

Honorary Treasurers Forum Meeting – 16th February 2017

Learning from the sharp end from serious incident reports

Charity Commission investigations into serious incidents was the topic of discussion at our February Honorary Treasurers Forum meeting at Cass Business School.

Between 2015-2016, 2117 serious incidents were reported to the Commission, according to its 'Tackling Abuse and Mismanagement 2015 to 16' report. This figure had increased from 1569 incidents reported the previous year. The Commission used its legal power in 1248 cases and directed charities to take action 71 times.

But how does the Commission operate its investigations? When does it use its legal powers? Furthermore, how should trustees report a serious incident and what can they do if their organisation becomes subject to investigation?

These issues were tackled by our guest speakers **Richard Black, Senior Investigator at the Charity Commission** and **Mindy Jhittay, Senior Associate Solicitor at Bates Wells Braithwaite**, who is a specialist adviser to charities and social enterprises involved in commission investigations.

How can we stay on the right side of the Commission?

In his decade of working at the Commission, Richard Black stressed that in his experience most charities are well run and 'do fantastic work,' but he was going to talk about when things go wrong and governance breaks down.

Richard firstly highlighted the Commission's role, responsibilities and five statutory objectives which are to:

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

He said that the annual report is the best way for charities to demonstrate their compliance, accountability and good governance. But many charities need to improve the information included in their reports to ensure it highlights the organisation's good work and its impact on beneficiaries. Many organisations don't do this as well as they could.

He also stressed that trustees need to work collectively and make decisions as a board, they need metrics and controls to ensure good governance and ensure that they are in control of decision making, rather than the senior management team and the CEO. Too much

delegation can be a big risk area for trustees and it is up to trustees to make sure have an appropriate level of oversight.

What are the biggest risk priorities for the Commission?

The biggest areas of investigation risk for the Commission are: fraud, misuse of finances, financial irregularities such as tax avoidance; safeguarding when there could be serious harm or risk of harm to the beneficiaries; and, the misuse of a charity for personal gain or for terrorist or extremism purposes.

How does the Commission respond to incident reports?

Richard explained the Commission targets resources where it sees the highest risks to beneficiaries, services or assets and interventions will have the greatest impact.

Once it receives an inquiry or complaint, its response depends on the nature of the report, the level of risk and what action is already being taken. Each incident is assessed on a case by case basis and a decision taken as to whether action is needed by the Charity Commission. This could involve meeting with the trustees, an inspection of the books etc., or it might be felt that a letter or warning will be sufficient.

If the Commission finds trustees have been careless or reckless, it will meet with them, scrutinise their conduct and examine what went wrong. If the trustees are willing to put the matters right and comply with the Commission's proposed actions this will usually be sufficient and the Commission will monitor the organisation to ensure compliance.

When will the Commission use its regulatory powers?

- If there has been deliberate or wilful wrongdoing
- If the trustees are willing to act but are unable to stop abuse of the charity themselves
- If the trustees are unwilling to act themselves
- If it may compel trustees to provide information or to take specific protective action to protect their charity from, or to remedy, this abuse or to ensure ongoing compliance.

What are the Commission's powers?

The following are examples of powers used by the Commission in the Charities Act 2011 and the numbers refer to section within the Act.

Permissions cases:

S67 Cy-près schemes

S105 Power to authorise dealings with charity property etc.

S198 Alteration of objects by companies and Commission's consent

Compliance cases:

S52 Power to call for information/documents

S60 An offence to provide Commission with false or misleading information

Statutory Inquiries (see also CC46 – guidance on statutory enquiries):

S47 Obtaining evidence under inquiry (e.g. documents, interview)

S76 Suspension of trustees etc. and appointment of interim managers

S78 Interim Manager S70 removal of trustee or officer

S84 Power to direct certain action to be taken, including S84B power to wind up

Richard ended his talk by stating that the Commission doesn't do spot checks into charities. It will only investigate once a complaint is received.

How should trustees reporting serious incidents to the Commission?

BWB's Mindy Jhittay then discussed three themes:

- What constitutes a typical serious incident?
- What should you report to the Commission?
- How will trustees respond? What frameworks and strategy need to be in place? How would trustees handle unwanted press attention?

What is a serious incident?

Mindy explained that a serious incident is "An adverse event, whether actual or alleged, which results in or risks significant loss to a charity's money or assets, damage to a charity's property or harm to a charity's work, beneficiaries or reputation."

If you are shocked to learn of an incident, that can be a useful "temperature check" for assessing whether it should be reported - but the definition is broader than that.

When responding to a serious incident, trustees should consider:

- There is a legal obligation to report serious incidents as they arise
- Consult the Commission's serious incident guidance
- A report should be made as soon as reasonably possible after you have investigated matters. An initial "holding" report may be necessary.
- It is an offence to provide false or misleading information to the Charity Commission

So how should trustees respond if they spot a serious issue?

Using the issue of safeguarding as a case in point, Mindy highlighted that if an issue was identified that presented a risk of harm to the beneficiaries or to the charity's reputation, a report must be made.

Once the issue is identified, trustees need to think about what controls they have in place, what safeguarding, recruiting and vetting policies they have in place and whether their

policies have been communicated well enough to staff. The Commission will also want to know how the trustees will prevent such an incident from happening again.

Depending on the nature of the issue, the trustees may need to consider if the media will be involved and how to handle them – do they have a crisis communications plan in place?

Do they need to work with third parties, such as the police or a Local Authority Designated Officer and involve them?

How will they remedy the situation? If the incident involves fraud for example, can they get their money back?

Mindy said charities should note that the Commission is a public body and as such is sometimes required to disclose information under the Freedom of Information Act 2000. The Commission will usually rely on a legal exemption to prevent disclosure of information provided in a serious incident report. However, that does not protect it from disclosure indefinitely. She advised that trustees should take care over the information they record and report, for example, minutes from meetings could be anonymised as decisions are made collectively.

She advised if a charity finds itself under inquiry, the most important thing they needed to do was to report the information they have appropriately, to be open and transparent, to reassure the Commission at an early stage into the inquiry, and to outline measures taken to improve the situation and reasons why it won't happen again.

For more information see the following Charity Commission documents:

[Charity trustee: what's involved \(CC3a\)](#)

[Reporting serious incidences – guidance or Trustees](#)

[Statutory inquiries into charities: guidance for charities\(CC46\)](#)

[Charities Act 2011](#)