

Charities Back on Track

Themes and lessons from the Charity Commission's investigations and regulatory casework

2010-11



The Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. Our aim is to regulate charities on behalf of the public, to enhance public trust and confidence in charities and work for an effective charity sector.

There are approximately 840,000 trustee positions governing the 180,000 charities in England and Wales. The Commission provides online guidance for trustees to help them work within charity law and be aware of legal requirements and good practice. We provide information for the public and online services, as well as creating schemes and giving legal permissions where necessary to enable charities to continue with their work.

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. Our overall approach emphasises the provision of regulatory guidance and advice, ensuring charities and their trustees comply with their legal obligations.

Contents

A. Foreword	2
B. Overview of the year	3
C. The Commission's approach to investigations and casework going forward	12
D. Key themes	14
E. Annexes – Key statistics from the Commission's compliance work 2010-11	35

A. Foreword

Charities enjoy high levels of public trust and confidence, but we know that trust is hard-gained and easily lost. To maintain that trust, the charity sector needs to be well-run and effectively regulated.

There are 180,000 charities in England and Wales. Most are well-run, but serious problems do occur. That's why the Charity Commission's role is essential in regulating charities on behalf of the public and taking action when serious problems arise.

Public trust also relies on charity trustees taking their legal duties and responsibilities seriously and running their charities properly. That's why again this year we aim our *Charities Back on Track* report specifically at trustees, to help them learn from the experience of other charities and to understand the seriousness of getting things wrong.

We deal with the most serious problems through our compliance and investigations work, and we are still seeing too many charities that are not getting the basics right and put themselves at high risk of harm and reputational damage. We have acted upon serious problems relating to poor governance, failures to have proper safeguards for vulnerable beneficiaries, poor financial management and inadequate financial controls and record keeping threatening charity funds and property, and concerns about terrorism allegations.

We have also for the first time included examples of common problems that arise in our other regulatory casework. These problems could often be avoided or dealt with much more quickly if charity trustees were more familiar with our guidance and how things can go wrong.

Charities Back on Track includes facts, figures and case studies from our work this year. We also explain how the Commission will be starting to change in light of our reduced funding so we can continue regulating effectively on the public's behalf. Investigations into serious mismanagement and abuse in charities will continue to be a key priority for the Commission. We will also work to one, unified risk framework which will provide a consistent approach to our work and help us, within our reduced funding, to focus our resources on the areas of greatest importance and impact.

No charity trustee should read this report and think 'it could never happen here', but with the right approach and effective management, they can dramatically reduce the chances that it will.

Sam Younger
Chief Executive

B. Overview of the year

This report highlights the key themes arising from the Commission's regulatory compliance and investigations work and through its other regulatory casework between 1 April 2010 to 31 March 2011. Every year we engage with thousands of charities, and it is vital that charity trustees understand what can happen if they do not fulfil their legal responsibilities.

Assessing concerns, investigating serious problems

We are a risk-based regulator and use our Risk and Proportionality Frameworks for assessing serious concerns raised about charities. Our specialist officers look at all serious concerns raised about charities, and in each assessment case decide whether we will examine the matter further and what the most appropriate course of action is. Most problems in charities are usually resolved at this assessment stage by trustees, with the help of the Commission's regulatory advice and guidance. However, where serious concerns exist we may need to investigate further.

- Our approach to investigating charities

This year we opened 1,845 new assessment cases and completed 1,912 assessment cases. This compares to 2,434 and 2,615 respectively the previous year.

The lower figures for this year are due to the smaller number of cases to follow up our monitoring work where we identified, through data checks on charity trustees, people disqualified from acting as trustees. Setting these cases aside, we saw an increase in the number of assessment cases.

The total income of all the charities subject to an assessment during this period amounts to £9.1 billion (17% 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.

In nearly 77% of assessment cases the concerns were raised with us by external sources including the general public, other regulators, law enforcement and government agencies, as well as trustees themselves. Key causes of concern include:

- serious failings in trusteeship or governance involving non compliance with trustee duties and responsibilities and breaches of trust arising in 56% of cases
- concerns about the safeguarding of vulnerable beneficiaries in 8% of cases
- issues of fraud and theft in 14% of cases
- serious financial and fundraising concerns in 12% of cases
- concerns about a charity's campaigning and/or political activities in 2% of cases

Concerns about fraud, theft, financial and fundraising issues went up from 16% to 26% as a proportion of overall completed cases. This is largely due to the increase in the number of serious incident reports and whistleblowing reports we received.

You can find more information on our completed assessment cases in annex 7.

Investigations

The most serious cases are taken forward as investigations. Most are dealt with as regulatory compliance cases, where the risk is more limited and can be resolved through regulatory advice and guidance, or by setting out an action plan for trustees to resolve the problems, and without the need to intervene using our powers. Where there is significant risk and serious regulatory concern we open a statutory inquiry. We usually publish an inquiry report into these cases when they are concluded. Our approach to investigations is set out here

- *Regulatory Compliance Casework: Guidance for charities and their advisers (CC45)*
- *Statutory Inquiries into Charities: Guidance for charities and their advisers (CC46)*

This year, the Commission opened 144 new investigation cases, of which three were statutory inquiries.

We completed 167 investigation cases in total, of which nine were statutory inquiries, ending the year with 119 active investigations.

The impact of our investigation work included:

- directly monitoring a total of £900m of the charity sector's income through either statutory inquiry or regulatory compliance cases
- directly protecting £8m of charity assets at risk through those investigations
- publishing 13 inquiry reports on our website
- publishing eight regulatory case reports on our website
- 49 cases where the Commission's involvement assisted in the protection of vulnerable beneficiaries
- 71 cases where the Commission's involvement helped protect the reputation of individual charities
- 49 cases which helped protect the reputation of the sector
- 20 cases successfully resolving significant conflict of interest issues
- 59 cases where we provided regulatory advice and guidance in investigation work to ensure the charity's governance improved as a result of our engagement
- 11 cases where we addressed serious concerns about charity fundraisers
- ten cases where an internal dispute in a charity was successfully resolved and the charity is properly functioning again

Enforcement action and monitoring charities

The Commission's enforcement work includes regulatory action taken during investigations into individual charities. This may involve using legal Orders and Directions and can include appointing interim managers to charities (see annex 6).

During 2010-11 we used our statutory compliance powers on 208 occasions, including use of our information gathering powers.

We can also take enforcement action against charities that fail to provide evidence of their activity and existence by not submitting annual accounts, annual returns or updates. All charities that send these key documents in late are highlighted in red on our online Register of Charities, but more serious action can result through charities being referred for compliance enforcement or removal from the Register of Charities entirely. Trustees must make sure key documents are submitted within the ten month legal deadline. At present 96% of the charity sector's income is accounted for in accounts filed by charities within the ten month deadline.

We carried out enforcement action on 108 charities for not submitting annual accounts. This targeted enforcement action resulted in ensuring:

- 68% of those charities submitted accounts, ensuring transparency in respect of a total of £9,387,407 charity funds
- 27% of the charities were removed from the Register of Charities as further evidence materialised that they were no longer operating or ceased to exist
- 5% of the charities were referred for further investigation

Our work also includes monitoring charities where we have concerns of serious non-compliance or of significant risk. This is conducted in a proportionate and targeted way, including scrutinising accounts, ensuring trustees complete actions they have promised to carry out.

During 2010-11, we opened 276 compliance monitoring cases and completed 297 cases.

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 1993. During the year we saw:

436 exchanges to the Commission (last year's total 446), and 615 exchanges from the Commission (last year's total 729).

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. Through our checks on trustees we identified 175 people disqualified from acting as trustees.

Reporting serious incidents

Trustees are responsible for reporting serious incidents to the Commission. This demonstrates to us that they have identified a risk to the charity and that they are taking appropriate action to deal with it. This is very important because safeguarding the assets of the charity and the charity's beneficiaries are key trustee responsibilities. 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 theft and fraud within a charity, or vulnerable beneficiaries having been put at risk.

During 2010-11, we received 849 Reports of Serious Incidents (last year 451 reports).

We are encouraged by the big increase in the number of serious incidents reported to us during the year. We believe that this represents greater knowledge and awareness amongst charities of the reporting serious incidents requirement. However, our view is that many serious incidents are still not being reported to us by charities given the overall number of registered charities and the concerns that are being identified from other sources.

We carried out 20 investigations during the year following a report of a serious incident where we had serious concerns. Seven of these related to serious incident reports made to us in 2010-11, and 13 related to reports made in the previous year. The vast majority of the regulatory issues arising from the reports made in the year were addressed by providing regulatory advice and guidance in our Assessment Unit without the need to intervene further.

After receiving feedback and consulting with the sector we updated our guidance for trustees on reporting serious incidents and this has been broadly welcomed by many charities and their professional advisers. The guidance provides additional clarification on reporting fraud and theft and introduces greater proportionality by allowing more discretion for trustees in reporting lower value fraud and theft.

- Reporting Serious Incidents - guidance for trustees

Key themes, common problems

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

Trustee duties and responsibilities

Serious failings in trusteeship or governance featured in 56% of our 1,912 assessment cases. Our recent work included, in particular:

- serious governance issues, breaches of governing document, conflicts of interest and unauthorised benefits – 271 (14%)
- serious non-compliance and other regulatory issues, including concerns raised by other agencies – 377 (21%)
- serious failures of trusteeship and governance, such as acting outside objects, as a result of internal disputes, and alleged general misconduct by trustees – 289 (15%)
- failures to properly discharge trustee duties and responsibilities – 118 (6%)

Financial mismanagement

The total value of the fraud and theft reported to us, through Reporting Serious Incidents and whistleblowing reports, was £6m against a total income of £3.66bn for these charities. While this represents a relatively small proportion of the income of the entire charity sector (£53.4bn), our view is that there remains significant under-reporting in this area.

Surveys and research carried out by other agencies and organisations, for example the 2010 survey of charities carried out by the National Fraud Authority (NFA), also conclude that there is substantial under-reporting of fraud by the charity sector.

Issues of fraud and theft featured in:

- 266 assessments (14% of the total)
- 38 of 158 completed regulatory compliance cases (24%)
- 13 of 144 new investigation cases opened in the year (9%)
- 371 out of 849 Reports of Serious Incidents (44%)
- 15 out of 35 whistleblowing reports (43%)

Concerns about financial mismanagement are not confined to fraud and theft. Our assessment work showed that in a further 242 cases (13% 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 277 charities, which were the subject of our targeted compliance monitoring work, also revealed evidence of problems in connection with financial management, including:

- 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
- failure to comply with the requirements of the Charities Statement of Recommended Practice ('SORP').

Sound financial management is an increasingly important factor in determining people's trust and confidence in charities, as the results of the Commission's last Public Trust and Confidence Survey show. It is therefore vital for charities to reassure the public that the money they donate to charity is used properly and goes to the causes for which it is intended.

Vulnerable beneficiaries

The effectiveness of how 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 incident occurs that the trustees could have done more to prevent.

Several cases involved actual, suspected or alleged abuse of beneficiaries, but we also saw a number of cases where we had serious concerns about charities that did not have effective safeguarding policies or practices in place.

The Commission does not itself investigate actual abuse. We can and do refer any concerns we have to other agencies and the police who are responsible for investigating incidents of physical or sexual harm against individuals.

In some instances the police or another agency may decide not to pursue a case. However there may still be serious concerns about the charity, the conduct of its trustees or its systems to safeguard beneficiaries that the Commission needs to look into. On some occasions we are the only agency that can take action, especially if the concerns centre on the conduct of the trustees.

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 effective safeguarding policies and procedures to protect them.

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

- 152 cases dealt with by our Assessment Unit (8% of the total)
- three out of 13 statutory inquiry reports (23%)
- 54 out of 158 closed regulatory compliance cases (34%)
- 29 out of 144 new investigations (20%)
- 217 out of 849 Reports of Serious Incidents (26%)

Counter-terrorism work

The Commission's Counter-terrorism strategy was published in July 2008 setting out our four-strand approach for identifying and minimising the risk of terrorist involvement or abuse in the charitable sector.

Awareness: We continued to work, in collaboration with the sector, on the remaining chapters of our online toolkit for trustees *Protecting Charities from Harm. Chapter 1 Charities and terrorism* was published in 2009 and provides information on the UK's terrorism legislation and how it is likely to affect charities and their work. This year we published *Chapter 2: Due diligence, monitoring and verification of the end use of funds*. This is an important area of risk based assurance and it is vital that trustees are aware of their legal duties and responsibilities in this area. We also published *Chapter 3: Fraud and financial crime* to raise awareness of the risks and assist trustees in managing them, and *Chapter 4: Holding, moving and receiving funds safely in the UK and internationally* which provides practical advice on financial controls and risk management. The toolkit has been welcomed by charities and our government partners.

Oversight: We continued to proactively monitor the sector in order to identify charities that may be facing problems and intervene where necessary, at an early stage, to alert them to the risks and provide them with regulatory advice and guidance.

Co-operation: We have built strong relationships with other regulators, law enforcement and government agencies so that we can collaborate effectively together to act on identified concerns and disrupt those that seek to exploit charities for terrorist ends.

Intervention: We act proactively, robustly and swiftly where we have evidence or serious suspicion of terrorist abuse involving charities. We always work closely with other agencies on these investigations as well as assisting other agencies with their investigations where a charity is connected to it. Out of our total caseload this year, sixteen investigations included dealing with allegations and suspicions of links to terrorist related activities or organisations. Eleven of these terrorism related investigations were completed during the year: nine were regulatory compliance cases and two were statutory inquiries.

Common problems, Schemes and powers from our other regulatory casework

Issues concerning charities that are not appropriate for investigation are mostly dealt with through our specialist casework and our large charities division, (charities with an income of more than £5m). These teams also have specific responsibility for armed forces charities and education charities.

Whilst some problems that arise are not deemed to be serious, significant problems can still occur when charities do not follow guidance and make mistakes that can be costly and time-consuming to remedy. Issues include making mistakes or not following guidance when selling property or land, problems where charities have not consulted properly on changes, charities needing to change their charitable objects, have schemes approved for them to make changes to the way they work, or problems with governance and trustee benefits. We have also worked to help charities wind up or identify where charities are no longer operating and have ceased to exist .

We also use our powers to enable charities to continue their work through the making of Schemes and use of powers to make necessary amendments and give our permission for transactions which require it.

In this casework we have used our powers on 4,329 occasions, including where we issued directions. This included issues such as:

- 698 occasions on which we granted consent to amend the objects of a charitable company
- 192 occasions on which we gave consent to amendments to the application of property of a charitable company
- 301 occasions on which we gave consent to amendments to trustee benefit provisions of a charitable company
- 655 occasions where we used our powers to remove a charity that had ceased to operate or exist
- 133 occasions when we used our powers for the voluntary removal of a Charity
- 579 occasions when we used our powers under a charity's governing document
- 172 occasions when we used our powers for the concurrence with a resolution to expend capital

There were 505 occasions where we set up Schemes for charities. These included:

- 315 administrative Schemes
- 182 cy pres¹ Schemes
- five concerning failed appeals
- one concerning a Common Investment Fund
- two concerning charter bodies

We also had to issue formal advice to trustees on 31 occasions.

¹ **Cy-près** is a Norman French term meaning 'near this'. Application of the cy-près doctrine enables us and the Courts to prescribe new purposes for a charity whose existing trusts have 'failed'.

Trustees working with the Commission

The courts have held that charity trustees have a duty to cooperate with the Commission. Whether they do so or not is a relevant factor in assessing whether misconduct or mismanagement has occurred in the administration of a charity. The level of cooperation the Commission receives from charity trustees may be a relevant factor in the Commission's consideration of whether regulatory action is proportionate. This is particularly relevant where the Commission has opened statutory inquiries.

C. The Commission's approach to investigations and casework going forward

The Commission launched a strategic review of its activity in November 2010 following confirmation of our reduced funding from Government in the comprehensive spending review. The Commission's income will decrease from £29.3m in 2010-11 to £21.3m in 2014-15, which has led to a fundamental rethink, with extensive external consultation, of what our priorities will be in the future, what charities can expect of us going forward and crucially what we expect of charities and their trustees. This is also rooted in our statutory duties as set out by Parliament, which details what we are required to do by law.

Our public consultation, including public opinion research, established that the Commission is seen as being first and foremost for the public, which obviously includes donors, grant makers and beneficiaries amongst others, rather than for charities.

Taking action to deal with the areas of most serious risk to the sector and its reputation will remain a key priority. This will consist of a strong focus on fraud, financial mismanagement, threats posed by terrorism and any risk to vulnerable beneficiaries.

We are introducing a new organisational structure with a flatter hierarchy and fewer layers of decision-making. This will enable us to deal more effectively with issues coming into the Commission and clarifying which issues are or are not for us to engage in.

Our new structure aims to provide an effective filter for issues raised with us. We will have an enlarged 'first contact' function that will aim to resolve the majority of issues raised with us. This will include sign-posting to relevant online services and advice and guidance on the Commission's website, signposting to umbrella bodies where appropriate or to other regulators and explaining where issues are not within our remit or should be taken up with the charity itself.

Where an issue requires further attention and the Commission's intervention, it will be dealt with within one of our four multi-discipline operational teams. Each team will each have specialist areas of work assigned to it, such as dealing with specific issues or types of charity, as well as the capacity to undertake general casework. The multi-disciplinary teams will deal with all but the most serious cases, which will be referred to a dedicated Investigations and Enforcement function.

The Investigations and Enforcement function will draw on the specialist knowledge and skills within the Commission to deal effectively with the areas of most serious risk to the sector and public trust and confidence in it, including where necessary opening a statutory section 8 inquiry. Investigations and Enforcement will build on the existing relationships with other government agencies and the work it has already done in the areas of serious risk, such as fraud and financial crime, links and associations with terrorism and abuse of vulnerable beneficiaries. We know that the work with other agencies has resulted in successful convictions for fraud and will continue to be an important part of our work. This includes in the area of counter-terrorism, where we have worked closely with Government agencies and effectively contributed to government counter-terrorism policy and planning.

We will also introduce a new over-arching risk framework to which the Commission will work going forward. In terms of casework, this clarifies how we assess risk, what factors we will take into consideration, and what the most effective way of dealing with that issue should be.

The importance of charities being accountable and transparent by submitting Annual Accounts and Annual Returns on time for public scrutiny will continue, and our commitment to highlighting charities that have documents overdue. We will look at what information charities provide and how we use the information we hold on charities to maximise its impact for the benefit of the public as donors and beneficiaries.

The importance of trustees reading and having regard to all our guidance will be even greater. Trustees must ensure that they fulfill their legal obligations and duties, and the best way of doing this is by ensuring they are familiar with all relevant Commission guidance. All our guidance is available for download from our website, including our trustees' toolkit to help trustees protect their charities from harm.

Numerous people can raise concerns about charities. The Commission's guidance for auditors and independent examiners explains the legal duty to report matters of 'material significance' to us. Equally people within charities – trustees, staff, volunteers, beneficiaries or funders can bring concerns to our attention. Concerns are also raised by Members of Parliament and the Welsh Assembly, other regulators, law enforcement and other government agencies as well as the media. Our guidance sets out where we will and will not take up issues reported to us.

Some of our casework involves granting permissions to charities to undertake certain actions. We are aiming to reduce the bureaucracy connected with these permissions and are considering options such as self-certification to reduce the number of things charities need to come to us to get permission for.

Whilst there are problems that occur in charities that are not classed as a serious incident, they could escalate if not dealt with properly. Our examples of casework includes issues of a less serious nature but which are still problematic and time consuming and can damage public trust and confidence in a charity if not dealt with properly.

D. Key themes

Here we look at the key themes arising from our compliance and investigations work and other regulatory casework more closely through case studies. Most of these are taken from our published statutory inquiry reports or regulatory case reports. Full details about these cases are given in these reports, available from our website or on request.

Key themes 1: Poor governance in charities

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.

Failings in trusteeship or governance often come to light during the course of investigations. These often involve inadequate management controls, no or ineffective management of conflicts of interest, failures to identify and manage situations where trustees are benefitting inappropriately from charities, and failures to control the activities of dominant individuals.

Serious failings in trusteeship or governance featured in approximately 56% of cases dealt with at the assessment stage.

In terms of our other casework, we see some charities that have never reviewed their governance arrangements and they may no longer be fit for purpose. Apart from impeding the smooth and efficient running of the charity, it can open the trustees up to criticism and challenges of maladministration from anyone in dispute with the charity. Whilst the Commission publishes guidance on best practice requirements, it cannot undertake reviews of individual charities. However there are resources available in the charity sector to help trustees to initiate and carry out their own review as well as experts who can carry out tailored reviews at a reasonable cost – which would be a proper charge on the funds of the charity.

Where we identify defects in charity governance, possibly as a result of a complaint to us, we will sometimes suggest that the trustees undertake a full governance review and act on its recommendations. Rather than using our remedial powers, we much prefer trustees to take control of the process and implement appropriate arrangements - if they are willing and able to do so. However, it would be far better if trustees regularly reviewed their governance arrangements to avoid problems arising that necessitated our involvement. It would also help to assure stakeholders and funders that the charity was well run with the necessary systems and processes in place.

Case study: Independence South West (charity no. 280099)

The charity runs a day care and respite centre for severely disabled adults in South West England. The investigation was opened after the Commission was anonymously informed that the Chair of the charity was being investigated by the police in connection with alleged fraud against a public body.

The Commission opened an investigation into the charity which was escalated into a statutory inquiry. The Commission's investigation looked at a number of issues, including whether a trustee was receiving unauthorised benefits. This related to the way in which the charity employed and paid its Chair to work as the charity's Chief Executive Officer (CEO). The investigation also looked at the misuse of charity resources, safeguarding procedures for the charity's vulnerable beneficiaries and the charity's failure to co-operate with the Commission.

The Commission's investigation found that the Chair had misused the charity's invoices resulting in two police cautions for fraud by false representation. The Inquiry also found that the Chair received unauthorised trustee payments as the CEO of the charity, and that the charity's vulnerable beneficiaries had been put at risk due to poor management, lack of staff training and inadequate safeguarding procedures.

The Commission's involvement ensured that the Chair resigned from the board of trustees and from the position of CEO. The charity elected new trustees and a new Chair of the board.

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.

A charity is entitled to the objective judgment of its trustees, exercised solely in the interests of the charity, and unaffected by the prospect of any 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 of a charity 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.

Generally, a trustee cannot become an employee of their charity nor can an employee become a trustee. 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 or, if there is no such provision in the governing document, the Commission or the Courts. Further information is available from *Trustee expenses and payments* (CC11).

The Commission expects trustees to make conscientious and continuing efforts to ensure that they resolve the issues that have already been raised with them by the Commission. Where a previous commitment has been given, the Commission will view non-compliance as evidence of misconduct or mismanagement.

Key themes 2: Inadequate financial controls

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. It is vital that charities are properly accountable to donors and the public about how they raise and spend funds.

Case study: London Philharmonic Orchestra (charity no. 238045)

The Commission opened an investigation in November 2009, after becoming aware of a substantial fraud at the charity. Approximately £666,000 was stolen by the Charity's former Finance Director between June 2005 and August 2009 but the total loss resulting from the fraud was considerably higher.

The charity has now recovered £1.2m of its losses, through legal action. The individual responsible has been convicted of fraud by abuse of position and acquiring and using stolen property, and sentenced to four years in prison.

The Commission's involvement focused on ensuring that trustees were acting responsibly as charity trustees in responding to the fraud and that there were no further risks to the charity's property.

The Commission was satisfied that, having detected the fraud, the trustees fulfilled their legal duties and responsibilities in responding to it. For example by: co-operating with the Commission and the police; obtaining professional advice including commissioning a forensic investigation by an independent accountancy firm; taking appropriate steps to recover the funds lost; and managing the reputational risks to the charity. The charity has also reviewed and strengthened its internal financial controls.

Case study: the Mohiuddin Trust (charity no. 1105585)

The charity is established to advance education and training, to relieve poverty, and to establish schools or colleges, including the provision of financial support.

The Commission opened an investigation after receiving complaints from members of the public alleging that a charity trustee had misappropriated a substantial sum of charity money and was personally benefitting from charitable funds. The Inquiry looked at a number of issues, including potential misapplication of the charity's funds, the management of conflicts of interest relating to a loan to a company connected with two of the trustees, and the trustees' role and financial management of the charity.

The Inquiry found that serious breaches of financial controls had taken place in this charity. The financial governance of this charity was poor, its record-keeping poor and there were weaknesses in its internal financial controls and procedures. Conflicts of interest were not properly managed, and the evidence gathered during the Inquiry showed acts of mismanagement in the administration of the charity. However, additional trustees have now been appointed and improvements made to the charity's management and administration. An action plan is being implemented and the charity's progress is being monitored by the Commission.

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. Internal financial controls are essential checks and procedures that help charity trustees to:

- a. meet their legal duties to safeguard the charity's assets
- b. administer the charity's finances and assets in a way that identifies and manages risk
- c. ensure the quality of financial reporting, by keeping adequate accounting records and preparing timely and relevant financial information

Internal financial controls do not eliminate the risk of losses, including through theft and fraud. Internal financial controls should, however, reduce the risk of those things happening. If they do happen then internal financial controls should also help the trustees to find out sooner and take necessary action.

Charities vary considerably in terms of their size, activities and complexity. Where activities or transactions are complex then trustees may need to seek professional advice on, or to carry out a review of controls in those areas to ensure they are appropriate and adequate. This would usually be undertaken as a separate piece of work from the routine audit or independent examination of the charity's accounts.

The Commission has produced guidance to assist trustees in implementing robust internal financial controls that are appropriate to their charity. *Internal Financial Controls for Charities* (CC8) is available on the Commission's website. There is also a *self check-list for trustees* which has been produced to enable trustees to evaluate their charity's performance against the legal requirements and good practice recommendations set out in *Internal Financial Controls for Charities*.

Trustees have and must accept ultimate responsibility for directing the affairs of a charity, and ensuring that it is solvent, well-run, and delivering the charitable outcomes for the benefit of the public for which it has been set up. Charity trustees must not let their personal interests conflict with their duty to act in the best interests of their charity.

Key themes 3: Safeguarding vulnerable beneficiaries

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.

Case study: International Tiger Moth (was 1087253, now removed from Register)

The charity provided flights for sick and terminally ill children in a Second World War Tiger Moth aeroplane. The Commission's investigation was opened following a complaint alleging that the charity's bank account was being used for the personal benefit of the charity's Operations Manager, and that he had at least one conviction for fraud. A further issue arose later around the airworthiness of the aeroplane used by the charity.

The Commission opened a statutory inquiry to examine risk to the safety of the charity's beneficiaries, the management of any conflicts of interest which had arisen through the family connection of a number of trustees with the Operations Manager, and the adequacy of the charity's financial controls.

The Inquiry concluded that there had been mismanagement in the charity and found that the trustees had failed to ensure that a Certificate of Airworthiness was in place for all charity flights, which led to a question mark over the validity of its insurance cover. They also failed to consider the suitability of the Operations Manager to act as the volunteer pilot and did not have a safeguarding policy. All of these factors created the potential for risks to the charity's beneficiaries.

The Inquiry could find no evidence that the trustees had a conflict of interest policy or were managing conflicts of loyalty created by the Operations Manager's being related to the vast majority of the trustees. Consequently the trustees could not demonstrate that they had acted wholly in the best interests of the charity when considering the suitability of the Operations Manager.

The Inquiry also concluded that there was a lack of effective financial control which led to the mixing of personal and charity funds. During the course of the Inquiry, the Commission provided the trustees with regulatory guidance and advice on the charity's governance. The charity was removed from the Register of Charities and is no longer operating.

Issues for other charities

Certain types of charity are set up to assist or care for those who are particularly vulnerable, perhaps because of their age, physical or mental ability or ill health. Children are an especially vulnerable group and therefore the Commission is concerned to stress the importance of charities having proper safeguards in place for their protection.

Charity trustees must comply with legislation that protects the health and safety of those benefiting from, or working with, their charity. Trustees are expected to find out what the relevant law is, how it applies to their organisation, and to comply with it where appropriate.

More generally, an effective charity regularly reviews and assesses the risks it faces in all areas of its work and actively manages those risks. The implementation of an effective risk management policy is a key part of ensuring that a charity is fit for purpose. Past mistakes and problems that the charity has faced should be taken into consideration. All staff and volunteers will need to understand the part they should play in risk management.

Prudent trustees use charitable funds and assets reasonably, and only in furtherance of the charity's objects. They avoid undertaking activities that might place the charity's endowment, funds, assets or reputation at undue risk.

Key themes 4: Dealing with suspicions and allegations of links to terrorism

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. Charities working in regions where terrorist groups are known to operate must take adequate steps to manage the risks, so that the public and those donating to charity can have confidence that money donated is used for legitimate purposes and is reaching its intended beneficiaries.

Case study: Iqra (charity no. 1095966)

The charity Iqra's charitable object was the advancement of the Islamic faith; it furthered this by running the Iqra Learning Centre, a bookshop and centre for religious learning in Leeds. The charity ceased to operate in 2005.

Following the terrorist attacks in London on 7 July 2005, the charity was publicly linked to two of the perpetrators who died in the attacks and had been former trustees of the charity. A further two former trustees were found guilty of terrorism related offences.

The Commission opened a statutory Inquiry to examine whether the charity may have been involved in terrorist, extremist or other inappropriate activities and ensure that the charity's property and remaining funds were properly used to further its objects.

From an analysis of the information available, including financial records relating to the charity, there was no evidence that the charity's funds had been used to facilitate the attacks.

The Inquiry reviewed the material removed by the police from the charity's premises as part of the criminal investigation into the 7/7 attacks. This included video tapes, written material and material held on the charity's computers. The Inquiry found that the majority of this material was appropriate for a charity with the object of advancing the Islamic faith. However, some was political, biased, propagandist or otherwise inappropriate for a charity.

The Inquiry found that following the 7/7 attacks in 2005 the charity's remaining trustees disassociated themselves from it. Before doing so they did not take appropriate steps to ensure that the charity's remaining assets were applied in furtherance of its charitable purpose. The Inquiry consequently temporarily froze the charity's bank accounts to protect its remaining funds. The Commission will exercise its regulatory powers to ensure their use for the purpose of the charity.

Case study: Muslim Aid (charity no. 295224)

The Commission's investigation was opened following the publication in a national newspaper of concerns that the charity had made payments to organisations allegedly linked to Hamas.

The Commission carried out an independent assessment of the issues raised and identified that, of the organisations named as being funded or otherwise supported by the charity, one - the Al-Ihsan Charitable Society - is designated in the UK, meaning that it is an offence to provide it with funds without a licence from HM Treasury. The Commission's own scrutiny of the charity's 2005 accounts found that funds had been set aside for the Al-Ihsan Charitable Society during that year, but not paid. The 2006 audited accounts did not state explicitly whether the funds had subsequently been paid. The Commission was not provided with sufficient evidence to support the allegation that other named organisations funded by the charity had the alleged links, and consequently did not carry out further investigations into payments to them. Given the seriousness of the allegations made, the Commission required material evidence in support of those claims in order for it to consider taking regulatory action.

The Commission opened a regulatory compliance case to investigate the regulatory concerns it had identified from the allegations. The aims of the investigation were to establish whether the charity had made payments to the Al-Ihsan Charitable Society in breach of financial sanctions and to ensure that the trustees are managing and mitigating risks to the charity by ensuring appropriate policies are in place and implemented to safeguard the charity and its property.

The Commission's investigation found that, although the charity had set aside funds for the Al-Ihsan Charitable Society, these were not subsequently paid. This was as a result of the financial sanctions imposed on the Al-Ihsan Charitable Society after the decision to provide funding had been made. On the evidence examined, the Commission concluded that the charity had not illegally funded the Al-Ihsan Charitable Society. Within the scope of this investigation the Commission found no evidence of irregular or improper use of the charity's funds or any evidence that the charity had illegally funded any proscribed or designated entities.

By publishing this report the Commission has given a public assurance that public allegations of links between the charity and terrorism in relation to the Al-Ihsan Charitable Society are unsubstantiated. The Commission has also provided regulatory advice and guidance to the trustees to further strengthen the way in which the charity's due diligence and monitoring procedures are applied and recorded.

Issues for other charities

Charities and Terrorism

Instances of terrorist involvement in and abuse of charities are rare, but when they do occur they are completely unacceptable. It is the responsibility of charity trustees to safeguard their charity from the risk of abuse, including terrorist abuse. The Commission will support them to do this, and will also support charities carrying out legitimate charitable work, within the law.

Links between a charity and terrorist activity corrode public confidence in the integrity of charity. Links include, but are not limited to, fundraising, financial support or provision of facilities and formal or informal links to proscribed organisations. The conduct of, or comments made by, an individual connected to the charity (such as a trustee) in relation to terrorist, or criminal purposes may be taken into account.

Trustees must ensure they and their charity comply with the law, including counter-terrorism laws. Trustees risk committing a criminal offence if they have financial dealings with someone who is a designated financial sanction target in the UK.

Further guidance about the effect of UK terrorism legislation on charities and trustees' duties in this area is available in Chapter 1: Charities and terrorism in the Commission's Compliance toolkit *Protecting Charities from Harm*.

Working internationally and due diligence

When working internationally, charities often operate through local partners rather than establishing their own delivery infrastructure in their country or region of operation. Working through or with a local partner can be an effective way of delivering significant benefits direct to a local community. It does not, however, shift or alleviate responsibility for ensuring the proper application of the charity's funds by the local partner. That responsibility always remains with the charity trustees, forming part of their duties and responsibilities under charity law. The need to implement risk strategies therefore remains critical.

When choosing local partners to work with, trustees must conduct adequate due diligence checks to ensure that:

- a. the activities they intend to carry out through their local partners are in furtherance of their charity's purposes
- b. their partners are and continue to be appropriate for the charity to work with
- c. the trustees have taken reasonable steps to monitor the use of funds to make sure that their partners can and will apply their funds for proper charitable purposes, and the funds reach their partners and end beneficiaries

Further guidance about due diligence and monitoring and trustees' duties is available in Chapter 2 of the Commission's Compliance toolkit *Protecting Charities from Harm*.

Key themes 5: Failures in fundraising

Trustees must make sure that they comply with the law when it comes to fundraising. Any agreement with a professional or commercial participator should be legal and managed in the best interests of the charity. Trustees must also ensure that they obtain the correct permissions from local authorities for collections including clothing collections.

Case study: Children's Air Ambulance (charity no. 1111780)

The charity was registered with the Commission in late 2005 with the object of providing a specialised air ambulance service for children and babies in the UK.

The Commission's investigation was opened after a significant number of complaints were received from members of the public about the charity, and in particular about its fundraising activities. Several of the complainants also made reference to misleading literature alleged to have been produced by the charity that indicated it was operating an air ambulance service when it was not. Some complainants also raised concerns that the charity's accounts appeared to reveal a high percentage of income had been paid out in consultancy fees.

The investigation was opened to examine all of these issues. It also looked into the charity's relationship with a company connected to its founder and how this conflict of interest was managed, as well as the charity's accounting practices and the general administration, governance and management of the charity by its trustees.

The investigation established that the charity does not own, lease or provide an air ambulance service. Some of the charity's literature was found to be misleading on this point so the investigation advised the trustees to amend their literature and the charity did this immediately. However, the investigation took the view that the trustees had taken active steps towards establishing an air ambulance service in the future and had put measures in place to strengthen their governance to help them achieve their goals and mitigate against the risks of failure

The investigation found that in the charity's first year of operation the trustees had not taken steps to manage the conflicts of interest created by the payment of nearly all of the charity's income to its founder for his work in trying to establish an air ambulance. The Commission provided advice on this and the charity has now carried out governance training and adopted new policies to ensure that any conflicts that may emerge in the future are appropriately managed.

The Commission's findings were published in a regulatory compliance report. The Commission provided further advice on fundraising methods and the trustees have now taken steps to improve the charity's practice in this area. They have also improved the administration, governance and management of the charity and, having received regulatory advice and guidance from the Commission, have been made aware of their responsibilities in managing the charity in the future and are therefore in a better position for the charity to achieve its objects.

Case study - Manacare Foundation (charity no. 1108701)

Manacare Foundation's objects are to relieve the suffering of people of all ages and bring together like-minded persons and organisations throughout England and Wales, Egypt, South Africa and Sri Lanka.

The Commission received complaints regarding clothing collections being made in the name of the charity by a commercial clothing company without obtaining the necessary public licenses from the local authority.

As a result of these concerns raised, the Commission opened an investigation to examine whether the charity trustees had discharged their legal duties and responsibilities regarding the fundraising arrangement with the commercial clothing company. The Commission established that there was an agreement between the charity and the clothing company dated 10 June 2008. The Commission also established that there was evidence that some unlicensed collections had taken place by the clothing company.

Following receipt of the complaint by the Commission the trustees took action to rectify the concern. They wrote to the clothing company insisting it make alterations to its procedures to ensure that further unlicensed collections did not take place. The trustees also made it clear that if further instances occurred, then the charity would consider terminating the agreement with the clothing company.

The Commission established that the clothing company accepted responsibility for the unlicensed collections. The clothing company stated that its staff had accidentally and unknowingly strayed into other local authority areas for which licenses had not been obtained. The clothing company gave assurances that changes to its procedures would prevent further instances of unlicensed collections occurring.

The Commission published a report and provided regulatory advice and guidance to the trustees about their duties and responsibilities to monitor the performance of the clothing company as the charity's agent and representative. The trustees accepted this point and assured the Commission that they would closely monitor the future performance of the clothing company.

Issues for other charities

Charities have a responsibility to ensure that their own reputation, and the good name of 'charity' in the public's perception, is not brought into disrepute by inappropriate activities. Charity trustees must ensure that promises they make in their fundraising literature are met and must ensure, when making statements to the public, that they are true.

Trustees have a fundamental responsibility to ensure their charity's activities further their charitable purpose. As part of an ongoing risk assessment trustees should regularly re-evaluate the charity's work, consider whether its activities successfully fulfill the original aim and if the work furthers their charity's purpose.

Charities are established to provide benefit to the public at large, so any fundraising undertaken must be subordinate to the main charitable activities. Fundraising is not a charitable object and so trustees must ensure that it does not become the main focus of the charity.

Trustees themselves will not always raise funds for the charity or organise fundraising on a day-to-day basis. However they retain overall responsibility for every aspect of the charity's activities and they should have proper mechanisms for delegating activities such as fundraising, with clear terms of reference for those exercising the delegated authority. The trustees should take an active interest in fundraising and ensure that they receive regular reports on performance targets in order to exercise proper oversight.

Trustees who use professional fundraising businesses to fundraise on behalf of their charities have a responsibility to ensure that proper agreements are in place which comply with fundraising regulations, based on fundraising legislation under Part II of the Charities Act 1993. They should also satisfy themselves that the professional fundraisers are aware of the regulations and have the necessary internal infrastructure and controls to implement them. Fundraisers who solicit donations must make clear to how much of the donation or selling price is being taken for expenses.

Key themes 6: Political activity and campaigning

It is a fundamental principle that trustees must ensure that their charities remain independent from party politics and do not give support to a political party, politician or political candidate. This applies to both purpose and activity. Support for a political party cannot be for the public benefit as it is not possible for the courts to judge the public benefit of one policy over another.

Case study: Tomorrow's People Trust Limited (charity no. 1102759)

The charity is 'an independent employment charity which works nationally with the long-term unemployed, helping people overcome personal barriers so that they can move into long-term, sustainable jobs'.

The charity's contribution to the manifesto of a political party issued at the time of the General Election raised concerns that the charity may have or may have been seen as endorsing the political party. Support for a political party is not permitted under charity law, and as such this issue has the potential to impact not just on the work and reputation of the charity, but also on public trust and confidence in charities generally. The full findings of the assessment were published in a regulatory case report.

The Commission was unable to conclude that the trustees could have properly discharged their legal duties and responsibilities and complied with the guidance on charities and political activities by contributing to the manifesto. Appearing in the party's manifesto called the charity's independence into question because it can be seen to be an endorsement of the wider policies of the party and consequently the party itself.

The Commission provided the charity with regulatory advice and guidance regarding the legal and regulatory requirements that must be complied with by charities and the risks associated with any engagement within the political environment.

Case study: Atlantic Bridge Education and Research Scheme (charity no. 1099513).

The Commission's investigation looked at whether Atlantic Bridge is properly established and registered as a charity, whether its activities are capable of advancing education for the public benefit and whether it has engaged in any inappropriate political activity.

The Commission concluded that, although Atlantic Bridge is a charity with exclusively charitable purposes and is capable of operating for the public benefit, its educational objects have not been advanced by its activities because of the way in which it has promoted the 'Special Relationship' between the US and the UK. The promotion of the Special Relationship is not the purpose of the charity and nor can it be. Although it is legitimate for a charity to study, research or educate the public about the 'Special Relationship', it is not permissible for a charity to promote a particular pre-determined point of view.

The Commission also concluded that the charity's activities may lead members of the public to call into question its independence from party politics. The Commission has made clear to the trustees their legal and regulatory responsibilities and that the way that Atlantic Bridge currently carries out its activities must cease immediately. The full findings of the Commission's investigation were published in a regulatory compliance report.

The Commission provided the trustees with regulatory advice and guidance on their obligations under charity law. As a result of the Commission's intervention, the trustees have committed to undertake a wide-ranging governance review over the next year and report back to the Commission within two months of its completion.

Issues for other charities

It is permissible for a charity to seek to influence the policies of a political party or parties where this will contribute to the delivery of its own charitable purposes. Where a charity's policy position on a particular issue is similar to or coincides with that of one of the political parties, it is also acceptable for the charity to continue to campaign on that issue and advocate its adoption. However, where it does so, the charity must emphasise its independence from any political party advocating the same policy and do nothing to encourage support for any political party.

One of the key features of advancing education or promoting research for the public benefit in charity law is that the education or research must not promote a position on a contested issue or area, unless that view is uncontroversial. To advance education under charity law, information must be presented in such a way as to allow those being educated to make up their own minds on the issues and form conclusions that are based on an objective analysis of the evidence. Equally, this principle applies to promoting a particular political stance or policy, which cannot be charitable. Trustees can only educate the public about a political policy in general terms, for example debates on the nature and content of those policies, rather than educating from the point of view that a certain political policy is good or better than another.

During an election period, the need for impartiality and balance is intensified, and charities must take particular care when undertaking any activities in the political arena to ensure that the charity's independence is maintained and that there is no perception that its independence is being adversely affected by the charity's activities.

Contributing to an election manifesto or any party political publication would have the inevitable result of providing or encouraging support for a particular political party, or at the very least, the perception of doing so. As a charity cannot support or encourage support for any political party, the Commission is unable to see how a charity could demonstrate that it had sufficiently considered and managed all the risks arising from a decision to contribute to an election manifesto or party political publication.

The Commission's guidance *Charities, Elections and Referendums* is for use by charities during the period between the announcement of an election, and the date on which an election is held, to help them decide what activities are and are not appropriate.

Key themes 7 – The damage of disputes

Where disputes arise in charities, the trustees should actively work to resolve them internally. Using external mediators can also help trustees put the charity on a proper footing. Trustees should ensure that they follow carefully the provisions of the charity's governing document, particularly those concerned with trustee appointments, otherwise unnecessary disputes can arise which are not in the interests of the charity.

Case study²

The charity is established for the purposes of animal welfare. A dispute arose between two groups who could not agree on who were the validly appointed trustees, or even whether there were any validly appointed trustees. One group intended to resolve the matter at Court, which would have required the Commission's consent. The Commission judged that charity property was at risk, had a serious concern that there may be no validly appointed trustees and saw there was evidence of mismanagement, and therefore opened a regulatory compliance case.

The Commission found that there had been no AGM since 2004, and that there was no evidence that there was even a membership of the charity, which was required to elect trustees. In the circumstances the Commission took the view that there were no validly appointed trustees. We proposed to appoint two people from each side to form an interim body of trustees, who would arrange an independently supervised election.

One of the groups was resistant to the Commission's proposals, and attempts were made by the group for the case to be brought to the High Court (which would have been 'charity proceedings' requiring the consent of the Commission). However the Court denied access, knowing that the Commission was intending to use its own powers to resolve the dispute. Although this group nominated two individuals, they proved to be uncooperative with the Commission.

The Commission proceeded with an Order appointing nominees from the second group to be interim trustees. There were in fact no objections to the Order, interim trustees were appointed, and a local respected individual supervised the establishment of a membership, and the election of a properly appointed body of trustees.

² The case study is anonymous as engagement is ongoing

Issues for other charities

Trustees have the responsibility to ensure that their charity is effectively managed, and that it is run in a legal and constitutional way, in particular by paying close attention to the provisions of the charity's governing document as it relates to the appointment of trustees. It is not acceptable to let things drift to such an extent that, for example, no AGMs or elections are held for many years.

Where disputes arise for whatever reason, trustees should do all they can to resolve the issue, either internally or through the use of external mediators. Otherwise, the charity's funds, beneficiaries and reputation are all put at risk.

The Commission will **not** become involved unless there is sufficient evidence that there are no validly appointed trustees, and all other attempts at resolution have failed.

Our publication *Conflicts in your charity* clarifies our role in disputes and provides guidance to help trustees resolve them.

Key themes 8: Problems concerning stakeholder consultations

Effective and transparent consultation with a wide range of stakeholders is important in the formulation of a charity's strategy and policy and in making key strategic decisions.

The Commission often sees situations where better engagement at the outset would have avoided misunderstandings and objections, enabled all issues to be properly examined and ensured that the best possible outcome was developed. Whilst it is not necessary to consult on everything, it is particularly relevant where a charity may be contemplating a change to an existing service as a result of the recession or to adapt to a changed environment. In our experience, proposals to dispose of land used by a charity (such as an open space for recreation) can be particularly controversial in the local community. In these circumstances, we would expect the trustees to consult widely and listen to the views of users before making a decision.

Case study

This case involved a dispute between the Council (who are corporate trustee of the recreation ground) and local community groups and businesses. The Council agreed a number of land swaps without consultation with local groups, generating distrust between the Council and local parties. The Council also had plans to develop some commercial activities on the site, also without consultation.

This led to a dispute between the council and local residents. The residents secured media interest in their opinion that the charity was being mismanaged. Local consultation would have prevented the misunderstanding and dispute. This has left a feeling of distrust between the parties and additional work for the trustee as decisions plus proposals are disputed.

Case study

The Playing Fields was created by a deed in 1920's. Land was settled on trust 'to be used as playing fields for scholars in attendance at schools situate within the local Borough maintained wholly or partly out of public funds'. The Metropolitan Borough Council is the trustee of the charity.

The Council approached the Commission with a proposal to rebuild a nearby school on part of the playing fields. In exchange it would convey replacement land to the charity, including the footprint of the existing school and a plot of land situated a few miles away.

We agreed to consider authorising the proposed transaction by way of a Scheme. However, before we made a decision on whether to make a Scheme, we asked the Council to undertake a public consultation exercise about their proposals.

The Council undertook public consultation and it appeared from the evidence it provided to us that it had consulted quite widely. It also appeared that the public were mostly supportive of the proposals and we agreed to make a Scheme. However, when we published the Scheme, we received representations and reviewed our decision to make it. It became clear from the representations that the public consultation had failed to address some legitimate concerns about the proposals, in particular that:

- the Council had failed to properly manage the conflict of interest between its role as charity trustee and its statutory role as local education authority
- it was questionable whether the replacement land was suitable for the charity's purposes (not least because the replacement land was actually outside the charity's existing area of benefit)

It was decided that the scheme should not be made and the proposed land swap did not go ahead.

E. Annexes – Key statistics from the Commission’s compliance work 2010-11

Annex 1 – Compliance performance headlines and impacts 2010-11

Performance headlines	2010 - 11	2009 - 10	2008 - 09	2007-08
Number of new Assessment cases opened	1845	2434 ³	1504	988
Number of Assessment cases closed	1912	2615 ⁴	848	799
Number of new Investigations opened ⁵	144	180	168	170
Total number of Investigations closed	167	121	188	200
Number of Statutory Inquiries opened	3	9	19	19
Number of Statutory Inquiries closed	9	15	21	29
Average duration of closed Statutory Inquiries (days)	519	395	358	414
Number of Statutory Inquiries closed which had significant involvement from other regulators	0	2	5	5
Average duration of closed Statutory Inquiries involving other regulators (days)	N/A	703	457	351
Number of Statutory Inquiry Reports published	13	15	23	42
Percentage of Statutory Inquiry Reports published within 3 month target	81%⁶	80%	74%	31%
Number of Regulatory Case Reports	8⁷	5	4	-
Number of new Regulatory Compliance Cases opened	141	171	149	153
Number of Regulatory Compliance Cases closed	156⁸	106	167	171
Average duration of closed Regulatory Compliance Cases (days)	172	162	158	149
Number of active Investigations at year end	119	140	77	104
Number of new monitoring cases opened	276	306	211	-
Number of monitoring cases closed	297	141	81	-
Number of monitoring visits	21	20	14	-
Number of Compliance accounts scrutinies carried out	277	236	320	-

3 931 of these related to work checking the eligibility of individuals to act as trustees.

4 940 of these related to work checking the eligibility of individuals to act as trustees.

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

6 This year, Regulatory Case Reports were also included within the target to publish all reports within three months of the end of the substantive investigation.

7 These relate to investigation cases only. See Annex 3.

8 There were also 2 regulatory compliance cases closed which had significant involvement from other regulators.

Performance Impacts	2010-11	<i>2009-10</i>	<i>2008-09</i>	<i>2007-08</i>
Charity assets directly protected in our investigation work	£8m	<i>£29m</i>	<i>£47m</i>	<i>£16m</i>
Charity income directly overseen through either Statutory Inquiry or Regulatory Compliance Cases	£900m	<i>£521m</i>	<i>£461m</i>	<i>£106m</i>
Number of cases where Commission action protected vulnerable beneficiaries	49	<i>20</i>	<i>30</i>	<i>9</i>
Number of cases protecting the reputation of individual charities	71	<i>50</i>	<i>70</i>	<i>38</i>
Number of cases protecting the reputation of the sector	49	<i>35</i>	<i>41</i>	<i>27</i>
Number of cases dealing with issues arising from conflicts of interest	20	<i>19</i>	<i>21</i>	<i>26</i>
Number of cases where advice and guidance provided to ensure the charity's governance improved	59	<i>43</i>	<i>47</i>	<i>61</i>
Number of cases involving concerns about fundraisers	11	<i>8</i>	<i>11</i>	<i>9</i>
Number of cases where an internal dispute was resolved and the charity is properly functioning again	10	<i>11</i>	<i>21</i>	<i>11</i>
<i>Charity no longer operating or applying funds outside its trusts⁹</i>	8	<i>-</i>	<i>-</i>	<i>-</i>
<i>Useful and effective advice and guidance given</i>	91	<i>-</i>	<i>-</i>	<i>-</i>
<i>Charity is now complying with the legal requirements</i>	2	<i>-</i>	<i>-</i>	<i>-</i>
<i>Greater transparency in the charity's operations and published reports and accounts</i>	3	<i>-</i>	<i>-</i>	<i>-</i>
<i>Moribund charity is now functioning</i>	0	<i>-</i>	<i>-</i>	<i>-</i>
<i>Charity's relationships with third parties is now properly managed in the best interests of the charity</i>	1	<i>-</i>	<i>-</i>	<i>-</i>
<i>Direct charitable expenditure has increased or targets are in place to increase this expenditure</i>	0	<i>-</i>	<i>-</i>	<i>-</i>
Number of occasions where Commission's statutory compliance powers were used, including extensive use of information gathering powers	208	<i>514</i>	<i>707</i>	<i>490</i>

These impacts relate to investigation cases closed during the year.

9 The indicators in italics were introduced for 2010-11.

Key Performance Indicators ('KPIs')

We report on the performance of our investigations and related regulatory work using the Commission's KPI 4:

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

KPI 4 is divided into three areas:

- Detection
- Investigation, Sanction and Redress
- Prevention and Deterrence

Detection

	Target	Achievement
4a Complete 90% of compliance assessments correctly in 30 working days	90%	86%
4b Carry out a minimum of 20 compliance visits annually to charities which are subject to monitoring and identified following a risk assessment	20	21

Investigation, Sanction and Redress

	Target	Achievement
4c Complete all regulatory compliance cases (excluding statutory inquiries) within an average of six months	183 days	172 days
4d Ensure 90% of all investigations result in at least one of the specified beneficial impacts which protect charities from mismanagement, misconduct or abuse	90%	94%

Prevention and Deterrence

	Target	Achievement
4e Publish 90% of reports on the results of investigations within three months of the end of the substantive investigation process	90%	81% ¹⁰
4f Publish an annual report on the 'Themes and Lessons from the Charity Commission's Compliance Work' which includes the duration of each statutory inquiry, the impact of investigations, the use of sanctions (including legal powers of remedy and protection), and the operation of our compliance work	Publish report before end of third quarter of financial year.	Published 22 September 2010

¹⁰ We published 13 statutory inquiry reports, and 8 regulatory case reports which related to investigations (see Annexes 2 and 3). Delays in publishing 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 2010-11

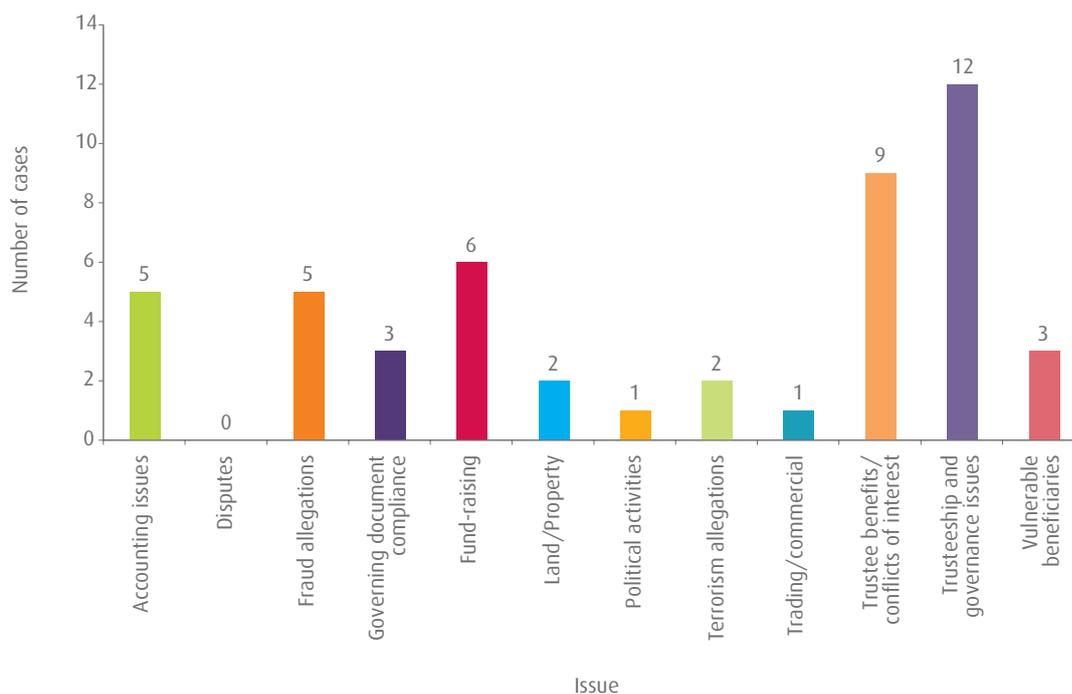
This table highlights key issues of concern in these investigation cases; notes the use of Charity Commission powers; and records the overall duration of investigations.

CHARITY	ISSUES											STATUTORY POWERS											Statutory inquiry durations ⁹
	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, officers etc	Remove trustees, officers etc	Freeze bank accounts	Interim manager	Direct Trustees to Act	Other Orders + schemes	No powers used	Months		
1 African Aids Action (1087378)	✓				✓					✓	✓		✓			✓		✓	✓		12		
2 Broad View Care Limited (1017712)					✓					✓	✓		✓		✓						32		
3 Charity which supports disabled people										✓	✓	✓		✓							6.7		
4 IDB Foundation (1109888)	✓		✓	✓									✓		✓				✓		27.4		
5 Independence South West (280099)			✓		✓					✓	✓	✓	✓						✓		5.2		
6 International Tiger Moth Charitable Trust (1087253)			✓							✓	✓	✓	✓								22		
7 IQRA (1095966)							✓	✓					✓		✓						3.1		
8 Manacare Foundation (1108701) (supplementary)				✓																✓	2.5		
9 Mohiuddin Trust (1105585)(formerly Al Ehya Trust)	✓		✓		✓					✓	✓		✓		✓						12.1		
10 New Mind (1063532)	✓				✓					✓	✓		✓								21.6		
11 People's Opportunity to Work Trust (1073917)	✓		✓						✓	✓	✓		✓								26.9		
12 Sivayogam (1050398)				✓		✓		✓		✓	✓		✓	✓	✓		✓	✓			43.5		
13 Waltham Forest Islamic Association (270323)					✓	✓					✓								✓		0.8		
TOTALS	5	0	5	3	6	2	1	2	1	9	12	3	10	2	1	6	0	2	5	1			

11 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.

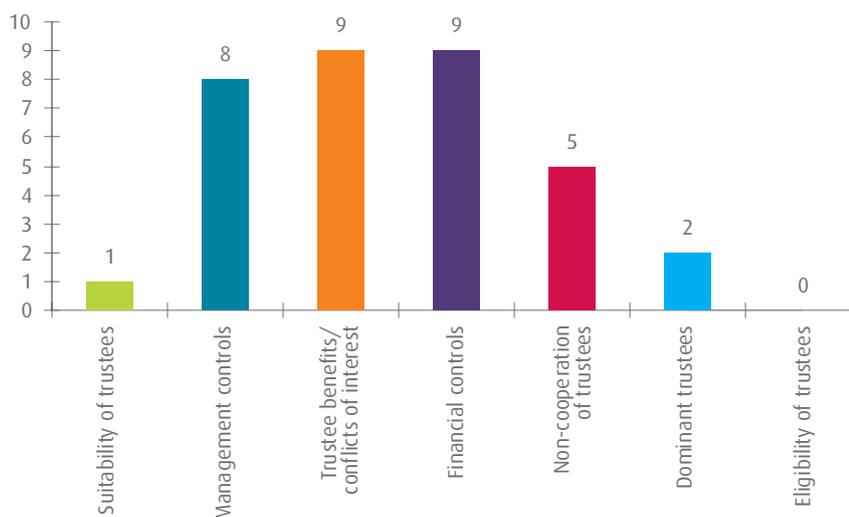
Annex 2.1 - Published statutory inquiry reports – the type and frequency of issues of concern

Note that most statutory inquiries involve more than one issue.



Baseline: 13 cases

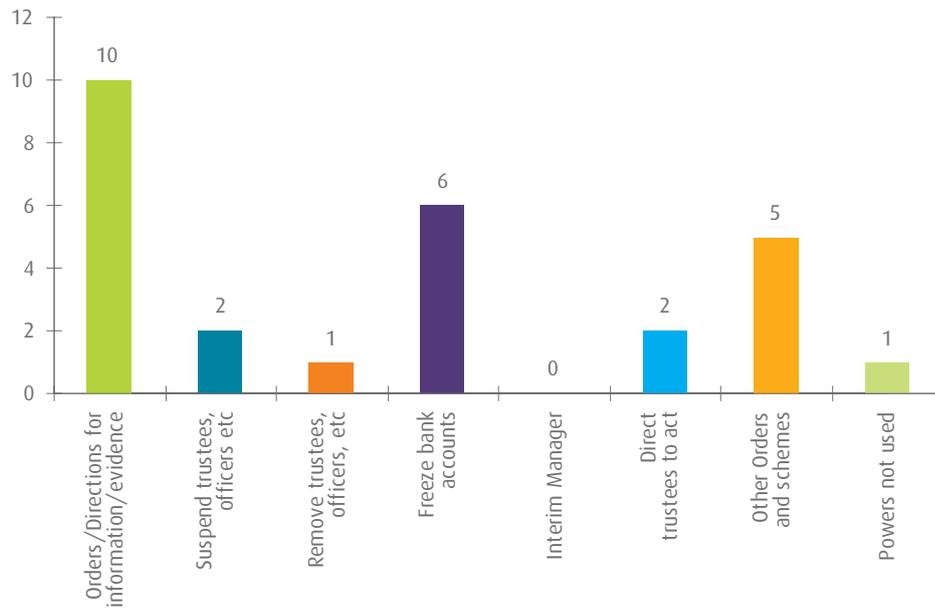
Annex 2.2 – Trusteeship and governance issues in statutory inquiries



Baseline: 13 cases

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

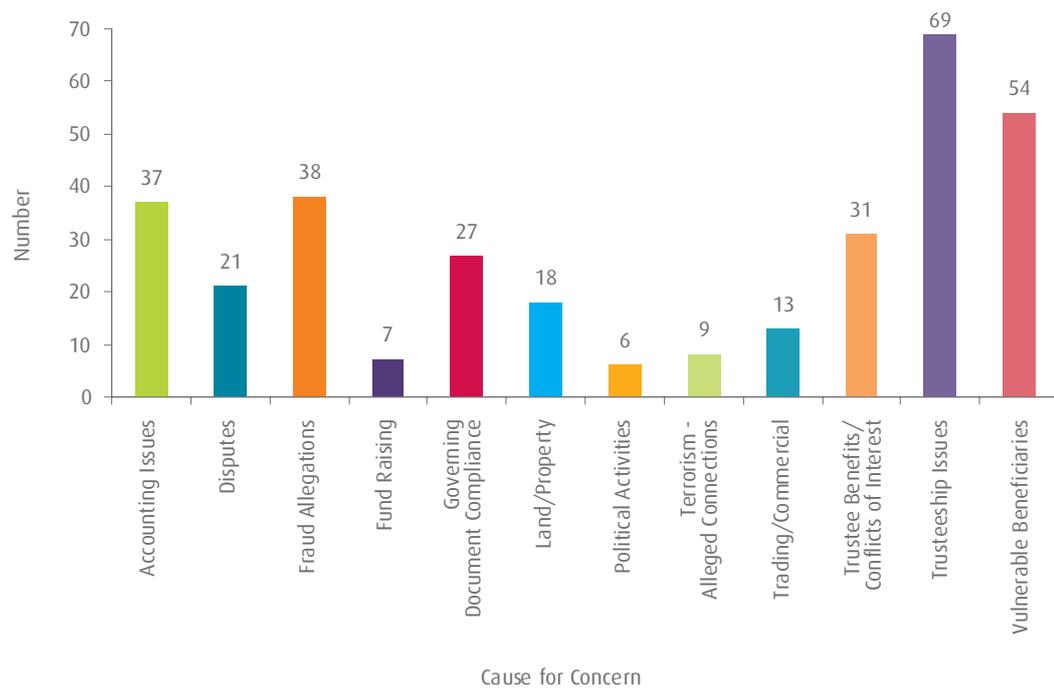
Note that more than one power is used in most cases.



Baseline: 13 cases

Annex 4 – Regulatory compliance cases 2010-11 – the type and frequency of issues of concern

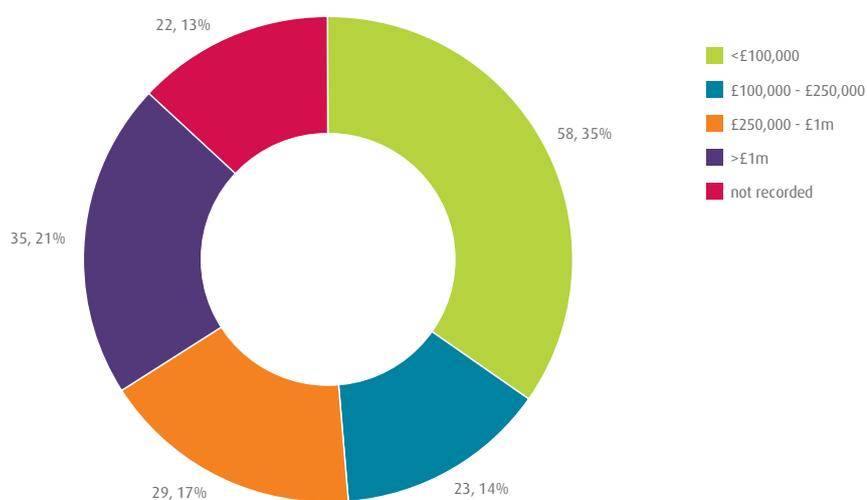
Note that most cases involve more than one issue.



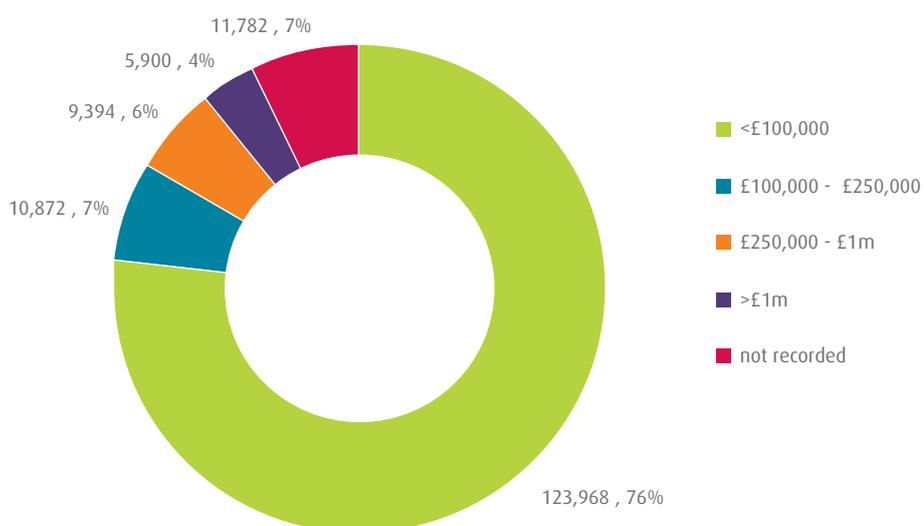
Baseline: 158 cases

Annex 5 – Investigations 2010-11 – the number of charities by income band

Cases by income of charity



Sector-wide information: the number of charities generally in each income band

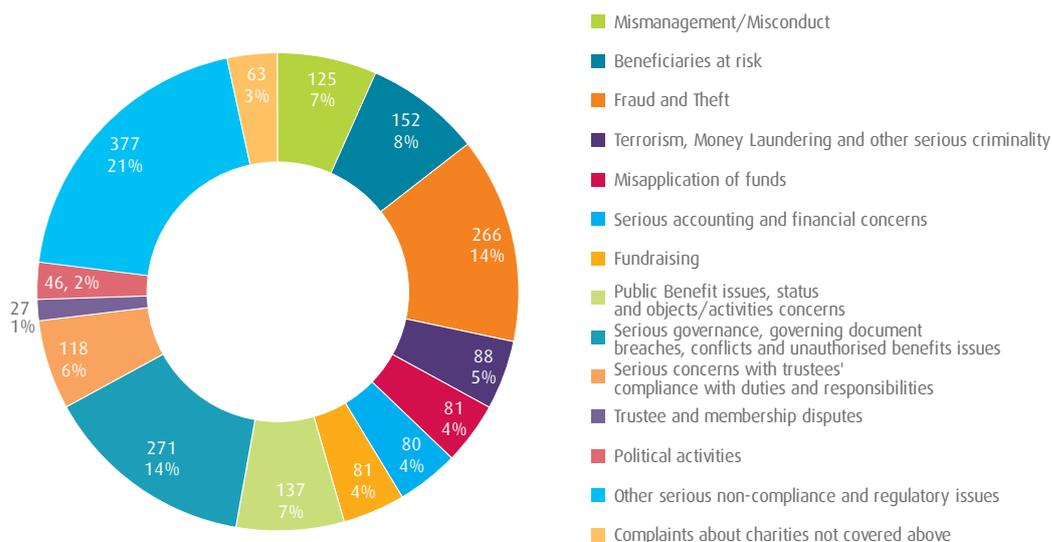


Annex 6 - Use of Commission powers in all compliance cases 2010-11

All Statutory Inquiry and Regulatory Compliance Cases – breakdown of the number of <i>individual</i> Orders or Directions under the Charities Act 1993	2010 - 11	2009 - 10	2008 - 09	2007-08
S8 (3) - (a) Furnish information/answers	0	11	9	40
S8 (3) - (b) Furnish copies/documents	2	4	3	25
S8 (3) - (c) Attend and give evidence	0	11	7	5
S9 (1) - (a) Furnish information	18	94	75	50
S9 (1) - (b) Furnish copies/documents	140	288	543	246
S18(1) - (i) Suspend trustee, officer, etc.	1	1	1	7
S18(1) - (ii) Appoint additional trustee	0	1	1	3
S18(1) - (iii) Vest property in the Official Custodian for Charities	0	22	1	0
S18(1) - (iv) Not to part with property	4	12	11	18
S18(1) - (v) Not to make payment	1	0	0	0
S18(1) - (vi) Restrict transactions	5	7	0	10
S18(1) - (vii) Appoint Interim Managers	1	2	2	2
S18(2) - (i) Remove trustee, officer, etc.	0	0	1	6
S18(2) - (ii) Establish a scheme	0	0	1	0
S18(5) Appoint trustee(s)	3	11	11	9
S19 (a) Specific Direction to protect charity	4	7	4	0
S26 Regulatory consent	8	9	9	8
Others (including Discharge Orders)	21	34	28	61
TOTAL Orders/Directions issued in period	208	514	707	490

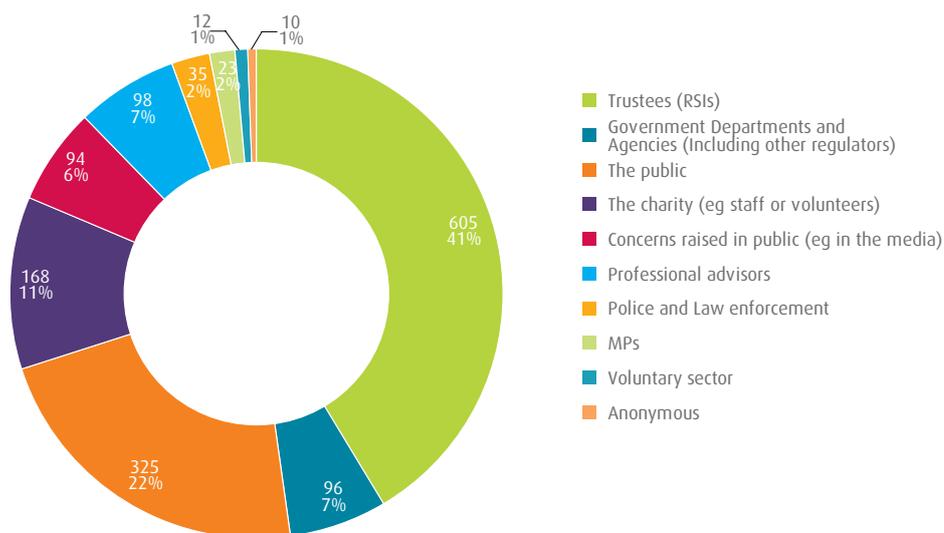
Annex 7 - Analysis of all completed assessment cases 2010-11

Annex 7.1 Causes of serious concern dealt with by our Compliance function



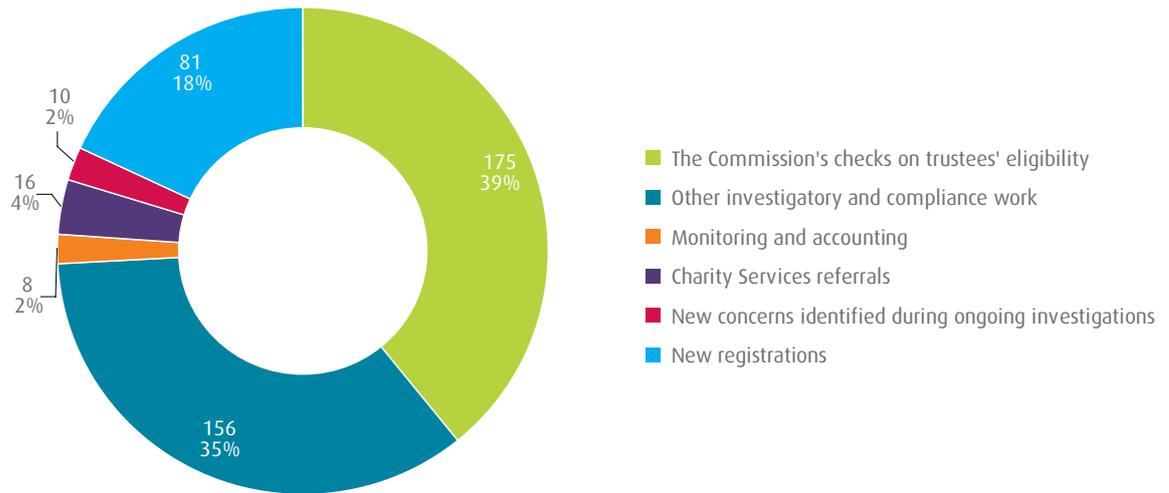
Baseline: 1912 completed assessment cases.

Annex 7.2 Sources of serious concern – external sources



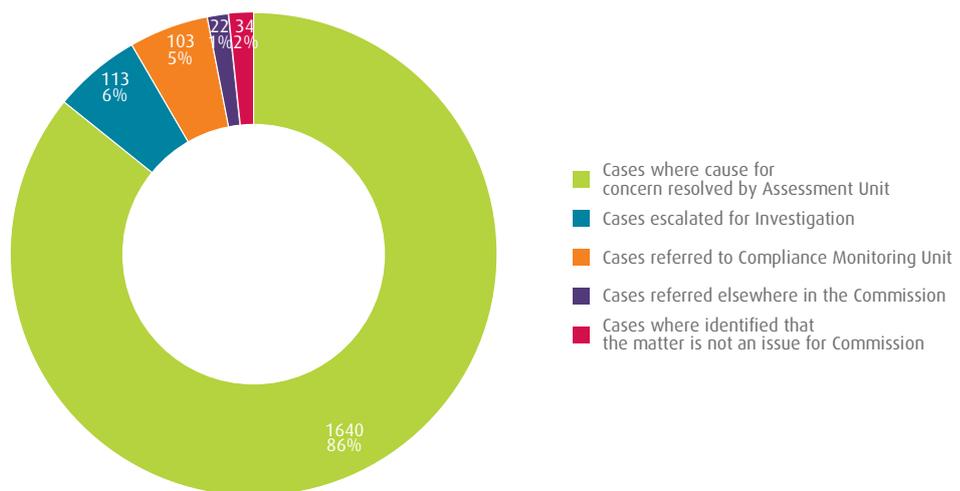
Baseline: 1466 cases

Annex 7.3 Sources of concern – identified proactively by the Commission



Baseline: 446 cases

Annex 7.4 Outcomes of assessments



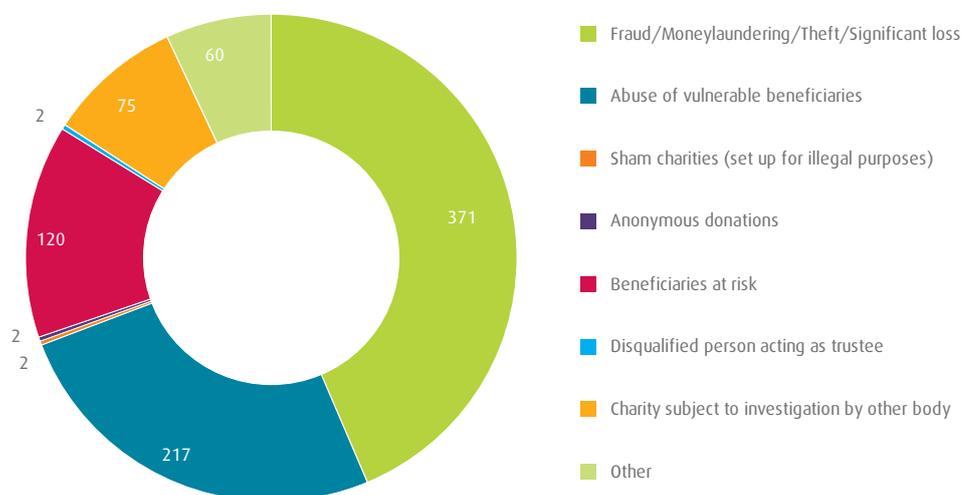
Baseline: 1912 cases

Annex 8 – Reported concerns about charities 2010-11

Annex 8.1 – Reports of Serious Incidents

The following chart shows the principal issue only.

Reports of Serious Incidents: Issues identified during 2010-11



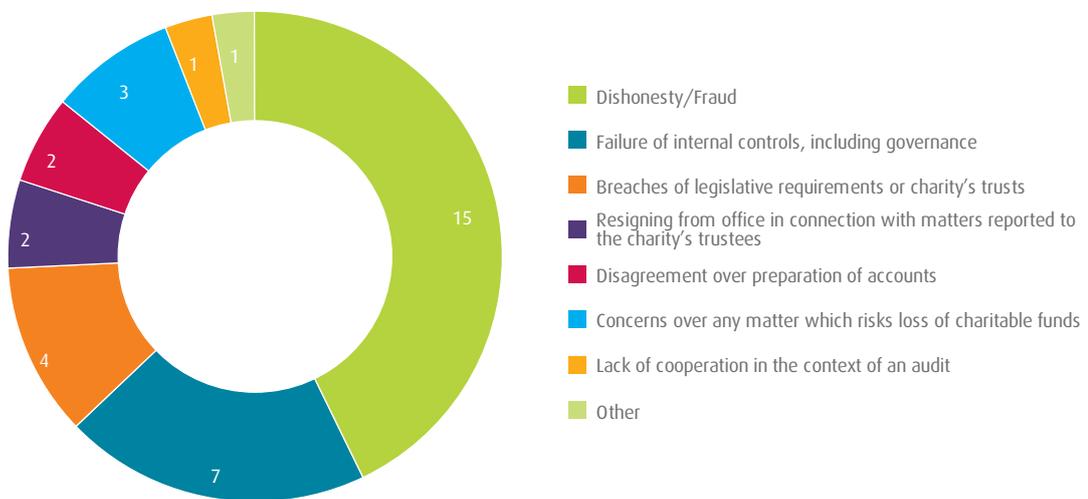
Baseline 849¹²

¹² The figures here show individual reports. Some charities reported RSIs in batches, so some “completed assessment cases” (Annexes 7.1 and 7.2) were in fact concerned with multiple reports by individual charities.

Annex 8.2 – Whistleblowing reports

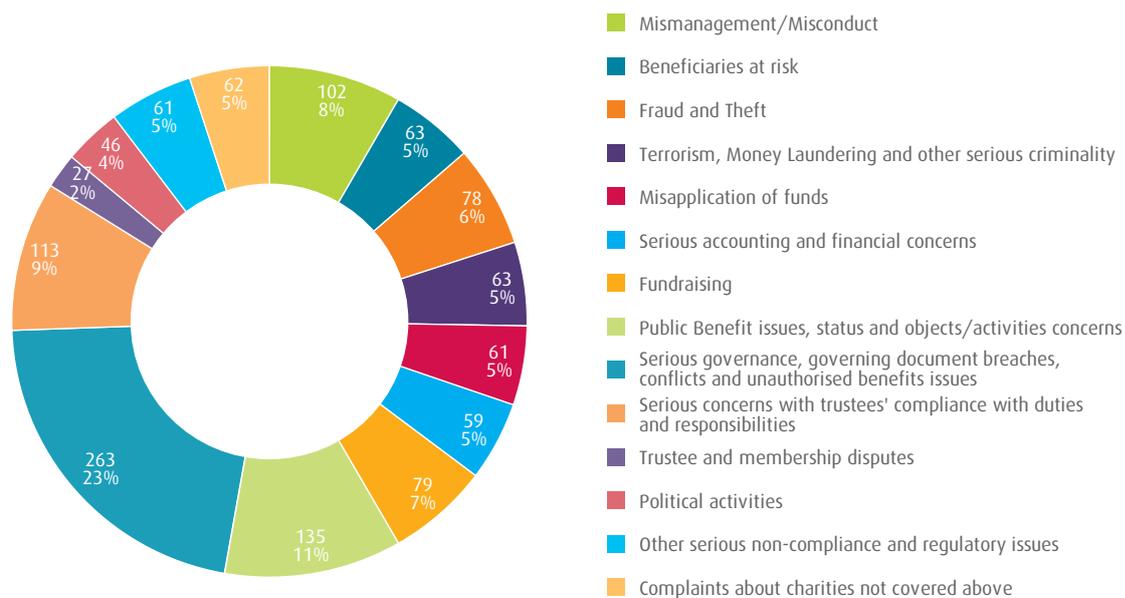
There were 35 whistleblowing reports received by the Commission in the year (53 last year), the vast majority of which were dealt with by the Assessment Unit. The key issues in these reports were as follows, showing the principal issue only.

Whistleblowing: Issues identified during 2010-11



Baseline: 35 reports

Annex 8.3 – Concerns about charities identified or reported from other external sources (other than RSI/whistleblowing)



Baseline: 1212 reports

© Crown copyright 2011. This publication may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.



You can obtain large-print versions
of this publication from the Charity
Commission on 0845 300 0218

Charity Commission

Telephone: **0845 300 0218**

Typetalk: **0845 300 0219**

Website: **www.charitycommission.gov.uk**