Whistleblowing in charities

A thematic report from the Charity Commission for Northern Ireland

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The Charity Commission for Northern Ireland

The Charity Commission for Northern Ireland is the regulator of charities in Northern Ireland, a non-departmental public body sponsored by the Department for Social Development.

Our vision

To deliver in partnership with other key stakeholders in the charitable sector “a dynamic and well governed charities sector in which the public has confidence, underpinned by the Commission’s effective delivery of its regulatory role.”

Further information about our aims and activities is available on our website www.charitycommissionni.org.uk

Equality

The Charity Commission for Northern Ireland is committed to equality and diversity in all that we do.

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Introduction

Foreword

The Commission receives a number of concerns each month from the public; on many occasions this will be the first time that these concerns have been raised in writing to either the Commission or to the charity directly. Whilst there will always be times when it is appropriate to report your concerns directly to the Commission, as the regulator of charities, raising your concerns with the charity may satisfactorily address any issues you may have had.

According to the UK charity, Public Concern at work, whistleblowing is when an employee tells an employer, a regulator, customers, the police or the media about a wrongdoing, risk or malpractice they are aware of through their work. As such, whistleblowing plays an important role in helping to inform those who need to know about potential risks, problems or even criminal activities within charities, allowing appropriate action to be taken to set things right. It is the first step in a process towards resolution. Without clear whistleblowing policies in place, such malpractices or risks may go unchecked and, eventually, worsen, to the detriment of the charity, its staff and its beneficiaries.

The public, which of course includes charity volunteers, staff and beneficiaries, have always been the Commission’s biggest source of concerns about charities. They are often the source of the initial concern and work with the Commission to provide further evidence and documentation as a charity investigation progresses. The fact the public is our largest source is a sign of how strongly the people of Northern Ireland feel about the charities they support. As well as their time and money, the public put their trust and confidence into charities and have a rightful expectation that the charities will respond by acting in good faith and good governance.

On most occasions, the charity may be able to resolve the concern themselves, using the protocols and policies they have in place and in accordance with their governing document and the Commission’s publicly available guidance. In fact, it may have been that the issue did not need to be escalated to the Commission in the first place. In such cases, the concerned party is usually unsure where else to turn, they don’t know how to raise the issue with the charity directly and so approach the
Commission. That’s why the Commission would like to take this opportunity to encourage charities to develop their own whistleblowing policies, allowing concerns to be raised and, where appropriate, handled internally and recognising and implementing the legal safeguards in place for whistleblowers.

Whistleblowers provide a vital, early warning of a risk, malpractice or an illegality which is taking place, allowing the issue to be investigated and resolved. They are often loyal, public spirited employees, volunteers or beneficiaries, looking to set things back on the right path. We would encourage all charities to use whistleblowers as an important resource for the charity’s benefit, just as they use support tools such as this thematic report. The alternative may be that the risk continues and, worse still, develops further with consequences which affect the charity’s governance or even its assets.

Of course, dependent on the seriousness of the issue, it may be that it is appropriate to contact the Commission or another regulator directly. This report, the latest in our series of thematic reports about our concerns work, aims to support individuals and organisations in knowing when, and how, they may wish to approach the Commission with a concern.

Myles McKeown
Head of Compliance and Enquiries
Charity Commission for Northern Ireland
Whistleblowing and concerns about charities: an overview

Guidance on concerns about charities

The Commission is currently reviewing its guidance on concerns about charities. The updated guidance will be available on the Commission’s website www.charitycommissionni.org.uk later this year. In the meantime, the following information will help you to identify:

- what concerns should be raised with the Commission
- what concerns should be raised with other organisations
- how you can raise a concern with the Commission
- what happens when you raise a concern with the Commission.

What is whistleblowing?

In their good practice guide, the whistleblowing charity Public Concern at Work define whistleblowing as “a worker raising a concern about wrongdoing, risk or malpractice with someone in authority either internally and/or externally (ie regulators, media, MPs).” However, it can often be difficult to know when the information you wish to share would be considered “whistleblowing” as opposed to simply raising a complaint. There is a fine line between whistleblowing and complaining and often the answer is not straightforward.

Generally speaking, the first step in deciding which process to follow is to look at the nature of the issue or concern. If the concern or issue relates to you, for example you have a personal grievance or feel you have been unfairly treated, then you may wish to follow the charity’s internal complaints process in the first instance.

If the concern refers to other individuals or the organisation itself, for example other staff or the charity’s beneficiaries, then you could consider following the charity’s whistleblowing process to highlight the issue.

If you are unsure which process to follow, then you might wish to contact Public Concern at Work for advice using their advice line 020 7404 6609 or via email to whistle@pcaw.org.uk.
The law on whistleblowing

Taking the decision to raise a concern via the whistleblowing process can be a daunting one. It is vital that workers speak out if they are aware of a wrongdoing or malpractice as this supports organisations, including charities, in taking prompt and effective action to resolve an issue or situation before it worsens. However, very often the employee fears reprisals or is unsure how, or what, they can do. It is important therefore to have an understanding of the law in relation to whistleblowing, and the legal protection it offers to whistleblowers.

The Public Interest Disclosure (Northern Ireland) Order 1998 protects workers from detrimental treatment or victimisation from their employer if, in the public interest, they report wrongdoing.

This Order protects most workers in the voluntary sector, which means that someone who is employed by a charity would be able to use the provisions of this Order. However, the Order does not apply to genuinely self-employed professionals, including voluntary workers such as charity trustees and volunteers.

Legal protection for charity employees

The Public Interest Disclosure (Northern Ireland) Order 1998 provides a number of protections for employees who use whistleblowing to raise a concern. For example:

- if an employee is dismissed because he or she has made a protected disclosure that will be treated as unfair dismissal
- workers are given a right not to be subjected to any 'detrimen' by their employers on the ground that they have made a protected disclosure
- workers are able to present a concern to an employment tribunal if they suffer detriment as a result of making a protected disclosure.

It is also important to note that for a disclosure to be protected by the 1998 Order it must relate to matters that 'qualify' for protection under that Order. A qualifying disclosure must relate to:

- a criminal offence
- the breach of a legal obligation.
- a miscarriage of justice.
• a danger to the health and safety of any individual.
• damage to the environment.
• deliberate concealment of information tending to show any of the above five matters.

In order to make a qualifying disclosure the worker must reasonably believe that the information being provided tends to show that one or more of the events bulleted above is happening now, has happened in the past or is likely to happen in the future.

Certain conditions must also apply to ensure the disclosure is 'protected'. A qualifying disclosure to the Commission will be a 'protected' disclosure provided the employee:

• makes the disclosure in good faith
• reasonably believes that the relevant failure relates to the proper administration of charities and funds given, or held, for charitable purposes
• reasonably believes that the information disclosed, and any allegation contained in it, are substantially true.

It is important to note that where a worker is victimised for making a disclosure to the Commission, any claim they may have under the Order is against his or her employer.

**Where to go for advice**

For further information on whistleblowing, please visit the NIDIRECT website [www.nidirect.gov.uk](http://www.nidirect.gov.uk) or the charity *Public Concern at Work*, [www.pca.co.uk](http://www.pca.co.uk)

You should also raise concerns with, or seek further advice from, the Comptroller & Auditor General (C&AG) about:

• the proper conduct of public business
• value for money
• fraud and corruption

in relation to the provision of centrally funded public services and health services.

In relation to district councils, joint committees, the Northern Ireland Local Government Officers’ Superannuation Committee and the Local Government Staff Commission for Northern Ireland, the Local
Government Auditor (LGA) may be approached to raise concerns about or seek further information on, for the following areas.

- The proper conduct of public business.
- Value for money.
- Fraud and corruption.

**How do I raise a concern with the Commission using whistleblowing?**

Good practice would recommend that charities have a whistleblowing policy in place but this is not required by legislation and you may feel unsure about where in your charity to take your concern.

If your concern could be resolved internally by the charity, you may wish to approach a manager or team leader, or perhaps contact one of the charity’s trustees, ensuring any confidentiality arrangements are agreed at the outset. If all of these avenues are exhausted, or you feel the matter is not one which can be resolved internally, then you may wish to consider approaching the Commission or another regulatory body.

As a 'prescribed person' under the Public Interest Disclosure (Northern Ireland) Order 1998, the Commission is allowed it to accept disclosures from charity workers. This means that charity employees who are aware of wrong-doing within a charity or a non-charitable body (where this involves the administration of charities or charitable funds) can disclose information to us about the administration of charities and funds given, or held, for charitable purposes so long as they raise their concerns in accordance with the provisions of the Order.

Any charity employee can report directly to the Commission when they have concerns about a charity by completing and submitting an online *Concern about a charity form, available on* [www.charitycommissionni.org.uk](http://www.charitycommissionni.org.uk). If you are submitting a concern under the Public Interest Disclosure (Northern Ireland) Order 1998. Please let us know this when you complete the form.

The Commission receives a steady caseload of concerns about charities throughout the year from a wide range of sources and we work to ensure the processes we have in place support individuals and organisations in providing the information we require in order to assess the concern.
For example, we will encourage you to provide as much evidence or supporting information as possible. While you need only have a reasonable and honest belief that a problem has occurred, is occurring, or is likely to occur in the future, any further information you can provide will support the Commission in investigating the issue raised. In addition, without viable evidence or information to support a concern or allegation, we may ultimately decide that intervention is not appropriate and will be unable to take the concern any further.

It is also important to note that the Commission will ask that you provide your name and contact details when submitting a concern form. While we work to protect the confidential nature of concerns received as much as possible, your contact details will be required so that we may contact you to clarify the concern, or ask for further information.

In cases where we are unable to maintain confidentiality, for example if it were to impede an investigation, we will consult with you and, where possible, request your consent before undertaking any action to identify you. Detailed investigations are often more difficult, or even impossible, to progress if the person who submitted the concern does so anonymously and cannot be contacted for further information.

We would also advise that, on the submission of a concern, the Commission will make the following commitment to you.

- We will formally acknowledge receipt of your concern within five working days.
- We will let you know if we intend to take further action on the concern received, but we will not enter into detailed correspondence about this action as this may impact on the investigatory process.
- We will respect your confidentiality where this has been requested and we will only breach confidentiality if required by the law.
- We will hold the information you provide, including any personal data, securely and in accordance with the law.
- We will take action to resolve the issue, as appropriate to the level of risk identified.
- Once we reach a conclusion following investigation into a concern we will write to inform you of the outcome.

If, at any point during an investigation, you feel that you are suffering harassment or other detrimental impact as a result of having submitted a
concern, we would strongly encourage you to contact the Commission to discuss this and how we might be able to offer support or guidance.

**What types of concern can I raise with the Commission?**

It is important for anyone who becomes aware of malpractice, risk, abuse or wrongdoing within a charity in Northern Ireland to highlight the issue to the appropriate person or organisation.

In cases of serious misconduct or mismanagement within a charity in Northern Ireland, the Commission may be the most appropriate body to deal with the issue. However, as highlighted below, some issues may be better addressed by approaching the charity or another organisation.

To address matters of serious concern the Commission will intervene to protect the charity using our legal powers where it is necessary and proportionate to do so. Concerns the Commission need to know about include:

- significant financial loss to the charity
- serious harm to beneficiaries and, in particular, vulnerable beneficiaries
- threats to national security, particularly terrorism
- criminality within or involving a charity
- sham charities set up for an illegal or improper purpose
- charities deliberately being used for significant private advantage
- where a charity’s independence is seriously called into question
- serious non-compliance in a charity that damages or has the potential to damage its reputation and/or the reputation of charities generally
- serious non-compliance in a charity which, left unchecked, could damage public trust and confidence in the Commission as an effective regulator.

**Concerns for other organisations**

The Commission works to provide the best possible regulation in order to increase charities' effectiveness and the public's confidence and trust in them.

However, we are a small team with limited resources and we must prioritise our actions and target work where the risks are highest. As
highlighted above, we cannot act on every concern we receive, particularly when that concern would be better addressed by approaching the charity itself, or another body or organisation.

Some concerns should therefore be addressed by raising the issue with the charity itself, such as a manager or the charity trustees, or by approaching another organisation. The most common of these concerns are:

- internal disagreements and disputes
- services provided by the charity
- fundraising methods
- employment and unfair dismissal
- disagreements with decisions
- contracts and legal action against the charity
- concerns about policies or actions taken by the trustees which are within their powers.

For example, if your concern relates to an allegation of inequality within a charity, we would encourage you to consider approaching the *Equality Commission for Northern Ireland* in the first instance.

Alternatively, you may believe there has been a breach of employment rights or perhaps a failure to safeguard personal or sensitive data. In such cases, organisations such as *The Labour Relations Agency for Northern Ireland* or the Office of the *Information Commissioner (ICO)* may be able to provide advice and guidance.

Of course, there may also be occasions where your concern relates to allegations of illegality or criminal activity, such as suspected or actual charity fraud. While we would encourage you to alert the Commission to the allegation, criminal activity is ultimately a matter for the police to investigate and should be reported to the *Police Service of Northern Ireland (PSNI)* in the first instance.

**What happens when I raise a concern with the Commission?**

The Commission carries out a risk assessment of each concern it receives, allowing us to determine the best route to take to rectify the situation, based on the seriousness of the concern, the risk to governance within the charity and the risk to the charities’ assets.
This risk assessment is carried out on initial receipt of the concern and is repeated throughout the life of the investigation as new information is received and conclusions drawn.

Following this assessment, there are four possible outcomes to a concern received by the Commission:

- **No action taken** - As a proportionate regulator we only take up issues where we believe there is substance to a concern and it is appropriate for us to take action under the Charities Act (Northern Ireland) 2008. While some concerns received do not breach this Act, it may be apparent that there has been a breach of another piece of legislation and we may refer the concern to another statutory agency, such as the PSNI.

When we receive a concern which is outside of our remit or where there is no evidence to support an allegation, we will keep the information on record and acknowledge the concern but will not enter into detailed correspondence with the concerned party.

- **Self-regulatory enquiry** - A self-regulatory enquiry will usually result in the Commission working with the charity to resolve the concern. This often involves the Commission offering best practice guidance to the charity.

This is the most common type of concern received by the Commission, with advice issued by the Commission to date on a wide range of areas and issues, from conflicts of interest and private benefit through to reminding trustees of their legal obligations.

- **Regulatory enquiry** - A regulatory enquiry will often result in the Commission making recommendations to the charity, including a timeframe for implementation and follow up monitoring by the Commission to ensure compliance.

For example, the Commission may identify where a charity lacks robust procedures to ensure good governance. We will work with the charity to ensure they develop and adopt new procedures within a specific timeframe then observe the implementation of these procedures until their effectiveness can be demonstrated.
- **Statutory inquiry** - A statutory inquiry sees the Commission use its most stringent powers under the Charities Act (Northern Ireland) 2008. The Commission will undertake a statutory inquiry if there is serious and substantial risk to the assets or beneficiaries of a charity.

Under a statutory inquiry, the Commission’s powers include, but are not limited to, the power to call for documents and search records and, after instituting a statutory inquiry; to suspend or remove a trustee, charity trustee, officer, agent or employee of the charity from the exercise of that person’s office or employment, to appoint a trustee in place of a trustee the Commission has removed, to restrict transactions entered into or the nature or amount of payments which may be made by a charity, and to appoint an interim manager in respect of a charity as the Commission thinks fit.

For more information on the Commission’s enquiries work please visit [www.charitycommissionni.org.uk](http://www.charitycommissionni.org.uk)
Whistleblowing in charities: case studies

Case study one: governance issues

The Commission has received concerns where the concerned party has highlighted a number of simple governance issues, which could easily have been resolved by the charity internally. However, the concerned parties were unsure how to raise the issues or were worried that whistleblowing might be misconstrued as malicious or unimportant and simply ignored.

In one such case, the concerned party raised issues with the Commission in relation to a number of governance issues, including meetings not being conducted in accordance with the organisation’s governing document. The Commission raised the issues with the charity and, with the right guidance in place, the charity were able to resolve those matters.

The concerned party had a great deal of knowledge of charity governance matters and, in effect, could have been a valuable asset to the charity. Unfortunately, the individual felt unsure how to approach the trustees and opted instead to contact the Commission in the first instance. The Commission opened a self regulatory enquiry, providing the charity with guidance on how to rectify the issues. However, once the issues were out in the open, the charity was not only able to resolve them but was able to appreciate and benefit from the concerned party’s extensive knowledge on an ongoing basis.

Case study two: dominant trustee

In another case, an employee within a charity had a number of concerns regarding a dominant trustee. As the charity had no whistleblowing policy in place, the concerned party had no assurance that his concerns would be properly heard, or that the dominant trustee would not influence the process. Consequently the only route open to the concerned party was to raise his concerns with the Commission.

The Commission listened to his concerns, investigated the matter further with the charity and found that this was simply a matter of internal dispute. The charity had minor governance issues which were resolved through self-regulatory guidance.
Ultimately the investigation could have been avoided if the charity had had a whistleblowing policy which demonstrated the proper process to be followed and which enabled the employee to have confidence that his concerns would be given due consideration. On completion of a proper, transparent process, the employee could still have raised his concerns with the Commission, however, it is likely that the need to bring the issues to the attention of the regulator would have been negated.

**Lessons for other charities**

A charity’s trustees have ultimate responsibility for directing the affairs of the charity and ensuring it is solvent, well-run and meeting the purposes for which it has been set up. Therefore, being a charity trustee is a responsible role - one which should only be undertaken with assurance that you fully understand what will be expected of you, and what your duties will be. It is also important to remember that, while it can be simple for a single, dominant personality to come to the fore, all trustees hold this ultimate responsibility collectively.

Cases of a single or small number of trustees acting in a dominant role within a charity are strongly may pose a serious risk to the charity. The dominant individual may be shouldering a lot of the responsibility alone, rather than sharing it with the trustee group, with the views, expertise and knowledge of other trustees remaining unheard and their legal obligations not being fully discharged. This can lead to concerns and dissension; other trustees may feel undervalued and afraid to speak out, or stakeholders may become concerned that governance procedures are not being adhered to.

Charities should ensure they have the correct number of trustees in place and, where possible, strive to have trustees who bring a diverse range of skill sets, experiences and knowledge to the table. For example, older Board members may have strong experience in financial or employment issues gleaned during their own career, while younger trustees bring new ideas and fresh opinions. In addition, trustee boards should not be afraid to look elsewhere for the support or assistance they need. A diverse board of trustees with varying areas of expertise will aid to bring good governance to a charity.

It is also clear that a properly applied whistleblowing process would allow charity employees to have the confidence that their concerns will be properly addressed without influence.
Whistleblowing policies

As highlighted earlier in this report, the Commission encourages charities to have a clear, written whistleblowing policy in place. While the Commission wants to know about serious concerns in relation to Northern Ireland’s charities, we are supportive of charities taking action to resolve issues themselves.

Whistleblowing policies support concerned parties in feeling confident and secure in raising a concern with the appropriate person, as well as detailing how the charity can handle the issues raised. As the concerns highlighted in this case study show, often the information provided can support the trustee Board in acknowledging weaknesses and taking simple, effective action to fix the issue.
Further information and advice

The Whistleblowing Commission Code of Practice

In 2013, whistleblowing charity Public Concern at Work established the Whistleblowing Commission to review the effectiveness of whistleblowing in UK workplaces and make recommendations for change.

To support organisations in developing clear and accessible whistleblowing procedures, the Commission developed a Code of Practice for effective whistleblowing.

This Code of Practice provides practical guidance to employers, workers and their representatives and sets out recommendations for raising, handling, training and reviewing whistleblowing in the workplace.

Available online at www.pcaw.org.uk, the Code can be picked up by any organisation looking to achieve high standards in ensuring workers, volunteers or beneficiaries are encouraged to speak up and when they do, that they are listened to.

Further information and advice on whistleblowing, including the law that protects whistleblowers, the Public Interest Disclosure Act1998 (PIDA), is also available on the Public Concern at Work website www.pcaw.org.uk