

The Charity Commission and Regulation

The Charity Commission

Telephone: 0870 333 0123

Minicom: 0870 333 0125

Website: <http://www.charitycommission.gov.uk>

We work in partnership with charities, umbrella bodies, local and central Government bodies, and our stakeholders.

Introduction

In September 2002 the Cabinet Office published *Private Action, Public Benefit* - a review of the legal and regulatory framework in which charities, and the wider not-for-profit sector, operate.

We explain how the Charity Commission regulates charities, and the principles we follow, below. Our approach is to regulate so as to promote compliance with charity law and to equip charities to work better. Our work should enable charities to maximise their potential and enhance their accountability to donors and those who benefit from charities. The end result should be increased public trust and confidence in charities.

As with any forward-looking organisation, there are always areas of work under development and targets to aspire to. But we believe the approach we follow is consistent with the Cabinet Office's proposals for the Commission's future role, and a useful first step in taking forward the recommendations in *Private Action, Public Benefit*. We will keep this approach under review as the recommendations are developed.

Why regulate charities?

Charities are free and independent organisations whose work is essential to society. But we need a charity regulator which regulates on behalf of those who give to and benefit from charities, and on behalf of wider society:

- to ensure that charities meet the legal requirements for being a charity, and are equipped to operate properly and within the law;
- to check that charities are run for public benefit, and not for private advantage;
- to ensure that charities are independent and that their trustees take their decisions free of control or undue influence from outside; and
- to detect and remedy serious mismanagement or deliberate abuse by or within charities.

Our work, our partnerships with other regulators, and charities' own work to manage their affairs, should result in public confidence in charities and the work they do.

The Charity Commission

The Commission is established by law as the regulator and registrar for charities in England and Wales. We fulfil this role by:

- securing compliance with charity law, and dealing with abuse and poor practice;
- enabling charities to work better within an effective legal, accounting and governance framework, keeping pace with developments in society, the economy and the law; and
- promoting sound governance and accountability.

Our aim is to provide the best possible regulation of charities in England and Wales, in order to increase charities' efficiency and effectiveness and public confidence and trust.

We approach our work in a number of ways.

1. Using information and advice to influence behaviour

We provide information and advice on what the law requires and on good practice. We aim to make a clear distinction between the two.

Gathering information on charities individually and collectively.

We do this:

- to make a particular decision, such as whether to register an organisation as a charity;
- to judge the extent to which a charity is complying with regulatory requirements; and
- in order to publish a register of charities and their activities.

Making information about charities public

We do this:

- to make people aware of charities and what they do, and of how they are regulated;
- to allow people to inform themselves about charities. We make the register of charities available online, and supply copies of charity constitutions, annual reports and accounts to anyone who asks; and
- to draw attention to good as well as bad practice. We assess how well charities in general perform against requirements in some important areas through our programme of regulatory studies, and highlight good practice. We name charities that have seriously defaulted on legal obligations, such as submitting their annual report and accounts.

2. Equipping charities to work better

We do this:

- by our registration processes (and by recognising new charitable purposes);
- by the advice and guidance we formally provide to 24,000 charities each year, in addition to the 250,000 calls to our Contact Centre;
- by several hundred visits to charities each year to review their activities, constitutions and administration, identifying good and bad practice; and
- by making legal schemes or orders modernising the constitutions of existing charities

3. Promoting legal compliance

We do this through our publications and casework. We will give charities every reasonable opportunity to comply with their legal obligations. Our expectations for full and prompt compliance will be higher in the case of larger charities with paid staff and access to professional advice.

4. Intervention and enforcement

We do this:

- by evaluating complaints or other evidence of possible causes for concern and, where this shows us that something may have gone seriously wrong, by opening a formal investigation. What has gone wrong may include:
 - misconduct or mismanagement; and
 - any other action which puts charitable assets at risk of loss, damage or misuse;
- by working in partnership with other regulators.

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

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

We have powers to intervene in charities to protect charity assets, which we can use if our formal investigation establishes serious mismanagement or abuse. Our aims in these cases will usually be:

- to prevent any misconduct or mismanagement from continuing or being repeated, if necessary by removing those responsible or by placing charity assets under other control; and
- to ensure that the charity's assets are secure and that it will be properly administered in future.

The Commission works closely with other regulators. Whilst the Commission is not a prosecuting authority, we are authorised to work with the police, the Crown Prosecution Service, and other authorities (such as the Inland Revenue).

Principles

In doing our work, we try to observe seven principles.

1. Accountability

We:

- report to the Home Secretary and Parliament each year on our work during the previous financial year;
- are audited annually by the National Audit Office (NAO) and examined periodically by Parliament's Committee on Public Accounts (the PAC);
- publish regular reports on our website, along with the reasons for important decisions; and
- publish our Service Delivery Agreement with the Treasury showing how we will meet our targets and improve our performance.

We will always:

- give reasons for our decisions to people or charities affected by them, unless there are compelling reasons of financial or personal confidentiality for not doing so; and
- consult before introducing major new policies or operational practices.

We are accountable for our legal decisions through the High Court, which can overturn them. Our decisions can also be challenged without going to court by asking for an internal review.

We come within the remit of the Parliamentary Ombudsman.

2. Independence

We act in the public interest in carrying out our independent role. We work in partnership with charities, umbrella bodies, local and central Government bodies, and to others to whom we are accountable. Although we will be receptive and responsive to the views of these interests, we will arrive at our own decisions without fear or favour.

3. Proportionality

We focus our priorities and resources where we believe our intervention as regulator can make most difference to charities and the people who benefit from them. We aim to ensure that the actions we take:

- are proportionate to the issue and to the risk of harm involved; and
- take account of the capacity of organisations to comply with requirements for change.

We think of harm as:

- detrimental effects on the people or causes the charity serves;
- loss or misuse of significant assets or resources;
- damage to the public reputation of a charity or charities generally; and
- damage to public confidence in charity regulation.

Where, in our view, none of these harm factors is present, we are likely to conclude that we can use Commission resources elsewhere to greater effect in the public interest, and that we should not take regulatory action.

This approach means that we are usually less likely to take up issues in relation to very small charities than to larger ones. All charities, whatever their size, have access to our Contact Centre and publications, which are almost all free of charge.

4. Fairness

In exercising our legal powers, we will seek to act with impartiality, fairness, independence and honesty. We will follow the principles of natural justice, and act proportionately and reasonably.

5. Consistency

This means:

- making sure that the decisions or actions we take in any particular case are accurate and consistent with the law, with our published policies, and with other decisions; and
- working with other regulators so that, as far as possible, we neither duplicate nor conflict with their actions.

6. Diversity and Equality

We value diversity. We will comply with all diversity and equalities legislation, and we will work to promote diversity and equality in all our dealings, both with charities and within the Commission itself.

We will publish, and update annually, a Race Equality Scheme showing how we work to eliminate discrimination and promote equality of opportunity and good race relations in all our dealings, both with charities and within the Commission itself.

7. Transparency

In our publications, statements and in dealings with individual charities we will:

- explain legal requirements in plain terms;
- openly set out the criteria by which we make decisions. The guidance to our staff about these is available to the public on our website;
- explain what we expect from charities by way of good practice over and above legal obligations; and
- draw attention to rights of appeal and other ways in which people can challenge our decisions affecting them.

Standards of Service

Our aim is to make our services accessible, and to be prompt, courteous, knowledgeable and constructive in our dealings – regardless of whether or not in particular cases we agree to do what the customer wants.

We will regularly survey customer satisfaction with these aspects of our services and will act on the findings. The Independent Complaints Reviewer (ICR) – who is similar to an ombudsman – can assess complaints about our service if they cannot be resolved by our internal complaints procedures.

We will provide a good service, not only to charities and those who run them, but also to others who have an interest in what we do – those who benefit from charities' activities, donors and the taxpayer, the Government, those who commission and fund work by charities, and those organisations which provide services in competition with charities.

Where stakeholder interests conflict, we will give priority to the interests of charities' clients.

Dealing with complaints about charities

We will look into complaints against charities:

- where concerns are expressed about serious mismanagement, for example involving a failure to observe the requirements of charity law; and
- where there is harm, or the risk of harm, and the use of the Commission's powers is proportionate to it; or
- where there is clear evidence of deliberate abuse.

The Commission will not investigate every type of complaint involving a charity. We will not do so:

- where the complainant is simply disagreeing with a decision which the charity, as a free and independent body, has taken within the law and the powers in its constitution;
- to resolve internal disagreements over a charity's policy or strategy which those involved should be responsible for resolving themselves;
- to take up individual complaints of poor service from a charity where there is no general risk to its services, its clients or its resources; or
- where the complaint is being dealt with, or is the responsibility of, another statutory or supervisory body.

We will aim to decide as early as we can whether we will pursue a complaint, and, either way, to explain the position to complainants as clearly as we can.

We will aim to ensure that anyone with a complaint about a charity knows which is the right body to receive and act on the complaint, whether that is the Commission or another body.

Further reading

The Charity Commission produces a wide range of publications giving information and advice to charity trustees and the general public on a number of issues relating to charity law and regulation. The full list is on our website or in our publication CC1, but the list below is a selection of guidance applicable to all charities and their trustees.

- CC3** Responsibilities of Charity Trustees
- CC8** Internal Financial Controls for Charities
- CC20** Charities and Fund-raising
- CC21** Registering as a Charity
- CC47** Complaints about Charities
- CC60** The Hallmarks of a Well-run Charity
- CC61** Charity Accounts: The framework

To obtain copies of these or any other of our publications you can either:

- View and print them from our website **www.charitycommission.gov.uk**;
- Order during office hours (0830-1800 weekdays) by phoning us on **0870 3330123**;
- Order outside office hours by phoning our voicemail order line on **01823 345427**;
- or
- Write to the Distribution Officer at **PO Box 392, Newton Aycliffe, DL5 6YG.**

Contact details

The Charity Commission

Telephone: 0870 333 0123

Minicom: 0870 333 0125

Website: <http://www.charitycommission.gov.uk>

London

Harmsworth House
13–15 Bouverie Street
London EC4Y 8DP
Fax: 020 7674 2300

Liverpool

2nd Floor, 20 Kings Parade
Queens Dock
Liverpool L3 4DQ
Fax: 0151 703 1555

Taunton

Woodfield House
Tangier, Taunton
Somerset TA1 4BL
Fax: 01823 345003

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