



National Audit Office

Report

by the Comptroller
and Auditor General

Charity Commission

The regulatory effectiveness of the Charity Commission

Key facts

£22.7m

annual budget of the
Charity Commission
in 2013-14

163,000

main registered charities
in England and Wales that
the Charity Commission
oversees

15

statutory inquiries into
charities opened by the
Commission in 2012-13

4,714	organisations registered as charities, 2012-13
1,199	registration applications not pursued after Commission requested further information, 2012-13
36	organisations refused registration, 2012-13
1,513	operational compliance cases opened in 2012-13
7	trustees suspended since 2009-10
0	trustees removed since 2009-10

Summary

The Charity Commission's role

1 The Charity Commission (the Commission) regulates charities in England and Wales. It is an independent, non-ministerial department and is directly accountable to Parliament for the way it uses its funds and operates. Its annual budget for 2013-14 is £22.7 million.

2 The Commission has five statutory objectives, including increasing public trust and confidence in charities and regulating their compliance with charity law. Its objectives, functions and duties are set out in the Charities Acts 2006 and 2011.

3 The Commission's core regulatory activities are:

- registering charities;
- monitoring and investigating charities, and using its powers to protect and recover charitable assets where there is mismanagement or misconduct;
- granting permission to charities to do certain things, such as amending their governing documents or disposing of assets;
- providing regulatory guidance on the duties of trustees under charity law; and
- maintaining a public register of charities.

4 Becoming registered as a charity does not indicate an organisation has passed a quality threshold. It merely means that the organisation meets the statutory criteria for registration. Nonetheless, registration is seen by many donors as a 'kitemark' that increases their confidence in, and likelihood of, giving to a charity. The Commission's regulatory activity is important in upholding the public's confidence and trust in charities generally.

5 The Commission has a number of ways it can investigate concerns about a charity. It can investigate to gather further information about a specific issue or monitor a charity's activities. In certain circumstances, it can open a statutory inquiry into the charity which enables it to exercise its strongest enforcement powers. The Commission regulates all charities, including 163,000 registered charities, and, given its limited resources, it prioritises its work according to its statutory objectives and its assessment of risk.

Report scope

6 This report examines the Commission's effectiveness as a regulator of registered charities, specifically how it:

- uses its resources to regulate (Part One);
- registers charities (Part Two);
- follows up regulatory concerns (Part Three); and
- manages its performance and shares information (Part Four).

7 We focused on the Commission's registration of charities and its investigation of regulatory concerns. We did not examine in detail the guidance that the Commission produces, including on public benefit, its advice or permissions work, or its work maintaining an accurate and up-to-date public register. We summarise our audit approach in Appendix One and our evidence base in Appendix Two.

Background to our report

8 The Commission's regulatory performance has attracted considerable public and Parliamentary interest recently. In March 2013, the Committee of Public Accounts held a hearing on the Commission's regulatory response to The Cup Trust charity. In its report, the Committee concluded that The Cup Trust was set up as a tax avoidance scheme and expressed dismay at the Commission's handling of the case. We published a separate report on the Commission's handling of the Cup Trust case.¹

9 Our four previous reports on the Commission's performance, over the past 26 years, repeatedly identified concerns about the Commission's follow-up of regulatory concerns, use of its powers, management of resources, the relevance of its performance targets, and use of information. We have had regard to these findings while carrying out our audit.

Key findings

10 The charity sector makes an important contribution to UK society and the Commission has a key role in increasing trust and confidence in the sector.

Stakeholders, including representative bodies of the charity sector, told us they value having an expert regulator that understands the sector and is independent of government (paragraphs 1.7 and 1.9).

11 The Commission's budget has gone down but the size of the sector has remained stable. Between 2007-08 and 2013-14, the Commission's budget fell by 40 per cent in real terms but over this period the number of main registered charities has remained fairly stable at around 160,000, as has the annual income of the sector at around £60 billion in real terms (paragraphs 1.8 and 1.12, Figures 3 and 5).

1 Comptroller and Auditor General, *The Cup Trust*, Session 2013-14, HC 814, National Audit Office, December 2013.

12 There is a gap between what the public expects of the Commission and what it actually does. The Commission cannot examine every case that people bring to it, on the grounds of proportionality and also given its limited resources. Admittance to the register of charities does not mean an organisation has passed a quality threshold, although the public can perceive it as such. Also, the Commission is only able to investigate mismanagement and misconduct and cannot deal with operational inefficiencies or disputes between trustees (paragraphs 1.4, 2.2 and 4.7).

13 The Commission has a broad range of responsibilities. The Commission's strategic review in 2010-11 did not identify significant areas of work that it could discontinue or pass to other bodies. In 2013, a parliamentary committee concluded that the Commission's statutory objectives are too vague and that the Charities Act 2006 represented an ambition that the Commission could not fulfil, even before its budget cuts (paragraphs 1.14, 1.15 and 1.17).

14 In response to budget cuts, the Commission has reviewed how it works and successfully reduced demand for its services, but it has not identified what budget it would need to regulate effectively. The strategic review led to an internal reorganisation, and the Commission successfully reduced the number of routine enquiries it receives. The Commission has argued against reductions in its resources with limited success, but it has not estimated the resources it would need to regulate the sector effectively (paragraphs 1.13, 1.14, 1.16, 1.21, 1.22 and Figure 8).

15 The Commission continues to make little use of its statutory enforcement powers. We reported in 2001 that the Commission's use of statutory powers was in decline. Its use of its powers has declined further since then. In the three years to 31 March 2013, the Commission did not remove any trustees, suspended two trustees and used its powers to restrict charities from entering into transactions only 17 times. Some practical and legislative barriers hinder the Commission's use of its powers. However, it has not been effective in getting these barriers removed (paragraphs 3.21 to 3.26, Figures 20, 21 and 22).

16 The Commission can be slow to act when investigating regulatory concerns. We found statutory inquiries and operations cases where periods of several months passed during which the Commission took no action. Factors outside the Commission's control, such as waiting for another body to act or litigation, explain some cases taking a long time, but reduced staff numbers and a lack of prompt action were also significant factors in some cases (paragraphs 3.10, 3.13 to 3.15, 3.17 and Figure 17).

17 The Commission does not take tough enough action in some of the most serious regulatory cases. The Commission's approach extends some latitude to trustees, recognising that most are volunteers who act in good faith. However, the Commission is slow to modify its approach in those few cases where evidence suggests trustees may be intent on abusing charitable status. We found cases where the Commission:

- was slow to recognise the gravity of the case;
- gave trustees regulatory advice in serious cases rather than opening a statutory inquiry; and
- allowed a lack of cooperation by trustees to delay statutory inquiries and operations cases for periods of more than a year (paragraphs 3.13 to 3.19).

18 The Commission relies heavily on trustees' assurances, but should do more to check whether trustees have actually complied. In many of the registration and operations cases we saw, the Commission relied solely on information from trustees or their professional advisers that they had acted to address the Commission's concerns. The Commission does not follow up a sample of these cases to check whether trustees have done what they say they have. Nor does it do enough to identify those trustees who may be seeking to abuse charitable status so it can check the information they provide (paragraphs 2.10 to 2.13, 3.16 and 3.19).

19 The Commission is reactive rather than proactive, making insufficient use of the information it holds to identify risk. Almost all of the Commission's investigations are prompted by concerns received from external sources rather than its own data analysis. The Commission has developed a mechanism for trustees to report concerns but it does not profile charities to identify those most at risk of regulatory breaches, and has reduced its monitoring of charities that are at high risk of causing serious harm and abuse. It is now starting a project to improve its analytical capability (paragraphs 1.28 to 1.31).

20 There are challenges to the Commission's efficiency. The Commission is located at four sites across the UK and spends 10 per cent of its budget on accommodation. It has a flat management structure and the Chief Executive has 11 staff directly reporting to him, placing heavy demands on his time. The Commission's new IT system has been unreliable and staff find it difficult to find relevant information (paragraphs 1.16, 1.18, 1.19 and Figure 6).

21 The Commission's performance indicators are not linked clearly enough to its statutory objectives. Some key targets, such as on the quality of registration, are not being met (paragraphs 4.1 to 4.4).

22 The Commission and HM Revenue & Customs have an information-sharing agreement but neither party has shared all the information possible under the agreement. This has hindered some of both organisations' investigations (paragraphs 4.8 to 4.10).

23 To become a more effective regulator, the Commission needs help from others. It needs assistance in securing legislative change where there are gaps or deficiencies in its legal powers. There is also a need for effective oversight of the Commission's performance as it takes action to address the issues identified in this report (paragraphs 1.1, 1.32, 1.33 and 3.26).

Conclusion on value for money

24 The Commission is not regulating charities effectively. It does important and necessary work and its independent status is highly valued, but it does not do enough to identify and tackle abuse of charitable status. It uses its information poorly to assess risk and often relies solely on trustees' assurances. Where it does identify concerns in charities, it makes little use of its powers and fails to take tough action in some of the most serious cases. This undermines the Commission's ability to meet its statutory objective to increase public trust and confidence in charities. We conclude that the Commission is not delivering value for money.

25 It seems to us the Commission is too passive in pursuing its objectives, letting practical and legal barriers prevent action, rather than considering alternative ways to prevent abuse of charitable status and developing a sufficiently persuasive case for legislative change.

26 The Commission has tried to adapt to its reduced resources, but in doing so it has not put sufficient emphasis on the rigour of its registration process and its investigation of wrongdoing in charities. Its restructuring has not been informed by an assessment of the costs, benefits and risk of different models for regulating charities, and it has not identified the resources it needs to meet its statutory objectives. We welcome the Commission's intention to change its strategy, and encourage the new board to bring about the radical change of pace and rigour which is so evidently needed.

Recommendations

The Commission should take the following actions:

- a Revisit its business model and think radically about alternative ways to meet its objectives within constrained resources.** It should use this work to define the resources it needs to regulate effectively and use this to inform its budget settlement negotiations.
- b Develop ways of measuring and reporting the effectiveness of its regulatory activity. This should include revising its performance measures to ensure they:**
 - are aligned with the Commission's statutory objectives;
 - are appropriately balanced between quality and timeliness; and
 - measure public trust and confidence in the Commission itself.
- c Make greater use of its statutory powers in line with its objective of maintaining confidence in the sector.** Where its powers are difficult to exercise, or inadequate, it should set out the regulatory impact of these barriers to make a persuasive case for legislative change.
- d Develop an approach to identify and deal with those few trustees who deliberately abuse charitable status.** It should develop an approach to assess the degree of trustee cooperation and the risk of deliberate abuse in individual cases, and use this to inform how far trustee assurances will be relied upon, and how quickly the regulatory response will be escalated.
- e Introduce, without delay, sample checks of the information and assurances trustees provide.** It should use the results to inform its strategy for relying on assurances.
- f Be more proactive in assessing risk, by:**
 - using its 'analysis hub' to develop its internal capacity to analyse the information it holds to better assess risk;
 - assessing the risk individual charities present in general, rather than the risk presented by specific issues within individual charities; and
 - updating the risk framework to explicitly include tax avoidance.

g Work more closely with HM Revenue & Customs to:

- share information through a mutual understanding of each other's information requirements; and
- collaborate on risk profiling charities.

The Cabinet Office should:

- h** prioritise its planned work to help the Commission focus on its core regulatory functions by removing or reducing those activities that add little regulatory value; and
- i** assist the Commission in securing legislative changes to address gaps and deficiencies in the Commission's powers.