



National Audit Office

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## **Report**

by the Comptroller  
and Auditor General

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## **Charity Commission**

# The regulatory effectiveness of the Charity Commission

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National Audit Office

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Charity Commission

# The regulatory effectiveness of the Charity Commission

Report by the Comptroller and Auditor General

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National Audit Act 1983 for presentation to the House of  
Commons in accordance with Section 9 of the Act

Amyas Morse  
Comptroller and Auditor General  
National Audit Office

21 November 2013

This study examines the effectiveness of the Charity Commission as the regulator of registered charities.

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This report can be found on the  
National Audit Office website at  
[www.nao.org.uk/2013-charity-commission](http://www.nao.org.uk/2013-charity-commission)

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## Key facts

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**£22.7m**

annual budget of the  
Charity Commission  
in 2013-14

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**163,000**

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

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**15**

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

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

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.

# Part One

## The Commission's use of its resources

### Charity regulation

**1.1** The Charity Commission (the Commission) regulates charities in England and Wales. It is an independent, non-ministerial department, wholly funded by Parliament rather than the sector it regulates. Where necessary, it receives ministerial support from the Cabinet Office but it remains directly accountable to Parliament for how it uses its funds and operates. The Commission's board consists of a chairman and four to eight further members, all of whom are appointed by the Minister for the Cabinet Office.

**1.2** The Charity Commission in its current form was created by the Charities Act 2006. The Commission's objectives, functions and duties are set out in the 2006 Act and were further consolidated by the Charities Act 2011 (**Figure 1**).

**1.3** The recent, high profile Cup Trust case illustrates the importance of effective regulation to the achievement of the Commission's objective to increase public trust and confidence in charities. Earlier this year the Committee of Public Accounts expressed concern about the Commission's regulatory response to The Cup Trust. The Committee believes The Cup Trust does not meet the public expectations of a charity and was set up to avoid tax.<sup>2</sup> The Commission has conceded that this case was very damaging to the charity sector.<sup>3</sup>

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### Figure 1

#### The Charity Commission's objectives

The Commission's objectives are to:

- Increase public trust and confidence in charities.
- Promote awareness and understanding of the operation of the public benefit requirement.
- Promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.
- Promote the effective use of charitable resources.
- Enhance the accountability of charities to donors, beneficiaries and the general public.

Source: Charities Act 2011, Section 14

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<sup>2</sup> HC Committee of Public Accounts, *Charity Commission: the Cup Trust and tax avoidance*, Seventh Report of Session 2013-14, HC 138, May 2013.

<sup>3</sup> See report in footnote 2, Oral evidence: the response by the Chair of the Commission to question 13.

**1.4** The Commission maintains the register of charities, investigates mismanagement or misconduct, encourages better administration, gives permission for certain actions (such as changes to governing documents) and provides guidance on the duties of trustees under charity law. The Commission cannot deal with operational inefficiencies within charities or disputes between trustees.

**1.5** Charities must register with the Commission when their income reaches £5,000. Some charities are 'excepted' from registration (mainly due to their small size),<sup>4</sup> and some are statutorily 'exempt' from registration and are regulated by other principal regulators.<sup>5</sup> The Commission's regulatory focus is predominantly on registered charities and this report adopts the same focus.

**1.6** Being included in the register of charities confers a status that helps registered charities raise funds, bid for contracts and access gift aid and other tax reliefs and exemptions. In 2011-12, charities received £3.6 billion in tax relief. It is therefore important that only those organisations that meet the legal definition of a charity are admitted to the register.

**1.7** Stakeholders we spoke to, including umbrella bodies for the charity sector, felt it was important to have a strong regulator to preserve public confidence in charities. They also valued having an independent, expert regulator overseeing charities rather than the tax authority taking on this role, as is the case in some countries, such as the US and Canada.

## The charity sector

**1.8** The Commission regulates a large and very diverse sector. As at March 2013, there were approximately 163,000 main charities and 20,000 subsidiary charities on the register, with a combined annual income of over £60 billion (**Figure 2** overleaf). Charities vary greatly in their purpose, size, activity, governance structure and management capability. UK charities employ around 820,000 people, have 940,000 overwhelmingly volunteer trustees overseeing their work, and have 2.9 million volunteer workers. The number of registered charities and their annual income in real terms has remained fairly stable since 2007-08 (**Figure 3** on page 15).<sup>6</sup>

<sup>4</sup> There are about 180,000 charities 'excepted' from registration, under section 30(2) of the Charities Act 2011, because their annual income is less than £5,000 or the organisation is a certain type (e.g. a scout group, church, or armed forces charitable fund). Although not registered, these charities are regulated by the Commission.

<sup>5</sup> There are around 11,000 exempt charities, under section 22 and Schedule 3 of the Charities Act 2011, that cannot register with the Commission, and which are regulated by various 'principal regulators', e.g. national museums by the Department for Culture, Media & Sport, and foundation schools by the Department for Education.

<sup>6</sup> At 2012-13 prices.

**Figure 2**  
Charities in England and Wales

Annual income band	Number and percentage of registered charities in each income band	Total income of registered charities in each income band (£bn, and as a percentage of all charity income)	
Over £5m	1,900 (1%)	£41bn (68%)	Charities this size tend to be: <ul style="list-style-type: none"> <li>• run like businesses;</li> <li>• supported by paid professional managers and advisers; and</li> <li>• regulated by others besides the Charity Commission, for example Care Quality Commission, Ofsted, Companies House.</li> </ul>
£500,000 to £5m	8,100 (5%)	£12bn (21%)	
£100,000 to £500,000	20,100 (12%)	£5bn (8%)	
£10,000 to £100,000	53,700 (33%)	£2bn (2%)	
Under £10,000	79,300 (49%)	£0.2bn (0.4%)	Charities this size tend to be: <ul style="list-style-type: none"> <li>• Small, wholly voluntary, community-based organisations.</li> </ul>

Source: Charity Commission

**1.9** In June 2013, the Prime Minister said: “Social enterprises, charities and voluntary bodies have the knowledge, human touch and personal commitment to succeed where governments often fail.”<sup>7</sup> Charities delivered an estimated £14.2 billion worth of public services through contracts and grants from central and local government in 2010-11.<sup>8</sup> The Commission recognises the important contribution that the sector makes to society, and its own role in defending the reputation of the sector.

## The Commission’s structure and staffing

**1.10** The Commission’s board is currently composed of eight non-executive members. The Cabinet Office appointed a new chairman in October 2012 and seven new board members between May and July 2013, with a view to strengthening the board’s skills, knowledge and experience. The new board has shown a willingness to address the concerns identified in this report. For example, the new board is leading the development of a change management plan, although it is too early to assess the adequacy of their response.

7 David Cameron speaking at the Social Impact Investment Conference in London, 6 June 2013.

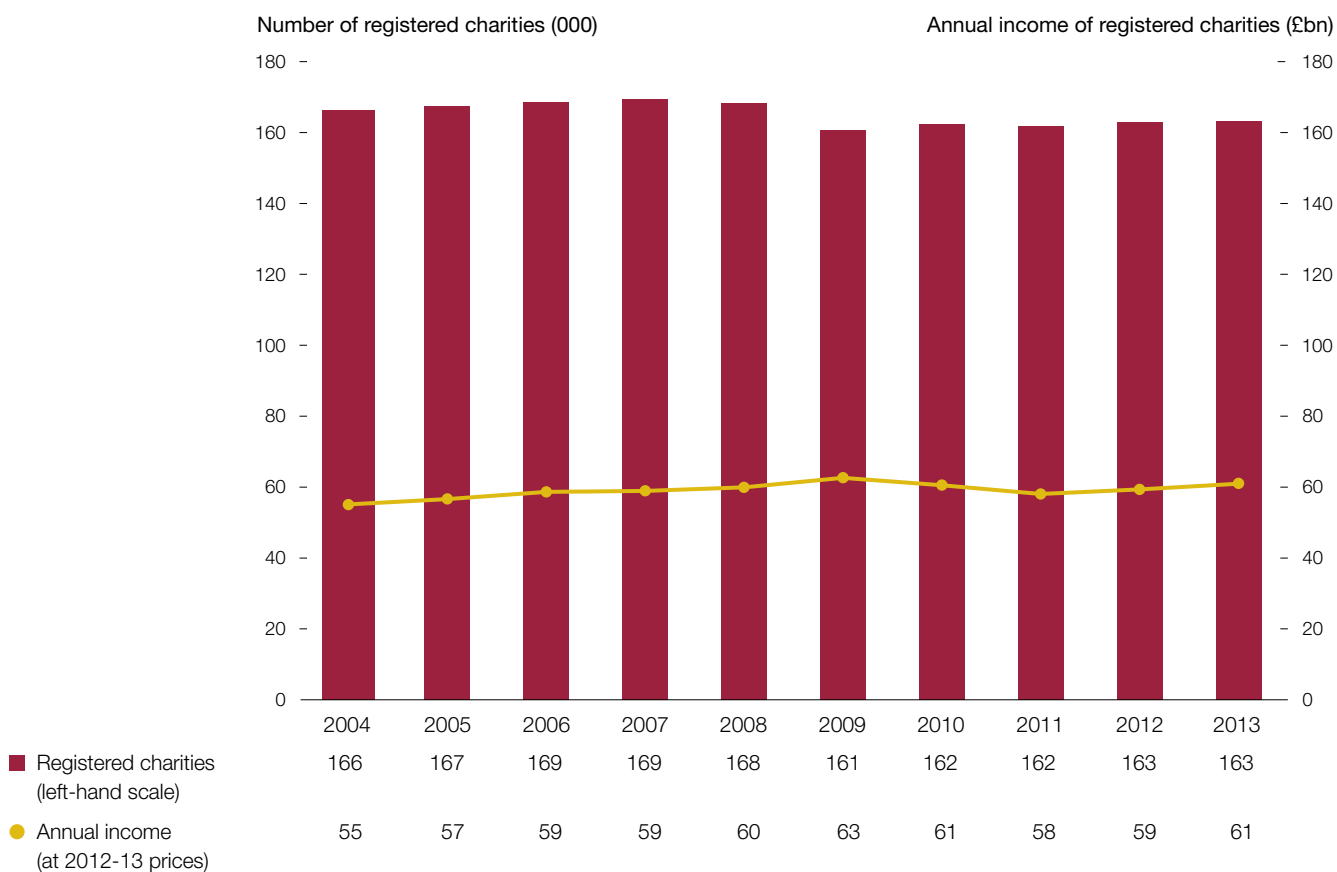
8 National Council for Voluntary Organisations, UK Civil Society Almanac. Available at: [data.ncvo-vol.org.uk/a/almanac13/almanac/voluntary-sector/income/how-have-government-grants-and-contracts-changed/](http://data.ncvo-vol.org.uk/a/almanac13/almanac/voluntary-sector/income/how-have-government-grants-and-contracts-changed/)



**Figure 3**

Number of main registered charities and their total annual income, 2004 to 2013

The number of registered charities and their annual income in real terms has remained fairly stable in the last decade



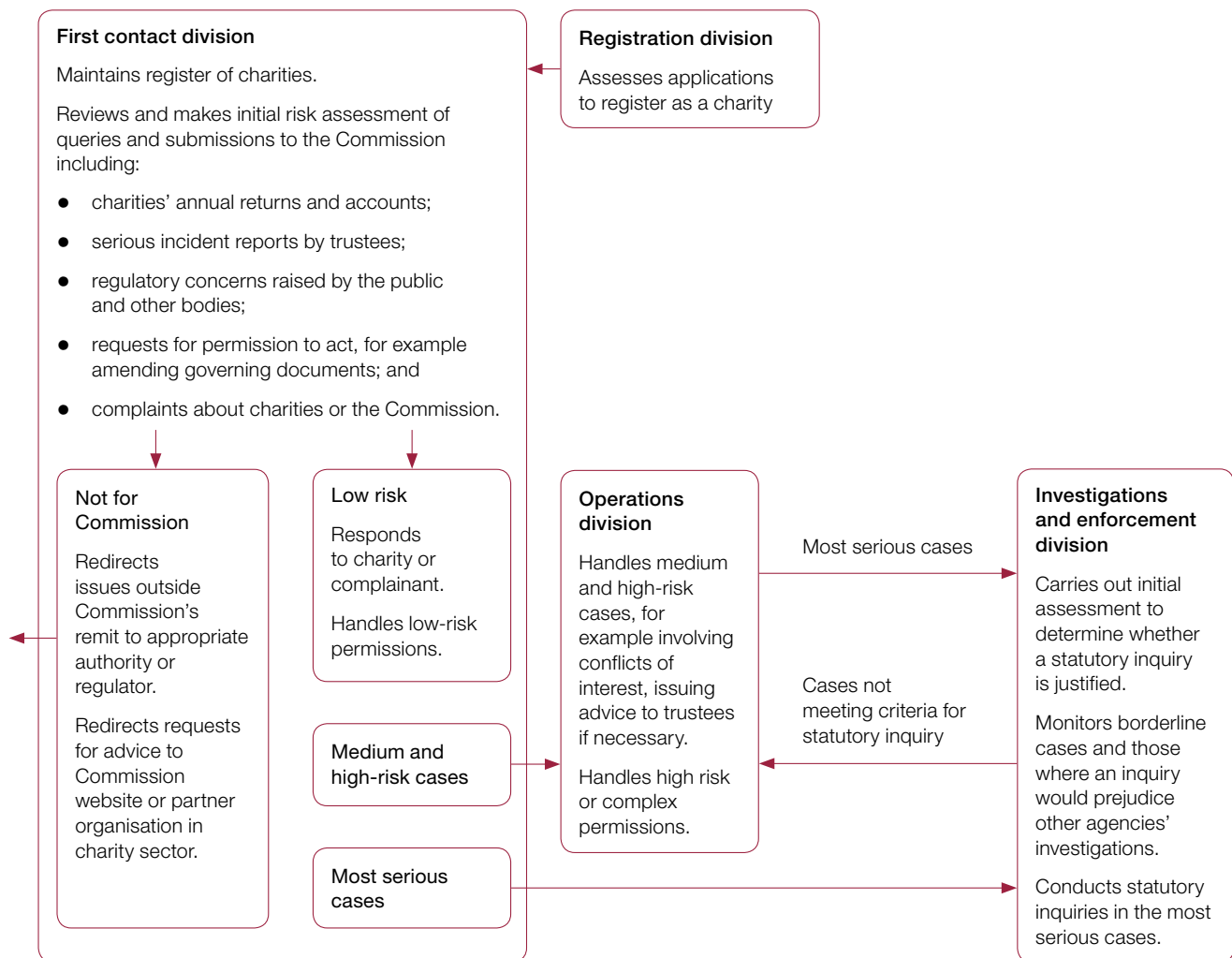
**Notes**

- 1 Number of main registered charities as at 31 March each year. In addition these main charities have around 20,000 subsidiary registered charities.
- 2 Annual income is shown in real terms at 2012-13 prices.

Source: Charity Commission

**1.11** The Commission has four front-line divisions: first contact, registration, operations, and investigations and enforcement (**Figure 4**). These are supported by various teams providing policy, legal and back-office support.

**Figure 4**  
Front-line structure of the Commission



Source: National Audit Office

## The Commission's budget

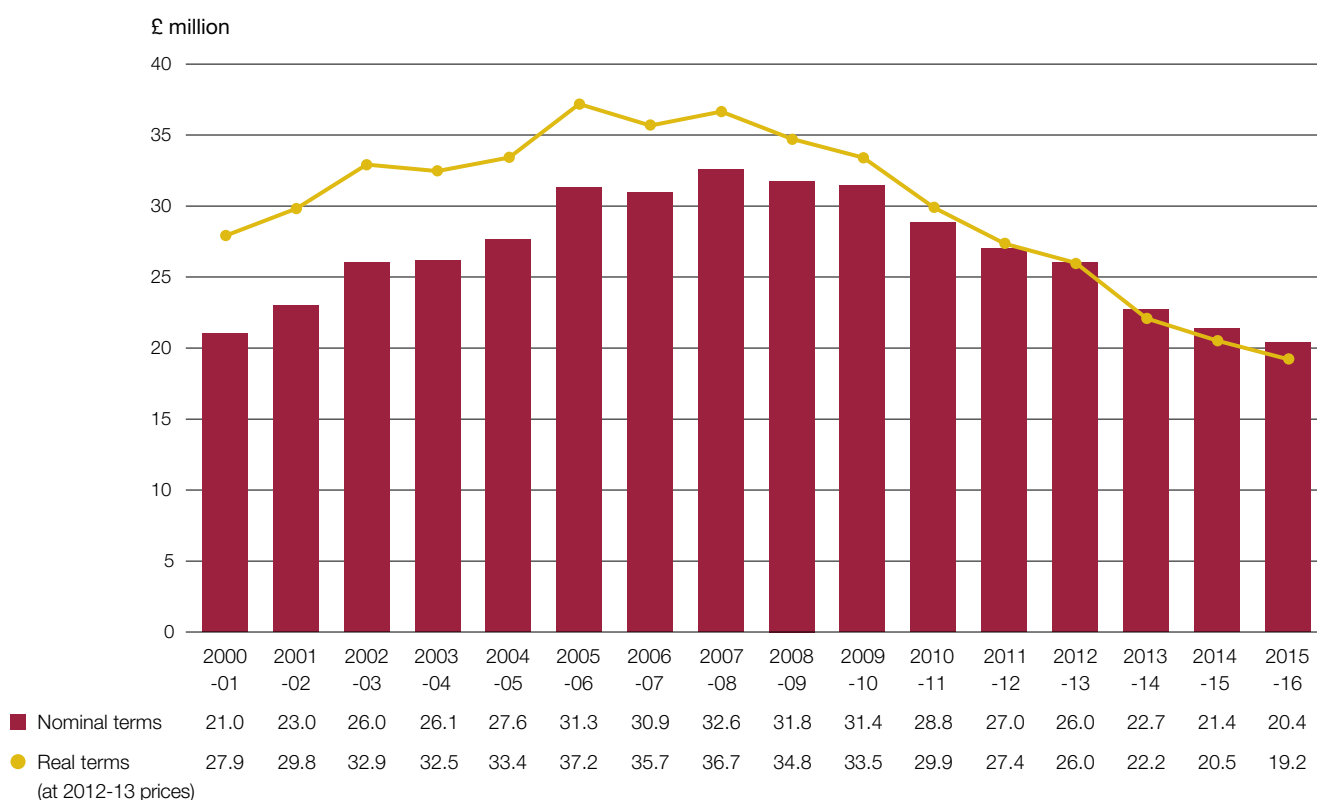
**1.12** The Commission's annual budget has fallen from a peak of £32.6 million in 2007-08 to £22.7 million in 2013-14, a fall of 30 per cent in nominal terms (40 per cent in real terms) (**Figure 5**). The Commission's budget will fall further to £20.4 million by 2015-16, a reduction of 48 per cent in real terms since 2007-08.

**1.13** The 2013 Spending Review imposed a 6 per cent annual budget reduction, rather than anything more, to allow for projects that would enable greater rationalisation and savings in future. HM Treasury accepted that the Commission needed to ring-fence its investigations work and preserve the timeliness of services, such as registration.

### Figure 5

#### The Commission's annual budget in nominal and real terms

Between 2007-08 and 2013-14, the Commission's budget fell by 40 per cent in real terms



#### Note

<sup>1</sup> We have used 2012-13 as the base year for calculating real terms values, using the GDP deflator issued by the Office for National Statistics on 27 June 2013. The 2013–2015 figures are based on comprehensive spending review budget figures and inflation estimates from the Office for National Statistics.

Source: National Audit Office (based on resource accounts, main estimates and spending review figures)

## The Commission's strategic review

**1.14** In response to its declining budget, the Commission carried out a strategic review in 2011. The Commission consulted a broad range of external stakeholders including the charity sector, the government, Parliament and the public. The key conclusions were that the Commission should focus on what only the regulator can do, and that it should see the public, rather than charities, as its 'customer'. The Commission's 2012–2015 strategic plan reflects this approach and focuses the Commission's activity on two of its five statutory objectives: accountability and compliance.<sup>9</sup> It also prioritises developing the sector's compliance, accountability and self-reliance.

**1.15** The review identified that stakeholders value all of the Commission's functions and did not identify significant areas of work that it could discontinue or pass to other bodies. The Commission continues to deliver areas of activity where it has little control over demand, such as its permissions work.

**1.16** After the strategic review, the Commission restructured and put new processes in place to improve efficiency and reduce demand for its services. The Commission did not use process improvement tools, such as the Lean principles, to inform these changes. The restructuring took out a layer of management, creating a very flat senior management structure, with 11 direct reports to the chief executive (**Figure 6**). The Commission's approach to restructuring did not involve an assessment of costs, benefits and risks of different models for regulating charities and meeting its statutory objectives.

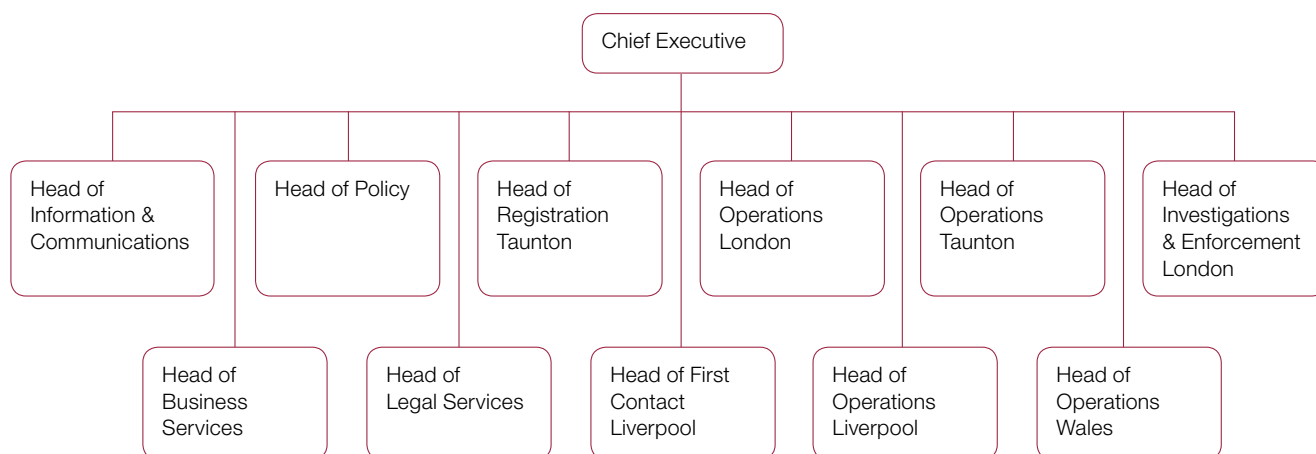
**1.17** The Public Administration Select Committee's 2013 review concluded that the Commission's statutory objectives are too vague and that the Charities Act 2006 represented an ambition that the Commission could never fulfil, even before the budget cuts.<sup>10</sup> The Committee recommended that the Cabinet Office should consider how to prioritise what is expected of the Commission and that "ministers must decide whether they think it is necessary to have a proactive regulator of the charitable sector, and if so, the government must increase the Commission's budget and ask Parliament to clarify their powers. If funding cannot be found for the Commission to carry out such a role, ministers should be explicit that they accept that the regulatory role of the Commission will, by necessity, be limited."

**1.18** The Commission has 315 staff in four locations: Liverpool, London, Newport and Taunton. It spends £2.5 million, almost 10 per cent of its annual budget, on accommodation. Recognising that this geographical spread is uneconomical and hampers efficiency, the Commission has a review of accommodation under way.

<sup>9</sup> Charity Commission, *Charity Commission Strategic Plan 2012–2015*. Available at: [www.charitycommission.gov.uk/about-the-commission/our-status/strategic-plan-2012-2015/](http://www.charitycommission.gov.uk/about-the-commission/our-status/strategic-plan-2012-2015/)

<sup>10</sup> Public Administration Select Committee, *The role of the Charity Commission and 'public benefit': Post-legislative scrutiny of the Charities Act 2006*, Third Report of Session 2013–14, HC 76, 6 June 2013.

**Figure 6**  
Charity Commission senior management structure



Source: Charity Commission

**1.19** We ran focus groups with staff in Liverpool, London and Taunton. Staff are deeply committed to the Commission's success and to supporting and regulating the charity sector. They feel they receive adequate training and have the necessary skills to do their jobs. However, they have concerns over the speed and reliability of IT systems and said they frequently found it difficult to find relevant knowledge. In January 2013, the Commission changed IT service providers, which led to some transitional performance problems that are now largely resolved. The Commission has several projects in hand to upgrade its main computer systems.

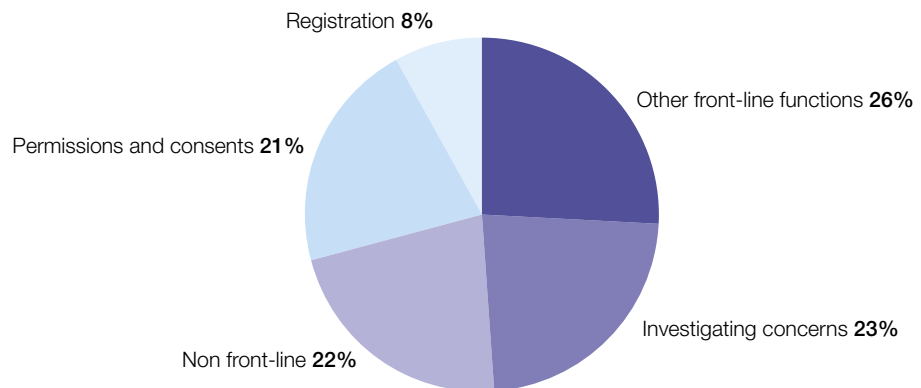
**1.20** The Commission does not know how much it is spending on each of its key activities, in part because it does not have a system for recording the time spent by staff on different activities. We asked the Commission to estimate the proportion of staff time spent on front-line work. It estimated that 52 per cent of its staff costs are spent on regulatory activity, with 78 per cent of total staff costs being spent on front-line functions. **Figure 7** overleaf shows the percentage of staff costs by activity and the number of staff employed in the Commission's different divisions. The Commission only spends 23 per cent of its resources on investigating concerns (in its investigations and operations divisions). Aside from investigations, the Commission has little discretion over the amount of other front-line work it does, as most derives from its statutory responsibilities, such as registering charities.

**Figure 7**

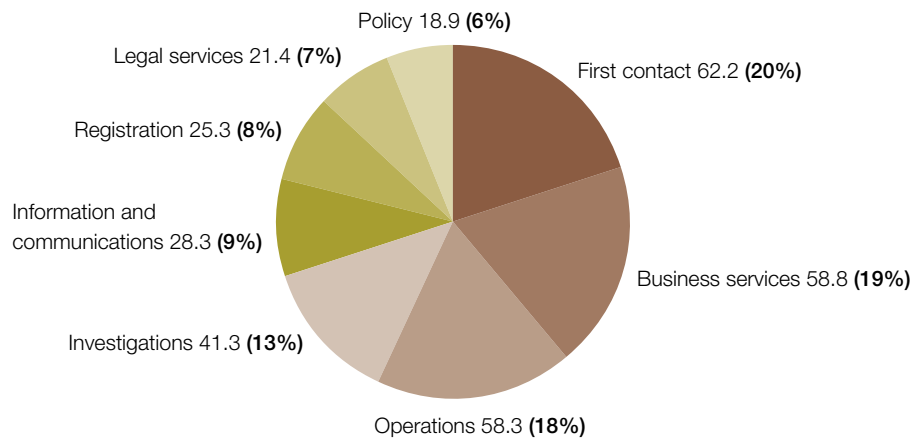
Breakdown of staff costs by function and staff numbers by division

The Commission only spends 23 per cent of its resources on investigating concerns

Breakdown of staff costs by function



Staff numbers by division



**Notes**

- 1 Staff numbers are full-time equivalents.
- 2 Breakdown of staff costs by function information was generated by the Commission at our request.
- 3 'Other front-line functions' includes dealing with requests for advice and guidance, website and elements of IT support and policy development. 'Non front-line' includes human resources and business support functions and support for the board.

Source: National Audit Office analysis of Charity Commission data

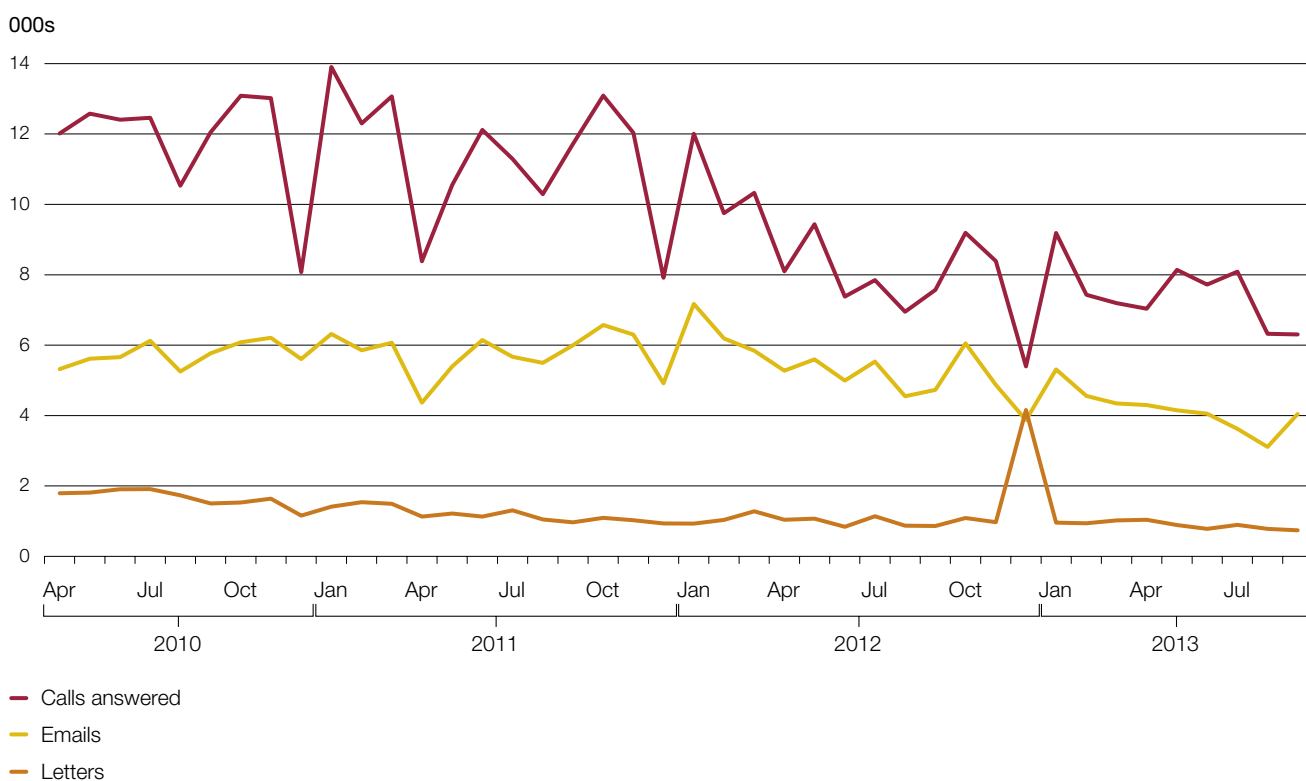
## Actions taken to reduce demand

**1.21** A key aim of the 2011 strategic review was to reduce demand for the Commission’s services and in the last three years it has successfully reduced the volume of telephone calls and letters it receives by shifting correspondents to web-based and self-service channels (**Figure 8**).

**Figure 8**

Volume of telephone calls, emails and letters received in first contact, April 2010 to September 2013

In the last three years, the Commission has successfully reduced the volume of telephone calls and letters it receives



**Note**

1 The increase in letters in December 2012 was due to a letter-writing campaign following the Commission’s decision not to register the Preston Down Trust.

Source: National Audit Office analysis of Charity Commission data

**1.22** The Commission is also seeking to reduce demand by:

- trying to reduce its permissions work – proposing in the strategic review that trustees should, subject to safeguards, have more autonomy, for example over disposal of land. This proposal is being considered by the Law Commission in its current review of charity law;<sup>11</sup> and
- establishing partnerships with nearly 50 charity sector umbrella bodies so those bodies can give charities support and guidance, instead of the Commission.

### The Commission's risk framework

**1.23** Given the size of the charity sector, the Commission prioritises its work according to its assessment of risk. It developed a new risk framework as part of its 2011 strategic review, which it uses to inform its response to regulatory concerns. Generally, the Commission is most concerned with those risks which: impact on the integrity of charitable status and its privileges; threaten charitable assets, services or beneficiaries; or impact significantly on public trust and confidence.

**1.24** Staff use the risk framework to determine whether the Commission should intervene, and if so, the framework is used to classify cases as low, medium or high risk. These categories are used to determine which part of the Commission deals with the case, rather than prescribing the process to be followed in handling the case.

**1.25** The Commission has identified a number of higher-risk issues in its risk framework.<sup>12</sup> Even here, if the Commission is satisfied that trustees have taken appropriate steps to address areas of concern, it may not take further action.

**1.26** The risk framework is used to assess specific issues of concern rather than assess the overall risk presented by a particular charity. Despite the public interest in tax avoidance and charities following The Cup Trust and other high profile cases, the risk framework has not yet been updated to include tax avoidance as a specific risk although it does identify charities set up for an illegal or improper purpose as a risk.

**1.27** All of the 40 registration cases we looked at had been appropriately classified in line with the risk framework. In December 2011, the Commission introduced a tool to help staff record their assessment of risk in operations cases. We found that the tool was used in the operations cases we examined, but that the rationale underpinning the level of risk judged to exist was not always well documented.

<sup>11</sup> The Law Commission expects to publish a consultation paper in the late spring/early summer of 2014. A final report with a draft Bill is anticipated in March 2016.

<sup>12</sup> *Application of the Charity Commission's Risk Framework*, Charity Commission – January 2012. Available at: [www.charitycommission.gov.uk/media/89112/arf.pdf](http://www.charitycommission.gov.uk/media/89112/arf.pdf)



## Identification of concerns

**1.28** The Commission is reactive rather than proactive in its approach to identifying regulatory concerns. Almost all of the Commission's investigations cases are opened because of issues raised by trustees, other public bodies, complainants, whistleblowers or the public. The Commission now requires trustees to report serious incidents to them, including those involving fraud and theft; terrorism; and abuse of vulnerable beneficiaries. However, other than monitoring charity accounts, the Commission does little or no analysis of risks to the sector, and no risk assessment of individual charities.

**1.29** The Commission checks a sample of charity accounts each year, representing around 2 per cent of the charities by number on the register (about 6 per cent of the total annual income of charities on the register). In the last two years, this resulted in the Commission issuing guidance to charities and amending data on the register. However, no investigations were opened as a result of this work.

**1.30** The Commission also monitors charities in higher risk cases, focusing on three strategic risks: safeguarding beneficiaries, counter-terrorism and fraud, where the evidence for taking regulatory action is insufficient or where intervention would prejudice the police or other agencies' work. Following the 2011 strategic review, the Commission reduced the number of staff monitoring charities from around eight full-time equivalents to less than two. It opened 42 monitoring cases in 2012-13 and 72 in 2011-12, 276 in 2010-11 and 306 in 2009-10. This reduction in monitoring cases increases the risk that serious concerns will go undetected.

**1.31** The Commission has made proactive risk assessment a priority. It is creating an 'analysis hub' to use its information better. This includes the concerns reported to it, its investigative work, and data from charities' annual returns. This is intended to help identify risk factors and patterns of behaviour, such as fraud or fundraising abuse, which could help the Commission better target its regulatory activity.

## Accountability of the Commission

**1.32** In terms of budget and staff numbers the Commission is a small public body. Nonetheless, it regulates a very large sector providing important services to many millions of people in the UK and beyond. We have reported on the Commission four times previously in the last 26 years (see Appendix One).

**1.33** The Commission submits its annual report to the Public Administration Select Committee and the Committee holds an annual scrutiny session with the chair and chief executive of the Commission. In addition, as part of the Committee's responsibility for scrutiny of the Charity Commission and government policy on charity issues, it undertakes regular inquiries into matters of relevance to the Charity Commission. When topics such as public benefit and the post-legislative scrutiny of the Charities Act 2006 have been examined by the Committee as part of a full inquiry, the Committee has published a report with its conclusions and recommendations.

# Part Two

## Registering charities

### Registration criteria

**2.1** Organisations are legally obliged to apply to register as a charity if they have an income of at least £5,000 and:

- have been set up for exclusively charitable purposes;
- have purposes that are for public benefit; and
- fall within the jurisdiction of the High Court of England and Wales.

**2.2** If the Charity Commission (the Commission) is satisfied these criteria are met, then it must add the charity to the register. Becoming registered as a charity shows that the organisation complies with the legal definition of a charity. It does not mean the organisation has successfully passed a quality threshold.

**2.3** The Commission also checks that individuals named as trustees are eligible to act in that capacity.<sup>13</sup> The Commission checks trustees are not on the Commission's own list of removed trustees, bankrupt, disqualified from being a director by Companies House, or on the designated terrorist list. If a specific concern is raised that a person may have been convicted of dishonesty or fraud, the Commission can also check the Police National Computer, but the Commission is not permitted to use the Computer to carry out routine checks on all trustees.

### Registration process

**2.4** **Figure 9** shows the outcome of the 5,949 applications to register a charity received in 2012-13.

### Performance

**2.5** The time taken to process registration applications fell between April 2011 and March 2013 (**Figure 10**) but the number of registration staff remained fairly constant at around 23.<sup>14</sup> The Commission met all three of its performance targets for registration in 2012-13. However, all three registration indicators focus on the time taken to process applications rather than on getting the decision right.

<sup>13</sup> The same checks are made when charities notify the Commission of a change in trustees.

<sup>14</sup> Full-time equivalent staff.

**Figure 9**

Outcome of applications to register in 2012-13

Applications	Number
Accepted on to the register <sup>1</sup>	4,714
Not pursued by applicant after Commission requested further information <sup>2</sup>	1,199
Refused	36
<b>Total</b>	<b>5,949</b>

**Notes**

- 1 Of the 4,714 successful applications, 650 were assessed as low risk, 3,191 as medium risk and 873 as high risk.
- 2 The Commission asked the applicant to remedy deficiencies in the application or asked them for more information but did not receive a response, so deemed the application to be withdrawn.

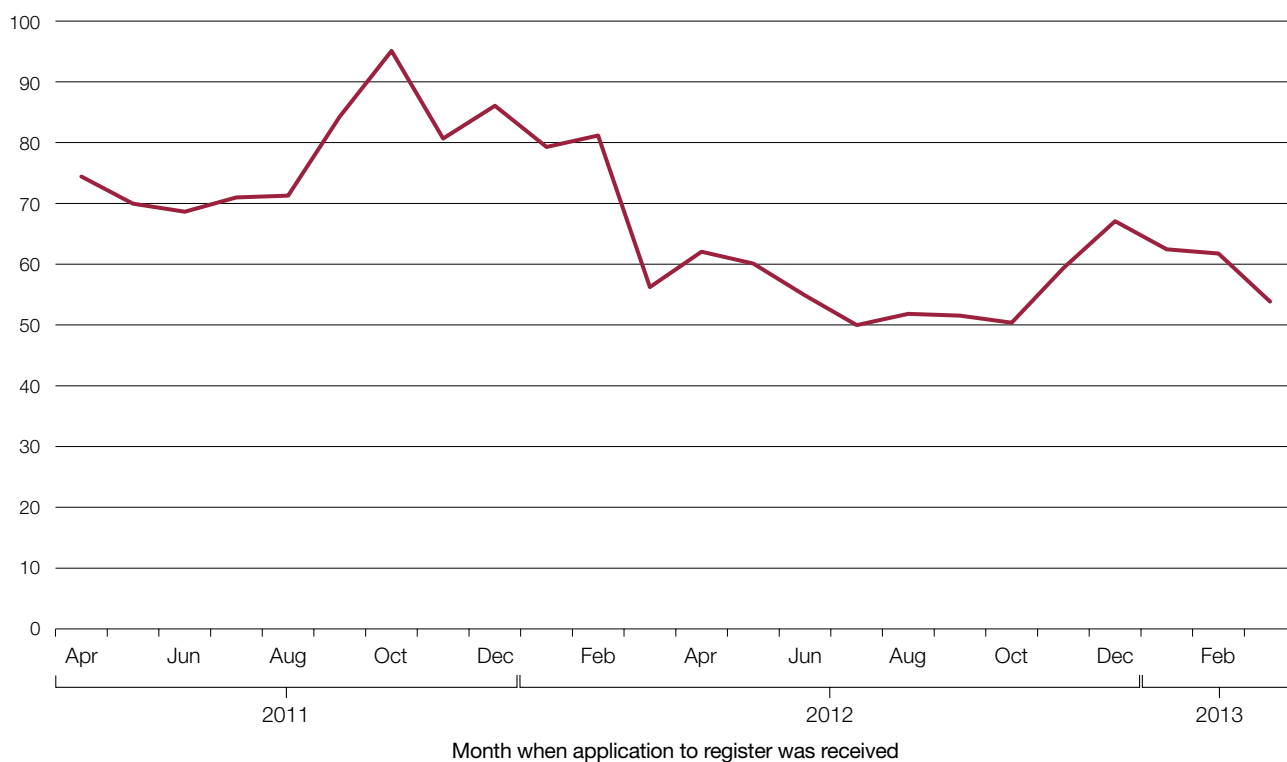
Source: Charity Commission

**Figure 10**

Average time to process applications to register a charity, April 2011 to March 2013

The time taken to process registration applications fell between April 2011 and March 2013

Number of days to process application



Source: National Audit Office analysis of Charity Commission data

**2.6** Some applications to register have features that do not prevent registration but which indicate there might be regulatory concerns in the charity in the future. Commission staff told us that, at registration, they have little time or incentive to follow up indications that the charity might be used for non-charitable purposes (**Figure 11**).

## Quality checks

**2.7** The First-tier Charity Tribunal acts as an independent check to correct any instances where the Commission has wrongly refused to register a charity. Since 2003, five organisations have appealed to the Tribunal about the Commission's decision not to register them.<sup>15</sup> By contrast, there is no independent check on incorrect registrations; the Commission's internal quality review process is the only check that might pick up incorrect registrations. The quality review process has not identified any instance of incorrect registration since the process was revised in April 2011.

**2.8** Senior registration staff review the quality of decision-making and case handling for a sample of around 5 per cent of registrations, and judge whether it is excellent, good, acceptable or unacceptable. The Commission has not met its own quality targets for registration for the last two years (**Figure 12**).

## Our review of registration applications

**2.9** We looked at 40 registration applications received by the Commission between April 2011 and June 2013. Of these:

- twenty-seven were approved for registration;
- seven remained under consideration, either because the Commission was waiting for trustees to respond or because it was considering legal issues; and
- six were not registered because the applicant had not provided additional information requested. These organisations may be registered later if applicants reapply with the information required.

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### Figure 11

#### Quotes from focus groups

"I don't feel I've got time to actually do my job properly and do the type of in-depth work that each case deserves and so... I'm making decisions sometimes without evidence, making decisions based on information they've provided."

"I would like time to sit down and look at the ones you know are going to be a bit iffy and you're not quite sure about and really focus on 'Is this a genuine charity?'...If we sort it out now we're going to save work six months, two, three years down the line when it all blows up and goes wrong."

Source: National Audit Office focus groups with Commission staff

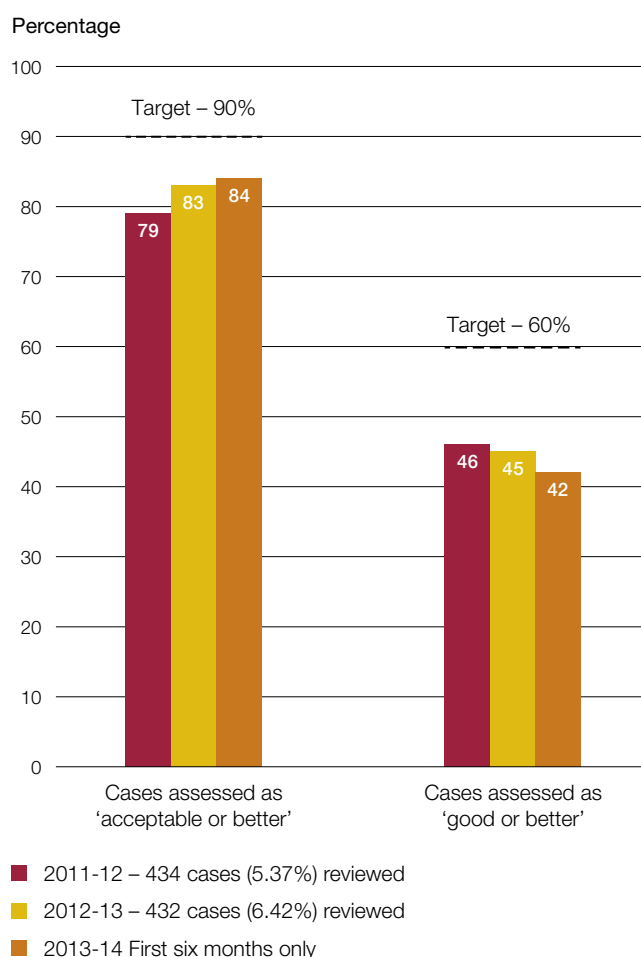
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<sup>15</sup> Two cases were dismissed, two withdrawn and one is continuing.

**Figure 12**

## Quality review of registration cases, 2011-12 to 2013-14

The Commission has not met its own quality targets for registration for the last two years



Source: Charity Commission

## Trustee assurances and follow-up

**2.10** The Commission relied heavily on the information applicants provided in the 40 cases we looked at. Much of the information on which the applications were judged was self-certified by trustees. We saw evidence in only one case of independent checking of the information provided, and that application was not pursued through to registration. While the Commission needs to balance its resources against the risk that information will be inaccurate, it should carry out checks of a sample of applications, in particular those it judges to be high risk.

**2.11** In two cases out of the 40 cases, the Commission registered applications on the basis that trustees would subsequently take certain actions. For example, a charity assured the Commission that a property owned by a trustee would be transferred to the charity to avoid the trustee benefiting from the charity's maintenance of the property. The Commission did not check whether this transfer happened. The Commission's policy is that the duty is on trustees to take relevant action, so it did not subsequently check these actions had been taken. However, until the promised action is taken, the regulatory risk remains.

**2.12** In one registration case, a possible conflict of interest for a trustee (which might mean the charity was being used in part for private benefit) was not fully explored before the organisation was registered. The Commission's guidance states that charities with less than £5,000 of income will only be registered in exceptional circumstances. In two cases, the Commission did not check proof of income, but the nature of the exceptional circumstances which allowed registration was unclear.

**2.13** In February 2013, the Commission reintroduced a process to monitor concerns identified at registration. In the following six months, 27 cases out of about 3,000 applications were referred by the registration division to the Commission's operations division for monitoring. The process is still new, but registration staff told us that in the past the lack of feedback on the result of this monitoring made it difficult to judge whether the information they were passing on was useful.

## **Review of registration process**

**2.14** Following the Committee of Public Accounts' hearing on The Cup Trust, the Commission reviewed its registration processes. It formalised its process of obtaining intelligence from HM Revenue & Customs before registering an organisation. It also reviewed its risk framework, but concluded no major changes were necessary because the framework had been significantly reviewed and updated as part of the 2011 Strategic Review.

**2.15** Lord Hodgson's 2012 review of the Charities Act 2006 recommended that the processes for registering a charity with the Charity Commission and registering with HM Revenue & Customs for gift aid tax relief should be joined up into a single process.<sup>16</sup> The Commission and HM Revenue & Customs are considering the scope for this. The proposed changes will not involve either organisation changing the criteria for their registration process, but should lead to them sharing more information when organisations apply to register. For example, HM Revenue & Customs will tell the Commission if the charity's managers fail its 'fit and proper' test before the Commission decides to register the organisation.<sup>17</sup>

<sup>16</sup> Lord Hodgson, *Trusted and Independent: Giving charity back to charities – Review of the Charities Act 2006*, July 2012.

<sup>17</sup> Charities' managers claiming gift aid tax relief must be deemed 'fit and proper' by HM Revenue & Customs. This test makes it harder for sham charities and fraudsters working within a charity, or targeting a charity from the outside, to abuse charity tax reliefs.

## Part Three

### Investigating regulatory concerns

**3.1** This part looks at the Charity Commission's (the Commission's) investigation of serious regulatory concerns.

**3.2** The Commission has several ways it can investigate concerns about a charity. It can investigate and 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.

**3.3** All concerns about charities that are reported to the Commission are initially assessed by the first contact division. Cases that require further investigation are passed either to the operations division or, for the most serious concerns, to the Commission's pre-investigation assessment and monitoring unit, part of its investigations and enforcement division. The unit assesses whether a statutory inquiry is justified. Cases investigated initially by the operations division may subsequently be escalated to a statutory inquiry. Prior to its restructuring in December 2011, the Commission also used 'regulatory compliance cases' to investigate serious concerns where a statutory inquiry was not justified.

**3.4** **Figure 13** overleaf shows the number of cases handled by the different divisions. In all aspects of the Commission's investigative work, more cases were opened than closed during 2012-13. There is a risk that backlogs may be building up.

**3.5** **Figure 14** on page 31 shows the results of the Commission's own quality review of a sample of cases handled by the operations division and the investigation and enforcement division in 2012-13. Monitoring cases were the only group not to meet their target.

**Figure 13**

## The flow of investigative cases through the Commission

Operations division	→ Pre-investigation monitoring and assessment unit	→ Investigations and enforcement division
There were 705 investigations under way as at 31 March 2013		There were 34 statutory inquiries ongoing as at 31 March 2013
<b>Operations cases (2012-13)</b>	<b>Monitoring cases (2012-13)</b>	<b>Regulatory compliance cases (2012-13)</b>
Opened: 1,513	Opened: 42	Opened: –
Closed: 1,232	Closed: 71	Closed: 24
	<b>Assessments prior to statutory inquiries (2012-13)</b>	<b>Statutory inquiries (2012-13)</b>
	Opened: 87	Opened: 15
	Closed: 84	Closed: 5

**Note**

1 No new regulatory compliance cases were opened after 1 December 2011. As at 31 March 2013, the investigations and enforcement division had 20 regulatory compliance cases alongside the 34 statutory inquiries.

Source: Charity Commission

**Statutory inquiries**

**3.6** The Commission has statutory powers to gather information to help it do its work. It also has powers to open a statutory inquiry where it has concerns about how a charity is being run (**Figure 15** on page 32).<sup>18</sup> The outcomes of statutory inquiries are publicly reported.

**3.7** To justify using powers where the opening of a statutory inquiry is a prerequisite, the Commission must show:

- there is or has been misconduct or mismanagement in the charity's administration; or
- that the action is necessary to protect the charity's property or to ensure it is correctly applied.

To remove a trustee, the Commission must show that both these conditions apply. The Commission will usually carry out a preliminary assessment before deciding whether to open a statutory inquiry.

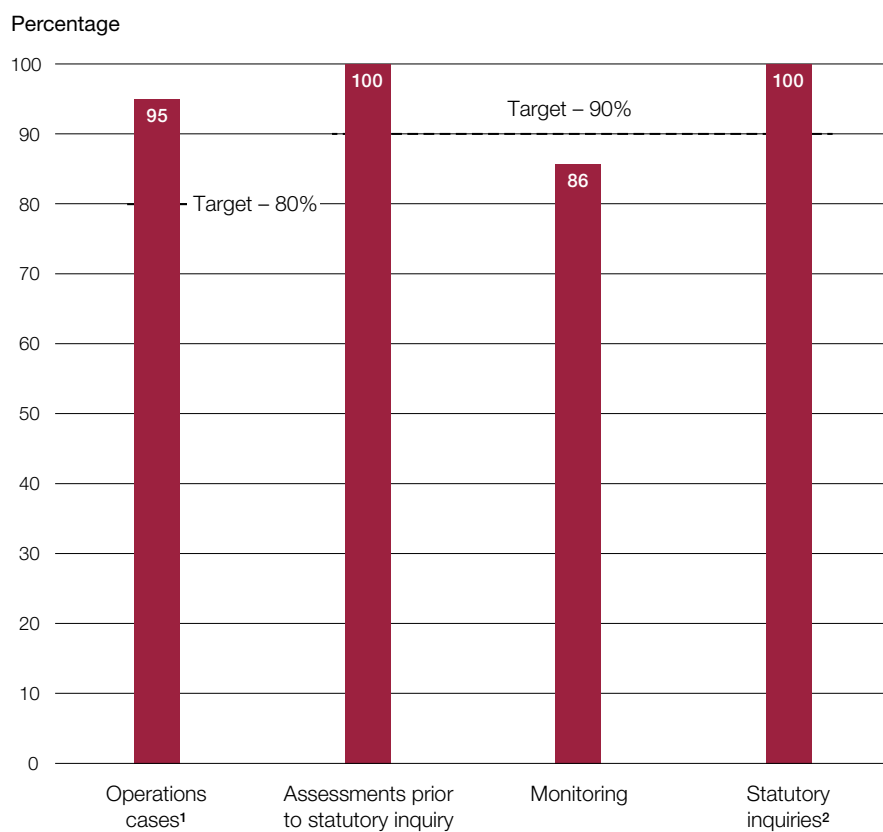
<sup>18</sup> Section 46 of the Charities Act 2011.



**Figure 14**

## Internal quality review of investigations and operations, 2012-13

Monitoring cases were the only group not to meet the internal quality review target

**Notes**

- 1 The targets and results are for cases assessed as 'acceptable or better'. In 2012-13, each division set their own targets, hence the lower target for operations. The Commission is now harmonising targets across its business areas.
- 2 Includes regulatory compliance cases being completed by the investigations and enforcement division.

Source: Charity Commission

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## Figure 15

### Summary of the Commission's statutory powers

Under the Charities Act 2011, the Commission can do the following using its statutory powers:

#### Information gathering powers

- Require individuals to give the Commission documents and information, or attend at a particular time and place to give evidence. It can also enter premises and seize documents.<sup>1</sup>

#### Enforcement powers

- Remove or suspend any trustee, officer, agent or employee of a charity.
- Appoint additional trustees as necessary to administer the charity properly.
- Direct any action to be taken that it considers expedient in the charity's interests.
- Appoint an interim manager to manage the charity's property and affairs. The cost of the interim manager is usually met from charity funds, although in exceptional circumstances the Commission can fund it.
- Restrict the disposal of charity property. The Commission can effectively freeze charity bank accounts using this power.
- Direct a person possessing or controlling charity property to apply it in a specific manner if they are unwilling to apply it properly.
- Restrict the transactions trustees may make, e.g. land sales.
- Transfer ownership of charity property to the Official Custodian for Charities.
- Establish a scheme for administering a charity (following its dissolution) to apply its funds and assets to purposes similar to those they were originally intended for.

#### Note

- 1 This can only be done after application to the magistrates court.

Source: National Audit Office review of Charities Act 2011

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**3.8** In the last five years, the Commission has opened fewer than 20 statutory inquiries annually but the number has been increasing since 2010-11 when it stopped doing regulatory compliance case investigations (**Figure 16**). Between 1 April 2013 and 30 September 2013, it opened 26 new inquiries.

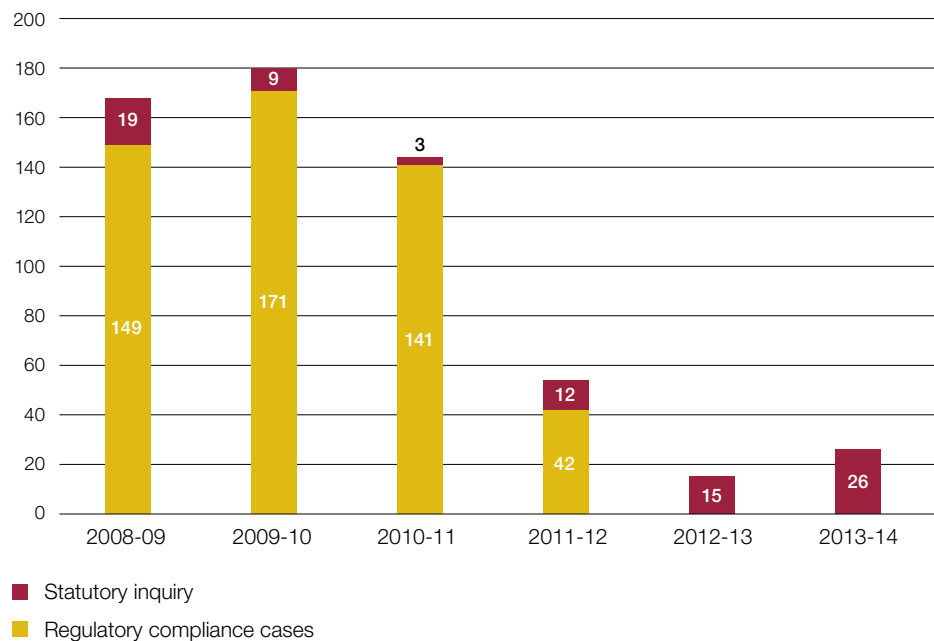
**3.9** The outcomes of some regulatory compliance cases were publicly reported. By no longer having these cases, and having operations division handle them, the findings and actions from these cases are no longer routinely made public. The Commission is looking at more efficient ways of reporting on specific cases and plans to report on these cases in future.

**Figure 16**

Number of regulatory compliance cases and statutory inquiries opened, 2008-09 to 2013-14

**In the last five years, the Commission has opened fewer than 20 statutory inquiries annually but the number has been increasing since 2010-11**

Number of cases opened

**Notes**

- 1 Regulatory compliance cases ceased to be opened after 2011 although similar cases continue to be conducted by operations division.
- 2 Number of statutory inquiries for 2013-14 is for the first six months of the year only and includes 12 inquiries opened as a 'class inquiry' against 12 charities.

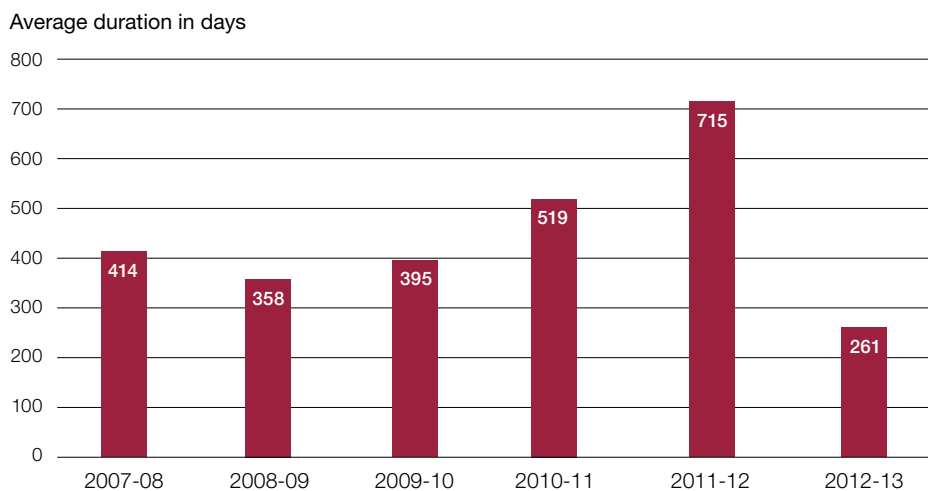
Source: Charity Commission

**3.10** The average time taken to complete a statutory inquiry almost doubled in the five years to 2011-12, reaching 700 days (**Figure 17** overleaf). It fell to 261 days in 2012-13. Only five statutory inquiries were completed in 2012-13 compared to nine in 2011-12, nine in 2010-11, and fifteen in 2009-10. The small number of cases makes it difficult to draw a meaningful comparison on the time taken to close inquiries. The Commission told us statutory inquiries take a long time because they often involve litigation, appointing interim managers or concurrent investigations by others, such as the police or HM Revenue & Customs. The Commission attributes the increased length of statutory inquiries in 2010-11 and 2011-12 to the reduction in staff. It lost 10 per cent of the staff carrying out regulatory compliance cases and statutory inquiries in 2010, and in the 2011 strategic review part of the team carrying out these cases moved to the operations division rather than the investigations division.

**Figure 17**

Average time taken to complete statutory inquiries, 2007-08 to 2012-13

The average time taken to complete a statutory inquiry almost doubled in the five years to 2011-12, but fell significantly in 2012-13



Source: Charity Commission

**Case review**

**3.11** We looked at 36 operations cases opened after April 2011. Fourteen cases were still open during our review. **Figure 18** shows how the remaining 22 operations cases were closed. This shows that in most cases where the Commission took action, it gave advice and guidance. If trustees do not follow this advice, it can give the Commission grounds for taking further action. This shows the importance of the Commission checking that the required action has been taken, particularly for high-risk cases.

**3.12** We also looked at eight statutory inquiries opened between August 2008 and April 2012 (**Figure 19** on page 36).

## Findings from operations cases and statutory inquiries

**3.13** The Commission can be slow to take strong action. In two statutory inquiries, we found that the Commission did not escalate its response sufficiently swiftly to deal with the most serious regulatory concerns. The Commission was first made aware of concerns about one charity in 2003, opening and closing one statutory inquiry and beginning four separate investigations between 2003 and 2009. It followed these by opening a regulatory compliance case and then a second statutory inquiry in 2009. At several points the Commission considered using its powers to remove trustees but did not do so until it appointed an interim manager in 2010. Each investigation identified similar issues and most were closed by issuing advice and guidance to trustees.

The Commission checked compliance with the advice in its later cases. In another case, the Commission investigated a charity for over a year before opening a statutory inquiry despite the issues being clear soon after the investigation began.

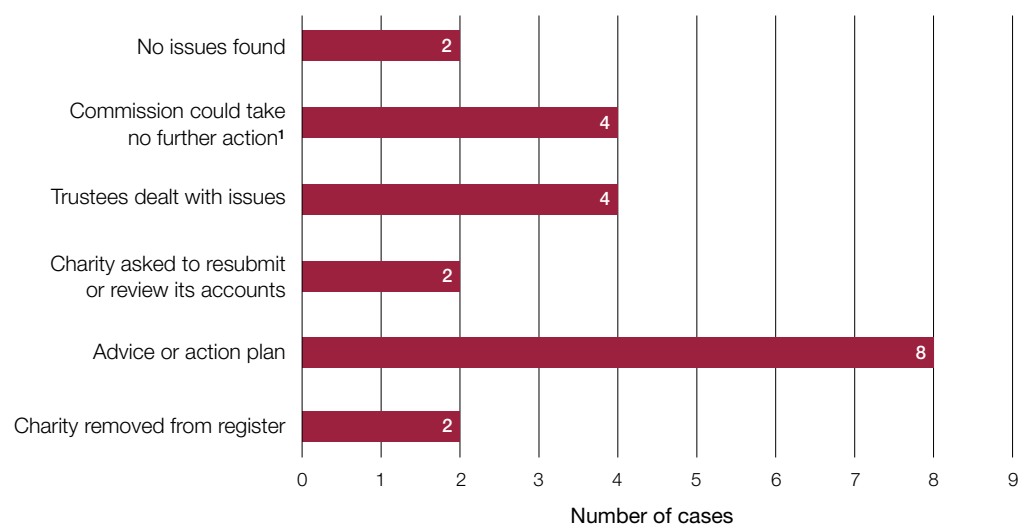
**3.14** In a third case, a trustee removed funds from a charity's bank accounts after the Commission had opened an investigation. The Commission opened a statutory inquiry two years later and took action to freeze the charity's and former trustee's bank accounts. It also referred the case to the police, providing evidence and witness statements. The trustee was prosecuted and a confiscation order made to recover the stolen funds for the charity.

**3.15** In three statutory inquiries, trustee non-compliance contributed to delays in the Commission's investigations. The Commission did not always modify its approach sufficiently swiftly to respond to this. In one case, the trustees failed to substantively answer the Commission's questions for six months. In another case, it took over 14 months for the charity to file several years' worth of overdue accounts, despite the Commission opening a statutory inquiry after three months.

### Figure 18

#### Outcomes of the 22 closed operations cases we examined

In most cases where the Commission took action, it gave advice or issued an action plan



Duration of the longest case we reviewed: 16 months

Duration of the shortest case we reviewed: 15 days

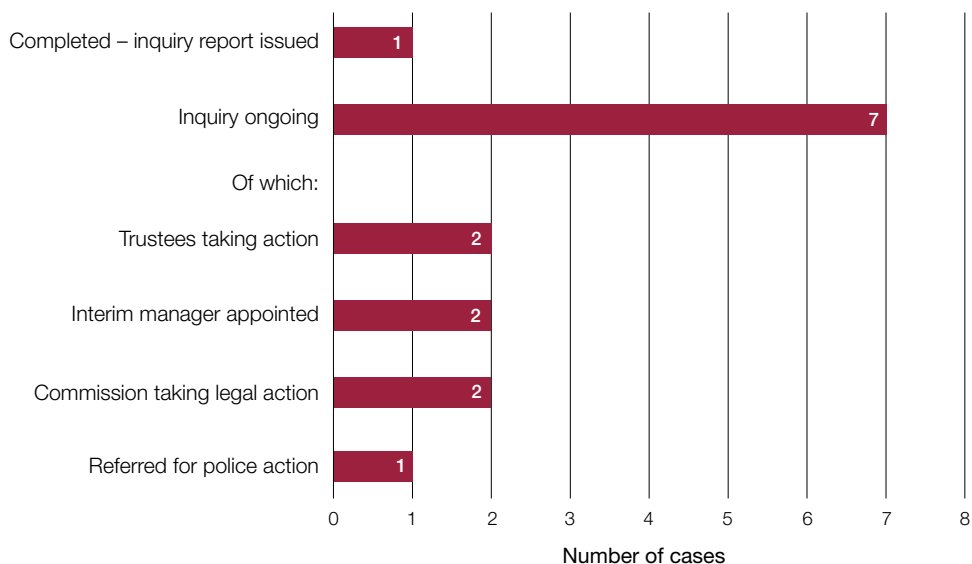
#### Note

<sup>1</sup> Two cases were outside the Commission's remit; in one case it could not identify the charity; and in the other it did not have enough information to investigate the concern raised.

Source: National Audit Office analysis of cases reviewed

**Figure 19**  
Status of the eight statutory inquiries we examined

Most of the inquiries we examined were ongoing



Longest time between concern being reported and inquiry opened: 30 months  
Shortest time between concern being reported and inquiry opened: 3 months

**Note**

1 Only one of the cases we reviewed was closed – it lasted 25 months.

Source: National Audit Office review of cases

**3.16** In the cases we looked at, the Commission frequently relied on trustee assurances that actions had been or would be taken to address concerns, rather than checking whether the required action had been taken. In one operations case, the Commission relied on trustee assurances that a large payment had been made, and in another, it waited five months before checking that payments to trustees had ceased (which they had). It is left to staff’s own judgement to decide whether trustees can be relied upon, bearing in mind the seriousness of the case.

**3.17** In two inquiries, we found long periods where the Commission took little or no action to progress the case. In one case, seven different case officers were involved over the five years of the case. There was a six-month period when the Commission did not actively follow up the issues under investigation with trustees. In another case, significant delays were caused by the Commission’s inaction when the case officer working on the case retired and the case was transferred between offices. We also found eight operations cases where there were delays caused by the Commission’s inaction. This included a case that took over two years in total, including nine months to arrange a meeting with the trustees.

**3.18** In one instance, an IT failure delayed the Commission issuing a notice to remove two trustees. Before it issued the notice, the charity's only other trustee resigned. The Commission could not then remove the trustees about whom it had concerns, since that would leave no one to run the charity.

**3.19** In two operations cases, the Commission did not gather further evidence beyond that given by third parties, despite serious allegations being made. In the first case, the Commission's own review found it should have made further checks and the Commission is considering reopening that case. In the other case, the Commission put the allegations to the trustees' solicitors, but took no further action to confirm what it had been told by the solicitors.

**3.20** Three of the statutory inquiries we looked at involved connected charities or charities with the same trustees. Where a person is a trustee of more than one charity, the Commission cannot take into account the trustee's misconduct in one charity when it investigates another charity the trustee is involved with. The Commission has asked the Cabinet Office for a new power to allow it to do so (see paragraph 3.26).

### **Decline in use of powers**

**3.21** Our last report on the Commission, in 2001, found that the Commission's use of its powers had declined over the previous five years.<sup>19</sup> We noted that a more assertive use of powers might have been expected. Its use of its powers has declined since then but there are indications that this trend is reversing.

#### Powers to gather information

**3.22** The Commission's use of its information-gathering powers has declined since 2008-09, being used 200 times in 2012-13 (**Figure 20** overleaf). The Commission said that the decline in its use of powers to gather information is partly due to the decline in the number of monitoring cases, which is where these powers were most frequently used. Between 2008 and 2011, the Commission opened more than 200 monitoring cases each year; this fell to 72 in 2011-12 and 42 in 2012-13. It also changed its approach following legal advice. Where it is already engaged with trustees, it now asks them for bank statements, rather than using its statutory power to get them from the bank. Its use of powers has recently increased with the Commission using its information-gathering powers 178 times between 1 April and 30 September 2013.

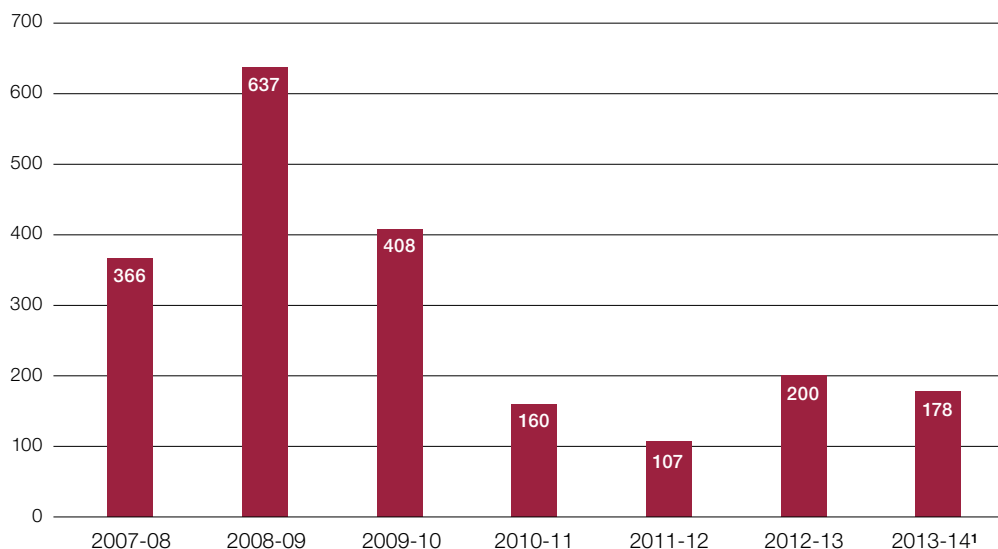
<sup>19</sup> Comptroller and Auditor General, *Giving confidently: The role of the Charity Commission in regulating charities*, Session 2001-02, HC 234, National Audit Office, October 2001.

**Figure 20**

Use of statutory powers to gather information, 2007-08 to 2013-14

**The Commission's use of its information-gathering powers has declined since 2008-09**

Number of times power used

**Note**

1 The number for 2013-14 is for the first six months of the year only.

Source: Charity Commission

**Enforcement powers**

**3.23** The Commission's use of its enforcement powers has fallen since we last reported in 2001 (**Figure 21**). In the three years to 31 March 2013, the Commission has not removed any trustees, has suspended two trustees, and prevented trustees from disposing of a charity's property or from entering into transactions 17 times. Its use of powers has recently increased with the Commission using its enforcement powers 30 times between 1 April and 30 September 2013.

**3.24** In 2009, the First-tier Charity Tribunal quashed the Commission's removal of a trustee of a charity and criticised the Commission's statutory inquiry into the charity.<sup>20</sup> The Tribunal said that the Commission had not adequately documented its decisions or done enough to engage with the trustee before using its powers. Commission staff said that this judgment had contributed to the decline in usage of its enforcement powers, particularly the removal of trustees.

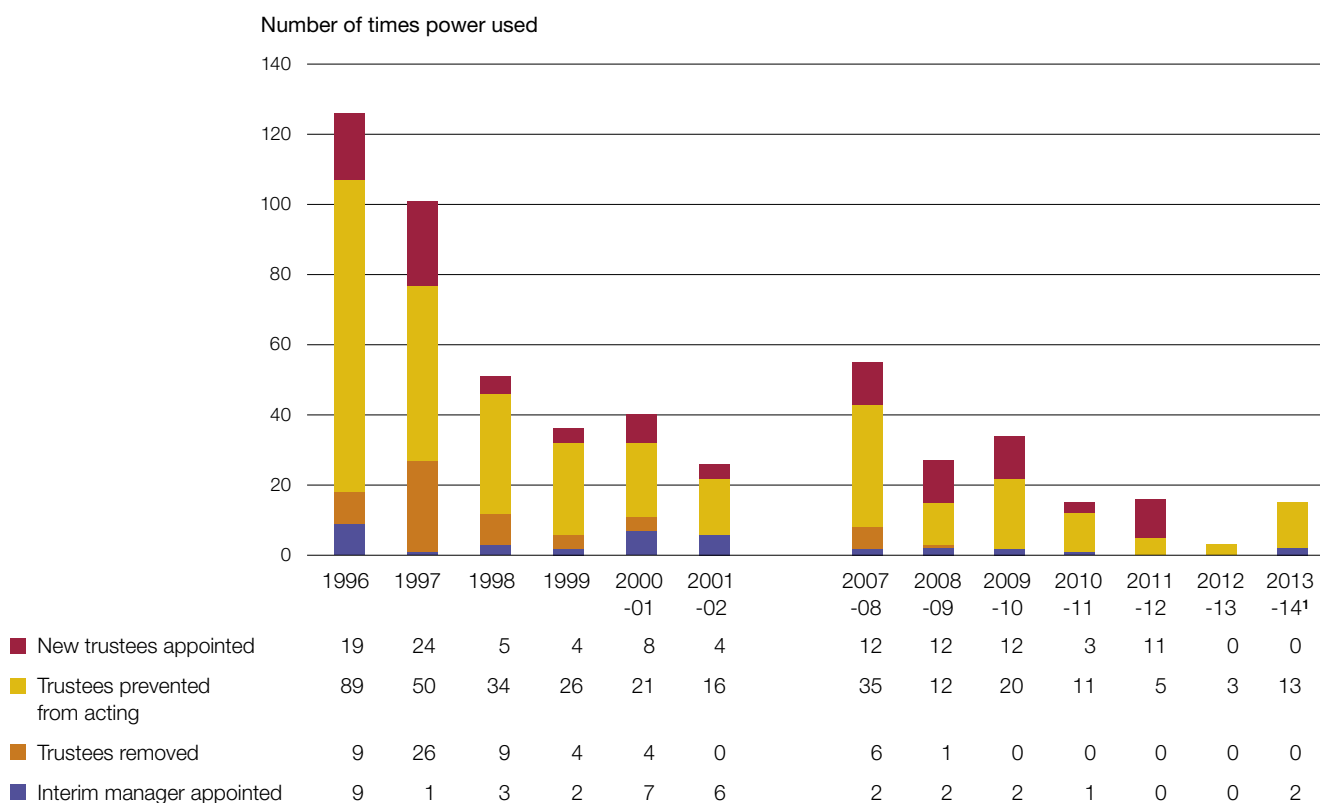
20 Nagendram Seevaratnam and the Charity Commission for England and Wales. Her Majesty's Attorney General [2009] UKFTT 378 (GRC), CA/2008/0001.



## Figure 21

Use of enforcement powers, 1996 to 2001-02 and 2007-08 to 2013-14

The Commission's use of its enforcement powers has fallen since we last reported in 2001



### Notes

- 1 Data for 2013-14 is for the first six months of the year only.
- 2 Data for 1996 to 2002 is from our report: *Giving confidently: The role of the Charity Commission in regulating charities*, Session 2001-02, HC 234, National Audit Office, October 2001.

Source: Charity Commission

**3.25** The Commission has identified deficiencies in its powers and practical barriers to their use (**Figure 22**).

**3.26** The Commission proposed changes to its powers when the Charities Act 2006 was being drafted, but these were not taken forward. More recently, it has submitted proposals for its powers to be strengthened to the Cabinet Office.

**3.27** The Commission has also recently asked HM Treasury for advice on handling unanticipated regulatory costs, including paying for an interim manager where a charity's funds are insufficient. The Treasury responded that these costs should be met from the Commission's existing budget.

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## **Figure 22**

### Deficiencies in the Commission's powers and barriers to their use

- The lack of a **power to disqualify trustees**. Where the Commission wants to remove a trustee without their consent, the Commission must give the trustee prior notice. This often means the trustee resigns before the Commission has a chance to remove them. Trustees are only barred from acting as trustees for other charities when they have been removed by the Commission – not when they resign.
- The costs of **appointing an interim manager** are met from the charity's funds. If a charity is insolvent or there are insufficient funds, then appointing an interim manager may be impossible. In two of the statutory inquiries we reviewed, the charity's lack of funds made it difficult for the Commission to appoint an interim manager. In one case, it took the Commission seven months to appoint an interim manager. This included three months to develop and issue the tender, resolve the issue of whether the charity had sufficient funds to pay the interim manager, and resolve the personal liability issues it raised for the interim manager.
- To **remove a trustee**, the Commission must prove there is a risk to assets as well as misconduct, so the Commission cannot use this power where the charity has no assets, for example, where it is close to liquidation or its income is very small.
- The cost and proportionality of taking someone to court – for **failing to provide information** demanded under the Commission's statutory powers – vastly outweighs the maximum penalty. As a result, the Commission rarely pursues such cases although it includes non-cooperation as evidence of misconduct and mismanagement in its use of other powers.
- It is a criminal offence to give the Commission **misleading information**. However, the penalties are so low and, in proportionality terms, the police tend not to pursue such cases, making it an ineffective sanction.

Source: National Audit Office analysis based on interviews with Commission staff

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# Part Four

## Managing performance and sharing information

### Externally reported performance indicators

**4.1** The Charity Commission (the Commission) has three externally reported performance indicators (**Figure 23**). The first indicator, the Commission's cost, is not linked to an assessment of the level of expenditure required for effective regulation, so is of limited value. The second indicator is based on the Commission's internal quality review system rather than an external assessment of quality, and the target has not been met. Neither indicator links to the Commission's statutory objectives. The third indicator does link to one of the Commission's statutory objectives. However, the Commission does not monitor the level of public trust in the Commission itself.

#### Figure 23

The Commission's externally reported performance indicators

External performance indicator	Target	2010-11	2011-12	2012-13
<b>1</b> The cost of the Commission for every £1,000 of income of registered charities	50p or less	53p	47p	43p
<b>2</b> The percentage of Commission casework or other pieces of work that has been reviewed as acceptable or better <sup>1</sup>	90%	N/a	N/a	89%
<b>3</b> Overall level of public trust and confidence in charity (according to independent survey) <sup>2</sup>	Improve on previous year	6.3	6.6	6.7

#### Notes

- 1 Indicator 2 was first measured in 2012-13.
- 2 The public were asked: "Thinking about how much trust and confidence you have in charities overall, on a scale of 0-10 where 10 means you trust them completely and 0 means you don't trust them at all, how much trust and confidence do you have in charities?"

Source: Charity Commission

### Internally monitored performance indicators

**4.2** The Commission has a further 30 key performance indicators against which it monitors its performance but does not report publicly. Many of these indicators do not have clear links to the Commission's statutory objectives.

**4.3** The Commission met 17 of the 24 indicators that had targets set in 2012-13. Six indicators had no targets set, including the percentage of Commission work internally reviewed and judged as good or better, and the average time to publish the reports of statutory inquiries. These are both areas where targets might be expected to improve performance. The Commission now sets targets for all key performance indicators.

**4.4** In 2012-13, the targets for two indicators that relate to the Commission's regulatory activity were missed by a substantial margin:

- The percentage of statutory inquiries that result in a beneficial impact – 82 per cent achieved some beneficial impact against a target of 90 per cent. This is the only target of the 30 that measures the regulatory impact of the Commission's work.
- The percentage of responses by charities made within three days to requests for information by the Commission where a critical risk area is involved. Only 66 per cent of responses were made within this time frame against a target of 90 per cent.

### Complaints about the Commission

**4.5** Users of the Commission's services who are dissatisfied can use the Commission's two-stage internal complaints procedure. Complaints about the Commission can also be made to the independent Parliamentary and Health Service Ombudsman.

**4.6** If trustees or other people affected by certain of the Commission's decisions<sup>21</sup> believe the decision is incorrect, they can seek a decision review by the Commission. They may also apply for a review by the First-tier Charity Tribunal. Where appropriate, the Tribunal may quash or substitute a decision or remit it back to the Commission. The Tribunal has no power to sanction the Commission.

<sup>21</sup> All such decisions are listed in Schedule 6 of the Charities Act 2011.

**4.7** The combined number of complaints about the Commission has declined from a peak in 2010-11 but is higher than it was five years ago (**Figure 24**). In 2012-13, the Parliamentary and Health Service Ombudsman received 37 enquiries about complaints concerning the Charity Commission. It decided that six of these required a closer look, and none were accepted for investigation. The Ombudsman concluded one investigation, of a complaint accepted in 2011-12, which was not upheld. Between 2000 and 2012, complainants who were not satisfied with the outcome of the Commission's internal complaint procedures could refer the matter to an external and independent complaints reviewer.<sup>22</sup> In their last annual report for 2009-10, the reviewer said that referrals in that year had been few in number but showed a continuing trend for complainants to expect a greater level of regulatory engagement from the Commission than its remit allowed or than was proportionate to the circumstances.

**Figure 24**  
Complaints about the Commission

The number of complaints about the Commission has declined from a peak in 2010-11 but is higher than it was five years ago



Source: National Audit Office analysis of Charity Commission and Parliamentary and Health Service Ombudsman data

<sup>22</sup> The Commission's independent complaints function is now carried out by the Centre for Effective Dispute Resolution and Complaint Handling & Investigation Associates.

## **Information exchange with HMRC**

**4.8** The law allows the Commission and HM Revenue & Customs to share information in specific circumstances, and the arrangements for sharing information have been set out in a memorandum of understanding since 2008. Both organisations have begun new investigations as a result of information received from the other.

**4.9** However, neither the Commission nor HM Revenue & Customs have always shared all the information they could have done as specified in the memorandum. Both organisations have failed to pass on information about some of the charities where they have identified significant non-charitable activity. In addition, HM Revenue & Customs has identified a small number of cases where further information from the Commission would have saved them work in their fraud investigations or allowed them to address concerns sooner. In some cases, HM Revenue & Customs has passed information to the Commission but with constraints on its disclosure which has meant the Commission cannot use the information in its investigations. This situation arose partly because HM Revenue & Customs was not sure how much information it could share with the Commission. It has now taken legal advice which suggests it can share more information.

**4.10** After HM Revenue & Customs had taken legal advice, the memorandum was revised in 2013 to widen the information shared. For example, the Commission will tell HM Revenue & Customs of enforcement cases it opens into charities for non-submission of accounts, and HM Revenue & Customs will tell the Commission about charities where it is pursuing criminal proceedings.

## **Sharing information with the public**

**4.11** Stakeholders we spoke to were keen to use data on the Commission's register, for example to understand how charities raise and use funds, or how much gift aid they claim. They believe this could have regulatory value by enabling third parties to identify concerns and raise them with the Commission. Under the open data agenda, the Commission plans, by March 2014, to make charities' annual returns easier for other bodies to analyse. The Commission also has a project to consider requiring annual accounts to be submitted in a format that enables the Commission and external users to compare the data across many charities.

# Appendix One

## Our audit approach

**1** This study examined the effectiveness of the Charity Commission (the Commission) as the regulator of registered charities. We reviewed:

- the Commission's use of its statutory powers and how effectively these contributed to achieving its objectives on public trust and compliance;
- the level of resources available to the Commission and how well it uses them; and
- how the Commission evaluates its regulatory impact and adapts accordingly.

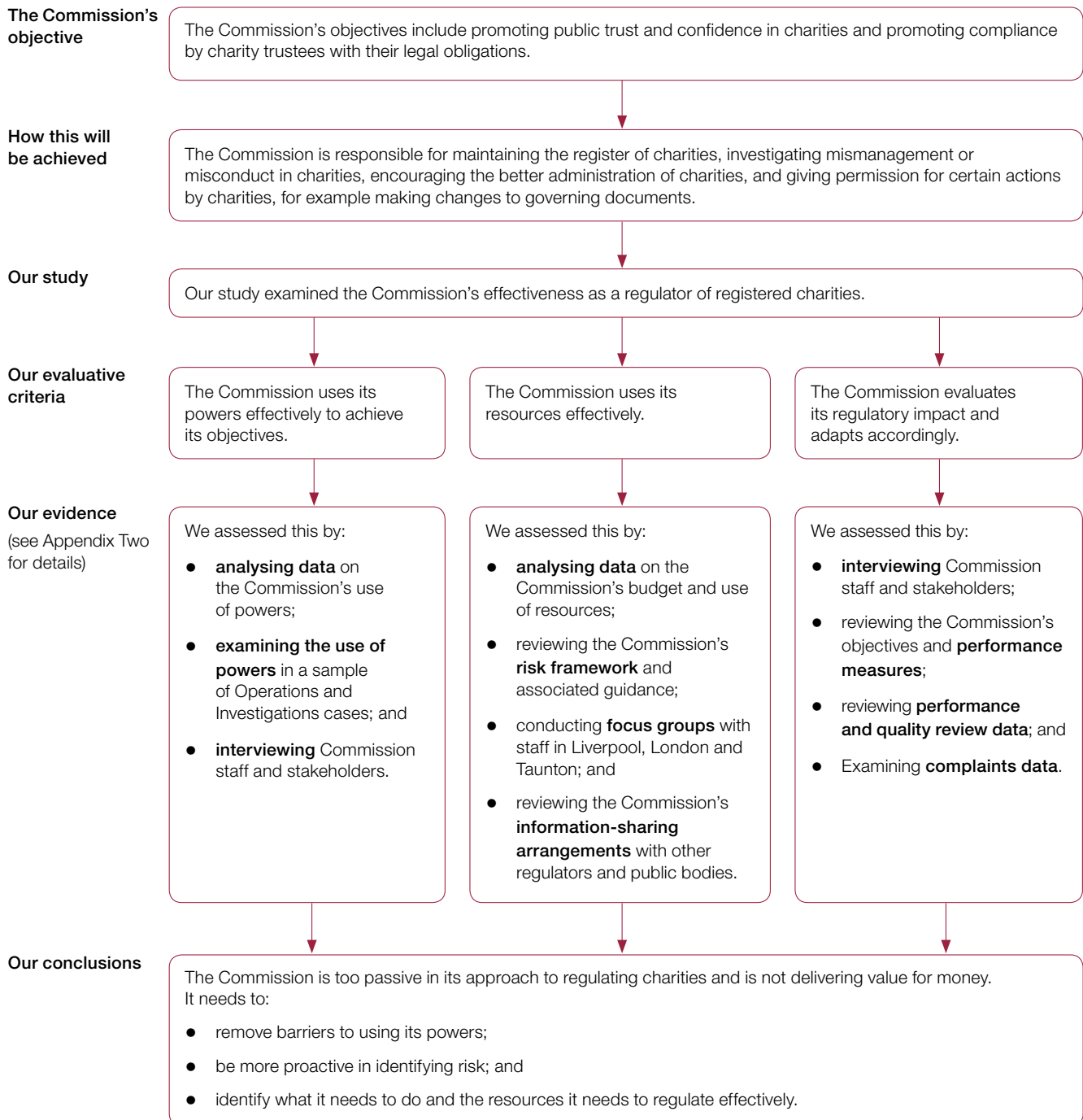
**2** We applied an analytical framework, with evaluative criteria, of the characteristics we would expect an effective regulator to demonstrate, drawing on the National Audit Office's previous and current work on other regulators.<sup>23</sup> We identified the characteristics of an effective regulator as including:

- appropriate use of powers;
- clear engagement with others;
- resources allocated according to risk;
- good use of own data and data on the regulated sector;
- effective engagement with others;
- skilled and motivated staff; and
- efficient processes and appropriate structure.

**3** Our audit approach is summarised in **Figure 25** overleaf. Our evidence base is described in Appendix Two.

<sup>23</sup> Previous National Audit Office reports on the Charity Commission are: Comptroller and Auditor General, *Giving confidently: The role of the Charity Commission in regulating charities*, Session 2001-02, HC 234, National Audit Office, October 2001; *Charity Commission: Regulation and Support of Charities*, Session 1997-98, HC 2, National Audit Office, May 1997; *Monitoring and Control of Charities in England and Wales*, Session 1990-91, HC 13, National Audit Office, November 1990; *Monitoring and Control of Charities in England and Wales*, Session 1986-1988, HC 380, National Audit Office, May 1987.

**Figure 25**  
Our audit approach





# Appendix Two

## Our evidence base

- 1 Our independent conclusions on the effectiveness of the Charity Commission (the Commission) as the regulator of registered charities were reached following our analysis of evidence collected between April 2013 and July 2013.
- 2 We applied an analytical framework, with evaluative criteria, of what characteristics we would expect an effective regulator to demonstrate. Our audit approach is outlined in Appendix One.
- 3 **We examined the extent to which the Commission used the powers available to it to achieve its objectives:**
  - We reviewed how clear the Commission's regulatory objectives were through **interviews with the Commission and stakeholders**. We also reviewed the Commission's strategic and business objectives for clarity and consistency with its statutory objectives.
  - We **analysed data on the Commission's use of powers** over the past five years and compared this to the use of powers when we last reported in 2001, to assess the extent that the Commission has acted on previous NAO and PAC recommendations on the use of its powers and vigour of enforcement.
  - We **examined the use of powers in a sample of cases**, including the investigations of regulatory concerns in the operations division; and statutory inquiries conducted by the investigations and enforcement division.

Our sample was not intended to be representative of the whole population. It was to help us understand the Commission's investigative processes, including the application of its risk assessment framework, the timescale for investigating, the extent of its powers, and compliance with its own guidance.

No counter-terrorism cases or monitoring and inspection visits arose in our sample.

- We **examined a sample of registration cases**. Our sample was not intended to be representative of the whole population but was to help us understand the Commission's registration process, including the application of its risk assessment framework, the extent of checks prior to registration, and compliance with its own guidance.

- We **interviewed Commission staff** to gather evidence on the way in which they used the Commission's statutory powers in their work.
- Where deficiencies in the Commission's powers (or ability to apply them) existed, we **reviewed the action the Commission had taken** to seek remedies to these deficiencies. We assessed the effectiveness of these actions.
- We analysed the legislation setting out the Commission's powers and **sought independent legal advice** on the Commission's powers.

#### **4 We examined whether the Commission used its resources effectively:**

- We assessed the level of staff skills, training, support and engagement through interviews with key staff, **focus groups** with staff in Liverpool, London and Taunton and a review of staff surveys.
- We assessed the Commission's **risk framework and its application in a sample of registration, operations and investigations cases**.
- We **analysed data on the Commission's budget** over time, and reviewed its business plan and board papers to analyse the use of resources.
- We **reviewed the Commission's board papers and management information** to assess its organisational structure and processes. We looked at its **strategic review** to assess its success in refocusing on doing what only the regulator can do.
- We **reviewed the quantity and quality of information exchanged** between the Commission and other regulators and public bodies especially HM Revenue & Customs and assessed the Commission's use and responsiveness to this data.

#### **5 We examined whether the Commission evaluated its regulatory impact and adapted accordingly:**

- We **interviewed Commission staff and reviewed board papers and management information** to assess the Commission's performance targets and the extent to which these are linked to its objectives.
- We **analysed performance and quality review data** to assess the extent to which these systems help the Commission achieve its objectives.
- We **gathered stakeholder views** and reviewed external reports on the Commission by independent and Parliamentary bodies to assess the extent to which the Commission is meeting stakeholders' expectations of its regulatory impact.
- We reviewed the Commission's management information and external reports to understand the options for those dissatisfied with the Commission's service and analysed **data on complaints about the Commission**.



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