the money had been spent, the costs of any action would be high, and the likelihood of successfully enforcing judgement against the Chair was low. It would not be proportionate and not in the public interest to seek to recover the funds from him. The charities were both removed from the Register of Charities.

The Chair appealed against the decision to remove him as trustee. His appeal was heard in April 2008 and was dismissed. The judgement of the court confirmed that the Commission had proved misconduct and mismanagement by the Chair. The judge stated that "the failure to make and keep proper records amounted to serious mismanagement". The Chair's application for permission to appeal the judgement was refused.

Issues for other charities

It is the fundamental duty of all charity trustees to protect the property of their charity and to secure its application for the objects of the charity. Financial transparency is crucial to help demonstrate to funders and to maintain the confidence of the public who give money to charity that their donations have been properly used. As part of this it is a duty of charity trustees to keep proper accounting records to show and explain their charity's financial transactions for their charity. Every charity, whether or not they are registered with the Commission, must comply with the relevant legal requirements to keep accounting records and to prepare annual accounts and reports.

All charities must prepare annual accounts and make them available on request. The duty to file annual accounts and the Trustees' Annual Report with the Charity Commission applies to all registered charities whose gross income exceeds £25,000.

Trustees must retain these accounting and other records for the minimum period prescribed by law. Charities which are companies must, under company law, keep accounting records for a period of three years, all other charities must keep records for a period of six years. The Commission recommends as good practice for all charities a minimum retention period of six years. Further information on the retention of accounting records can be found under 'Charity requirements and guidance' on the Commission's website.

Charity trustees are under a statutory duty to cooperate with the Commission. Whether they do so or not is a relevant factor in assessing whether misconduct or mismanagement may have taken place in a charity and considering whether regulatory action is proportionate.

(2) Catz Club (1112772) (statutory inquiry)

Catz Club is a charitable company which was registered in 2006 with the aims of advancing education and providing for the recreation of children of school age. It ran breakfast and after-school clubs across the country during school hours and school holidays. This included using interactive numeracy and literacy computer software to run activities.

In September 2007 a regulatory compliance case was opened to examine a complaint alleging unmanaged conflicts of interest within the charity, and the charity's financial position. Having undertaken financial analysis, the Commission found that a £15,000 payment had been made to a political party, which comprised of a £10,000 delegate fee to attend a party event and a £5,000 donation. The Inquiry found that the charity breached charity law by making a £5,000 donation to the party. This was in addition to a donation made by the charity to the party which was subject to a previous Commission regulatory compliance report in 2008, noted in *Charities Back on Track* last year. The discovery of the donation, as well as other regulatory concerns about financial management and governance, led us to open a statutory inquiry.

A charity cannot make political donations, give other financial support or support in kind to a political party, as the Commission's guidance on campaigning and political activity makes clear. The full £15,000 was subsequently returned to the charity by the party. In the light of this the Commission was of the view that it was not proportionate to take further regulatory action on this issue.

The Inquiry continued to investigate the wider concerns. The charity had undertaken an ambitious expansion of its clubs, after securing a significant grant which resulted in a number of clubs running at a loss requiring central funding from the charity. The Inquiry found that, having received a grant and loan package with very specific terms and conditions, Catz Club had embarked on a path of rapid expansion. A low level of take up at the clubs and the repayment structure of the loan led to the charity getting into financial difficulties.

As a result, informal but large interest-free loans had been made by the Chair of Trustees to the charity. The Commission accepted the trustees' verbal accounts of how decisions were made, but advised that these agreements should have been formalised in writing.

The Inquiry found that the trustees had entered into the funding agreement with full knowledge of the terms of the funding package, and the Commission was critical of them in failing to keep to its terms. The case illustrated the risks associated with ambitious expansion and unsustainable growth that may put the financial status and long-term viability of a charity at risk.

The Inquiry also found that the trustees did not recognise or adequately manage conflicts of interest that arose as a result of the relationship between the founders of the charity, the charity, and a software company that was established by the founders of the charity. The trustees had also failed to keep adequate records of their decision-making, which unnecessarily exposed their decisions to the risk of challenge. In view of these complicated arrangements, the Commission was critical of the trustees in this respect.

During the course of the Inquiry, the trustees had informed the Commission of their intention to wind the charity down on a solvent basis and establish a Community Interest Company, which is a non-charitable entity. The Commission continues to engage with the trustees to ensure that they continue to properly discharge their duties towards the charity and its assets, namely that those assets can only be used for similar charitable purposes.

Issues for other charities

A significant number of charities depend upon grant and/or loan funding for some or all of their income. Before accepting funding, trustees must satisfy themselves that to do so is in the best interests of the charity. This should include consideration of the terms and conditions attached to the funding and whether these are realistically achievable. Where funding requires rapid expansion of a charity's activities the trustees need to consider whether the charity's infrastructure is able to absorb any additional work and costs that follow. A failure to successfully manage a charity's expansion may result in unsustainable rapid growth which puts the long term viability of the charity at risk.

Trustees must act collectively when taking decisions that concern the charity, including decisions about accepting or agreeing to conditions on terms.

They are personally responsible for the decisions they make. Trustee decisions and the discussions preceding them should be clearly recorded in minutes - further guidance is available in *Charities and Meetings* (CC48).

Where charities do get into financial difficulties, the risk of insolvency will be greater if the trustees do not take action to address the situation. Our guidance for charity trustees, *Managing Financial Difficulties and Insolvency in Charities* (CC12), outlines steps that may be taken to lessen the risks of insolvency and describes the legal position.

C5. Putting vulnerable beneficiaries first

Charity trustees have a vital role in ensuring that vulnerable beneficiaries in their charity are protected from harm. It is of the utmost importance that effective safeguarding policies and procedures are in place and implemented.

(1) St Peter's Independent School (281736) (statutory inquiry)

The school was registered with the Commission in 1981. In June 2008 we became aware of allegations that the Headmaster had physically harmed some of the pupils. A statutory inquiry was opened in September 2008 because the trustees failed to demonstrate to the Commission that they had responded appropriately to these concerns. The trustees had received advice from statutory agencies and authorities that temporarily suspending the Headmaster would have been a reasonable precaution to take in the interests of safeguarding pupils. However they chose not to do so, and were not able to provide adequate reasons for making this decision.

Upon our engagement with the trustees, they originally informed us that they would ensure that the Headmaster retired at the end of the 2007-08 academic year. However, it subsequently became known that the trustees had arranged for him to return to the school as a consultant in September 2008, to help with the transition to a new Headteacher. The Commission eventually agreed with the trustees that his return was permissible, on the condition that his access to pupils was monitored and supervised until the investigation of complaints made against him were concluded.

The trustees failed to ensure that the Headmaster was systematically monitored while on school premises. For this reason, the Commission used its powers to *direct* the trustees to prevent the Headmaster from coming into contact with pupils unless accompanied by an appropriate adult at all times. Although the Commission found that its Direction was not being complied with and that the trustees had initially provided misleading information to the Commission, there was a marked improvement in the trustees' cooperation as the Inquiry went on. As a result, the Commission was able to ensure that appropriate safeguards were put in place to address the risks to the charity and its beneficiaries.

The Commission identified a number of weaknesses in the charity's governance. In particular, the Inquiry found that trustees had historically delegated responsibility for managing the charity to staff members, without making sure the charity's activities were properly supervised and monitored. The Commission also found that the charity did not have an effective complaints procedure in place, and it made a second Direction to require the trustees to address the weaknesses identified within six months. That review has now been completed and the charity has complied with its obligations under the Direction. A supplemental report will be published by the Commission in due course.

The police have informed the Commission that following a full investigation, no criminal charges will be made against the former Headmaster in relation to the allegations made.

(2) The Trust of St. Benedict's Abbey Ealing (242715) (two statutory inquiries)

The Trust of St Benedict's Abbey Ealing was registered in 1966. The charity's aim is to promote the charitable work of the Order of St Benedict at Ealing Abbey. It runs a Roman Catholic day school for boys and girls aged 3 to 18.

In June 2006, the Commission received a complaint alleging that one of the monks of the Order (Individual A), who had previously taught at the school, had been accused of 'paedophile activity' with pupils, in respect of one alleged incident in 1984 and one in the early 1990s. The complainant alleged that the accusations were dealt with in the civil courts system, which had awarded damages against Individual A in favour of the victim. The complainant also stated that a second monk of the Order (Individual B) was due to appear in court on criminal charges of sexual assault on a pupil of the school. Due to the serious nature of these complaints, the Commission opened a statutory inquiry in July 2008.

In cases where there are allegations of abuse of a charity's beneficiaries, it is not the role of the Commission to investigate these allegations. This would fall to the police, social services or another agency. The Commission's role in such cases is to establish whether the trustees have responded to the accusations appropriately and to ensure that they are taking steps to protect the charity's beneficiaries in the future.

The purpose of the Inquiry was therefore to establish and verify the facts and determine what action, if any, was needed to protect the charity's beneficiaries, reputation and assets. The trustees gave assurances to the Inquiry that both Individuals A and B were immediately removed from access to any vulnerable beneficiaries within the school and parish. Individual B was a trustee of the charity at the time the complaint was made – consequently, the trustees sought and received his resignation. The Inquiry received confirmation from the trustees that the appropriate statutory agencies had been informed of the allegations made and that the charity's child protection policies and procedures had been reviewed by the appropriate authorities and that these were adequate. Individual B, who was tried on criminal charges relating to indecent assault, was acquitted in March 2007.

The trustees confirmed that the award of damages against Individual A was covered by an insurance policy held by the charity and that his legal fees were paid for from the charity's funds. We considered that it was arguable that the latter was a reasonable decision for the trustees to make.

On the basis of assurances received from the charity that the required restrictions were imposed on Individual A, the Commission considered that no further action was necessary in respect of this issue. However, just before the Commission was due to publish the results of the first Inquiry in January 2008, we were informed by the charity that Individual A had been arrested following new allegations of sexual abuse. The allegations had been made by a beneficiary of the charity working on the charity's premises.

Because of the serious nature of the allegations, and the charity's recent assurances that Individual A had no contact with children, the Commission opened a second inquiry, which focussed on whether the charity had been following its child protection policies. We also looked at how the charity was managing the risks to the charity's reputation following the arrest of Individual A. The Commission was told by the trustees that the restrictions on Individual A were well monitored, and they had not been aware that Individual A had access to a child on charity premises until the new allegations were made and Individual A was arrested.

The Inquiry concluded that, despite assurances from the trustees, they failed to implement the restrictions placed on Individual A whilst on charity premises. One of the terms of Individual A's continued role in the charity was that he was to have no access to children and young people on the charity's premises – the trustees failed to ensure this was the case.

The Inquiry also found that the trustees had taken positive steps after the arrest of Individual A to manage the risks to the charity's reputation. Trustees had released a statement, spoken to parishioners from the pulpit, and written to the parents of pupils at the school outlining the steps taken by the trustees in response to the arrest. The charity also announced that it had commissioned an independent review to make sure this kind of thing could not happen again. During and following the Inquiry, we provided regulatory advice and guidance to the trustees and informed them that we will be monitoring the outcome of the independent review.

Individual A has been sentenced to 8 years imprisonment.

Issues for other charities from these cases

Trustees of charities which work closely with vulnerable beneficiaries must pay particular attention to the risks associated with the nature of the work they undertake and their duty of care to the charity's beneficiaries. They must ensure that they react quickly and responsibly to allegations of harm to beneficiaries, whatever the source of the abuse, to ensure that none of them are at risk of harm. Not to do so could both seriously endanger beneficiaries and increase the risk of charity trustees being in breach of their duties. Trustees should ensure that they have adequate policies in place to safeguard the charity's beneficiaries and that these are implemented and monitored.

Trustees risk being in breach of their duty of care and duty to act in the best interests of the charity if they fail to take reasonable and proper steps to protect vulnerable beneficiaries from harm. Trustees of charities working with vulnerable beneficiaries must therefore:

- I. take sufficient steps to ensure incidents of abuse cannot and do not take place;
- II. have adequate and proper safeguarding policies and systems in place, including appropriate vetting procedures for trustees and others who work with vulnerable people; and
- III. ensure they deal with allegations of abuse or concerns seriously and responsibly and in the interests of the charity.

Trustees of a charity also have a responsibility to ensure that their charity's reputation is not brought into disrepute by failing to adequately manage risks or serious complaints. A charity's reputation is part of its property, which must be protected and managed appropriately.

Trustees are responsible for the overall management of their charity and should always act collectively when taking decisions about the charity. They can delegate tasks and responsibilities to employees of the charity; however, if doing so, they should ensure that there are adequate reporting mechanisms and clear lines of accountability in place. Trustees should also instruct staff members to report important and serious matters to the board. They must also remember that they are ultimately accountable and responsible for any decisions or actions taken by a member of staff.

If charities fail to manage complaints, customers might withdraw their support which could affect the viability of the charity. A charity should therefore have a complaints procedure in place and should, so far as is possible, deal with complaints openly and transparently. Everyone working in a charity should be informed about the complaints procedures.

All trustees should provide the Commission with information about serious incidents as soon as possible after they become aware of them. If a charity has an income over £25,000 it must, as part of the Annual Return, confirm that there are no serious incidents or matters relating to the charity over the previous financial year that should have been brought to our attention but have not. As a matter of good practice, any serious incident that has resulted or could result in significant loss of funds or a significant risk to a charity's property, work, beneficiaries or reputation should be reported to us immediately, not just on completion of the Annual Return. We published our updated *Reporting Serious Incidents - guidance for trustees* in June 2010.

C6. Keeping it neutral

Charities are expected to be independent from external control, and this includes the need to be independent from party politics. This year has seen a number of cases where activities undertaken by charities have risked their independence and reputation, requiring our involvement.

We published four regulatory case reports where there were concerns involving charities and inappropriate political activities.

There are a number of important principles and relevant issues for charities in connection with political activities that are illustrated in these cases. The particular issues in each case differed, but include:

- a charity cannot make political donations or give support to a political party;
- this prohibition applies equally to a charity's trading subsidiary;
- joint fundraising ventures with political parties give rise to risks to the charity including the perception of its independence;
- a charity can try to influence the policies of political parties in the interests of beneficiaries but must not assist a party to gain support or get elected;
- the results of charity research must have sufficiently wide dissemination;
- contracts for research should only be authorised if the legal requirements are met and the terms are reasonable and in the charity's interests;
- a charity can in furtherance of its aims invite politicians to speak at charity events, but we would be concerned if a charity consistently enlisted the support of politicians from one political party only; and
- where companies are required by legislation to seek and obtain shareholders' consent before making political donations or political expenditure and a charity is a majority or significant shareholder in that company, its trustees cannot properly give consent if they know that some of that expenditure will be made to a political party.

(1) The Prince's Trust (1079675) (regulatory case report)

In October 2007 a volunteer fundraising group of the Prince's Trust held a joint fundraising event, a lunch with a former Prime Minister, with Women2Win, an organisation associated with a political party. The charity's trading subsidiary collected the proceeds of the event and paid half to Women2Win. This was recorded on the Electoral Commission website as a donation of £10,050 by the Prince's Trust Trading Limited to Women2Win.

We opened an investigation to determine whether the charity had improperly supported a political party through its trading subsidiary. It was found that The Prince's Trust had either indirectly offered an opportunity to a political party to fundraise, or had agreed to a joint fundraising event with a political party. In deciding to share equally the funds raised by the lunch with Women2Win, the political body received a benefit, and the charity indirectly supported a political party. By allowing this to happen, the charity's volunteer fundraising group, the role of which was to raise money for the Prince's Trust's charitable work, had not acted in the charity's best interests.

As soon as the Commission's concerns were raised with the Prince's Trust, Women2Win voluntarily offered and subsequently made a donation to the charity of the same sum, £10,050, which was received by the charity in March 2009.

(2) The Royal United Services Institute for Defence and Security Studies (210639) (regulatory case report)

The Electoral Commission formally referred information to us under section 10 of the Charities Act which raised concerns that the charity may have supported a politician and/or political party and may have acted in a way which called into question the charity's independence from party politics. An MP commissioned the charity to undertake paid research. Although the research paper subsequently produced by the charity fell clearly within its core purposes – and was well balanced, objective and not seeking to influence or change the law or government policy – the research was not otherwise published in the same form, and provided the MP with useful material for a party political publication that was not available to other politicians or parties at that time. The MP was unaware of any concerns that might have arisen from the charity undertaking the research and our investigation focused only on how the trustees discharged their responsibilities and duties under charity law. We concluded that in accepting the research commission, the charity had inadvertently given support to the MP and his party in a party political context. This was not appropriate nor an activity that furthered the charity's objectives for the public benefit as the material was not made publicly available.

The charity has now amended its own internal policies and staff procedures regarding interaction with politicians and political parties and co-operated fully our enquiries throughout.

(3) UCARE Foundation (formerly Pakistan Foundation International) (1083036) (regulatory case report)

The charity supports two hospitals in Pakistan and also operates in England, Wales and Scotland. The purpose of our investigation was to find out whether the charity had improperly supported a politician and/or political party, in particular by allowing only members of one political party to speak at events held by the charity, or whether donations to a political party had been made by the charity or by the trustees on its behalf. There was also an issue about the non-submission of annual accounts and returns in breach of its statutory duty (the charity subsequently filed its outstanding accounts).

We found that political speakers had taken part in charity events; however this was not in support of a party political aim, and the charity invited politicians from other parties. The trustees were not consequently in breach of charity law by allowing or inviting them to attend. We also concluded that although political donations were made to a political party by a trustee, these were made in a personal capacity and not for or on behalf of the charity.

We advised on financial controls, policies and procedures; the management of conflicts of interest; and the need for the charity to register with the Office of the Scottish Charity Regulator (OSCR).

4) Garfield Weston Foundation (230260) (regulatory case report)

The Garfield Weston Foundation is a grant-making charity with wide general charitable objects. It had an investment income of £38.5m in the financial year ending 5 April 2009. During the same period it made grants totalling £26.1m.

The concerns which led to the opening of the investigation related to political donations made by Wittington Investments Ltd ('WIL'), an investment company in which the charity held a controlling interest. The Commission was concerned about whether the trustees of the charity had supported a political party by allowing a company in which the charity had a controlling interest to make donations to a political party.

The report contains wider lessons for the sector about the fundamental principle that charities must remain independent from party politics and cannot give support to a political party. Where companies are required by legislation to seek and obtain shareholders' consent before making political donations or political expenditure, and a charity is a majority or significant shareholder in that company, the Commission confirmed its view that trustees of such charities cannot properly give consent if they know that some of that expenditure will be made to a political party.

C7. Dealing with suspicions and allegations of links to terrorism - and the challenges of working in areas where proscribed groups or designated entities are known to operate

Trustees must handle concerns and allegations of links to, or associations with, known or suspected terrorist groups or individuals properly and appropriately. They must demonstrate that they are managing the risks to charity property and reputation if they are to discharge their duties and responsibilities. Alongside this, trustees must act to protect the property of their charity and secure its proper application. They must make every effort to ensure the charity retains control over its assets and that they reach its intended destination.

(1) Eelapatheeswarar Aalayam (1125884) (regulatory compliance case)

The charity was registered in September 2008 with the aim of advancing the Hindu religion according to the special traditions prevailing in Sri Lanka and Southern Indian States. Its main activity is to run a temple in Wembley, London. It had also supported charitable work in Sri Lanka. In December 2008, the Commission received complaints of alleged links between some of the trustees and the Liberation Tigers of Tamil Eelam ('LTTE'), a proscribed organisation under the Terrorism Act 2000.

Links between a charity and terrorism are completely unacceptable. In light of the allegations, the Commission opened its investigation into the charity to consider whether there were concerns about those individuals' suitability to hold their position, whether the trustees had discharged their duties and responsibilities to the charity about handling the allegations and whether they were ensuring that the charity and its reputation were protected.

The Commission found no evidence that the trustees had made public statements of support, even in ambiguous terms, for the LTTE, or had used language or imagery associated with the LTTE in a way which could inadvertently promote its causes or activities. The Commission found that the trustees had discharged their duties in handling the allegations and concerns properly and appropriately.

Issues for other charities

Proven instances of terrorist involvement or association in the charitable sector are not common but completely unacceptable. The Commission has been clear that charities carrying out activities that mean the risk of this happening is higher, must ensure they take sufficient steps to protect their charity and its work. We take seriously all allegations of suspected terrorist abuse involving charities or their trustees.

A charity is entitled to have the independent and objective judgement of its trustees, acting in the best interests of their charity. Trustees must ensure they do not permit any personal associations to interfere with their judgement as charity trustees. Trustees must also ensure that their conduct in their personal capacity does not impact negatively upon their charity's reputation. To do so may breach their duty as trustees to safeguard their charity from

undue risk. Any personal associations between a trustee and serious criminal activity, such as terrorism, could have a significant negative effect on public confidence in their ability to discharge their responsibilities as charity trustees.

It is the responsibility of charity trustees to safeguard their charity from the risk of abuse, including terrorist abuse. The Commission will support them in doing this, and believes that the most effective way to minimise the risk of abuse is through implementing strong governance and financial arrangements.

Any person who has a serious concern of any actual or suspected criminal activity within or involving a charity, its trustees or others connected to it should report it to the police and also inform the Charity Commission.

(2) Viva Palestina (1129092) (statutory inquiry)

We opened an investigation in March 2009 following various public fundraising events regarding the Lifeline for Gaza appeal, also known as Viva Palestina. The charity's initial activity was to launch an appeal for, and to facilitate, a convoy of vehicles carrying humanitarian aid to Gaza in February 2009. The charity's website claimed that the appeal had raised £1 million.

We appreciated that the charity was established and operating quickly, in response to an immediate need in Gaza. However, we had a number of regulatory concerns. Following initial enquiries, including a review of the charity's constitution and other publicly available literature, the Commission's view was that it was a charity, although not registered with the Commission. We also had concerns over the financial governance arrangements relating to the control and application of the charity's funds.

The Commission confirmed in its Inquiry that Viva Palestina was a charity, being exclusively charitable for the public benefit and any funds raised were held on charitable trusts, and it was registered as a charity with the Commission under the name Viva Palestina on 8 April 2009.

The charity's then bank had placed an internal freeze on the charity's bank account. This meant that the charity could not access the funds it had raised to provide emergency humanitarian relief to the people of Gaza. The bank had also taken the business decision to end its relationship with the charity as it had failed to submit sufficient information to meet their requirements. Monies donated directly to the appeal via the bank since the freeze was imposed had been returned to the donors by the bank.

We established that the money the charity was raising through its website appeal was being deposited in a bank account run and controlled by a non-charitable organisation. The Inquiry concluded that because of the lack of a written agreement with the organisation and the lack of communication between it and the charity, the founding trustees had exposed the charity to unnecessary risk and this amounted to mismanagement in the administration of a charity.

We also became aware of media coverage which gave rise to a concern that the charity may have acted in breach of the financial sanctions required by the UK government and the European Union. From the material the Inquiry examined we found no evidence that the charity's property or money was provided in breach of such sanctions.

The Inquiry took urgent steps to protect the funds belonging to the charity. This included using the Commission's powers to place temporary restrictions on the bank accounts of both the charity and the non-charitable organisation. These measures ensured that the funds frozen by the bank were accessible for the charity's purposes and all of the charity's funds were safeguarded until they were transferred into a new account that was in the name of, and under the control of, the charity.

The Commission ensured that the charity's funds were effectively managed and controlled by the trustees of the charity.

Issues for other charities

Action to set up a public appeal following a humanitarian emergency or natural disaster by its nature happens without notice, with little time to prepare. This is why it is so often best done through existing charities. The public response can be overwhelmingly generous. Whether an appeal for funds from the public is charitable would depend upon the purpose for which it is set up. Charitable appeals attract generous tax relief; donations to them may also do so, especially through the Gift Aid scheme.

The Commission has a duty to maintain an accurate Register of Charities. Where it has an annual income of over £5,000 the duty to register a charity rests with the trustees of the charity. Failure to register a charity where there is a legal obligation to do so does not exclude the charity from the Commission's jurisdiction. For the purposes of charity law in England and Wales, a charity is any institution, corporate or not, established for charitable purposes and for the public benefit and subject to the control of the High Court. Where a charity or charitable appeal is established for a short time the Commission will not normally enforce the duty to register. However, the trustees must still keep records of income and expenditure of charitable funds and prepare accounting statements. In addition, given the benefits of registration the trustees of the charity may wish to register it with the Commission.

Charities can carry out political or campaigning activities to help achieve their charitable purpose, but a charity cannot have political aims. Those who wish to pursue a political aim or who wish to campaign as a principal activity will need to find an alternative to setting up a charity, such as setting up a non-charitable campaigning body or pressure group.

The Commission fully recognises the risks that charities face operating in conflict-affected areas, including the Occupied Palestinian Territories, and acknowledges that in practice they may be more likely to come into contact with proscribed organisations and designated entities, persons or groups. Trustees need to be aware that they may commit a criminal offence if they give support to a proscribed organisation or make funds or economic resources available to designated entities, groups, or individuals without first obtaining a licence from HM Treasury. Generally, when assessing their risk management procedures, trustees should consider incorporating regular checks of the designated list when considering whether to work with new people or organisations and should ensure their volunteers and staff are also aware of the risks surrounding designation. For further regulatory advice and guidance on proscription and designation and what it means for charities see Chapter 1 of the Compliance Toolkit *Protecting Charities from Harm: Charities and Terrorism*.

It is a fundamental duty of all charity trustees to protect the property of their charity and to secure its application for the objects of the charity. In order to discharge this duty it is essential that there are adequate internal financial and administrative controls over the charity's assets and their use. Trustees must make every effort to ensure the charity retains control over its assets and not permit third parties to hold funds on their behalf, especially in the absence of any written agreements.

It is important that the financial activities of charities are properly recorded and their financial governance is transparent. Charities are accountable to their donors, beneficiaries and the public. Donors to charity are entitled to have confidence that their

money is going to legitimate causes and reaches the places that it is intended to. This is key to ensuring public trust and confidence in charities.

The position of the Commission as charity regulator is clear. In order to operate effectively and transparently when delivering aid or undertaking other charitable work, every charity must have access to formal banking facilities. It is a decision for the charity as to which bank or organisation they choose to hold their account. However, the

Commission would have serious concerns if a charity were not able to operate because of a lack of banking services. If financial services are declined or withdrawn from a charity, harm could result to its charitable work and its ability to operate transparently. It would also have an adverse impact on public trust and confidence in that charity and on charity generally. It may also have a wider impact upon the community that the charity represents or works with.

C8. The damage of disputes

Opposing groups within charities should be willing to compromise so that the charity can concentrate its efforts and resources on looking after the needs of its beneficiaries.

A charity based in the West Midlands⁴ (regulatory compliance case)

This charity's purpose is to advance the religious and cultural traditions of a particular religion.

The charity had been subject to a dispute which had lasted for a number of years. It had been unable to operate effectively because of personality clashes, and there had been no proper elections of trustees since 2005. The Commission took the view that the charity had no validly appointed trustees, and that previous attempts to resolve the dispute had failed.

The dispute came to our attention when the President attempted to suspend the Executive Committee, and the Executive Committee tried to remove the President. Both actions would have been unconstitutional. It became clear that there were two opposing groups in the charity. The Commission was proactive in seeking to help the charity resolve the dispute and we organised a number of meetings with the different parties. We managed to secure agreement that four individuals would be appointed as interim trustees, who would have the responsibility to hold and call an independently supervised election. It was agreed that each group would nominate four individuals, and the opposing group would choose two of them. This is a strategy that the Commission has used successfully on a number of occasions in dispute cases.

The charity appointed an election supervisor from an independent consultancy. The task of the supervisor was to establish an agreed membership list; to give notice of the election and invite nominees for the relevant trustee positions; and to assist on the election day itself. The Commission continued to advise the election supervisor on legal matters as appropriate, for example on the interpretation of the charity's constitution. The election supervisor reported that successful elections were held in August 2010.

⁴ We have not named this charity as it was not a statutory inquiry and no formal public report was published on its conclusion

Issues for other charities

Charities must ensure that trustees are validly appointed in accordance with the terms of the governing document. Existing and outgoing trustees must ensure they make arrangements in good time for new trustees to be appointed in accordance with any provisions in the governing document. They should ensure this is not left to the last minute. Not doing so, particularly where the whole trustee body retires at the same time, leads to so many problems, and often to unnecessary internal disputes.

Our publication *Conflicts in your charity* clarifies our role in disputes and provides guidance to help trustees resolve them. We will usually become involved only if there is sufficient evidence that:

- there are no validly appointed trustees; and
- all other methods of resolving the dispute have failed.

If it is not possible to resolve differences within charities, consideration should be given by charities to using the services of independent election supervisors. This can be helpful even if there is not a dispute in the charity. As long as they are properly briefed, they can ensure all the legal requirements regarding elections are followed, which will help prevent challenges to the election results.

D. What concerns are we seeing and how do we deal with them?

D1. Assessment

Charity Commission Direct deals with the vast majority of enquiries that the Commission receives. Only those enquiries that raise serious concerns about charities are looked at in the Compliance Assessment Unit. This Unit assesses all serious concerns about charities against the Commission's published policy on *Complaints about Charities* (CC47) and our *Risk and Proportionality Framework for the Commission's compliance work*. This ensures that concerns are dealt with fairly, objectively and consistently as well as helping ensure that we prioritise our actions and target our resources where the risks are highest.

The Assessment process determines whether we should deal with the particular concerns raised about a charity and, if we decide we do, establishes the most appropriate and proportionate course of action to take. It also ensures consistency of approach in our work. We do not investigate all complaints or concerns raised with us about charities. Nor are we allowed to interfere in the internal administration of a charity, or become involved in its internal affairs when trustees have acted within their legal powers.

We deal with problems in charities in a number of different ways depending on what the problem is, its severity and the risk it poses to the charity, the available evidence, the likely impact on the charity and what is required to resolve it. We take time to validate and verify the reliability and credibility of concerns, including allegations, along with the source of the concern.

Even where we have regulatory concerns and do engage further about them, it may not be necessary or proportionate for us to open a formal

investigation into the charity. In fact, we are usually able to address most concerns by providing regulatory advice and guidance in our Assessment Unit to put the charity back on a secure footing without the need to intervene further. Our focus is on reducing the risk to the charity and restoring governance to a proper standard now and in the future and not on past actions. Our view of the most serious issues and areas of greatest risk for charities is set out in section B.

The likely outcome from the assessment process is one of the following:

- there is no regulatory concern, but the charity may benefit from further specialist or enabling advice provided by our Charity Services Divisions;
- it is not a concern that can be dealt with by the Commission and we advise who else might be best placed to deal with this;
- further action by the Commission would not be a proportionate response to the concern raised;
- the concern is dealt with by regulatory advice and guidance provided by the Assessment Unit;
- the concern is referred to the Compliance Monitoring Unit, perhaps to consider a compliance visit to the charity, or carry out targeted scrutiny of the charity's accounts; or
- the concern is sufficiently serious to need further examination and/or investigation by one of our Investigation Units. In very serious cases it may be clear that the Commission needs to exercise its regulatory powers to resolve the problems or protect the charity and its assets.

If an assessment is referred to one of our Investigation Units it will usually be taken forward as either a regulatory compliance case or a statutory inquiry.

The Assessment Unit deals with causes for concern from a number of external sources:

- charity trustees, through Reports of Serious Incidents;
- charity donors, beneficiaries, employees and volunteers;
- statutory whistleblowers, including Auditors and Independent Examiners;
- other regulators, and law enforcement and other government agencies;
- MPs, the media and local communities; and
- the general public.

In addition, a significant proportion of causes for concern were identified in the course of the Commission's proactive compliance work. As noted

in Fig 3 below, the majority of these referrals were as a result of the Commission's work checking the eligibility of individuals to be charity trustees. This is reported in further detail in section E1.

In the last year a total of 2,615 'causes for concern' were dealt with by the Assessment Unit, broken down as follows:

Reports of Serious Incidents	451
Whistleblowing reports	53
Issues raised from external sources about charities	1,090
Concerns identified proactively by the Commission	1,021
TOTAL	2,615

The following charts show the principal issues arising from all these causes for concern (Fig 1); the source of the concerns from external sources (Fig 2); the source of concerns identified proactively by the Commission (Fig 3); and the way the Commission dealt with these concerns (Fig 4).

Fig 1 – Causes for serious concern dealt with by our Compliance function

Baseline: the 2615 cases dealt with by Assessment Unit

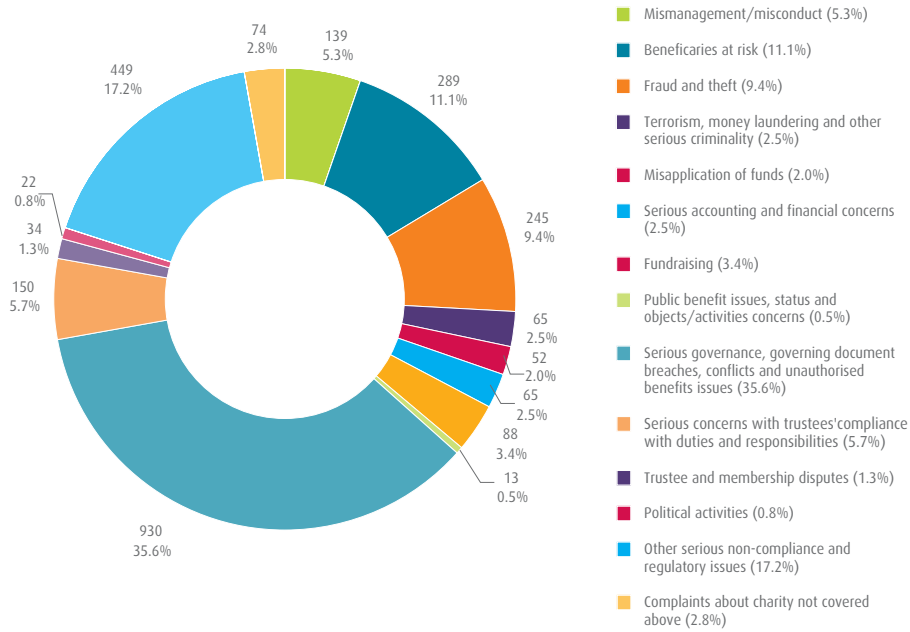


Fig 2 – Sources of serious concern - external sources

Baseline: 1594 cases

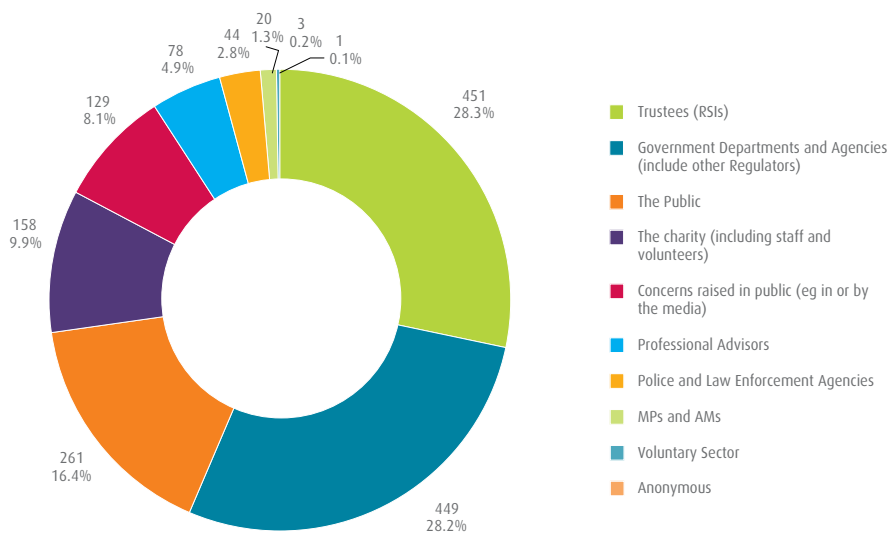


Fig 3 - Sources of serious concern – identified proactively by the Commission

Baseline: 1021 cases

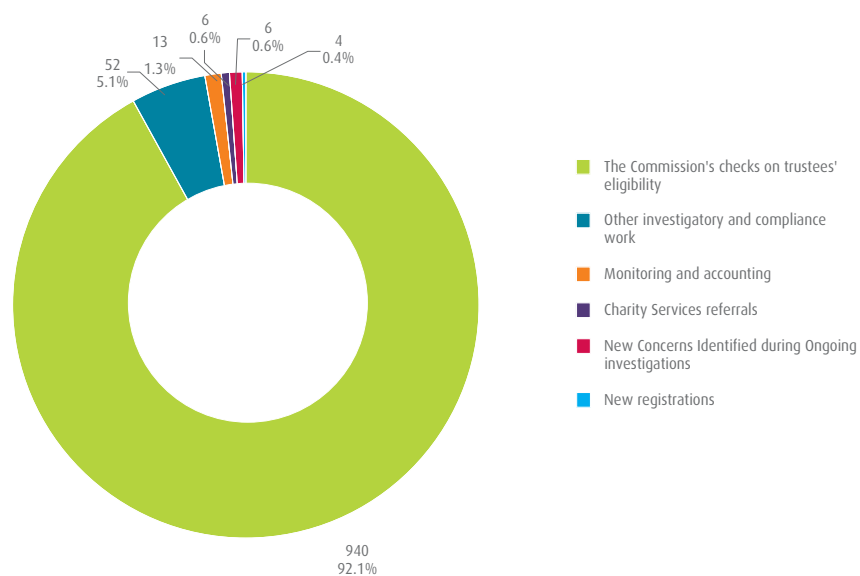
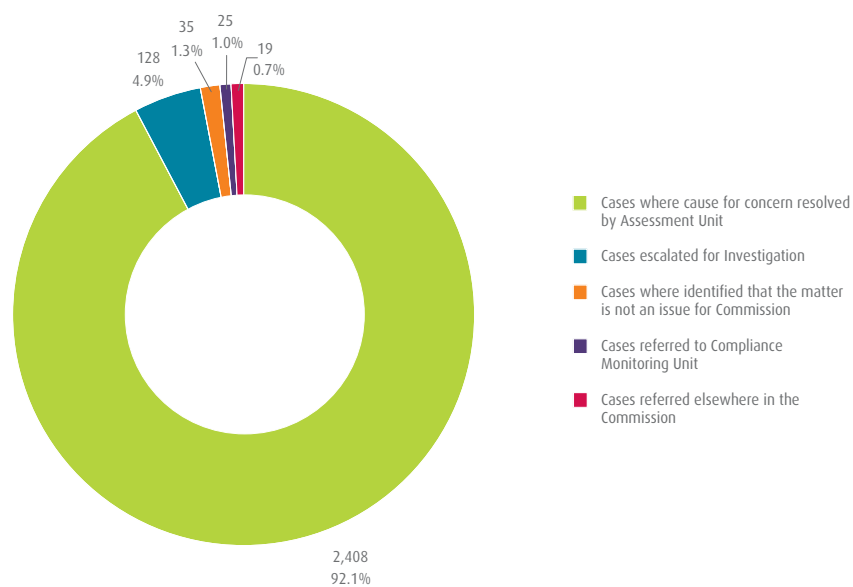


Fig 4 – Outcomes

Baseline: the 2615 cases dealt with by Assessment Unit



The next sections explain and analyse the various categories of case dealt with by the Assessment Unit in more detail.

D2. Concerns reported by trustees about their charities – our Reporting Serious Incidents regime

It has always been good practice that trustees of all charities should report serious incidents to us. Since 2007 it has been a legal requirement that trustees of charities with an income of over £25,000 must declare in their annual return that they have already reported serious incidents to us and, if not, to do so then.

We have a statutory function to **identify** as well as investigate misconduct and mismanagement in charities. The reporting serious incident regime is an important tool in carrying out this role and links with the *Risk and Proportionality Framework for the Commission's compliance work*. It helps focus our engagement and resources where the risks are highest, and allows us to provide assistance at the earliest opportunity where problems arise in charities. Our regulatory interest is in how trustees respond to serious incidents and manage the associated risks. We do check whether there are links to other charities but where it is clear that trustees are handling serious incidents appropriately we are unlikely to take further action or require anything else of trustees. However if trustees are not acting responsibly we engage further, and in some cases we may need to use our legal powers to protect the charity.

We first published guidance for trustees on reporting serious incidents in 2007. This explained which incidents are serious and should be reported, how trustees can do this and what information we need. Each year since then we have updated the guidance in the light of useful feedback and suggestions from the sector. This year has been

no exception and, having sought feedback from some of our key sector stakeholders we recently published (June 2010) a further update to the guidance. In particular, this responds to concerns we received from some parts of the sector about the requirement to report all fraud and theft regardless of the size of the loss.

The guidance, which is available on our website, now provides additional clarification on reporting fraud, theft and significant loss of funds, and introduces greater proportionality by allowing more discretion for trustees in deciding whether to report low value fraud and theft. We have not set a minimum figure for reporting. Fraud and theft are criminal activities and are unacceptable within a charity. So even if the trustees decide that an incident should not be reported to us because they consider it to be too minor, we still expect them to handle it responsibly and appropriately. Where we receive complaints or concerns are raised with us we will expect trustees to be able to show us that they have responded appropriately.

The revised guidance also gives:

- further explanation of our role and regulatory remit and how this relates to other agencies. We clarify why trustees need to report cases of actual or suspected abuse of beneficiaries to the Commission as well as to other agencies which have a regulatory interest;
- guidance on how trustees can report multiple incidents to us, helping to reduce the time and burden on them;
- an updated section on safeguarding beneficiaries with information on the Independent Safeguarding Authority and the Vetting and Barring Scheme, with links to other useful sources of information.

During the year the Commission received 451 Reports of Serious Incidents compared to 255 last year. Nevertheless, it is evident from our own compliance work that incidents which should have been reported to us have not been; in many cases if they had been, we could have assisted the charity in dealing with the problem.

The majority of the reports we received were incidents about beneficiaries at risk - 42%, and fraud and theft - 39%.

For the first time we are reporting publicly on the value of incidents of fraud and theft which has been reported to us through the reporting serious incidents regime.

- Total reported fraud and theft **£20.9 million**
- Total gross income of the charities that reported fraud and theft **£1.74 billion**

This figure does **not** include incidents of fraud and theft we identify in our investigations and other compliance work which has not been reported to us by trustees.

For those charities reporting a serious incident during the year:

- 18 charities had an income of less than £25,000;
- 297 charities had an income of more than £25,000;
- 6 charities had no income data available (for example, because they were newly registered or in breach of their obligation to file an annual return with us); and
- 2 organisations were not registered.

Annex 7.1 provides further detail of the issues identified in these self-reported incidents.

Reports of Serious Incidents – some case studies

Charity A

The trustees reported to us that funds amounting to approximately £10,000 were unaccounted for, and suspected the former Treasurer of stealing cash and falsifying financial records. The discrepancies were discovered by the incoming Treasurer and the matter was reported to the police. The trustees reported that the charity had undertaken a review of its financial controls and new systems were introduced to tighten security and closely monitor actions.

We requested and received information about the identity of the former Treasurer; whether the individual had admitted the theft; and what action was being taken to recover the misappropriated funds. The trustees told us that the individual pleaded guilty to and was convicted of eight charges of fraud and one of theft, and was sentenced. We checked the individual was not involved in other charities and on the basis that the trustees had taken appropriate action in responding to the suspected fraud and theft, and had strengthened the charity's financial controls to reduce the risk of similar incidents occurring again, we took no further action.

Charity B

The trustees reported that the charity's Treasurer had been transferring money from the charity's account to two accounts unknown to the charity,

and that money was being transferred online several times a day in multiples of £500 and £1,000. Over £100,000 had been moved in an eight month period. The trustees suspected these transfers amounted to misappropriation, but had not reported the matter to the police.

Given the nature and frequency of the transactions, and the cumulative amount, we decided that further investigation was required. The case was referred to our Compliance Investigations Unit and an investigation was opened to examine the concerns further and the actions of the trustees.

The matter was satisfactorily concluded when the charity took legal action against the individual and the misappropriated funds were recovered. The Commission also provided detailed regulatory advice and guidance on improving the charity's financial controls in order to prevent such incidents occurring again.

The trustees did refer the matter to the police as a result of the Commission's intervention. Our understanding is that no police investigation followed, principally because by then the charity was taking legal action to recover the funds.

A key feature of internal financial controls is to ensure that no single individual has sole responsibility for any single transaction from authorisation to completion and review. The case shows how important it is to have procedures in place to carry out spot checks and to monitor financial transactions.

D3. Concerns about charities reported by statutory whistleblowers

The Commission's *Guidance for auditors and independent examiners* clearly explains their legal duty to report matters of 'material significance' to the Commission. This guidance mirrors that contained in Appendix 6 of the consultation draft of *Practice Note 11, The Audit of Charities in the United Kingdom*, published by the Auditing Practices Board in April 2008.

For the first time we can report on the value of the fraud and theft which has been reported to us under the whistleblowing regime. This totalled **£457,854**. The overall income of the charities subject to whistleblowing reports was **£584,236,195**.

There were 53 whistleblowing reports in the year. The concerns raised in these reports include:

- that the governing document of a charity was being breached in respect of remuneration of trustees;
- that trustees of a charity were enjoying the benefit of expenses and cars which had not been reported as taxable benefits;
- that a charity's financial reports had been qualified for not having disclosed all remuneration paid to the executive directors;

- that there was a general lack of control over a charity's expenditure, specifically in respect of cheques cashed with no explanation as to what the funds had been used for;
- that remuneration was being paid to a charity's trustees and partners without being subject to PAYE and NI deductions; and
- that a charity's finances were under the sole control of one trustee.

In most cases, our Assessment Unit provided regulatory advice and guidance to the charities. We keep on record the fact that auditors or independent examiners have raised these problems with the charity, which will be taken into account if similar problems occur in the future. In a few cases of serious regulatory concern we decided to conduct an investigation, working where appropriate with other regulators. This reinforces the important role auditors and independent examiners have and how seriously we take the concerns reported to us.

Annex 7.2 provides a further breakdown of the causes for concern in these reports.

D4. Concerns about charities reported from other external sources

Some complaints are prompted by people connected to the charity (such as employees, volunteers, beneficiaries and funders), and others by MPs and Assembly Members, local communities and the general public. Concerns are also brought to our attention by other regulators, law enforcement

and other government agencies, as well as the media. The majority of these complaints were dealt with by Charity Commission Direct. Only the cases where there is a serious risk of significant harm to or abuse of the charity are referred to the Compliance Assessment Unit.

We receive a number of different types of complaints about charities, but there are only certain kinds of complaints we can get involved with. We have found that the majority of complaints we receive should be made directly to the charity itself rather than the Commission. These complaints include ones about the services a charity provides, employment issues, fundraising methods and internal disputes.

Our guidance *Complaints about Charities* (CC47) explains when we will, and when we will not, take up the issues reported to us, and gives guidance for the public on how to set out a complaint and where it should be sent to. The easiest way to do this is by using the *online complaints form* on our website as this sets out clearly what information we need.

The Commission opened approximately 1500 complaint cases last year about the way charities were being managed or operated.

In total 1,090 cases (not including Reports of Serious Incidents and statutory whistleblowing cases) from a variety of external sources were considered by the Compliance Assessment Unit during the year.

Annex 7.3 provides detail of the breakdown of the causes for concern in the cases referred to our Assessment Unit.

E. Compliance policy and other developments

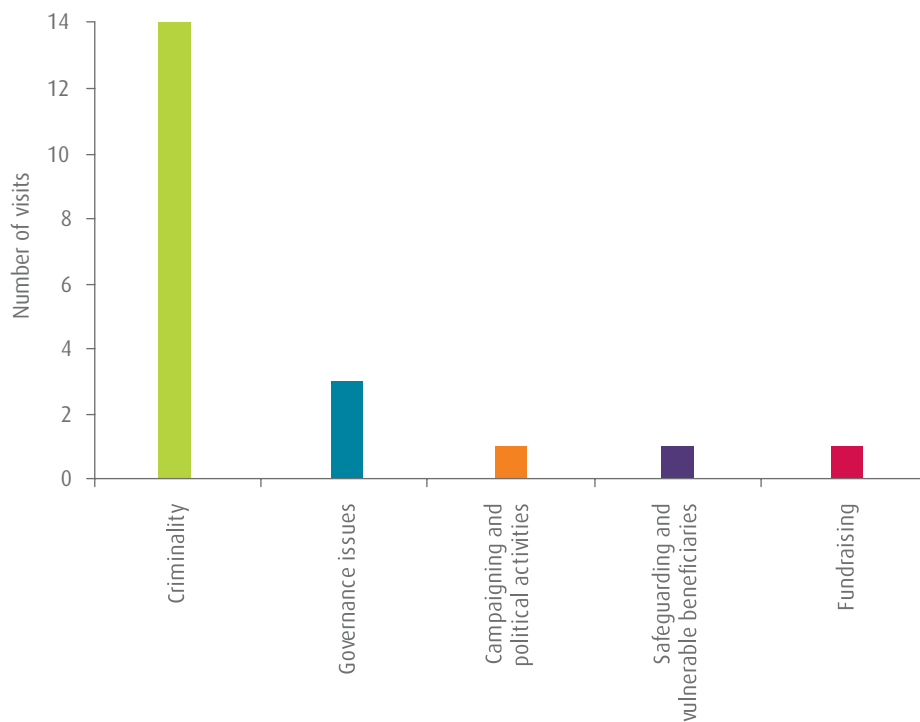
This part of the report covers other key developments in our compliance work during the year.

E1. Our monitoring and analysis capability

The Compliance Monitoring Unit's aims include the exercise of greater oversight and monitoring of concerns of non-compliance in charities, and using information, knowledge and experience to detect and deter serious abuse, and disrupt the activities of those seeking to abuse charities.

Where it engages with charities, it ensures compliance but also encourages self-regulation and good practice by providing regulatory advice and guidance, at an early stage, to charities identified as being at the highest risk, including guidance on putting adequate systems in place for minimising and managing those risks.

Compliance visits 2009-10 Concerns about:



Compliance issue

Compliance visits

In September 2008 the Compliance Monitoring Unit began undertaking compliance visits to a number of charities, examining specific concerns which have come to our attention, and enabling us to provide regulatory support and guidance at an early stage where appropriate. The programme of monitoring visits is a positive and effective tool for the Commission. Building on previous review visits, compliance visits are targeted at charities where specific concerns have been brought to our attention, which helps ensure that we are using our resources most effectively, that the visit has a positive impact in ensuring compliance, and that it benefits the charity.

The Unit completed 20 compliance visits in the financial year 2009-2010 (14 in the previous year). The key issues in the visits during the year were:

As in our compliance cases generally, it was clear from our compliance visits that poor financial management and annual reporting was a common theme. Financial concerns include lack of adequate financial controls, poor accounting and failure to submit, or late submission of annual accounts. 17 of the 20 charities visited (85%) had a history of non-submission or late submission of accounts. The majority of the visits involving issues of criminality were concerned with financial related crime. Even where financial issues did not prompt a compliance investigation, and subsequent visit, financial concerns were often found. Furthermore, identified financial problems often uncovered other governance concerns. The total income of those charities subject to regulatory oversight through monitoring visits was **£43,746,572**.

Trustee eligibility

Some people are disqualified by law from acting as trustees, including anyone falling into the criteria in section 72(1) of the Charities Act 1993. This includes individuals who:

- have been convicted of any offence involving dishonesty or deception which is 'unspent';
- are undischarged bankrupts;
- have made an arrangement with creditors and have not been discharged (this will include an Individual Voluntary Arrangement (IVA));
- have been removed from the office of charity trustee by an order made by the Commission or the High Court;
- are subject to a disqualification order under the Company Directors Disqualification Act 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986.

More detail is provided in our publication *Finding New Trustees: What charities need to know* (CC30).

It is an offence to act as a trustee while disqualified unless we have given a waiver under section 72(4) of the Charities Act 1993.

As part of our proactive monitoring, intelligence and assessment work, we carry out certain checks on the eligibility of persons to act as trustees. We are able to run data checks against certain public lists held by other agencies and regulators as part of our regular trustee checks and compliance work. In the last year, this resulted in us identifying 940 individuals who were thought to be disqualified from acting as trustees. Cases were opened in our Assessment Unit, who contacted the individuals concerned with a view to verifying the information and, if they were still trustees, requiring them to resign from the charity.

Our programme of work targeting checks on individuals who are trustees is risk-based. It is the responsibility of individuals applying to be trustees of charities to ensure they are eligible to be a trustee under charity law, that they meet any other legal requirements (for example, certain people cannot be trustees of children's charities or in positions engaged in regulated activity, which covers anyone working closely with children or some adults, either paid or unpaid), and that they satisfy any additional requirements there may be in a charity's governing document.

Charities must ensure they carry out proper checks and take steps to ensure new trustees meet, and continue to meet, these requirements. If they discover an individual is no longer eligible to act as a trustee, they should take steps to ensure they resign or are removed. If they have problems with this, they should approach the Commission for advice.

Accounts scrutiny

Our Accounts Scrutiny Team, which is part of our Monitoring function, examines the accounts of charities where there are compliance issues. This is carried out on a risk basis and will usually include charities into which we have monitoring cases or investigations. It also includes some of the cases into which we have current assessment cases. The Team will consider whether the accounts are compliant with the *Statement of Recommended Practice* (SORP) but will also examine the accounts to establish any underlying issues of concern. During the year a total of 236 targeted accounts scrutinies were carried out, of which only 14 were considered to have no substantive issues of concern.

The key issues arising from the accounts scrutinies carried out this year (where there may have been more than one issue) were as follows:

Financial management issues	138
Trading Company issues	43
Trustee Benefits	42
Fundraising	23
Insolvency	12
Debtors	6
Fraud	4
Misappropriation	3
Restaurant/bar activities	3
Excessive legal costs / loans to finance legal costs	3
Land or property	1

The Financial Management issues include concerns about:

- high support costs, or legal professional fees;
- high rental costs;
- high administration costs;
- high advertising costs;
- low expenditure on charitable purposes;
- high staff costs;
- ensuring grants are applied correctly; and
- SORP issues relating to insufficient information in the Trustees' Annual Report and accounts.

E2. Working with other regulators

Effective and credible joined-up working with other regulators, law enforcement and other government agencies is essential for detecting, deterring and preventing abuse from taking place in charities, and rectifying problems when they arise. During the year, we continued to strengthen our strategic and operational relationships with a number of agencies by ensuring appropriate protocols, memoranda of understanding (MOUs), or operational arrangements were in place. We now have **sixteen** MOUs in place with key compliance agencies, with a further **six** under development. The following are examples of our regulatory engagement with other agencies and regulators during the year.

(1) Independent Safeguarding Authority (ISA)

Ensuring charities are properly safeguarding children and other vulnerable beneficiaries is a key area of regulatory interest for us and an important issue related to public trust and confidence in charities. The Commission places great importance on developing a constructive relationship with the ISA. This is essential for us to be able to carry out our regulatory responsibilities in ensuring that charities comply with their legal obligations while not duplicating the role of other agencies and ensuring the administrative burden on charities is kept to a minimum.

The Commission is a named supervisory authority under the Safeguarding Vulnerable Groups Act 2006. Since our own duty to make referrals to the ISA came into effect in October 2009 we have been working with the ISA to discuss the practical implications of these obligations and looking at other ways in which we can co-operate more effectively.

(2) Child Exploitation and Online Protection Centre (CEOP)

In March 2010 CEOP organised a seminar for the charitable sector on 'Combating Travelling Child Sex Offenders'. The purpose was to raise awareness and discuss with NGOs and charities on how to report suspicious behaviour or concerns to appropriate law enforcement agencies about persons who may pose a sexual risk to children overseas; and to advise charities about the legal duties of trustees to take reasonable steps to assess and manage risks to charities' beneficiaries. The Commission supported CEOP with the seminar and continues to be involved on a strategic level in this area.

Based on the positive feedback from participants CEOP hopes to repeat this seminar on a regular basis. For more information, visit www.ceop.gov.uk.

(3) National Fraud Authority

The National Fraud Authority (NFA), which is an Executive Agency of the Attorney General's Office, is tasked with managing the ongoing delivery and development of the National Fraud Strategy, first published in March 2009. The NFA manages Action Fraud – which provides a new central point of contact where victims can report fraud, share their experience and get support. As the UK's first national fraud reporting centre, it aims to deliver a coordinated response to fraud reporting that has never existed before.

The Commission works closely with the NFA on a number of issues, actively contributing to various working groups and task forces. This includes membership of the Information Sharing Task Force that has been set up to work across public, private and third sector organisations to resolve information sharing barriers and to identify and promote good practice to improve organisations' long-term capability to prevent fraud. The Commission has also been engaged with the Measurement and Analysis Unit within the NFA, about the extent and nature of fraud committed against the sector.

Exchange of information with other regulators

The Charities Act 1993 (sections 10 and 10a) provides the legal gateway for the mutual exchange of information between the Commission and other regulators or government agencies where this will further the statutory purposes of either organisation. As a public authority and data controller under the Data Protection Act 1998, the Commission must comply with the proper and safe collection, handling and use of personal data. This is something we are required under law to do but which in any event we take extremely seriously.

The effectiveness of the Commission's growing visibility as a regulator, and of its information sharing, is demonstrated by an increase in **incoming** referrals and information reported to the Commission during the year.

Outgoing exchanges (from the Charity Commission)

Disclosure to Police Forces	302
Disclosure to other regulators	427
Total	729

[last year's total 641, previous year 417]

Incoming exchanges (to the Charity Commission)

Disclosure from Police Forces	131
Disclosure from other regulators	315
Total	446

[last year's total 111, previous year 89]

The Commission's collaboration with other agencies – including the appropriate exchange of information – often helps ensure successful and effective outcomes to our compliance work.

E3. Our Counter-terrorism work

The Commission's *Counter-terrorism Strategy* was published in July 2008. It is the Commission's formal statement of its approach to tackling terrorist involvement or abuse in the charitable sector.

Our strategy has a four-strand approach for identifying and minimising the risk of terrorist exploitation of charities:

1. Awareness – working in close co-operation with the sector to build on charities' existing safeguards to minimise the risk of terrorist abuse.

2. Oversight – taking a more proactive approach to monitoring the sector in order to identify those charities that may be facing problems so we can alert them, at an early stage, to the risks and provide them with regulatory advice and support.

3. Co-operation – in addition to maintaining close links with the charitable sector, we will work closely with other government regulators and law enforcement agencies to better ensure the disruption of those that seek to exploit charities for terrorist ends.

4. Intervention – dealing proactively, robustly, effectively and swiftly when we have evidence or serious suspicion of terrorist abuse involving charities.

UN Counter-Terrorism Committee Report

In November 2008 a delegation from the UN Counter-Terrorism Committee Executive Directorate (CTED) carried out a research visit to the UK to review the UK Government's approach to combating terrorism. As part of the review the delegation met Charity Commission representatives to review our role and activities in this area, nationally and internationally.

The CTED review was very complimentary about the Commission's work. The review report states:

"With regard to the regulation of charities in the United Kingdom, the delegation recommends that the Charity Commission:

Continue its high standard of work to register, regulate, monitor, and investigate the charitable sector within its jurisdiction to prevent the risk of criminal and terrorist abuse.

Continue to share information and best practice among charities, with other United Kingdom charity regulators, and with law enforcement and Government agencies responsible for the prevention of terrorist financing.

Continue and expand its International Programme within priority countries. It is also recommended that the Commission develop a training programme or other method for non-priority countries to gain from its experience.”

The Commission was credited with how, as a small organisation, our compliance staff were highly professional and well trained in the counter-terrorism area. The report also commented on the Commission’s positive approach to the charity sector, as a helpful partner engaged in building sector capacity and creating a co-operative environment of open exchange and self-regulation.

The report gives international recognition to the leading role that the Charity Commission plays in combating terrorism both domestically and internationally.

Awareness

Protecting charities from harm is an online reference guide that aims to give trustees the knowledge and tools they need to manage risks and protect their charity from harm and abuse.

This new toolkit, produced in response to demand from the sector and developed in consultation with a range of charities and other government departments and agencies, was launched in November 2009 with the first chapter, *Charities and terrorism*. Providing key information on the UK’s counter-terrorism legislation and showing how it is likely to affect charities and their work, it explains the legal requirements placed on trustees in relation to UK counter-terrorism legislation and charity law.

Although proven instances of terrorist involvement in the charitable sector are rare, they are completely unacceptable. The enormous diversity of the sector means that the risk of links to terrorism does not apply equally to all charities and the Commission does not take a ‘one size fits all’ approach to the issue. Nevertheless, all trustees must be vigilant about the potential risks associated with terrorism. The summary at the beginning of the chapter highlights key issues that all trustees should be aware of.

Charities and terrorism is particularly aimed at and will be helpful to those charities which, whether working at home or internationally, are likely to be exposed to greater risk of abuse. This chapter’s modules contain more detailed advice to help them assess and manage the risk of links to terrorist activity or of terrorist abuse.

The second chapter of the toolkit will be published later in 2010. Key modules will define ‘know your’ principles which will clarify minimum standards for due diligence in relation to a charity’s donors, partners and beneficiaries, and cover monitoring and verifying the end use of funds. It will also provide guidance on mitigating and managing the risks from a range of financial crime, and good practice in raising, storing and moving funds.

Oversight

The Compliance Monitoring Unit monitors the sector in areas we recognise as high risk in order to identify, at an early stage, those charities that may be facing problems, and intervening where necessary. We provide regulatory advice and guidance to help the trustees better manage the specific risks to their charities.

Co-operation

We have continued our work to strengthen strategic and operational relationships with other regulators, law enforcement and government agencies which are involved in counter-terrorism work, including exchanging information about identified concerns, allegations and suspicions; improving the relationship with the National Terrorist Financial Investigation Unit in the Metropolitan Police and regional Police Counter-terrorism Units; and ensuring we effectively contribute to government policy and plans in this area.

Intervention

We continue to look into concerns raised about terrorism related issues and carry investigations into these. We always work closely with other agencies on these investigations as well as assisting other agencies with their own investigations where a charity is connected with it. Out of our total caseload in 2009-10, eleven investigations included dealing with allegations and suspicions of links to terrorist related activities or organisations. Eight terrorism related investigations were completed during the year: five were regulatory compliance cases and three were statutory inquiries.

In the eight completed investigations involving terrorism issues we used the following powers of protection and remedy:

Use of Charity Commission Powers – all completed terrorism related investigations 2009 - 10

s.8 to direct the charity or its representatives to respond to questions	12
s.9 ordering the charity or associated institutions to provide information	7
s.18 to direct a person not to part with property	1
s.19A to direct charity to take specific actions to protect charity	2
s.26 regulatory consent	1
s.89(5) varying an Order	1
s.18(13) Discharging Orders	7

Our experience from these recent cases supports our view that the most effective way for charities to minimise their exposure to the risk of links to terrorism is through implementing strong governance arrangements, financial controls and risk management policies and procedures.

Precedents and wider lessons from counter-terrorism cases continue to feed into our counter-terrorism policy development and the compliance toolkit guidance. This flow of information and learning continues to strengthen our knowledge, regulatory approach and the advice and guidance we provide.

E4. Challenges to the Commission's decisions

Given the sensitive and difficult nature of our work, it is not uncommon for us to receive complaints that we have made a decision which is unpopular or which the trustees or complainants are unhappy with. Where trustees or complainants ask for a review of a decision we have made to exercise our legal powers, this is dealt with under the Decision Review procedures administered by the Commission's Final Decision Team. A person or persons in the Commission who did not make the original decision independently reviews the decision. The aim of the Decision Review is to ensure that the Commission's final decision is the right one, in the sense that it is a proper exercise of our powers and consistent with our statutory objectives. We also check that the reasons for our decisions have been adequately expressed.

We opened 16 Final Decision cases during the year and completed 15. In eight cases the decision was upheld and in seven cases the decision was partially upheld. There were no cases where the decision was not upheld.

Separate to this process, some decisions the Commission makes can be appealed or reviewed directly by the First-tier Tribunal (Charity). The Tribunal provides an independent route of appeal for charities for decisions made by the Commission. In 2009-10 the Tribunal received four appeals against Charity Commission decisions: one of these involved a compliance investigation. More detail may be found on the Tribunal's website <http://www.charity.tribunals.gov.uk/>.

Full details of the Commission's general procedures in relation to making a complaint may be found on our website under 'About Us'.

E5. Freedom of Information

Our approach to dealing with requests for information about our compliance work mirrors our long-standing commitment to openness and transparency. We aim to disclose information wherever this is possible, providing this does not prejudice our ongoing investigation and compliance work or the work of other agencies. In 2009, the Commission dealt with 559 Freedom of Information requests overall; 110 of these related to compliance work⁵ (last year we reported that about a quarter of 500 requests for information related to compliance work).

One Freedom of Information request which went before the Information Commissioner and the Information Tribunal involved our approach to information requests relating to statutory inquiries. After careful consideration, we refused the request on the basis that the information was exempt under section 32 of the Freedom of Information Act (which relates to inquiry documents). The decision of the Tribunal confirmed that we have been adopting the correct approach to Freedom of Information requests relating to statutory inquiries. The appellant subsequently appealed unsuccessfully to the High Court and then applied for permission to appeal to the Court of Appeal. Leave for the appeal has now been granted.

⁵ In these 110 cases, we gave a full response to 51 requests; a full refusal to 32 requests; a partial response in 22 cases; and advice and assistance in 5 cases.

E6. Public statements about live compliance cases

The Commission often receives enquiries from the media about its engagement with charities on regulatory issues, including our assessment work and our investigations. This year we clarified and explained our approach to dealing with enquiries about ongoing compliance work so that the charities involved, and the media, are clear about this. Queries from the media are dealt with by our Press Office in conjunction with the relevant teams. The Commission is committed to respond accurately to press enquiries, while ensuring it does not prejudice due process and the outcomes of its regulatory and investigatory compliance work.

We consider and issue a response to specific media enquiries on a case-by-case basis. We do not provide proactive updates or detail about ongoing investigations. However we will confirm, if asked, whether we have an investigation into a named charity.

We do not routinely inform the media on a proactive basis of the opening of investigations. Whether we issue a press release is decided on a case-by-case basis. This decision is based on whether it is in the public interest to do so and with consideration of our objective to increase public trust and confidence in charities. The factors which may be taken into account in this decision are fully set out on our website but include the extent of previous and/or current media interest in the issue and whether it is already in the public domain that the charity is subject to a Commission assessment or investigation.

Our policy, except in exceptional circumstances, is to issue a press release when a statutory inquiry ends and we publish the statement of results of the inquiry on our website; for other investigations, our usual approach is to issue a press release where a regulatory case report (RCR) is published on our website. More information about our policy in this area can be found there under 'Our regulatory activity'.

The Commission now offers an email update service and an RSS feed service to enable people to receive Commission news, alerts and reports as they are published.

E7. Guidance and other useful information

The Commission aims to respond quickly to issues in a way which is supportive to charities and the public. Where appropriate we will raise awareness of particular risks facing charities as they come to our attention. This year we launched an alerts and warnings page on our website and two were published in the last quarter of the financial year – one concerning Haiti fundraising scams involving bogus websites, and the other about direct debit scams.

During the year we also published the following guidance about our investigation work:

- *Statutory Inquiries into Charities: guidance for charities and their advisers* (CC46) (March 2010);
- *Regulatory Compliance Cases: guidance for charities and their advisers* (CC45) (March 2010).

We fully recognise how sensitive it is for charities when the Commission has to open investigations into them, and that there is a need for trustees to know what an investigation means for them and their charity. These publications make clear our commitment to follow the relevant legal procedures, work to high standards and clearly explain the reasons for our actions. We now write to the trustees of charities when we open an investigation and advise them to read this guidance.

It is important that trustees have clear guidance to help them safeguard their charities and ensure they keep pace with new developments. During the year we also produced and published the following new, or significantly updated, guidance and reports to help them do this:

- *Charities Back on Track: Themes and lessons from the Charity Commission's compliance work 2008-09* (October 2009).
- *How the Commission deals with regulatory casework (OG117)* (revised December 2009).
- *Protecting Charities from Harm* (the 'compliance toolkit'): chapter 1, *Charities and terrorism* (November 2009).
- (revised) *Reporting Serious Incidents* guidance (May 2009).
- 15 statutory inquiry reports and 5 regulatory case reports.
- Our policy on public statements about live compliance cases.
- *Internal Financial Controls for charities (CC8)* (June 2010).

F. Annexes – Key statistics from the Commission’s compliance work 2009-10

Annex 1 – Performance headlines and impacts

Compliance Performance Headlines	2009 -10	2008 - 09	2007-08
Number of new Assessment cases opened	2434⁶	1504	988
Number of Assessment cases closed	2615	848	799
Number of new Investigations opened ⁷	180	168	170
Number of Statutory Inquiries opened	9	19	19
Number of Statutory Inquiries closed	15	21	29
Average duration of closed Statutory Inquiries (days)	395	358	414
Number of Statutory Inquiries closed which had significant involvement from other regulators, or interim manager	2	5	5
Average duration of closed Statutory Inquiries involving other regulators/interim manager (days)	703	457	351
Number of Statutory Inquiry Reports published	15	23	42
Percentage of Statutory Inquiry Reports published within 3 month target	80%	74%	31%
Number of Regulatory Case Reports	5	4	-
Number of new Regulatory Compliance Cases opened	171	149	153
Number of Regulatory Compliance Cases closed	106	167	171
Average duration of closed Regulatory Compliance Cases (days)	162	158	149
Total number of Investigations closed	121	188	200
Number of active Investigations at year end	140	77	104
Number of new monitoring cases opened ⁸	306	211	-
Number of monitoring cases closed	141	81	-
Number of monitoring visits	20	14	-
Number of Compliance accounts scrutinies carried out	236	320	-

6 Many of these cases related to the work checking the eligibility of individuals to act as trustees, as explained in section E1.

7 ie the total number of statutory inquiries and regulatory compliance cases.

8 These final four rows show performance relating to the first two full years of the new Compliance Monitoring, Assessment and Intelligence function (see sections D and E).

Compliance Performance Impacts	2009 - 10	<i>2008 - 09</i>	<i>2007-08</i>
Charity assets directly protected in our investigation work	£29.56m	<i>£47m</i>	<i>£16m</i>
Charity income directly overseen through either Statutory Inquiry or Regulatory Compliance Cases	£521m	<i>£461m</i>	<i>£106m</i>
Number of cases where Commission action protected vulnerable beneficiaries	20	<i>30</i>	<i>9</i>
Number of cases protecting the reputation of individual charities	50	<i>70</i>	<i>38</i>
Number of cases protecting the reputation of the sector	35	<i>41</i>	<i>27</i>
Number of cases dealing with issues arising from conflicts of interest	19	<i>21</i>	<i>26</i>
Number of cases where advice and guidance provided to ensure the charity's governance improved	43	<i>47</i>	<i>61</i>
Number of cases involving concerns about fundraisers	8	<i>11</i>	<i>9</i>
Number of cases where an internal dispute was resolved and the charity is properly functioning again	11	<i>21</i>	<i>11</i>
Number of occasions where Commission's statutory compliance powers were used, including extensive use of information gathering powers	514	<i>707</i>	<i>490</i>

These impacts relate to investigation cases closed during the year.

Key Performance Indicators ('KPIs')

Background

As a result of a review of our compliance KPIs during 2009-10 the Commission's Board took the view that the existing key performance indicators were too narrowly drawn, and did not properly reflect all our Compliance work. The Board agreed that we will now report on a basket of measures that better reflects the broader range of our compliance activity, and focuses on effectiveness and quality outcomes as well as the timeliness of

investigations. The KPI for our Compliance work is now to:

- *Improve the effectiveness of investigations and related regulatory work into charities by improving detection, investigation and prevention and with clear reported outcomes.*

Performance

Our performance for 2009-10, using the new KPI, was:

	Target	Achievement
Percentage of compliance assessments carried out correctly within 30 working days	90%	90%
Number of compliance visits carried out annually to charities which are subject to monitoring and identified following a risk assessment	20 visits	20 visits
Average time taken to complete all regulatory compliance cases (excluding statutory inquiries)	183 days	162 days
Percentage of all investigations resulting in at least one of the specified beneficial impacts which protect charities from mismanagement, misconduct or abuse (see "Compliance performance impacts" above).	90%	93%
Percentage of statutory inquiry reports published within three months (92 days) of completing the proactive investigation process	90%	80% ⁹
Publish an annual report on the 'Themes and Lessons from the Charity Commission's Compliance Work' (<i>Charities Back on Track</i>), which includes listing the duration of each statutory inquiry, reporting on the impact of investigations, the use of sanctions (including legal powers of remedy and protection), and the operation of our compliance work	Publish report during third quarter of financial year.	Report published in October 2009

⁹ Delays in publishing inquiry reports were mainly due to the need to coordinate with other regulators/agencies, including the police, where we were handling sensitive issues, or where we have been actively engaging with charities to resolve issues and reach agreement. It is also essential that we follow due process and are fair to those who are the subject of our reports, which may sometimes result in a delay in publication

Annex 2 – Published statutory inquiry reports 2009-10

This table highlights key issues of concern in these investigation cases; notes the use of Charity Commission powers; and records the overall duration of investigations, from the opening of the statutory inquiry to the publication of the inquiry report.

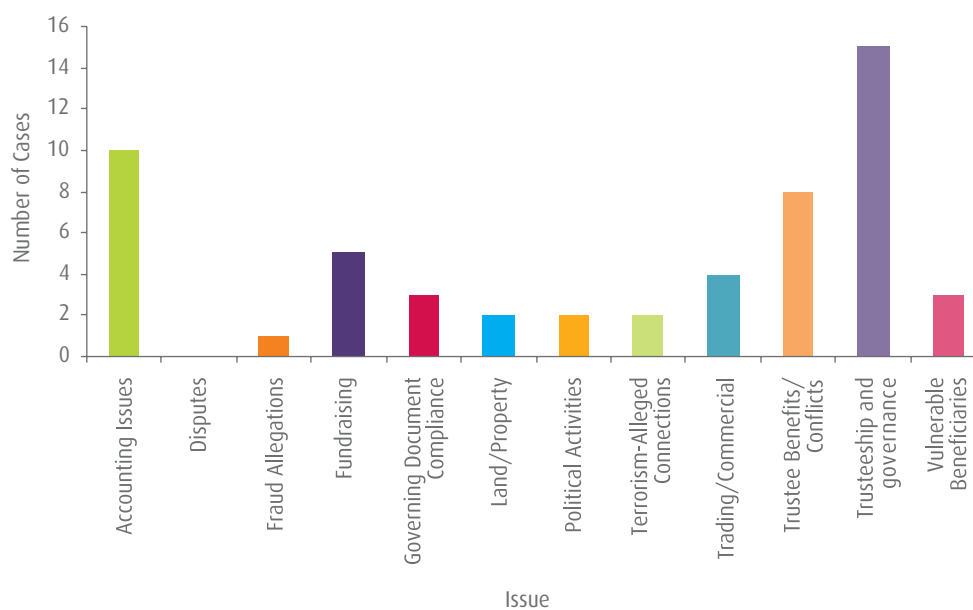
CHARITY	ISSUES											STATUTORY POWERS							Statutory inquiry durations ¹⁰ Months		
	Accounting issues	Disputes	Fraud allegations	Fund-raising	Governing document compliance	Land / Property	Political activities	Terrorism allegations	Trading / commercial	Trustee benefits / conflicts of interest	Trusteeship and governance issues	Vulnerable beneficiaries	Orders / Directions for information / evidence	Suspend trustees	Remove trustees	Freeze bank accounts	Interim manager	Direct Trustees to Act		Other Orders + schemes	No powers used
1 African Development Agencies (297950)	✓										✓		✓	✓	✓						31.5
2 Afro Caribbean Millennium Centre (519691)	✓				✓					✓	✓			✓							23.5
3 Al Ikhlas Foundation (1047844)	✓				✓		✓			✓				✓				✓			12
4 The Andrew Lloyd Webber Art Foundation (1015648)						✓			✓	✓	✓									✓	4
5 Catz Club (1112772)	✓						✓		✓	✓	✓		✓								9
6 Dedicate Ltd. (1102509)				✓					✓	✓	✓		✓			✓				✓	15
7 Essex Islamic Trust (1043627)	✓			✓		✓				✓	✓		✓								35
8 Hackney African Organisation (288997)	✓										✓		✓	✓							31.5

¹⁰ The case duration shown in this column is the total period from the opening of a statutory inquiry to the date on which the substantive inquiry was closed, disregarding any delay which may have been related to the work of other regulators or legal proceedings or other external factors.

CHARITY	ISSUES													STATUTORY POWERS								Statutory inquiry durations
	Accounting issues	Disputes	Fraud allegations	Fund-raising	Governing document compliance	Land / Property	Political activities	Terrorism allegations	Trading / commercial	Trustee benefits / conflicts of interest	Trusteeship and governance issues	Vulnerable beneficiaries	Orders / Directions for information / evidence	Suspend trustees	Remove trustees	Freeze bank accounts	Interim manager	Direct Trustees to Act	Other Orders + schemes	No powers used	Months	
9 Humanitarian Coalition Aid Foundation (1095610)	✓		✓	✓							✓		✓								25.5	
10 Viva Palestina (formerly Lifeline for Gaza) (1129092)	✓			✓	✓		✓	✓			✓		✓			✓			✓		8.5	
11 Raise a Smile Ltd (1108489)				✓				✓	✓	✓		✓			✓				✓		19	
12 Somali Progressive Association (1057081)	✓								✓	✓		✓			✓						8	
13 St Peter's Independent School Northampton (281736)										✓	✓							✓			6	
14 Tariqa Burhaniya D'Suqiyya Shazuliyya (TBDS) (1041647)	✓								✓	✓	✓	✓						✓	✓		9	
15 The Trust of St Benedict's Abbey Ealing (242715) (2 separate inquiries)										✓	✓									✓	7.5 and 9	
TOTALS	10	0	1	5	3	2	2	2	4	8	15	3	10	4	2	4	0	3	4	2		

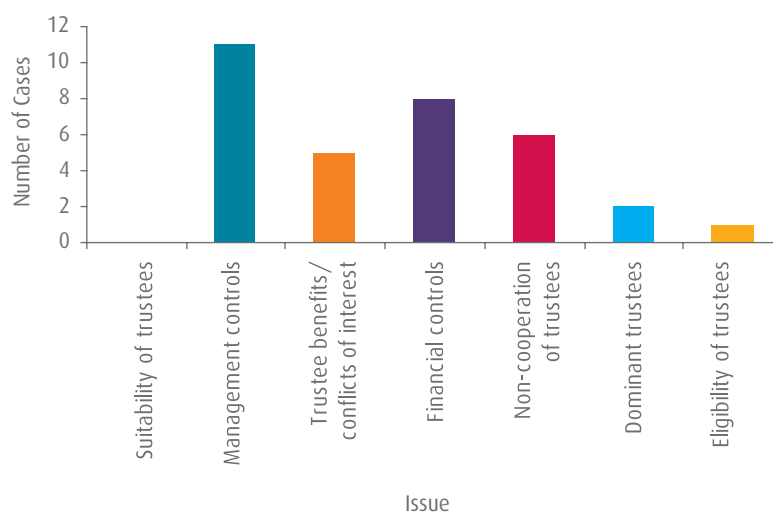
Annex 2.1 - Published statutory inquiry reports 2009-10 – the type and frequency of issues of concern

Note that most statutory inquiries involve more than one issue.



Baseline: 15 statutory inquiry reports

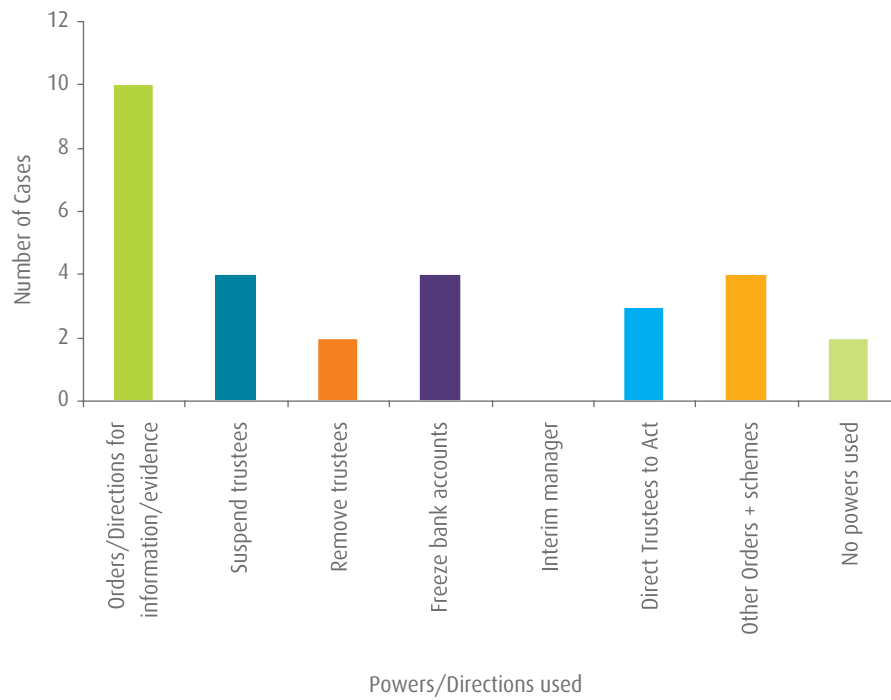
Annex 2.2 – Trusteeship and governance issues in statutory inquiries 2009-10



Baseline: 15 statutory inquiry reports

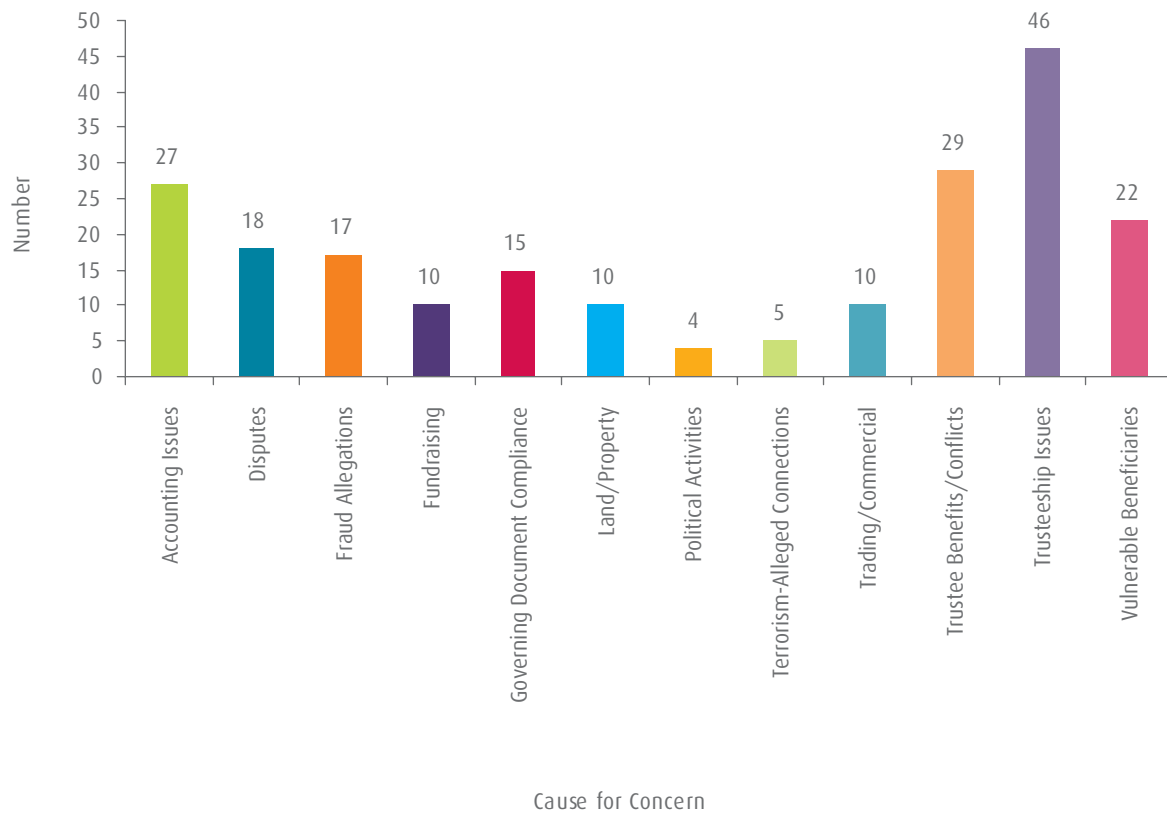
Annex 2.3 Published statutory inquiry reports 2009-10 – the frequency of use of different Charity Commission powers

Note that more than one power is used in most cases.



Annex 4 – Regulatory compliance cases 2009-10 – the type and frequency of issues of concern

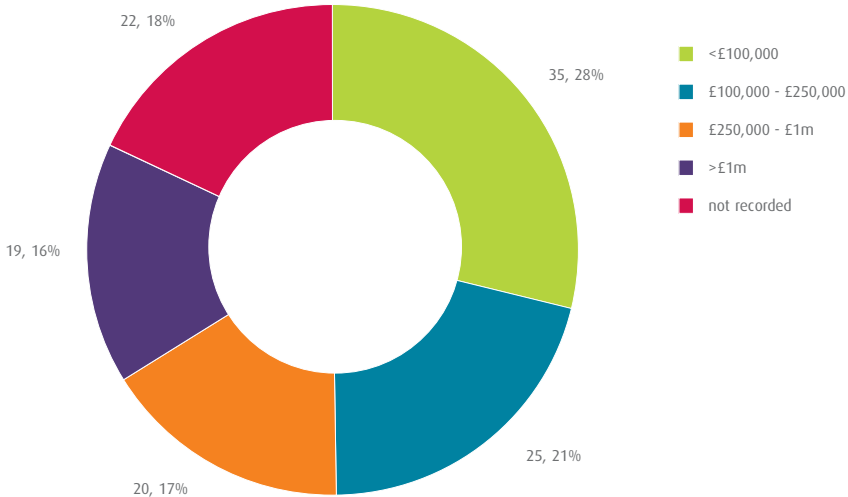
Note that most cases involve more than one issue.



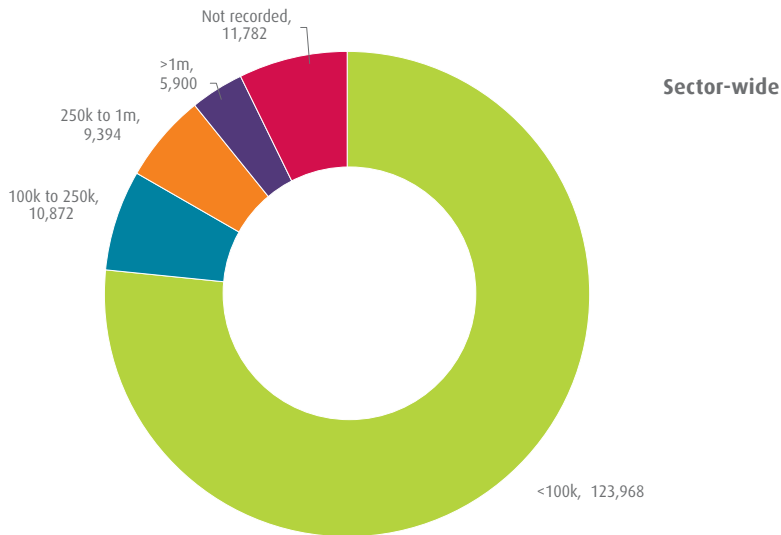
Baseline: 106 cases

Annex 5 – Investigations¹¹ 2009-10 - the number of charities by income band

Baseline: 121 investigations



For comparative purposes, the following is a profile of the income of the sector generally.



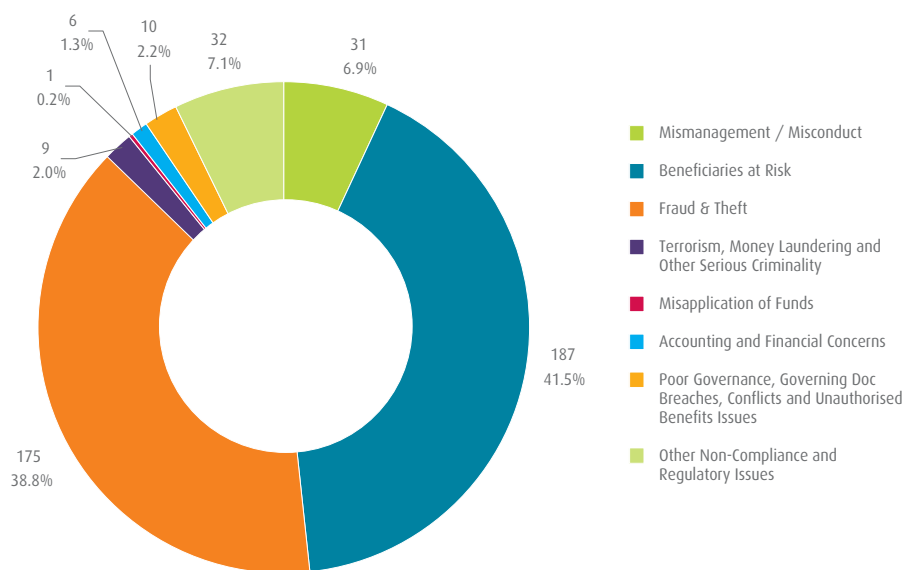
Annex 6 - Use of Commission powers in all Compliance cases

The number of <i>individual</i> Orders or Directions under the Charities Act 1993	2009 - 2010	2008 - 09	2007-08
S8 (3) – (a) Furnish information / answers	11	9	40
S8 (3) – (b) Furnish copies / documents	4	3	25
S8 (3) – (c) Attend and give evidence	11	7	5
S9 (1) – (a) Furnish information	94	75	50
S9 (1) – (b) Furnish copies / documents	288	543	246
S18(1) – (i) Suspend Trustee, Officer, etc	1	1	7
S18(1) – (ii) Appoint additional trustee	1	1	3
S18(1) – (iii) Vest property in the Official Custodian for Charities	22	1	0
S18(1) – (iv) Not to part with property	12	11	18
S18(1) – (v) Not to make payment	0	0	0
S18(1) – (vi) Restrict Transactions	7	0	10
S18(1) – (vii) Appoint Interim Managers	2	2	2
S18(2) – (i) Remove Trustee, Officer, etc	0	1	6
S18(2) – (ii) Establish a scheme	0	1	0
S18(5) Appoint Trustee(s)	11	11	9
S19 (a) Specific Direction to protect charity	7	4	0
S26 Regulatory Consent	9	9	8
Others (including Discharge Orders)	34	28	61
TOTAL Orders / Directions issued in period	514	707	490

Annex 7 – Concerns about charities

Annex 7.1 – Reports of Serious Incidents

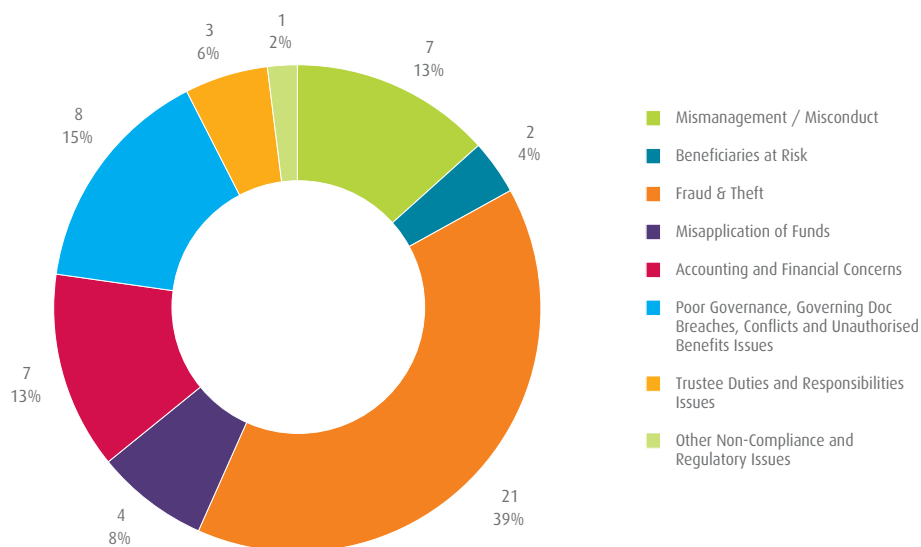
The following chart shows the principal issue only with the data showing the number of reported incidents rather than the number of charities submitting reports. For example, some charities submitted more than one report.



Baseline 451

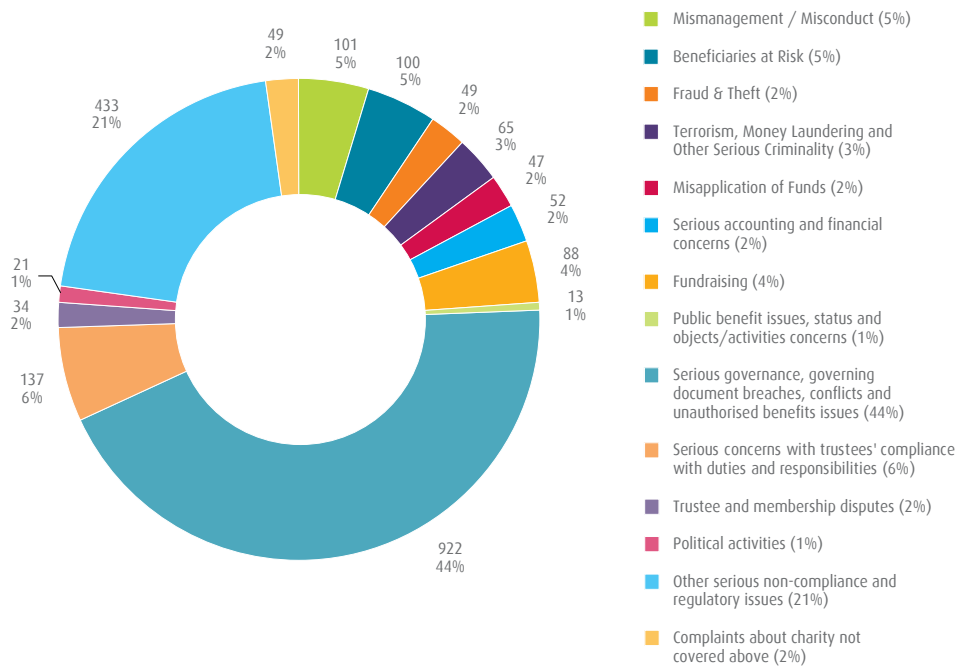
Annex 7.2 – Whistleblowing reports

There were 53 whistleblowing reports received by the Commission in the year (49 last year), the vast majority of which were dealt with by the Assessment Unit. The key issues in these reports were as follows, showing the principal issue only.



Baseline: 53

Annex 7.3 – Concerns about charities identified or reported from other sources



Baseline: 2111

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