



Risk Framework

Application of the Charity Commission's Risk Framework

Contents

Introduction – what is this guidance about?

A. Our general approach to applying the risk framework

A1. Principles of best regulatory practice

A2. What we do not do

A3. Proactive work

B. Stage 1 - does the Commission need to be involved?

B1. The key questions we ask ourselves

B2. If we decide we should not engage

C. Stage 2 – assessing the nature and level of risk

C1. The nature of the risk

C2. Other factors that affect the level of risk

D. Stage 3 – Outcome and response

D1. Possible outcomes

E. Registration of charities

E1. Factors that affect the level of risk

F. Using the Commission's enabling powers and maintaining the register

F1. When is the Commission's authority needed?

F2. Maintaining the register

G. Regulatory engagement and intervention

G1. Conduct and response of the trustees

G2. Regulatory advice

G3. Investigations

G4. The criteria we consider when deciding whether to open an investigation

Annex A - The Commission's general duties under s.1D

Annex B - Principles of best regulatory practice

Annex C - Key questions when considering whether to engage

Annex D - Risk-based regulatory engagement and investigation: a strategic approach

Introduction – what is this guidance about?

The Commission's approach to risk is explained in our overarching Risk Framework. This guidance provides more information about how that approach is applied practically in the Commission's casework. It has been written for Commission staff to use when applying the Risk Framework.

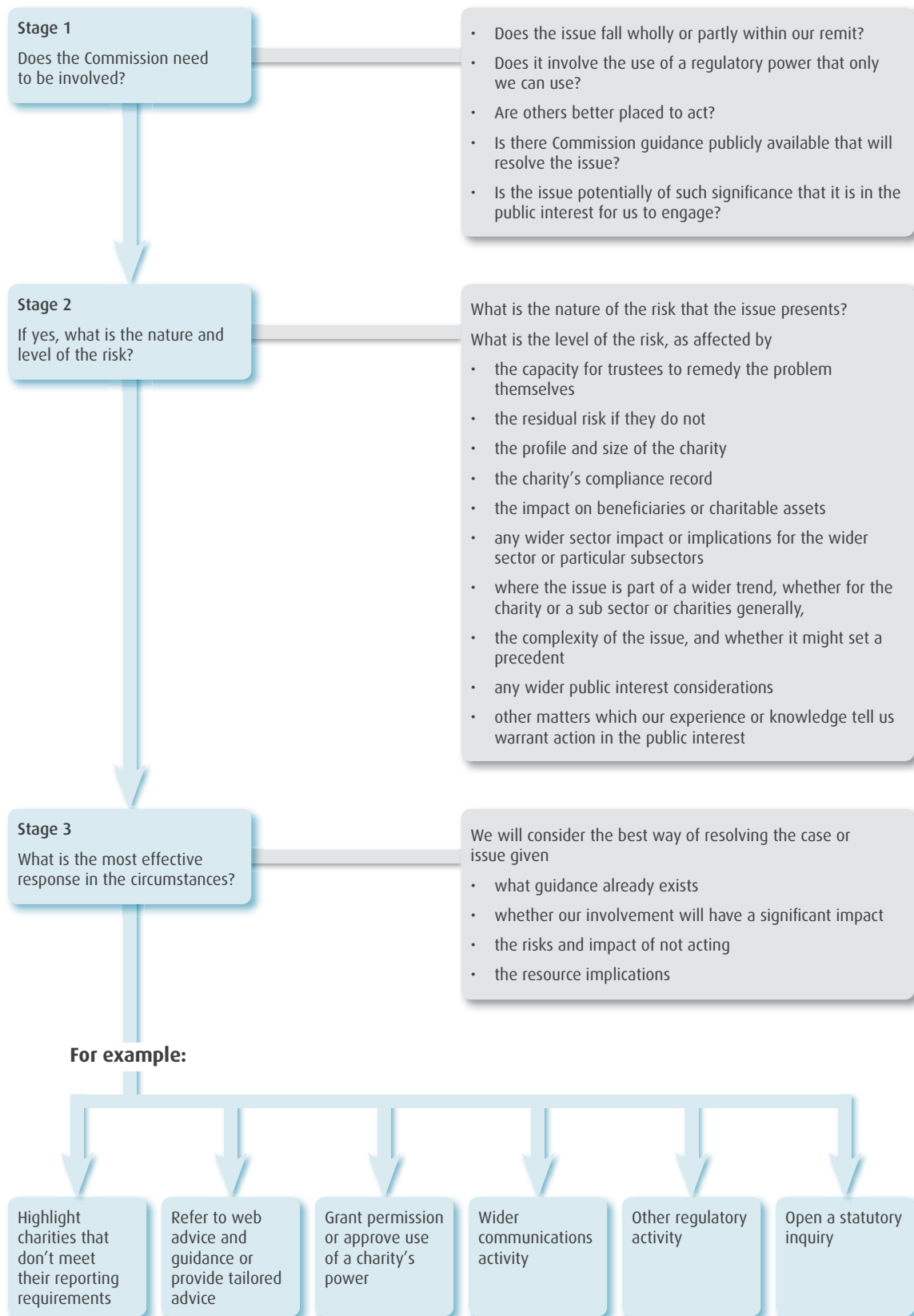
This guidance looks at how we apply the Risk Framework in practice and explains further how each of these three stages operate in our casework. It then looks at how the framework applies in some key areas of the Commission's work.

As the Risk Framework explains, we use a three stage approach to assessing risk and applying our resources to our regulatory work:

- **Stage 1: Does the Commission need to be involved?**
- **Stage 2: If yes, what is the nature and level of risk?**
- **Stage 3: What is the most effective response in the circumstances?**

The following chart summarises the key questions we ask ourselves in these three stages:

Our regulatory approach to protecting the public’s interest in charity – how we assess risks and manage resources



A. Our general approach to applying the risk framework

Some of our work affects all charities, some a particular group of charities and some is targeted at individual charities. The Commission's Risk Framework is the common basis used across the organisation for determining when and how to act in individual cases, as well as when and how to get involved in proactive programmes of work.

Page 2 of the Risk Framework lists the Commission's statutory objectives and sets out the purpose of regulation of the charitable sector, to protect the public's interest in charity and ensure that, as the law requires, charities:

- consistently focus on those purposes for the public benefit which give them their charitable status; and
- act independently of any private, governmental or political interests

The Commission's starting point is that responsibility for administration and management of charities rests with trustees. We have no power to act as trustees and make decisions in the administration of a charity. Therefore, as long as trustees act lawfully and reasonably¹, we have no power to intervene or overturn their decisions, no matter how unpopular they may be with the public or a charity's beneficiaries. In these cases, there will be no issue of regulatory concern or interest to us.

However, there will be some situations where we will need to engage with charities. We take a risk based approach to such engagement. This means we target our help and resources at the highest risks to charities' beneficiaries, services and assets and where we think our intervention will have the greatest impact. The risk assessment process allows us to identify the highest impact issues and so prioritise our work. We will focus our one to one engagement on cases where there are serious risks, on risks affecting the sector as a whole or parts of it and on cases where we need to use our legal powers.

In practice, this means:

- we will use web-based advice and guidance to ensure trustees know what they are required to do under charity law and to help them get it right in the first place
- where general advice is required or appropriate in an individual case, charities will be directed to our advice on the Commission's website
- we will engage in matters where specialist advice is required and where the nature and level of risk justify engagement
- we will consider specific permissions or use our powers where this is justified by the issues
- we will respond with strong and effective regulatory engagement, intervention and action where the Commission needs to be involved in light of the nature and level of the risk. This will be in serious cases of non compliance and abuse of charities
- sometimes the best use of our resources will be achieved by us focusing on providing corrective regulatory advice and guidance, not on investigating or addressing past actions
- we will reserve our use of inquiries and powers of investigation to the most serious cases of non-compliance and abuse, where we may also address past actions

¹ By acting reasonably we mean making decisions which are within a range of reasonable decisions that a trustee can make and acting in accordance with their duties.

Assessing the level of risk in any case, and deciding what a proportionate response should be, is not always easy. There is no magic formula and no risk assessment tool will ever be able to identify every risk or determine how to approach every individual case. Each case requires an individual judgment to be made by the case officer in light of the facts and circumstances of the case. However, our risk framework provides a consistent basis for considering risk in all our cases.

A1. Principles of best regulatory practice

As well as applying the Commission's general law duties (under s.1D(2) of the Charities Act 1993, see Annex A) in all our work, we follow the principles of best regulatory practice, ensuring our actions are:

- Proportionate
- Accountable
- Consistent
- Transparent
- Targeted

More information about how these principles apply to our work when we are making decisions about regulatory action can be found in Annex B.

A2. What we do not do

The Risk Framework sets out the main areas where the Commission will not get involved.

A3. Proactive work

The Risk Framework is also used for the starting point for considering and deciding on proactive work, including developing policy, new guidance and proactive one to one regulatory engagement with charities. In making those decisions we take into account:

- the higher risk issues we have identified (see section C)
- the information we receive as regulator from and about charities
- our work to assess the type and nature of the risks affecting the sector and public confidence in the integrity of charities

B. Stage 1 - does the Commission need to be involved?

Before we can decide whether the Commission needs to become involved in matters affecting a particular charity, we need to identify what the key regulatory issues are. Sometimes the issues will be obvious but sometimes we may need to ask questions to confirm or identify what they are and whether there is a role for us.

The Commission deals with a variety of issues affecting charities. Given the diversity of the charitable sector and the wide range of activities undertaken by charities, it is not possible to provide a prescriptive list of the regulatory issues that arise or which ones we will deal with. However, common

regulatory issues include deciding whether an organisation is charitable and registering it, dissolutions of charities and taking charities off the register, amendments to governing documents, granting legal permissions to enter into land and other particular transactions and dealing with concerns such as poor financial management or significant governance problems.

We will not necessarily look at all the issues raised with us about a particular charity, even if we decide to engage further on a specific matter based on the risks.

B1. The key questions we ask ourselves

Once we have identified the main regulatory issues, we need to decide whether to engage. In doing so, the key questions we ask are:

- Does the issue fall wholly or partly within our remit?
- Does it involve the use of a regulatory power that only we can use?
- Are the trustees able to resolve the issue themselves?
- Are other public agencies better placed to act and/or already engaged?
- Is there Commission guidance publicly available that will resolve the issue?
- Is the issue potentially of such significance that it is in the public interest for us to engage?

See Annex C for more information on these key questions.

B2. If we decide we should not engage

Where it is clear that an issue is not within the regulatory remit of the Commission, we will advise the correspondent that we are not taking the matter forward. Where we are able to, we will direct them to another relevant body that may be able to assist.

If we decide we should engage, we move on to Stage 2.

C. Stage 2 – assessing the nature and level of risk

Stage 2 assesses the nature of the risk and (based on the information available at that time) seeks to determine whether the overall level of risk is low, medium or high.

The level and nature of the risks are affected by various matters. The key influencers are:

- the nature of the regulatory issue itself and how serious it is
- other factors which affect or modify the initial assessment, such as the amount of money at risk or the level of harm

Some issues may start off as being relatively low risk but, when combined with a number of other factors, become high risk. On the other hand, high risk issues may become lower risk if they are being effectively managed. The risk rating of low, medium or high may therefore go up or down depending on what modifying factors are present. This process allows us to achieve consistency, fairness and proportionality, in accordance with the principles of best regulatory practice.

Part of our approach is to work with other regulators and law enforcement agencies where an issue falls within their primary role. One of the modifying factors is how the issue is being managed and controlled by the charity and/or other agencies.

C1. The nature of the risk

The nature of the risk an issue presents will vary. Different issues will inherently give rise to different types and levels of risk and some issues are of higher risk than others. The Risk Framework explains that we are generally most concerned with those risks which impact on the integrity of charitable status and its privileges, challenge the protection of charitable assets, services and/or beneficiaries, and/or impact significantly on public trust and confidence.

Taking into account our casework experience and the knowledge of the sector we have, the issues that we have identified as being **higher risk issues** include:

- significant financial loss to a charity
- serious harm to beneficiaries and, in particular, vulnerable beneficiaries
- misuse of a charity for terrorist purposes (including charity links with or support for terrorism, financial or otherwise, connections to proscribed organisations, misuse of a charity to foster criminal extremism)
- serious criminality and/or illegal activity within or involving a charity (including fraud and money laundering)
- 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
- other significant non-compliance, breaches of trust or abuse that otherwise impact significantly on public trust and confidence in the charity and charities generally

These high risk issues are in no order of priority and this assessment will be reviewed and updated as we analyse our casework and identify changes in the risks to the sector.

However, that is not to say that the Commission will always engage on these issues. For example, if we are satisfied trustees have already taken appropriate steps to address points of concern we may decide no further action is needed. Similarly, a breach of trust may have occurred but if we assess that it is not appropriate we will take no further action.

Depending on the circumstances, there may be other issues that we decide to engage on.

Taking account of what these higher risk issues are, we have decided we should have a public strategic response to dealing with the following three regulatory areas:

- Fraud and other financial abuse of charities
- Safeguarding children and vulnerable adults issues in charities
- Misuse of a charity for terrorist purposes

These three strategies flow from our approach to risk as set out in our Risk Framework.

As our assessment and monitoring of risk develops, there may be other regulatory areas that are identified in the future.

C2. Other factors that affect the level of risk

Risk is not just about what the issue is. There will also be other factors and influences that affect or modify the level of risk in a particular case. We refer to these internally as 'modifying factors'. Applying modifying factors gives us flexibility in our approach and response depending on the circumstances of the case.

When dealing with regulatory concerns, how the problem arose and how the trustees are dealing with the issue will be additional factors we consider. The risk assessment will be affected by whether there are indications that the trustees acted honestly and reasonably but have made a mistake, or whether the situation is more serious either because there are indications of deliberate abuse or because the trustees cannot resolve the problem without our help. These factors will also affect the case outcome and our response to the issue (see section G1).

We use the media, parliamentary and ministerial interest as indicators of public interest in a charity or charities and therefore relevant to our risk assessment. However, this does not mean that our actions and decisions are influenced by external media or any parliamentary agenda. Nor does it mean we will always examine an issue raised by the media. It will depend on how serious the issue is and what supporting evidence there is.

Some modifying factors can either raise or lower the level of risk depending on the circumstances. For example, in some situations a charity being large in size might lower the risk because it should have the infrastructure in place to be able to resolve the issue itself. In other cases, a charity being large in size may raise the risk because the impact of the regulatory concern may be magnified through the scale of its operations.

We have identified some modifying factors which we believe are key in assessing the level of risk in a case. Examples of general modifying factors, which are in no order of priority, include the following:

- Scale of assets alleged to be at risk or already misapplied
- The impact on beneficiaries or charitable assets
- Type of charity and its beneficiaries (for example, does it provide services to vulnerable beneficiaries)
- Risk to public safety
- Risk to curtailment or withdrawal of services as a result of mismanagement, misconduct or abuse
- Area of operation and size of the charity
- Public profile of the charity (for example, is it a small local charity or well-known household name)

- Public profile of trustees
- Indicators of a high level of interest, for example interest from the media, parliamentarians, members of the National Assembly for Wales or the local community
- Any public benefit issues
- The charity's case history – including whether it has previously been investigated by us
- Whether a charity is in default with requirements for submitting its accounts and annual return (the charity's compliance record)
- Whether this is the first time this issue has arisen
- Whether regulatory advice and guidance has previously been given on this particular issue
- Whether this is an isolated incident or there is a series of issues or a history of complaints
- Whether the trustees have acted responsibly by reporting the issue as a Serious Incident to us
- Level of co-operation by the trustees and the action they are taking to deal with the issue
- The capacity for trustees to remedy the problem themselves
- The residual risk if they do not
- Existing involvement of the police or another regulator
- Potential involvement of the police or another regulator
- Potential for remedy through self regulation or support through an umbrella body or other charity groups
- Complexity or novelty of the issue (for example, could it set a precedent)
- Any wider impact or implications for charities generally or for a particular group of charities
- Whether the issue is part of a wider trend, whether for the charity or a sub sector or charities generally
- Any wider public interest considerations
- Other factors which indicate the need to act in the public interest
- Other indicators of damage to public confidence in the charity or charities generally

Examples of modifying factors particular to registration applications include:

- Whether the purposes state what the charity is set up to do and are in a charitable form
- Novel purposes or purposes which test the legal boundaries on charitable status
- Whether it is clearly demonstrated that the activities undertaken further the stated charitable purposes for the public benefit
- Any private benefit issues

Examples of how the level of risk is affected by modifying factors

1. Concerns about the abuse of vulnerable beneficiaries in a charity will always be a serious issue. However, the level of risk in the particular case will be affected by the response of the trustees and the involvement of other agencies. If the trustees have contacted us to report the issue as a serious incident; have taken all appropriate steps; have sufficient safeguarding policies and procedures in place; and are working with other relevant agencies, the risks would be lower than if the trustees had failed to or refuse to report an incident of abuse to other agencies and the person against whom allegations are made was still involved with the charity.
2. Trustee benefits made without the appropriate authority are a cause for concern but the level of risk will vary. Factors such as how long the payments have been made for and how much they are worth, whether it is a breach that we would have authorised if asked for permission in advance, whether the trustees acted in good faith or whether they knew when making the payments they did not have power to do so will alter the overall risk level.
3. When a charity wants to dispose of land and has a power of sale, the Commission would not generally get involved. However, if the land was of very high value and there was evidence of significant conflicts of interest which were not being properly managed, or financial benefits to the trustees from the land deal, the level of risk would be assessed as higher and permission may be needed.
4. A grant making organisation applying for registration may have purposes which are capable of being charitable and for the public benefit. However, if the organisation was funded by a commercial entity that also appointed some of the trustees, this could impact on its independence and therefore raise the risk level.
5. Misappropriation in a charity is a serious issue, however the risk is modified according to the level of funds that have been misappropriated. Where the value of the funds alleged to have been misappropriated is low, say a few hundred pounds, our initial assessment may be that the risk is relatively low. However, the risk would be raised higher if it was identified that there had been other recent allegations of misappropriation suggesting a repeat issue or one that the trustees have not properly addressed.

These are just examples and we will always need to apply judgment looking at all the factors and circumstances present in a particular case.

D. Stage 3 – Outcome and response

Generally the Commission will engage on a matter in an individual charity if the risk assessment at stage 2 has identified that this is justified by the issue and the nature and level of risk. What the level of that engagement is and what the outcome will be depends on the circumstances of each case.

As the Risk Framework sets out, in light of our assessment of the nature and level of the risk we will consider the response based on:

- what guidance already exists
- whether our involvement will have a significant impact on resolving the issue

- the extent of any negative impact our involvement will have on the charity
- the risk and impact of not acting; and
- the resources required and our need to prioritise the use of the resources available

Our decision may be that we will not engage at all. If we decide not to engage on the basis that it is not appropriate, having assessed the risks, we will advise the correspondent of this decision. If we decide not to engage on the basis of insufficient evidence on which to act or insufficient information provided for us to exercise our enabling powers, we will explain this to the correspondent.

D1. Possible outcomes

There are a range of possible outcomes when the Commission decides to engage on an issue. The outcome chosen in a particular case will depend on the nature of the problem, its severity, the evidence to support it, the impact it has and what is required to resolve it.

In registration work, the outcome will be the organisation being registered as a charity or its application being rejected (or withdrawn).

In other regulatory work, the outcomes include:

- signposting to web-based guidance
- signposting to another relevant body/regulator, better placed to deal with the issue
- updating the Register of Charities to reflect changes or removing a charity from the Register if it has dissolved or otherwise ceased to exist or operate
- highlighting on the Register charities that do not meet their reporting requirements
- engaging further to provide regulatory advice and guidance
- exercising our powers
- in the most serious cases, opening a statutory inquiry

The response and conduct of the trustees is an important factor when deciding on the outcome. Our response will be different depending on whether there are indications that:

- the trustees have acted honestly and reasonably; or
- the trustees have been careless/reckless; or
- there has been wilful/deliberate wrongdoing

Sometimes the best use of our resources, and the best impact, will be achieved by us focussing on providing corrective regulatory advice and guidance to put the charity back on a secure footing going forward, not on investigating what has happened in the past.

Examples of different outcomes and how they are affected by the risk assessment

1. In a case involving abuse of vulnerable beneficiaries, depending on the level of risk our response would vary from recording the information submitted and monitoring the charity in future, to taking action to investigate and considering exercise of our powers if the trustees were failing to take appropriate action.
2. Although we cannot give retrospective authority for unauthorised trustee benefits, our response may be to authorise payments for the future. However, if the risks are higher we may decide to investigate the payments made and consider restitution.
3. In a low risk land disposal case, trustees would be expected to follow guidance on our website and we would not usually become involved. Where we assessed the level of risk to be higher, for example a high value transaction involving significant conflicts of interest that the trustees could not manage themselves, we would engage to obtain further information and determine whether it was necessary and appropriate for us to exercise any legal power.
4. An application from an organisation seeking to register as a charity explains that it is funded by the local authority to operate local leisure facilities owned by the authority. We need to be satisfied that the charity is sufficiently independent and that the trustees are free to make their own decisions in operating those facilities to further the charitable purposes for the public benefit. We would therefore seek further information on this before making a decision about whether to register the organisation.
5. An organisation applying to register as a charity will operate by purchasing and distributing literature and films produced by the founder who is also a trustee. We need to be satisfied that the charity is established for exclusively charitable purposes and that any private benefit arising for the trustee from this arrangement is incidental to those purposes and properly authorised. The trustees will need to demonstrate how they have managed the conflict of interest in these circumstances before we will register the organisation.

These are just examples and we will always need to apply judgment when deciding the best response in a particular case. More information on possible outcomes in some key areas of the Commission's work can be found in the remaining sections of this guidance.

E. Registration of charities

The Commission is responsible for maintaining the Register of Charities, including deciding if organisations are charitable and should be added to the Register.

Applications for charity registration are made online and the online system will only forward complete applications for assessment and handling.

At registration we expect the trustees of applicant organisations to:

- have carefully considered the guidance available on our website

- be confident that the organisation is capable of complying with all the requirements of being a charity
- provide accurate and comprehensive information about its operation

Our website guidance explains that a charity must have exclusively charitable purposes and operate for the public benefit. It offers guidance on and gives examples of the model forms of governing document and purposes for charities and explains governance requirements and the role of the trustees.

Charities with an income of less than £5,000 are not required to register and we would not normally register them save for exceptional circumstances. It is also our policy not to register charities which are exempted from the requirement to register for other reasons. .

We are unable to register a charity which is not governed by the law of England and Wales or which is an exempt charity with a principal regulator.

Applications which do not meet the requirements for charity registration will be rejected and it is therefore important that the application is made correctly. We cannot provide assistance to charities in completing the application form or provide tailored advice to help them identify what changes they would need to make to the organisation's set up and operations to ensure it was exclusively charitable.

We may exceptionally give advice on status issues prior to receiving an application for registration where we are satisfied that doing so will significantly enhance our ability to effectively carry out our statutory objectives and functions.

We make a formal assessment of all applications for registration on a case by case basis against the Risk Framework and engaging modifying factors such as those identified at section C2.

E1. Factors that affect the level of risk

We make a formal assessment of all applications for registration on a case by case basis against the Risk Framework. The following are some of the factors we use in assessing the level of risk in registration applications. These are in no priority order. We consider whether:

- A model governing document or model or established purposes have been used
- The purposes state what the charity is set up to do
- The purposes are worded in a way which is charitable
- The purposes are novel or test the legal boundaries on charitable status
- The trustees have demonstrated that the activities of the charity further the stated charitable purposes for the public benefit. This means that there must be an identifiable benefit and that it must be available to the public or a section of the public
- There are any private benefit issues. Private benefit must only be incidental to carrying out the charitable purposes
- The organisation has a complex structure

- The organisation has significant financial or reputational weight
- There is a sufficient number of trustees to operate the charity and make independent decisions
- There are any conflicts of interest or potential conflicts of interest issues
- There are any indications that the governing document is not fit for purpose
- Appropriate safeguarding procedures are in place, where a charity serves vulnerable beneficiaries

F. Using the Commission's enabling powers and maintaining the register

The Commission's approach emphasises that responsibility rests with trustees to use the powers available to them in their governing document or statutory powers, minimising the Commission's regulatory engagement.

It is the responsibility of trustees and their advisers to approach us for permission if required and we expect them to provide all relevant material from the outset. If they do not, we are likely to reject the application at an early stage. General guidance available on our website should be used by trustees to identify whether they do require consent for a particular action.

The Commission will give authority where it is necessary and where only the Commission (apart from the court) can give consent, except where very significant or momentous issues arise. This means:

- we will not give 'comfort' orders where trustees have a power to act but want reassurance
- we will limit our engagement to authorising exactly what we need to

All three stages of the Risk Framework apply when we are exercising our powers. However, when there is a clear case for a consent, Order or Scheme the application of these principles should be straightforward and the assessment of risks will be a simple, high level review.

We also apply the principle of proportionality when exercising our enabling powers. We will use streamlined processes, including online application forms whenever possible, and spend less time considering straightforward consents.

F1. When is the Commission's authority needed?

The most common situations when the Commission's authority is needed are:

- Written consent under section 64 of the Charities Act 1993 for a charitable company to amend the objects clause, the dissolution provisions or any alteration which would result in a benefit for the directors or members of a company or people connected to them
- An Order under section 26 of the Charities Act 1993 to authorise trustees to carry out an act that they otherwise have no power to do and where we are satisfied the action is expedient in the interests of the charity
- An Order under section 36 of the Charities Act 1993 to authorise the disposal of an interest in land, such as where the sale is to a connected person or where the trustees do not want to obtain a surveyor's report
- An Order under section 16 of the Charities Act 1993 to appoint a corporate trustee and confer trust corporation status

- An Order under sections 16 and 21 of the Charities Act 1993 to vest land in the Official Custodian
- A Scheme under sections 13 and 16 of the Charities Act 1993 to authorise a change to the purposes of a charity where the trustees/members have no power to make this change themselves. This includes authority for the sale of designated land (land which must be used for the purposes of the charity)
- A Scheme under section 14 of the Charities Act 1993 to re-direct the funds from a failed appeal
- A Scheme under section 16 to make other changes outside the scope of the trustees' powers, for example removing the rights of a third party without their consent
- Consent under the charity's governing document where the trustees are unable to use any other power

F2. Maintaining the register

The Commission has a duty to maintain an accurate Register of Charities and the trustees have a duty to submit Annual Returns and accounts depending on their income. We will highlight on the Register all charities that fail to meet their reporting obligations.

Trustees must also inform us when they have amended their governing document. We have taken a light touch approach to this by developing an online system to deal with amendments.

G. Regulatory engagement and intervention

As the Risk Framework explains, the nature and level of risk and how serious it is affects what we do and will be assessed on a case by case basis. If we do decide to engage based on the risks, our regulatory engagement can range from concluding the trustees have matters in hand to giving regulatory advice to opening an investigation.

An increased level of involvement with a charity or on a particular issue does not necessarily mean that something has gone wrong. It may simply mean that the potential impact of the issue justifies greater regulatory involvement, for example where a charity wishes to do something particularly innovative or novel.

Complex, serious and higher risk issues may trigger one-to-one regulatory engagement with a charity. This engagement may have been initiated:

- by the charity
- by the Commission proactively
- as a result of a concern raised with us (concerns can be raised by members of the public and those with an interest in charity, or by another agency or regulator)

When we decide to engage on a particular issue, we apply an evidence based approach to our work. As a proportionate regulator we take up issues where we believe that there is some substance to the allegations made or, particularly where the regulatory issues are serious, there is a reasonable suspicion there may be. If there is no or little evidence to support a complaint or allegation we may decide that we will not intervene further and it is not appropriate or proportionate for us to expend resources identifying and collecting evidence.

The source of the evidence (in terms of what this tells us about the reliability, credibility or strength) may be a relevant factor in relation to our assessment of the nature and level of the risks.

We will regularly review our assessment of the risk and our level of involvement in a case as it progresses.

G1. Conduct and response of the trustees

When dealing with regulatory concerns, the risk assessment and outcome are both affected by the conduct and response of the trustees.

Have the trustees acted honestly and reasonably?

We accept that charities and trustees who often work on a voluntary basis will get some things wrong and make mistakes.

Where trustees have acted honestly and reasonably and are willing to put matters right themselves, our engagement is likely to be limited to providing or directing them to relevant guidance to resolve the mistake for the future. Where the impact of their actions is significant we expect trustees to act responsibly and deal with the consequences of the breach without regulatory intervention.

If the breaches are low level governance issues or minor breaches of charity law, we may not engage at all, or, if we do, we are likely to refer the trustees to the guidance on our website.

We monitor the types of queries we receive and address minor issues of non compliance by developing and updating our website guidance and by signposting to other resources and organisations which can help with promoting good practice.

Have the trustees been careless or reckless?

Where there are indications that the trustees have been careless or reckless because they have not taken sufficient care, we are more likely to scrutinise their conduct and examine what has gone on more closely.

Again, if the trustees are capable and willing to put matters right, we will usually respond by providing specific corrective regulatory advice and warning the trustees it must not happen again. We may undertake checks to ensure the required actions have been taken.

In some cases, the regulatory outcome may include agreeing an action plan for a charity and following up to ensure this has been implemented. However, it will usually not be necessary for us to use our compliance powers, unless the regulatory concern and its circumstances are so serious that the public's interest in charity can only be safeguarded if we do.

Has there been deliberate or wilful wrongdoing or abuse that cannot be stopped?

Where there has been deliberate or wilful wrongdoing, or where trustees are willing to act but are unable to stop abuse of the charity themselves, we may need to act using our regulatory powers to remedy the breach or to minimise its impact.

In these cases, it is also more likely we will need to examine the regulatory concerns in greater depth. We may compel trustees to provide information or to take specific protective action to protect their charity from this abuse or ensure ongoing compliance in the future. We may also require them to take specific action to immediately correct and remedy the impact of the abuse or non compliance.

We will consider whether the impact on, or damage to, public trust and confidence would be significant if we did not act, when deciding whether to use the resource of a targeted compliance visit and/or statutory inquiry.

The diagram in Annex D illustrates this approach and how the more serious the risks and issues are, the more this leans towards more invasive and resource intensive action. We can start our engagement at any of the stages, according to the risk. It will only be in those cases which are **most serious** that we will investigate in an inquiry conducted under s8 of the Charities Act 1993.

G2. Regulatory advice

Regulatory advice may be given to support trustees to comply with the legal framework, or correct substantive issues within a charity. Whatever type of advice we give, the principles we apply are the same. We will provide regulatory advice where it is appropriate and proportionate to do so.

Most regulatory advice from the Commission will now be delivered through web-based guidance, including guidance aimed at particular types of charity. The Commission will give specific advice and guidance on a one to one basis to charities:

- in circumstances where the guidance cannot be given over the web
- where the Commission is the only body which can give authoritative advice (apart from the court)
- where failure to give advice would have a serious impact on trustees' ability to comply with their legal duties to administer charities and therefore on public trust and confidence

We expect trustees to follow any regulatory advice we give. If they do not follow it, they need to be able to justify with good reason why they did not. If appropriate, we will follow up with the trustees on cases where it is clear that unless the advice is followed it will lead to serious non compliance.

Failure to follow advice previously given by the Commission is a factor that would affect the level of risk and may be used as evidence if further regulatory action was being considered in future.

G3. Investigations

It is only in relation to regulatory concerns that we consider are the **most serious** that we would consider conducting an investigation. All the Commission's investigations going forward will be statutory inquiries and will be conducted in the Commission's Investigations and Enforcement area.

Under section 8 of the Charities Act 1993, the Commission 'may from time to time institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes...'. This is the legal framework under which an investigation will be conducted and which formalises the Commission's engagement with the charity under investigation.

Inquiries can be both resource and time intensive for the charity under investigation and the Commission. We will be clear about what issues we are investigating and do our best to ensure the investigations are conducted in a timely manner.

The power to open an inquiry is discretionary. The decision to open an inquiry into a charity or class of charities is subject to review in the Tribunal. A decision not to open an inquiry is not subject to review in the Tribunal. It is therefore important that we are clear about what criteria we will have regard to in making our decisions. Section G4 sets out the criteria we will use in deciding whether to open an inquiry.

The purpose of the inquiry is to examine the issues in detail and investigate and establish the facts so that we can:

- ascertain the extent of misconduct and mismanagement, if any
- establish the extent of the risk to the charity's property, beneficiaries or work
- decide what action needs to be taken to resolve the serious concerns, if necessary using our legal powers to do so

The Commission can, on opening an inquiry, exercise certain regulatory powers of remedy and protection including those in s18(1) and (2) and s19A of the Charities Act 1993. These powers are also discretionary. We will not always use our powers during the conduct of an inquiry, and will only do so where this approach is lawful, appropriate and proportionate in the circumstances.

The Commission is not a prosecuting authority and does not investigate criminal matters. However, we will be concerned about whether a suspected criminal issue raises other issues within our regulatory remit, such as poor governance, or indicates misconduct or mismanagement in the administration of the charity. We will in some cases work with the police and other regulators and do so under the provisions of section 10 of the Charities Act 1993. Even when there is a role for the Commission, we may need to delay our involvement due to the interests of other regulators but keep monitoring the situation.

G4. The criteria we consider when deciding whether to open an investigation

We will only open inquiries in the most serious cases. This is likely to be where the regulatory issue in itself is serious and in circumstances where there is evidence or serious suspicion of misconduct or mismanagement or where the risk to the charity or to public confidence in charity more generally is high. This will include where charity assets, services or beneficiaries are at serious and/or immediate and high risk of abuse or harm. Each case will be assessed on its own facts and merits.

The decision to open an inquiry will be based on a matrix of factors including:

- the seriousness of the regulatory issues
- indications of evidence or serious suspicion of misconduct or mismanagement
- indications of significant risk to property
- other factors which indicate it is necessary to promote public trust and confidence in the charity or charities more generally

We have identified the factors which are likely to feature in a decision to open an inquiry. These are, in no order of priority, where there are indications of/²that:

- criminal, unlawful or improper activity, particularly fraud and money laundering, which pose significant risk to the charity's assets, property and/or ongoing operation;
- misuse of a charity for terrorist purposes (including charity links with or support for terrorism, financial or otherwise, connections to proscribed organisations or designated persons or entities or misuse of charity to foster criminal extremism);
- ongoing and immediate risk to a charity's beneficiaries;

² which, where appropriate, may be possible or actual indications

- significant risk to the charity's funds or other property;
- serious and/or deliberate abuse and/or wrongdoing by a trustee/trustees or those otherwise involved in the control or management of the charity;
- the charity has previously been the subject of an inquiry or received regulatory advice and guidance on the same or similar issues;
- the charity is exposed to risk because an individual closely connected to a charity is already, or has recently been, subject to an inquiry relating to another charity and there are reasonable grounds to believe that the regulatory concerns already under investigation may have been replicated in this charity;
- based on the facts and evidence available and the identified risks there is likely to be significant damage to public trust and confidence in the charity or charities more generally if an inquiry were not opened;
- there would be significant damage or potential damage to public confidence in the Commission as regulator if an inquiry is not opened;
- there are significant risks in drawing conclusions outside the framework of an inquiry;
- the trustees are unwilling or unable to take the necessary action to protect the charity;
- there is significant public interest and a need for public accountability in relation to serious issues of concern in the administration of charities;
- there are reasonable grounds to believe that there may be a need to use the Commission's regulatory powers of remedy and protection which are only available if an inquiry has been opened;
- it is necessary to establish and verify facts or collect evidence;
- the regulatory concerns are otherwise so serious and/or complex that it warrants the opening of an inquiry to investigate the facts, gather evidence and/or to formalise our engagement with the trustees.

Even if a case triggers one or more of these factors, we may not take a matter into investigation if:

- the risks are best contained in regulatory engagement outside of a formal investigation
- the risks and nature of the concerns are not so serious as to warrant an investigation
- in light of the Commission's general duties identified in s.1D(2) of the Charities Act 1993 (see Annex A) we believe opening an investigation would not be proportionate and/or an effective use of our resources, in light of either the likely outcome and/or what other matters we are considering investigating at that time
- it is likely to prejudice another agency's operational activity or performance of its functions

The decision to open an inquiry may also be affected by the extent to which the risks are already being managed by the charity trustees or other agencies, whether the abuse or non compliance is ongoing or has stopped and how long it has been going on.

Annex A - The Commission's general duties under s.1D

(1) The Commission has the general duties set out in subsection (2).

(2) The general duties are:

- 1 So far as is reasonably practicable the Commission must, in performing its functions, act in a way--
 - (a) which is compatible with its objectives, and
 - (b) which it considers most appropriate for the purpose of meeting those objectives.
- 2 So far as is reasonably practicable the Commission must, in performing its functions, act in a way which is compatible with the encouragement of--
 - (a) all forms of charitable giving, and
 - (b) voluntary participation in charity work.
- 3 In performing its functions the Commission must have regard to the need to use its resources in the most efficient, effective and economic way.
- 4 In performing its functions the Commission must, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed).
- 5 In performing its functions the Commission must, in appropriate cases, have regard to the desirability of facilitating innovation by or on behalf of charities.
- 6 In managing its affairs the Commission must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

Annex B - Principles of best regulatory practice

In carrying out our work we will follow the principles of best regulatory practice (as set out in the Charities Act 1993, as amended by the Charities Act 2006). This means we will be proportionate; accountable; consistent; transparent, and targeted only at cases where action is needed.³ We are also required by the Act to consider the need to use our resources in the most efficient, effective and economic way.⁴

This guidance explains how these principles are applied in our regulatory engagement with charities.

Proportionate

Proportionality for the Commission means relating our engagement and any regulatory action to the greatest risks to public trust and confidence in charity.

Any action taken will be proportionate to the seriousness of the issue and the impact it has on the charity and public confidence in the sector. This will be balanced against the cost of our involvement and the impact it will have.

Proportionality means greater efforts and stronger measures will be used for higher risk and higher impact regulatory concerns. This means in some cases regulatory action and intervention will be necessary but in other cases there will be greater discretion and a number of possible ways in which we as regulator may respond, if at all. The amount of money at risk will be an important factor but it will not be the only factor. Sometimes we will not take regulatory engagement and action where the sums involved are high, because the trustees are resolving matters themselves. However, in other cases, the sums involved may be low and size of the charity small, but the impact on trust and confidence in charity more generally justifies engagement on a one to one basis and, where appropriate, regulatory intervention.

Accountable

The Commission is accountable to Parliament for the effective use of its resources, although it is independent of Ministerial control or direction in its decisions. We prepare and publish an annual report on our performance. We consult before introducing major new policies or operational practices.

We will give reasons for our decisions to the individuals and charity affected by them, unless there are legal or other compelling reasons why we cannot, for example when doing so would result in financial loss or breach of confidentiality. We will make clear the routes for challenging decisions and complaining about our actions.

We are accountable through the First Tier (Charity) Tribunal and the courts for exercise of our legal powers affecting charities. We also publish key decisions and the reasons for them on our website. We ensure that when conducting our casework we act lawfully, fairly and professionally and that we follow the relevant frameworks and policies.

³ Section 1D (2)4 Charities Act 1993

⁴ Section 1D (2)3 Charities Act 1993

Consistent

A consistent approach is important for the Commission because inconsistency in regulatory action can undermine public and sector confidence.

A consistent approach to our work does not mean we will deal with all cases identically or that we will take up every complaint where a particular regulatory issue has been identified. It does mean we will apply the same approach to assessing risk in every case and decide accordingly on the appropriate response in each particular set of circumstances.

Even when the same issue arises, the level of risk will be affected by different factors that are in place. Our response will also vary in different circumstances depending on the level of risk and the capacity of the charity to resolve it.

Transparent

Transparency means both being clear about what is expected of charities and being open about how we operate. We help trustees understand what is expected of them and why using published guidance on our website. We ensure the public are clear about what they can expect from the regulator acting on their behalf by publishing our key policies and the criteria by which we make decisions, such as when we will take action in response to concerns about a charity. We also publish reports on a range of topics, including findings from our regulatory casework.

Targeted

Targeted action means making sure that any action we take is directed primarily at those cases which pose the greatest risks and where we can have the most impact when we do act. Adequate resources will be made available and used in those cases where we have decided to act. Effective targeting will therefore ensure that we identify the regulatory issues correctly as early as possible and make proper and appropriate use of our resources, including the information we hold. It also means working collaboratively with other regulators and agencies to avoid duplication.

Annex C – Key questions when considering whether to engage

Does the issue fall wholly or partly within our remit?

The Commission's remit and statutory objectives are defined in law (the Charities Act 1993, as amended by the Charities Act 2006). Our remit is over charities subject to the law of England and Wales. This includes holding to account charities based in England and Wales which operate internationally. It also includes some charities which are not registered (for example because they do not meet the minimum requirements). We also have remit over funds raised in England and Wales for exclusively charitable purposes, for example in an appeal fund, even if the appeal is not run by a registered charity. We have a limited remit in relation to exempt charities which have a different principal regulator responsible for overseeing compliance with charity law (such as higher education institutions in England which are regulated by HEFCE).

Does it involve the use of a regulatory power that only we can use?

The Commission concentrates its resources on work only we can do. If an issue can only be resolved by the Commission exercising a regulatory power, and such action is in the interests of the charity, we are likely to need to become involved. For example, if there was self-dealing in a charity relating to a significant value land transaction, only the Commission exercising its powers could ensure the transaction was properly authorised. We may decline to become involved in some cases granting permissions or approving the use of powers, as explained in the Risk Framework.

Are the trustees able to resolve the issue themselves?

As explained in section B above, responsibility for administration and management of charities rests with trustees. We have no power to act as trustees and make decisions in the administration of a charity. For example, it is for the trustees to address any complaints about standards of service or which charity activities they are carrying out, providing they further the charity's purposes. If the trustees can take action to resolve issues themselves, the Commission expects them to do this. For example, in dispute situations we expect those involved to have exhausted all other means of resolving the dispute before approaching the Commission. In permissions work, where a charity can use s74D of the Charities Act 1993 to confer a power itself, we would expect it to do so. Sometimes trustees may need to take professional advice or advice from other bodies to help them resolve an issue.

Are other public agencies better placed to act and already engaged?

If another regulator or agency is already engaged, and this engagement is likely to manage the key risks, we are likely to decide not to get involved. Sometimes, the other agency may be better placed to deal with the specific concern and this is particularly so where the issue relates to specialist activities carried out by the charity. If the concern is raised by a member of the public, we may advise them to contact another agency. Sometimes, we may decide to delay our involvement until the outcome of the other agency's investigation or work is known and then re-assess whether there are any remaining issues for us. This approach avoids dual regulation and minimises administrative burden on the charities involved.

Is there Commission guidance publicly available that will resolve the issue?

Where guidance is publicly available trustees are expected to use this and apply it to their particular circumstances. The Commission will no longer provide bespoke advice to an individual charity, its trustees or people who bring their concerns about charities to us where the required information is already available on our website.

Is the issue potentially of such significance that it is in the public interest for us to engage?

When considering whether it is in the public interest for us to engage, taking into account what the regulatory issue is, we consider the potential impact on public trust and confidence in charities if we do not engage. We know from our surveys of the public on the issue of public trust and confidence that various factors affect this.⁵ The public expects to be able to support charities with confidence and that their money reaches those it is intended to benefit. The Commission's core role is to protect the public's interest in charity. For an issue to be significant enough for us to engage, it is likely to be one that is more than a minor concern or technical breach. Other relevant factors may include indicators of existing interest, such as whether the issue is being raised in the national or local media, if the issue concerns the use of funds collected from a public appeal or if the charity concerned is largely supported from public funds.

⁵ Our most recent survey in July 2010 revealed that the most important factor influencing levels of trust was charities ensuring that a reasonable proportion of donations get to the end cause.

Annex D - Risk-based regulatory engagement and investigation: a strategic approach

