Why is evidence so important?

A thematic report from the Charity Commission for Northern Ireland

February 2016
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](http://www.charitycommissionni.org.uk)

**Equality**

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

**Accessibility**

If you have any accessibility requirements please contact us.
Section 1: Concerns about charities

The Charity Commission for Northern Ireland (“the Commission”) works to provide the best possible regulation of charities in Northern Ireland, to increase charities' effectiveness and the public's confidence and trust in them.

The Commission has statutory objectives to ensure trustees comply with their legal obligations in managing charities. We also have a statutory function to identify and investigate apparent misconduct or mismanagement in the administration of charities, and to take remedial or protective action.

The vast majority of charities encounter few problems. However, on occasion, someone may have a concern about a charity or group of charities and look to the Commission, as the regulator of charities in Northern Ireland, to take up that concern.

As a proportionate regulator we will only take up issues where we believe there is substance to a concern. We will not act on unsubstantiated allegations, rumour or opinion. To do so would not only impact on our limited resources but also has the potential to unfairly disrupt the charity's work.

Consequently, if you have a concern about a Northern Ireland charity that relates to any of the following areas, the Commission needs to know about it.

- Significant financial loss to the charity.
- Serious harm to 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.
- A charity's independence being seriously called into question.
- Serious non-compliance in a charity.

If you are submitting a concern about a charity to the Commission, it is important to remember that you are likely to be asked to provide evidence to substantiate your assertion. This is common practice and
helps the Commission to ensure any action we take is not only the correct course of action, but is proportionate to the level of risk.

It may be that your concern could be better addressed by approaching the charity itself, or another body or organisation in the first instance. This allows the charity or a more appropriate regulatory authority to take action to resolve the issues, or provide further information to explain what has happened.

There may also be occasions where a concern relates to allegations of illegality or criminal activity, such as charity fraud. While we would encourage you to alert the Commission to the allegation, criminal activity should be reported to the Police Service of Northern Ireland (PSNI).

If you have a concern about a charity in Northern Ireland, before considering your next step, the flowchart on the following page may help to guide you in the right direction. You should also read our Concerns about charities guidance.
Is your concern about a charity which is currently operating in Northern Ireland?

Yes

Does your query relate to any of the issues detailed in Section 2: Concerns about charities?

No

The Commission can only investigate concerns about charities in Northern Ireland. You may wish to raise the issue with another authority.

Yes

Can you provide the Commission with evidence or eyewitness testimony to substantiate the concern?

No

Does your query relate to an internal disagreement or dispute, a disagreement with a decision or services provided by the charity?

Yes

Hearsay evidence is unlikely to meet the Commission’s evidence test and your concern may be declined.

No

Have you raised your concern with the charity?

Yes

The Commission would encourage you to raise your concern with the charity in the first instance.

No

Does your query relate to an employment fundraising, criminal issue?

Yes

Please review the Commission’s Concerns about charities guidance.

No

Please raise your concern with the appropriate regulatory body - see Section 5: Useful contacts.

Please read the Commission’s Concerns about charities guidance.
Section 2: The importance of evidence

The Commission is a risk-based regulator working within the values of independence, proportionality and impartiality. This means that our actions are measured to fit the seriousness and scale of what has occurred, as well as taking account of the potential for further risk to the charity.

On receiving a concern about a charity, the Commission will undertake an initial risk assessment, which will help to determine the best route to take to deal with the matters raised and, if required, restore the charity to good governance.

If sufficient evidence is not included with the initial concern submitted, and the allegation relates to an issue which is within the Commission’s remit, we will ask the concerned party to provide further information or documentary evidence.

Examples of evidence

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<th>Concern about a charity</th>
<th>Examples of evidence which might be submitted to substantiate the concern</th>
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| The charity is providing an inappropriate private benefit to one or more trustees. | ➢ Information on the alleged private benefit, including the name of the individual or organisation allegedly receiving the benefit.  
 ➢ The connection to the charity, such as copies of correspondence.  
 ➢ Receipts and/or invoices, if applicable. |
| Incorrect procedure for calling an Annual General Meeting (AGM) was followed | ➢ Governing document, or relevant extract.  
 ➢ Meeting minutes and/or correspondence.  
 ➢ Invitations demonstrating inaccurate times or insufficient notification periods. |

These are examples only, the list is not exhaustive.
Each concern received will be considered on its own merits. However, any evidence provided to support a concern or allegation will, as expected, play a vital role in the initial risk assessment and the Commission’s subsequent decision making. If sufficient or valid evidence is not presented, the Commission may have no option but to reject the concern and concentrate its resources on issues or concerns which are supported by evidence.

Of the 40 concerns received by the Commission between 1 October 2015 and 31 December 2015, seven concerns (over 20 per cent) were submitted without supporting evidence.

As a proportionate regulator we can only take up issues where we believe there is substance to the concern. For this reason, you should submit as much detail as possible to us if you are raising a concern. If you know that evidence exists, but are unable to obtain it yourself, you should indicate this to us.
Section 3: What will the Commission do?

Following the Commission’s initial risk assessment, there are four possible outcomes to a concern received by the Commission. As expected, the level of investigation and statutory powers available to the Commission increases in accordance with the concern itself, including the risk posed to the charity, and the subsequent actions of the trustees. The four outcomes are detailed below.

- No action taken.
- Self-regulatory enquiry.
- Regulatory enquiry.
- Statutory inquiry.

To support your understanding of the Commission’s concerns process, the information below is in the form of anonymous case studies based on real life concerns received by the Commission.

For more guidance on how your charity can learn valuable lessons from the Commission’s investigatory work please see the Charity essentials section of www.charitycommissionni.org.uk

3.1 Referral or no further action

As with all regulatory bodies, the Commission will inevitably receive concerns which we do not investigate past the initial assessment stage. For example, if a concern received is credible and evidence based but falls outside the scope of the Commission’s powers then we can take no further action, however, we can refer it to another appropriate body. This has occurred in the past where we have referred a matter to Trading Standards and, on separate occasions, to the PSNI and HMRC (Her Majesty’s Revenue and Customs).

Additionally, the Commission may not progress a concern if, for example, no evidence to support the allegation has been provided, or the concern is refuted by information already known to the Commission. In this case, we will contact the individual who raised the concern and explain the reasoning behind our decision not to proceed.
Case study: A member of the public has raised a concern with the Commission about a charity not organising an Annual General Meeting (AGM) in compliance with its governing document.

For most charities, the holding of an AGM would be an annual requirement.

How often a charity should hold an AGM will be dictated by the organisation’s governing document. This is a legal document which represents the rule book for the way in which a charity will operate and should, usually, contain information on the charity’s purposes, governance and internal arrangements for meetings, voting and finance.

In the future, it is anticipated that each registered charity’s governing documents will be publicly available via the register of charities on the Commission’s website www.charitycommissionni.org.uk. This will allow simple checks to be undertaken by any member of the public.

In the meantime, if you have a concern of this nature, you may wish to ask the charity for information relating to their requirement to hold a regular general meeting, or to view a copy of the governing document. Charities are encouraged to be transparent and are expected to permit their members, volunteers, officers, agents and trustees to access a copy of their governing document as well as be informed of the dates and frequency of meetings.

If evidence was found that a charity was not holding the required frequency and number of general meetings, this would be a governance matter and the Commission would expect to be notified.

In investigating a concern of this nature, the Commission would look at the evidence provided and, assuming that the evidence supports the concern raised, we will contact the charity’s trustees for further information or clarification.

In a recent case, a member of the public raised a concern with the Commission that the charity of which he was a member did not follow the governing document when it held its recent AGM.
The concerned party provided the Commission with a copy of the charity's governing document and the invite that was issued to him regarding the AGM.

The evidence suggested that the charity had not complied with its governing document and therefore the Commission contacted the trustees to establish if there was a reason for non-compliance, or if there was any further action taken by the charity to rectify the situation. Without this evidence the Commission would not have taken further action.

On receipt of correspondence from the charity, it was clear that the charity had not initially complied with the requirements for holding an AGM, which are specified in its governing document. However, the charity had taken action to rectify the matter.

On review of this new information, the Commission was satisfied that no further action was required to resolve the concern.

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Case study: A member of the public was concerned about the activities of an organisation. The concerned party reported that the organisation, which presented itself as charitable, did not appear on the Commission’s registration list.

It is compulsory for all charities operating in Northern Ireland to apply for charity registration.

While long standing in England and Wales, charity registration is relatively new to Northern Ireland and began for the first time in December 2013. It is estimated there are between 7,000 and 12,000 charitable organisations currently operating in Northern Ireland and registration is a managed process, with organisations being called forward by the Commission to apply in tranches.
The Commission anticipate that it will take four to five years for all existing charities to be assessed for registration and the Commission reaches the point where it is processing applications from newly established organisations only.

However, as an interim check, the Commission has published an online registration list which lists all organisations the Commission is aware of to call forward to apply for charity registration. This list also details if a charity is registered to date, is “deemed” (granted charitable tax status by HMRC by 18 August 2013) or has been refused registration. The Commission’s powers of investigation extend to organisations which are either registered or, while registration progresses, deemed.

In this case, the concerned party did not provide any evidence that the organisation was presenting itself as charitable. An Open Source check of the organisation did not provide evidence to support the allegation.

The Commission contacted the concerned party and asked for further information to support their assertion; however, they were unable to provide this.

As the organisation was not a deemed or registered charity, and as there was no evidence to support the concern raised, the Commission took no further action in this case.

3.2 Self-regulatory enquiries

A self-regulatory enquiry will typically result in the Commission working with the charity to resolve the concerns raised. In reality, this will often involve the Commission offering best practice guidance to the charity, for example, assistance on governance issues such as records management, documenting meeting minutes and complying with governing documents.

If a charity fails to follow this advice, the Commission can follow up using more stringent powers under the Charities Act (Northern Ireland) 2008.
Case study: A member of the public raised a concern about the governance of a charity. The individual provided evidence that trustees may not have been meeting as frequently as dictated by the governing document.

In this case, having been provided with sufficient evidence supporting the concern raised, the Commission contacted the charity for further information.

The trustees confirmed that a period of some initial difficulty had led to fewer board meetings being held than was required by their governing document.

The Commission requested a range of information from the charity to ensure the issue was not having an adverse effect on the running of the charity. The trustees provided the Commission with:

- minutes of meetings held over the previous three years
- accounts and audit reports.

The Commission issued self-regulatory guidance, supporting the trustees in addressing the matter going forward. This allowed the concern to be resolved relatively simply, with the Commission working with the charity to get it back on track.
Case study: A member of the public raised a concern about safeguarding and evidenced how he, as a service user, had been treated by a charity in the provision of their charitable activities.

Whilst the Commission would not normally look at the provision of service as a concern, in this instance the concern was core to the charity’s charitable purposes and activities.

Furthermore, the individual had already approached the charity and provided evidence of their correspondence, which demonstrated that the charity did not appropriately address the matter.

Information was requested from the charity in relation to the issues raised, which confirmed that although mistakes had been made, the processes and policies they had followed did comply with best practice.

To resolve the issue, the Commission provided self-regulatory guidance and signposted the charity to review how it had handled the complaint and to learn lessons for the future.

3.3 Regulatory enquiries

For issues of a more serious nature, a regulatory enquiry can result in a direction, in the form of guidance, being issued to a charity to address an issue or to take steps within a specified timeframe.

The Commission will closely monitor the charity during a regulatory case to make sure that action is taken to resolve the identified issues.

While some concerns can immediately be identified as sufficiently serious to warrant a regulatory outcome, on occasion, the Commission’s investigation into a lesser concern may find further issues which will result in its escalation to this higher level.
Case study: A concern was received from a charity stakeholder organisation regarding a community-based charity. It was alleged that the trustees may have been in receipt of an inappropriate private benefit, with one trustee acting whilst disqualified.

To support the allegations made, the concerned party provided evidence of correspondence between parties and Open Source documents.

The evidence demonstrated to the Commission that there was an issue of concern to be investigated. The Commission usually finds that these types of investigation lead to other issues of concern.

Following subsequent contact with the charity by the Commission, a trustee who had been unaware that a specific conviction rendered them disqualified to act as a trustee, stood down promptly from the office of trustee. For more information on trustee disqualification, including the duties and responsibilities of trustees, please see the Commission’s Running your charity guidance.

A number of governance issues were also identified and the Commission took action to resolve the matters by issuing regulatory guidance, with follow up monitoring to ensure compliance.

The charity subsequently held an overdue Annual General Meeting, with a new board of trustees elected by the members and new policies introduced.

Former trustees, who had a conflict of interest, continued to contribute to the charity’s activities without being involved at a strategic decision making level.
Case study: A member of the public raised a concern on behalf of another party who they refused to identify. That party was asserted to be a beneficiary of a charity. The issues raised included current and historic matters relating to decisions of trustees, charitable activities and allegations of inappropriate private benefit.

Whilst the person raising the concern with the Commission was identifiable and correspondence was exchanged, the issues they raised were not corroborated by the provision of any documents or witness accounts.

The concerned party asserted that an anonymous individual they represented knew the facts personally but was adamant that this information would not be shared, including their identity.

Without this necessary and substantiated evidence, the Commission was unable to confirm that there was justification in opening a concern. It would have been unfair to the charity and its service users to disrupt its work by investigating a concern based on the assertions of a third party.

It would also be difficult for the Commission, as a publicly funded body, to justify expenditure on matters which had not been evidenced, potentially causing delay to other high risk concerns. It was also noted that some of the issues raised had already been investigated by the Commission and found to be without substance.

To allay the fears of the concerned party, the Commission shared its reasoning and the findings of the earlier case to support and explain the decision to reject the concern on this occasion.

The concerned party did not provide any further evidence to support their claims, despite requests, and therefore this case was closed.
3.4 Statutory inquiries

The highest level of investigation open to the Commission, a statutory inquiry may be instituted where the severity of the risk warrants the use of the Commission’s most stringent of powers.

The opening of a statutory inquiry is not a decision which is undertaken lightly and, in fact, must be approved by at least three Commissioners on consideration of a number of issues, including the risk to the charity.

Once a statutory inquiry has opened the Commission may use its powers to:

- suspend or remove a trustee, officer, agent or employee of a charity (a person removed by the Commission cannot act as a trustee or director in any other charity within the UK without the permission of the Commission)
- restrict the charity’s financial transactions
- appoint an interim manager or additional trustees
- take any other reasonable action to act for the protection of the charity and its assets.

For case studies on our statutory inquiry reports work, see the Statutory inquiry reports section of our website www.charitycommissionni.org.uk.
Section 4: Information security and confidentiality

All information gathered by the Commission is held securely and lawfully, and used to meet the Commission’s regulatory purposes only.

This information may, on occasion, include personal and sensitive data, provided to support the Commission in taking action to protect a charity, its assets and beneficiaries. The Commission is a statutory body with the appropriate security clearance to process and hold sensitive and personal data. Access to such data is also restricted to staff dealing with a specific case or matter, and is handled in accordance with the relevant legislation.

The Commission will not disclose personal details to anyone unconnected with the Commission unless the individual has consented to its release, we are legally obliged to disclose the information, or we regard disclosure as necessary to carry out our statutory functions. For example, we may need to disclose information to third parties in the following circumstances.

- As a result of a court order or to meet another legal requirement.
- Where we are required to pass information to another regulatory or statutory body.
- Where the information forms a key part of a statutory inquiry report.
- Where the information is the subject of a Freedom of Information request (though exemptions may apply).

Some information and decisions will be published as a matter of course during our investigatory work. For example, in order to use some powers, the Commission is required to give advance public notice.

The purpose of a public notice is to give individuals and organisations, that are affected by a decision, the opportunity to find out more about the decision and, if necessary, to provide comments or make representations. Additionally, through publishing decisions the Commission aims to increase openness, transparency and levels of public trust and confidence in the charity sector.
If the concerns raised lead to the opening of a statutory inquiry then it is the Commission’s policy to publish this decision unless there are good reasons not to.

Please tell us if any information you provide is of a particularly sensitive or confidential nature.

Charity trustees must remember that the position of charity trustee is a matter of public record, carrying certain duties and responsibilities. The public have a legitimate interest in being assured that those duties are complied with and it may be in the public interest to disclose certain information.
Section 5: Useful contacts

Charity Commission for England and Wales (CCEW)
PO BOX 1227
Liverpool
L69 3UG

**Telephone:** 0845 300 0218
**Website:** [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

Charities Regulatory Authority (CRA)
Charities Regulatory Authority
St. Martin's House
Waterloo Road
Dublin 4

**Telephone:** (00353) 01-633-1500
**Website:** [www.charitiesregulatoryauthority.ie](http://www.charitiesregulatoryauthority.ie)

Charity Tribunal
Charity Tribunal
Tribunals Hearing Centre
3rd Floor, Bedford House
16-22 Bedford Street
Belfast
BT2 7FD

**Telephone:** (028) 90 724892
**Email:** tribunalsunit@courtsni.gov.uk

Companies House
Companies House
2nd Floor
The Linenhall
32-28 Linenhall Street
Belfast
BT2 8BG

**Telephone:** 0303 1234 500
**Website:** [www.gov.uk/government/organisations/companies-house](http://www.gov.uk/government/organisations/companies-house)
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<th>Department of Health, Social Services and Public Safety (DHSSPS)</th>
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<tr>
<td>Safeguarding Vulnerable Groups / Disclosure and Barring Service</td>
<td>Information Office</td>
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<tr>
<td>C5.20 Castle Buildings Stormont Belfast BT4 3SQ</td>
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<tr>
<td><strong>Telephone:</strong> 028 9052 0500 <strong>Website:</strong> <a href="http://www.dhsspsni.gov.uk/index/hss/svg.htm">www.dhsspsni.gov.uk/index/hss/svg.htm</a></td>
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<tr>
<td>Charities Correspondence S0708 Bootle L69 9AZ</td>
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<tr>
<td><strong>Telephone:</strong> 0300 123 1073 <strong>Website:</strong> <a href="http://www.hmrc.gov.uk/charities">www.hmrc.gov.uk/charities</a></td>
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<th>Information Commissioner’s Office (Northern Ireland)</th>
<th>The Information Commissioner’s Office – Northern Ireland 3rd Floor 14 Cromac Place, Belfast BT7 2JB</th>
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<tr>
<td><strong>Telephone:</strong> 028 9027 8757 / 0303 123 1114 <strong>Website:</strong> <a href="http://ico.org.uk">ico.org.uk</a></td>
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<tr>
<th>Office of the Scottish Charity Regulator (OSCR)</th>
<th>OSCR 2nd Floor Quadrant House Dundee</th>
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<tr>
<td><strong>Telephone:</strong> 01382 220446 <strong>Website:</strong> <a href="http://www.oscr.org.uk">www.oscr.org.uk</a></td>
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