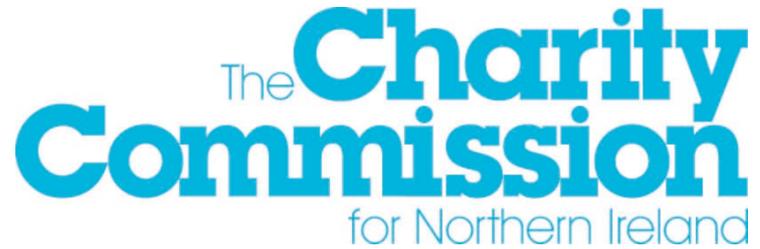
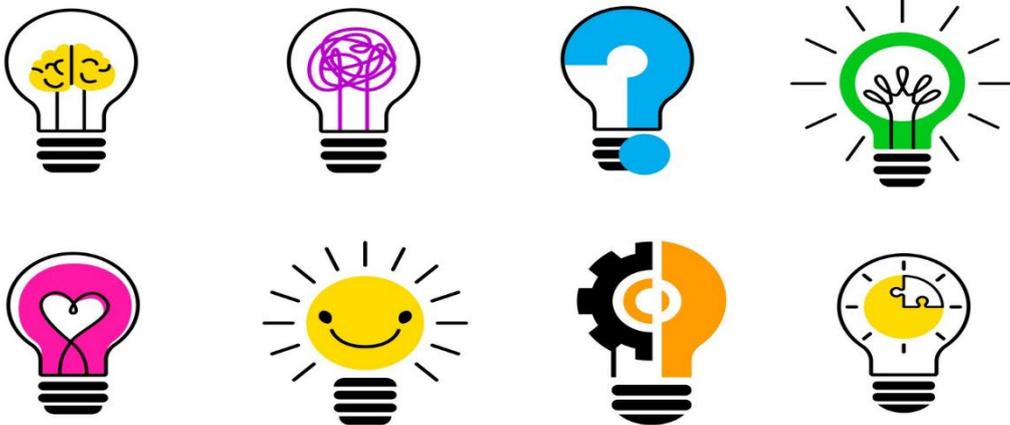


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Lessons learned from concerns about charities

A thematic report from the Charity Commission for Northern Ireland



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Section 1: Introduction

The people of Northern Ireland feel very strongly about charities. They support them with money, time and skills. Things can and do go wrong and if not managed correctly can damage the trust and confidence which people have in the charity and the sector as a whole.

The key to an effective charity is good governance. We have published a wide range of guidance, videos and vlogs on our website at www.charitycommissionni.org.uk to help charity trustees to understand what the law expects of charities and how they can comply with it. The Developing Governance Group has also produced the [Code of Good Governance](#) for Northern Ireland, the [Governance Health Check](#) Governance Health Check and redeveloped the [diycommitteeguide](#) website with resources mapped to the Code.

The Commission has also published [How to raise a concern](#) guidance to support people in submitting a concern about a charity. The [Dealing with Concerns about charities](#) guidance explains how the Commission deals with concerns and, importantly, how charities can get things right by putting the right processes and policies in place from the beginning.

This thematic report and our [Running your charity](#) guidance are aimed at helping charity trustees to learn from the mistakes of others. We hope this report will support charity trustees in making the right choices and putting in place good governance practices.

Key terms:

We have produced a glossary that provides definitions and descriptions of key terms used in the Commission's guidance. This is available on the [Registration support](#) page of the Commission's website. Key terms in this report include:

Concerns: Occasionally people have concerns about how a charity is being run and look to the Commission to address these. Concerns that are likely to cause harm or damage to a charity should be raised with the Commission. For example, significant financial loss, suspected fraud, harm to beneficiaries, sham charities set up for illegal or improper purposes, charity not meeting its public benefit, not being independent, threats to national security, particularly terrorism or serious non-compliance.

Matters of Material significance (MoMs): *Material significance* is a term used in the Charities Act which places a duty on auditors and independent examiners to report to the Commission any matter they become aware of regarding a charity or any connected organisation. They must believe the issue or matter is likely to be of 'material significance' to the Commission in carrying out its functions of regulating charities.

Related Party Transaction: Related party transactions are the transfer of resources, services or obligations between related parties, regardless of whether a price is charged.

Serious Incident Reporting: A serious incident is an adverse event, whether actual or alleged, which results in, or risks, a significant loss of charity money or assets, damage to charity property, or harm to the work of the charity, its beneficiaries or reputation. Charity trustees should report serious incidents to the Commission immediately, not waiting until they submit their annual return to notify us. If the charity trustees have any doubt about whether an incident is serious, report it to us anyway.

Section 2: Lessons from concerns

The Charities Act (Northern Ireland) 2008 (the Charities Act) gives the Commission a range of powers to investigate charities, within Northern Ireland, where a risk exists to assets or beneficiaries. This has allowed us to identify and investigate apparent charity misconduct and mismanagement.

In using these powers, we are committed to our key values of proportionality, fairness, independence, transparency and consistency.

During 2022/23 we received 137 concerns, 75 serious incident reports and 15 matters of material significance.

Most concerns involve minor governance issues, which can be dealt with by opening a self-regulatory enquiry. This means that the Commission will investigate the concern and provide the charity with advice or best practice guidance on the best way to resolve the issue or better manage their operations.

At the other end of the scale, where there are allegations of mismanagement within local charities the Commission may have to use its more serious powers, for example to open a statutory inquiry, which may involve removing a charity trustee or appointing an interim manager to oversee the work of a charity.

The examples below are aimed at providing charities and their trustees with advice and guidance on common issues experienced by others within the charitable sector, along with key lessons on how they can improve and develop their own management processes and policies.

- Lesson one:** Charity property
- Lesson two:** Payments and expenses for charity trustees
- Lesson three:** Disagreements and disputes within a charity
- Lesson four:** Safeguarding, protecting people from harm
- Lesson five:** Recruiting and managing staff

Lesson one – charity property

It should usually be straightforward for charities to buy or rent property, for their own use or as an investment, as well as to sell or lease charity property.

As with any business transaction, it is important that you get the best deal for the organisation and follow any rules laid out in the law and your governing document. For example, when renting or buying property ensure the property is suitable for your needs, is reasonably priced and that any mortgage terms are competitive.

Similarly, when selling or leasing charity property, you should ensure you have the necessary permission in your governing document, that the charity actually owns the title to the property and that you are acting in the best interests of the charity. However, problems can arise when the boundaries between charitable and commercial enterprises become blurred.

For example, individuals involved in the decision making of a charity were also involved in a commercial body, which shared property with the charity. Both organisations shared common objectives and, as things progressed, the two organisations ended up answering each other's calls, working with the same clients and sharing common facilities and services. It became increasingly difficult for outside parties to understand where the commercial company and the charity's interests began and ended. This created mistrust, and concern that benefits aimed at assisting the charity, such as tax reliefs, were also benefitting the commercial body.

What can the Commission do?

In, this type of investigation the Commission would usually offer the charity trustees guidance, working with the charity to resolve the concern raised through best practice guidance and support. This might involve encouraging the charity trustees to recognise the risk of a conflict of interest between the individuals in question. We might also encourage them to take steps to make it easier for the public to know the difference between the charity and the commercial body.

The Commission would monitor the situation to see if the matter was resolved and, if appropriate action was not taken, may then move the case to the next stage – a regulatory enquiry. A regulatory enquiry may result in the Commission making recommendations to the charity, including a timeframe for implementation and follow up monitoring by the Commission to ensure compliance.

If when this type of concern was received the Commission's assessment indicated that there was serious and substantial risk to the assets or beneficiaries of a charity, we may open a statutory inquiry. Under a statutory inquiry the Commission can take a range of remedial action, for example, removing the individuals in question from their role as charity trustees.

Words of advice

When dealing with property issues, it is important to note that there are restrictions within company and charity law which are designed to act as checks and balances for charity trustees.

For example, a charity must have permission in its governing document in order to sell or lease charity property. If this power does not exist, the charity may apply to the Commission to make a transaction which is either:

- in the best interest of the charity
- is not in the best interest of the charity but is something the trustees feel a moral obligation to do.

The Commission's [Authorising transactions](#) guidance provides further information on this area, including how you can apply to the Commission for an authorisation.

Lesson two - payments and expenses for charity trustees

While most charity trustees are not paid for their services as a trustee, many charities pay trustees' out-of-pocket expenses and, in some circumstances, for work they do for the charity. When undertaken within the appropriate legislation, and with the correct controls in place, there is nothing wrong with this practice.

For example, under its expenses policy, a charity may cover transport costs for charity trustees travelling to undertake charity business, perhaps attending a trustee meeting. Expenses are refunds made by the charity to cover out-of-pocket payments made by charity trustees, staff and volunteers in order to carry out their duties. As with all payments to charity trustees, a written agreement should be in place setting out what is classed as an expense, how to claim and the process for approving expenses, with all claims supported by bills and receipts.

As highlighted above, when undertaken within the appropriate controls, there are circumstances in which payments can be made to charity trustees. However, when things are taken to extremes, the Commission may find it has to step in to provide advice, guidance and, in cases of financial mismanagement, take further action to resolve the situation.

For example, a charity has a healthy level of reserves. Over time the payment of expenses has grown to include things which may be viewed by others as unnecessary and even excessive. Such expenses may have been authorised correctly and in line with the charity's governing document and charity law, however, the collective impact of expenses which are viewed as unnecessary can create a perception that is detrimental to the charity's reputation.

Another example is where charity trustees or people closely connected to them are providing services to the charity, there may be a lack of transparency on their appointment as service providers. These transactions could lead to a perception that the charity trustees were benefitting from their position within the charity and consequently not demonstrating a fair and equitable use of charitable funds.

What can the Commission do?

Whether or not your charity receives external funding, such as grants, sponsorship or donations, it is important that the charity's expenditure shows a proportionate level of funds is being directed towards charitable purposes. One of the most common areas the Commission receives concerns about is financial matters, from trustee payments and expenses through to staff remuneration, services costs and Related Party Transactions.

When investigating concerns of this nature, the Commission will look into the organisation's annual accounts, looking at what payments have been made and ensuring the correct checks and balances are in place and are being used. The Commission will then take necessary action, proportionate to any issue which has been identified and to protect the charity's assets and beneficiaries.

Words of advice

As with all governance areas, the best advice is to ensure you are following good practice and the requirements of the law in the first instance, which includes knowing what kind of payments can and cannot be made to charity trustees, and what checks you should be making.

Generally, when you become a charity trustee, you volunteer your services and usually receive no payment for your work. However, in some circumstances, payments may be made to charity trustees. This includes expenses, as highlighted above, or payment for certain services provided by the charity trustee, for example IT consultancy, estate agency advice, or if the charity entered into a maintenance contract with the charity trustee's firm. In such cases, payments may be made but only if the following conditions are met.

- The governing document of the charity authorises charity trustees receiving remuneration.

- The charity trustees must decide that the payment is in the best interests of the charity – there must be a clear advantage to the charity of using the services of the trustee as opposed to other providers.
- The amount of remuneration must be agreed in writing between the charity and the trustee and must be reasonable in the circumstances.
- The total number of charity trustees who are either receiving payment or who are connected to someone receiving payment are in the minority.

Before paying a charity trustee, the charity should also:

- produce a written agreement between the charity and the trustee providing the service, specifying the amount to be paid
- ensure payment to the trustee is disclosed on the charity's accounts and that the number of charity trustees receiving payment is in the minority
- ensure the particular trustee, whose services are to be used, is absent during any discussions regarding contracts or tenders.

It is important to remember that charity trustees must act in the best interests of the charity and only within the purposes of the charity. An effective charity is one which is open, transparent and accountable to the public as well as to others who have an interest in it– ensuring all payments to trustees are reasonable, fair and legitimate is a step towards achieving this aim.

Lesson three: Disagreements and disputes within a charity

Internal disputes and disagreements tend to indicate other issues, such as a perceived lack of transparency creating mistrust and concern that things are not as they should be. These issues should be raised directly with the charity and in some cases with other bodies.

It is not the Commission's role to mediate disputes such as a difference of opinion between the charity trustees or members. We may get involved where there are apparent governance failures by charity trustees, for example failing to hold regular trustee meetings, to publish financial information to members or to act in line with the governing document of the organisation.

Where we do get involved, we will provide regulatory guidance and, if necessary, use our statutory powers to resolve any misconduct or mismanagement within the charity.

What can the Commission do?

If the Commission is involved it will want to ensure that oversight, rather than something more serious, is the extent of the problem and to guide the charity on how it can be more open, transparent and accountable.

The Commission may offer advice on how to set things right, and how to put better controls and balances in place to increase transparency.

Often, for example, the issue may be something as straightforward as ensuring that trustees' meetings are well documented, with the minutes of meetings, including any decisions or votes taken, made publicly available.

Words of advice

The Commission has limited resources, and we must prioritise our actions, particularly where the matter could be better dealt with by another body. This means that while we will acknowledge and assess every concern we receive, keeping the information on record, in certain situations we may choose to take no further action other than to advise you of an alternative body which may be able to help.

If there has been no breach of the charity's governing document or the law, and the proper process has been followed, the charity should try to resolve any issues themselves in the first instance. If that fails, the

matter may be better dealt with by another regulatory or umbrella body, such as:

- The Centre for Effective Dispute Resolution (CEDR)
- The Northern Ireland Ombudsman
- NIDIRECT - Employment contracts and conditions, resolving workplace disputes
- ACAS - employment advice for employers and employees
- Citizens Advice Northern Ireland
- Equality Commission for Northern Ireland
- The Labour Relations Agency for Northern Ireland.

We would therefore write to the individual who submitted the concern to advise them of our decision, providing advice on where they may wish to go to seek further assistance.

Lesson four – Safeguarding, protecting people from harm

Managing risks is an important task for all charity trustees. Protecting children, young people and adults at risk of harm is a fundamental part of operating as a charity for the public benefit. Whether working online or in person, charity trustees must take reasonable steps to protect from harm people who come into contact with your charity. This includes:

- people who benefit from your charity's work
- staff
- volunteers
- other people who come into contact with your charity through its work.

The Commission expects charities to:

- have appropriate policies and procedures in place, which are followed by all trustees, volunteers and beneficiaries
- carry out the appropriate checks that people are suitable to act in their roles
- follow statutory guidance, good practice guidance and legislation relevant to their charity
- know how to spot and handle safeguarding concerns in a full and open manner
- have a clear system of referring or reporting to relevant agencies as soon as concerns are suspected or identified
- report any actual or alleged safeguarding concerns to the Commission as soon as possible using the checklist in our [*Serious incident reporting: a guide for charity trustees*](#).

The amount of detail in your policies depends on what your charity does, where it works, whether it operates in person or online and the level of risk.

For charities that are registered in one location but operating in another, safeguarding incidents should be reported to the charity regulator where the organisation is registered. It should also be reported to relevant statutory agencies in the jurisdiction where the incident occurred.

What can the Commission do?

The Commission does not administer safeguarding legislation. We cannot prosecute or bring criminal proceedings, although we may refer concerns on to lead agencies.

The Commission's role is to:

- ensure that charity trustees are complying with their legal duties
- help to protect the charity and sector's reputation
- perhaps offer regulatory advice or guidance
- assess the risk to other charities.

By reporting the serious incident as soon as possible charity trustees can take steps to limit the immediate impact of the incident and prevent it from happening again.

Words of advice

Charity trustees ask whether they will be in breach of their data protection duties by reporting to the Commission.

Charity trustees reporting a safeguarding incident to the Commission will not be in breach of the Data Protection Act as disclosures to a regulatory body are protected. The Commission will deal with this information according to the Data Protection Impact Assessment which it has developed in line with the advice and guidance of the Information Commissioner's Office (ICO).

If you plan to employ someone from another country and you want to check if they have a criminal record in that country you can find information about getting this on the [GOV.UK website](https://www.gov.uk).

Remember while risks cannot be entirely eliminated, they can be reduced and managed. In doing this charity trustees may find the following guidance useful:

The Commission's [Running your charity](#) guidance has information for charities in relation to their responsibilities around safeguarding. The [Safeguarding resources](#) page on the Commission's website includes a decision tree to assist charity trustees to decide whether they need to obtain a criminal record check as part of the recruitment process, and if so which organisation they should go to for this check.

[Bond's 'Good governance for safeguarding'](#) provides support on developing good practice on governance.

Lesson five - Recruiting and managing staff

Charities can range in size, from small organisations of just one or two people to large, household name organisations with a network of offices, staff and volunteers spread out across the country. However, no matter what size your charity is, you will need to follow employment laws when it comes to recruiting and managing employees.

One of the growing areas for concerns received by the Commission is in relation to allegations and suggestions of poor recruitment practice in charities. Examples include a Board meeting in which a Board member was recruited to a position within the charity; and another where a close relative of a charity trustee was hired to a job role, with the selection again taking place at a Board meeting. In both cases, the appropriate conflicts of interest policies were not used to ensure that the Board member in question did not take part in the decision-making process.

Such situations can create an atmosphere of suspicion and mistrust, which can have a further impact on the overall working environment.

What can the Commission do?

The Commission does not regulate employment matters and there are many other organisations and bodies which provide advice, support and guidance on employment.

However, where there are issues involving the expenditure of charitable funds and risk to the charity, the Commission will step in to look at the matter and, if necessary, take the appropriate action to resolve the issue.

As with all concerns, the Commission works to ensure the response is proportionate to the level of risk involved and therefore will take action appropriate to that risk.

Words of advice

Ensure you are aware of your charity's legal obligations as an employer and that all processes are clearly followed and all discussions and decisions recorded, including the justifications for any decisions made. This will help to show the process is fair, consistent and transparent, helping to inspire confidence and trust in you as an employer and, ultimately, in the charity as an organisation.

You may also wish to look at your charity's conflicts of interest policy. It is good practice that the charity agrees a code of conduct for managing conflicts of interest. For example, where a charity trustee or a person connected to them becomes interested in applying for a job with the charity, that trustee should declare a conflict of interest. They should not take part in any discussions around the position, such as setting rates of pay, holidays or job description. If this does occur the charity will be open to accusations of unfairness in the recruitment process as it could be deemed that one candidate had an unfair advantage over others.

However, recruitment is often only the beginning of the process when it comes to employees. Your staff and volunteers are a vital part of your charity's assets, often the ambassadors for your charity and the first port of call for your stakeholders. It is essential they are managed well. Some of the factors you might need to consider are available in Appendix 1.

Conclusion

Our investigations work is an important element of our responsibilities as a regulator, giving us the powers when, on occasion, things do go wrong in a charity, to step in and take the appropriate action to set things right.

And while our investigations work can, on occasion, see us tackling more serious cases of mismanagement and misconduct, we remain open to seeing - and highlighting - the good work which charities are undertaking across Northern Ireland.

As this report has highlighted, many concerns involve minor governance issues which can be set right quickly, with the right advice and guidance. Something as seemingly trivial as failing to publish financial accounts on time, or appearing tight lipped about how or when a decision was made, can have a major impact on a charity's reputation, encouraging mistrust and raising questions.

We hope that this report, will encourage charity trustees to take a few minutes and ensure they are following the right processes and policies, and meeting their responsibilities.

Appendix 1: Employment - Areas to consider

Job roles and descriptions:	Are job roles and responsibilities clearly defined, including the boundaries between the charity trustees' role and that of senior management, or the differences between the rights, roles and expectations of paid staff and volunteers.
Working Time Regulations	ensuring that employees do not work hours in excess of the legal maximum and take sufficient holidays, breaks and time off.
National Minimum Wage	providing a minimum hourly rate of pay categorised by age.
Health and Safety	ensuring employees and volunteers are safe at work. Support and guidance are available from the Health and Safety Executive for Northern Ireland.
Redundancy	including consultation procedures, entitlement to statutory redundancy payments etc.
Discrimination	the right to be treated fairly in all employment decisions.
Parental rights	maternity/paternity/parental/adoption leave and dependants' leave for emergencies.
Flexible working	for those with caring roles for children and other dependants.
Training and development	Ensuring employees and volunteers have access to training for their roles and fair opportunities to develop their skills.
Immigration and work status	ensuring that your employees have the right to work in this country.
Safeguarding	Specific checks required for employees working with children, young people, and adults at risk of harm (for example, Criminal Records Bureau checks).
Data Protection Act	Covering the information that may be kept for an employee. See the Information Commissioners Office website.
Equality	Advice and guidance on a range of equality legislation is available from the Equality Commission for Northern Ireland .
Accessibility	Advice and guidance are available from a range of organisations such as Disability action, RNIB, Action on hearing Loss and the equality Commission.

For further information:

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