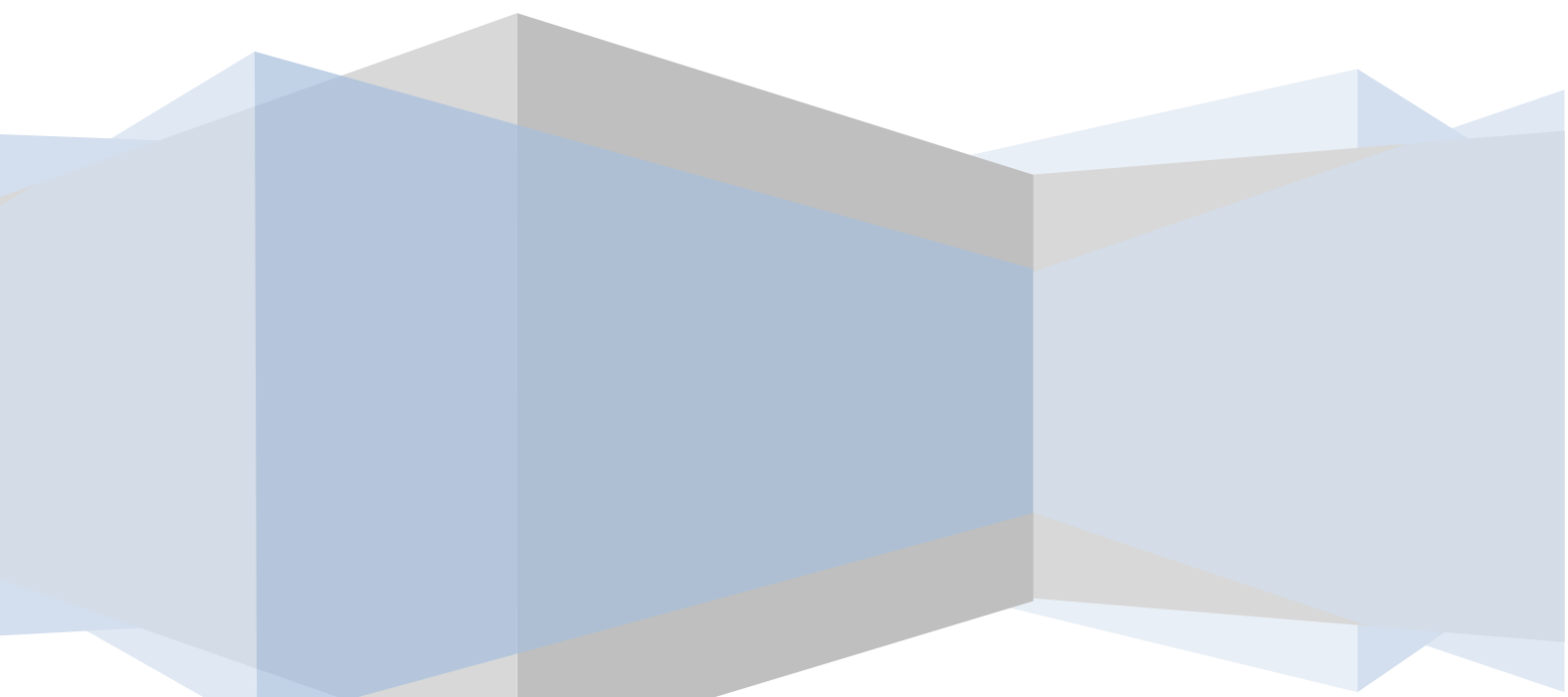


One hundred lessons to be learned...

**Themes and trends from
the Charity Commission for
Northern Ireland's first one
hundred concerns received
about charities**

January 2012



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1. Introduction

Charities are part of the social fabric of Northern Ireland and the charity sector here is diverse and vibrant. The sector also enjoys relatively high levels of public trust and confidence. Indeed, a recent survey from the Charity Commission found that 49% of the Northern Ireland public indicated that they trust charities operating within Northern Ireland.¹

Trust in charities can be eroded, however. A single incident of misconduct or mismanagement in the administration of a charity can undermine the good work of that organisation and trust and confidence in the charity sector as a whole.

This is why the Charity Commission's regulatory role is vital in promoting a dynamic and well governed charities sector in which the public can have confidence.

The Charity Commission for Northern Ireland started to investigate charities for the first time in February 2011. Since then the Commission has received a steady number of concerns about charities. The vast majority of these concerns have come from members of the public.

In January 2012 the Commission received its 100th concern about a charity. The enquiries undertaken by the Commission in response to these first 100 concerns have allowed us to draw out some common themes and lessons.

The "One hundred lessons to be learned" report outlines these lessons, grouped in themes, and illustrated using facts, figures and case studies. The report is intended to benefit charity trustees, supporters and volunteers by highlighting common problems and helping charities to get the basics right.

The "One hundred lessons to be learned" report will help the overwhelming majority of charity trustees who want to get it right by avoiding the common mistakes.

2. Overview and background

In February 2011 the Charity Commission gained powers to investigate charities within Northern Ireland. At present, the powers extend to those organisations that have been granted charitable tax status by Her Majesty's Revenue & Customs (HMRC).

This allowed the Commission to identify and investigate apparent misconduct and mismanagement in the administration of charities for the first time. These powers do not yet apply to all charities as the registration of Northern Ireland charities has not yet begun.

The list of charities to which it applies has been published on the Charity Commission website and numbers well over 6,500 charities drawn from right across Northern Ireland. This list is updated four times per year and can be viewed at www.charitycommissionni.org.uk.

Our approach to investigations

The Charity Commission carries out an initial assessment of every concern we receive about a charity. This allows us to determine the best route to take to rectify the situation based on the seriousness of the concern and the risk involved.

In reality many problems within charities can be resolved by the charity trustees themselves, sometimes with the assistance of a mediation service. However, serious problems do occur within charities and serious risk of significant harm to or abuse of the charity, its assets, beneficiaries or reputation can be apparent. When this is the case the Commission can intervene using its powers under the Charities Act (NI) 2008.

Proportionality underpins our approach at all times. This means that our actions are measured to fit the seriousness and scale of what has occurred and to take account of the potential for further risk to the charity and the capacity of the charity to comply with any requirements for change.

This approach gives rise to four possible outcomes when a concern is received by the Charity Commission:

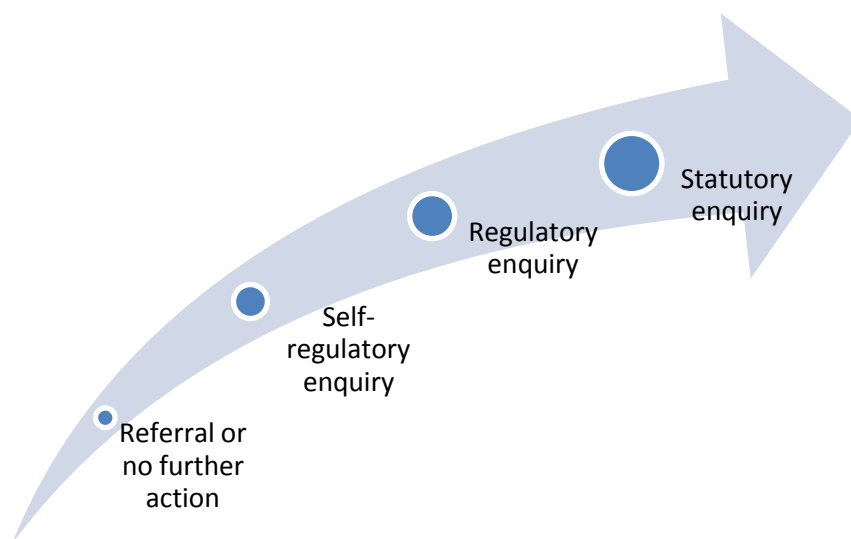


Figure 1: The Charity Commission's regulatory approach following initial assessment

1. Referral or no further action

The Commission will inevitably receive concerns which we do not investigate past the initial assessment stage. This is usually because the concern raises a matter which falls outside the scope of our powers or simply because it is not credible.

As a proportionate regulator we only take up issues where we believe there is substance to a concern. Therefore, if there is no evidence to support the concern or allegation, we may decide that intervention is not appropriate. We will not act on unsubstantiated allegations, rumour or opinion - to do this and, as a result, disrupt the charity's work would be unfair to that charity, its activities and its users and beneficiaries.

If a concern received is credible and evidence based but falls outside the scope of the Commission's powers, we can refer it to another government body. This has occurred in the past where we have referred a matter to Trading Standards and, on separate occasions, the PSNI and HMRC.

If we cannot investigate the concern received we will contact the individual who raised the concern and explain the reasoning behind our decision.

2. Self-regulatory enquiries

A self-regulatory enquiry will typically result in the Commission working with the charity to resolve the concern raised. In reality, this will often involve the Commission offering best practice guidance to the charity, for example, by providing guidance and assistance on governance issues such as records management, documenting board of trustee minutes and complying with governing documents.

If a charity fails to follow advice from the Commission, we can follow up using more stringent powers under the Charities Act (NI) 2008.

3. Regulatory enquiries

A regulatory enquiry can result in a legal order or direction which makes it compulsory for a charity to follow the Commission's instructions. The Commission will closely monitor the charity following a regulatory case to make sure that the direction or order is complied with.

Usually the Commission will publish case summaries and lessons learned on our website following regulatory cases. These case reports will include the issues that prompted the enquiries and the Commission's responses including the resultant legal directions or orders.

4. Statutory enquiries

A statutory enquiry sees the Commission use the severest of its powers under the Charities Act (NI) 2008. The Commission will undertake a statutory enquiry if there is serious and substantial risk to the assets or beneficiaries of a charity. Statutory enquiries can, for example, result in the Commission removing a charity trustee, removing a charity from the register of charities or appointing an interim manager to oversee the work of a charity.

3. The impact of our regulatory work

The Commission's first 100 concerns and subsequent enquiries have allowed us to draw together some important themes and trends. The following charts represent some of the most useful pieces of information that we have collated.

(a) Where did the first 100 concerns come from?

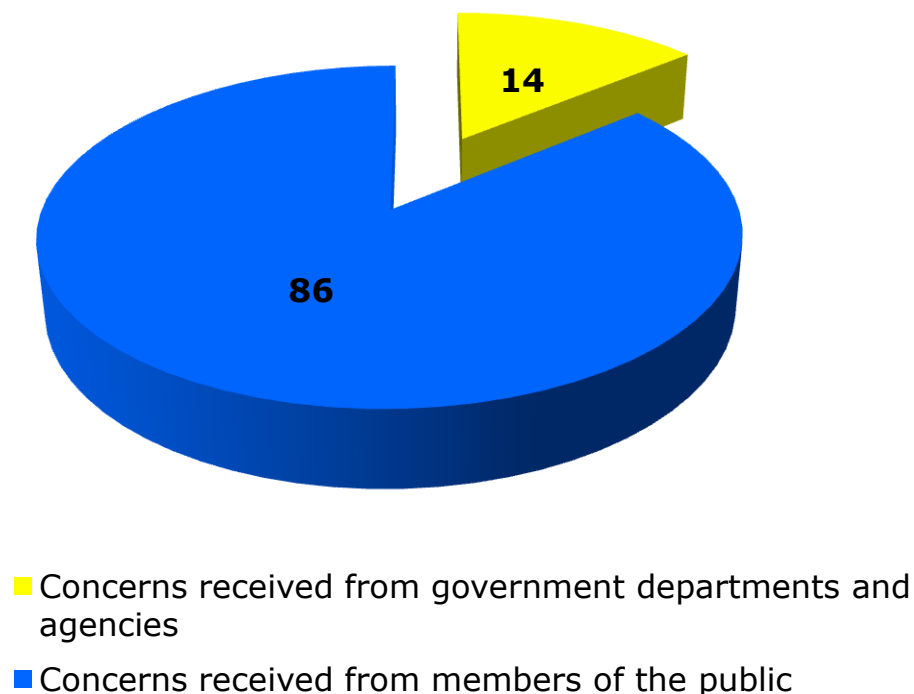


Figure 2: Where did the first 100 concerns come from?

86 concerns came from members of the public. The remaining **14** concerns came from other sources including government agencies such as HMRC.

The Commission has developed a number of Memoranda of Understanding (MOUs) with a range of government agencies. These MOUs are aimed at simplifying the information sharing process if, for example, the PSNI or Trading Standards receive a complaint from the public which the Charity Commission can deal with effectively.

Chief Executive Frances McCandless and members of the Commission's Board have been working with both charities and members of the public to increase understanding of the Commission's new role, particularly in relation to investigations. This work continues as the number of concerns received surpasses the 100 mark.

(b) When did we receive the first 100 concerns?

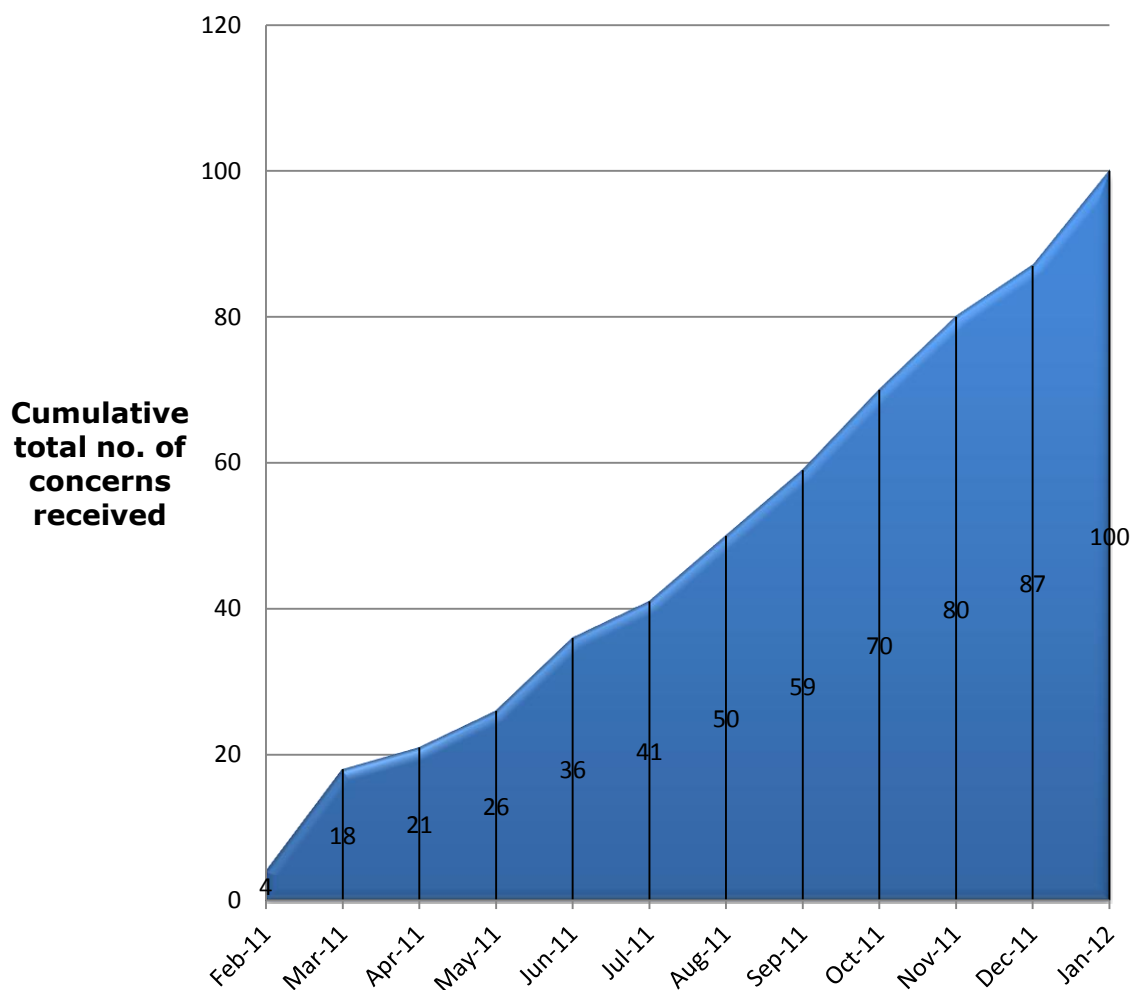


Figure 3: When did we receive the first 100 concerns?

Lessons to be learned

The number of concerns received has increased steadily since the Commission began to investigate charities in February 2011. Our website includes details of how members of the public can submit a concern about a charity, with the process designed to be accessible and as simple as possible.

The first 100 concerns have brought, on average, 10 concerns per month to the Commission. This equates approximately to one concern every other working day across the ten month period from when we started investigations to when the Commission received its 100th concern.

(b) How many of the first 100 enquiries are now closed?

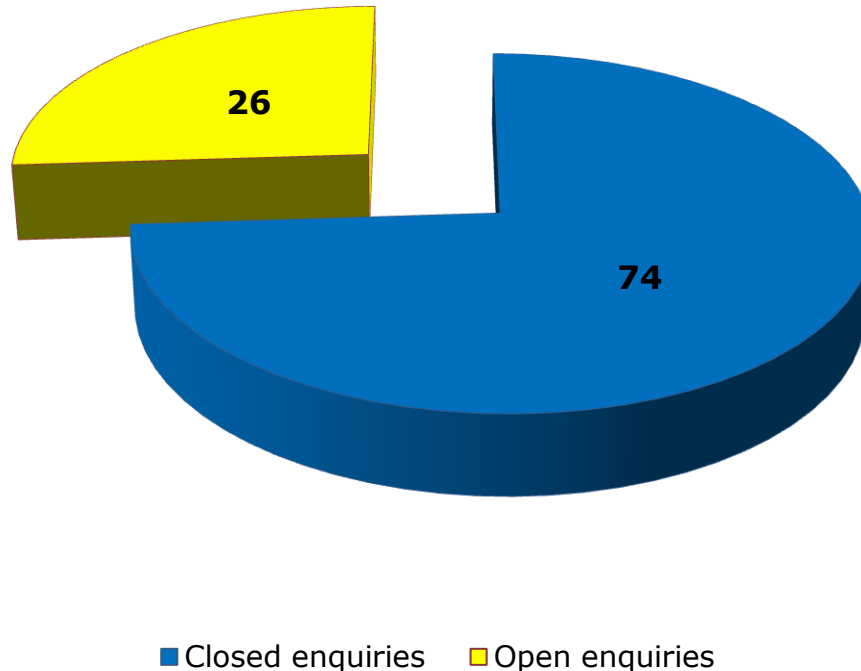


Figure 4: How many of the first 100 enquiries are now closed?

Lessons to be learned

When the Charity Commission receives a concern, there is always an initial assessment or enquiry. Some of these initial enquiries result in a full enquiry while others are not continued for a range of reasons.

Of the first 100 concerns received, 74 of the subsequent enquiries have been closed and 26 are still ongoing. The 26 live enquiries involve a range of issues across a spectrum of charities. The Commission continues to deal with concerns on a regular basis.

In closing 74 concerns, the Charity Commission has engaged with a wide range of individuals and organisations including charity trustees, charity umbrella groups, the legal profession, accountants, and most importantly, members of the public. This includes providing an update to the individual who raised the concern initially.

As a new regulator, the Commission has worked alongside charities in resolving these issues, resulting in a large number of self-regulatory cases and advice issued to charities.

The Commission has yet to close a regulatory or statutory enquiry in relation to a concern about a charity. The experience of the Charity Commission for England and Wales (CCEW) indicates that the majority of cases will be dealt with without having to resort to regulatory or statutory powersⁱⁱ.

4. Key themes from the first 100 concerns received

- **Key theme 1: Poor governance in charities**
 - **Key theme 2: Poor financial control**
 - **Key theme 3: Lack of transparency**
 - **Key theme 4: The damage of disputes**
-
- **Key theme 1: Poor governance in charities**

Trustees must comply with their legal duties in the administration of a charity and run it solely in the interests of the charity. This includes taking reasonable steps to assess and manage the risks to their charity's activities, beneficiaries, property, work or reputation.

Failings in trusteeship or governance often come to light during the course of investigations. These can involve, for example, inadequate record keeping, poor management of conflicts of interest, failures to identify and manage situations where trustees are benefitting inappropriately from charities, and failures to control the activities of dominant individuals.

Case Study 1

During 2011 the Charity Commission received a concern in relation to a named charity. Following an initial assessment the Commission opened a self-regulatory enquiry into the activities of the charity. The concern centred on an alleged failure to hold Annual General Meetings (AGMs).

The enquiry looked at a number of governance issues and established that AGMs had not been held for a number of years. As a result the Commission provided self-regulatory advice to the charity, including information on how holding AGMs can contribute to good charity governance.

The charity resolved to continue to implement the guidance provided by the Commission. For concerns which are easily resolved like this one, the Commission will not necessarily monitor the charity other than through eventual annual monitoring. The Commission can revisit the matter in the short term if it becomes apparent that problems with the charity are continuing.

Lessons for other charities

Every charity needs an effective trustee body which has control over the administration of the charity and acts as a whole, especially because all trustees are equal in responsibility.

Good governance is essential for the success of any charity and is now more important than ever in the current economic context. Trustees play a vital role in serving their causes and communities by ensuring the charity resources are used effectively. Using charity resources effectively means implementing simple but robust governance measures. These include, for example:

- Producing yearly accounts which can be accessed by funders and beneficiaries;
- Holding a yearly AGM to keep stakeholders updated and involved;

- Following procedures which have been laid down in the charity's own governing document.

The Developing Good Governance Group has published a useful [Code of Good Governance](#) setting out seven principles of good governance.

(www.diycommitteeguide.org/resource/governance-health-check)

- **Key theme 2: Poor financial control**

Adequate financial control is a basic essential for all charities. This includes implementing and managing proper systems for the collection, holding and use of charity funds and ensuring that a charity's financial position is monitored.

Trustees should also keep proper records of all financial transactions and produce clear and accurate accounts. If a trustee applies to us, the Charity Commission can provide advice and its opinion to that trustee on a specific governance issue. This includes guidance on financial control and management.

Case study

During 2011 the Charity Commission received a concern in relation to a named charity. The concern centred on poor financial control within that charity including that the financial management of the charity was deficient. Following an initial assessment, the Commission opened a self-regulatory enquiry into the activities of the charity.

The Commission's enquiry found inadequate financial control; specifically that the charity had conducted public collections but did not record this income on even the simplest of balance sheets. The enquiry also found that the position of charity treasurer was not filled and that all forms of financial control were vested solely in a single charity trustee.

The Commission provided self-regulatory guidance to the charity in three areas:

- (1) That charity income and expenditure should be documented;
- (2) That an independent charity treasurer should be appointed as a matter of urgency;
- (3) That more than one trustee should oversee the work of the charity.

The trustee was keen to take on the self-regulatory advice of the Charity Commission and admitted that the administration of the charity had become difficult as a sole trustee. The Commission will look again at the activities of the charity once it becomes compulsory for the charity to submit annual returns and accounts or if it becomes apparent that difficulties remain.

Lessons for other charities

It is the fundamental duty of all charity trustees to protect the property of their charity and to secure its application for the objects of the charity.

The Charity Commission for Northern Ireland does not yet require charities to submit annual returns or accounts. This will change in time when registration has commenced. It is vital, however, that charities understand their existing obligations under the law. This will also serve to help charities when the Commission's accounting requirements are introduced following charity registration.

In the interim there is best practice guidance on charity accounting issued by various organisations such as the Northern Ireland Council for Voluntary Action ([NICVA](http://www.nicva.org.uk)) (www.nicva.org.uk) and the Association of Chartered Certified Accountants (ACCA) (www2.accaglobal.com).

ACCA, in conjunction with the Charity Commission for England and Wales, has produced a useful podcast on charity accounting. [Access the podcast](#)

(http://www.charity-commission.gov.uk/charity_requirements_guidance/accounting_and_reporting/preparing_charity_accounts/acca.aspx)

- **Key theme 3: Lack of transparency**

As a guiding principle charities should be open, accountable and responsive to their users, beneficiaries, members, partners, funders and others with an interest in their work. Problems can arise when charities and their trustees do not provide any or enough information relating to their activities, purpose, governance or financial standing.

A recent Charity Commission survey highlighted that only 34% of people in Northern Ireland who give their time and money to charities know enough about how they are operatingⁱⁱⁱ. Lack of transparency has emerged as a common theme of the first 100 concerns received by the Commission.

Case Study

During 2011 the Charity Commission received a concern in relation to a named charity. Following an initial assessment the Commission opened a self-regulatory enquiry into the activities of the charity. The concern centred on a charity supporter who had raised funds for the charity but subsequently found themselves unable to get in contact with the charity.

The Commission's enquiry found that the charity was still operational but that their publically advertised contact details, including telephone number and email address, were incorrect. The supporter was therefore unable to contact the charity on the ways listed on their own website.

The enquiry found that an inability to contact the charity had served to undermine trust and confidence in the charity. The use of incorrect details on the website had created mistrust in the mind of the individual who had previously supported their charitable objectives. The enquiry also found that the charity had failed to provide correct contact details to HMRC, with whom it was registered for charitable tax status.

The solution was quite a simple one and the charity welcomed the Commission's independent intervention and the opportunity to rectify the situation. The Commission provided guidance to the charity stating that they should:

- Update their contact details on their website immediately;
- Provide up to date contact information to HMRC immediately.

The Commission can check at any time to ensure that the charity lists correct and up-to-date information on its website.

Lessons for other charities

Charities rely on the support of the public in a number of ways. This includes financial support through donations and the gift of time and effort through volunteering. Accordingly a charity should be open and transparent to their supporters and indeed anyone that they come into contact with through their course of business.

Lack of financial transparency has emerged as a common issue amongst the first 100 concerns received by the Charity Commission. The Association of Chief Executives of Voluntary Organisations (ACEVO) is one organisation that has published a useful [Transparency Manifesto](http://www.acevo.org.uk/document.doc?id=968) (www.acevo.org.uk/document.doc?id=968) which details how charities can become more transparent in their dealings, particularly in relation to financial matters.

- **Key theme 4: The damage of disputes**

Where disputes arise within charities, the trustees should actively work to resolve them internally. The use of external mediators can also help trustees put the charity on a proper footing. Trustees should ensure that they carefully follow the provisions of the charity's governing document, particularly provisions concerning trustee appointments. Without these considerations, otherwise unnecessary disputes can arise which often damage the reputation of the charity.

Case study

During 2011 the Charity Commission received a concern in relation to a named charity. The concern centred on a disagreement over the election of officers to the charity board of trustees.

Enquiries at the initial assessment stage indicated that the problem centred on personal difficulties between members of the board of trustees. The assets, reputation or charity beneficiaries were not at risk and therefore intervention from the Charity Commission was not a necessary and proportionate response.

The Commission therefore did not intervene but recommended that the charity should seek some form of resolution, possibly through mediation.

Lessons for other charities

When disputes arise trustees should do all they can to resolve the issue through internal measures or the use of external mediators. Otherwise, the charity's assets, beneficiaries and reputation may be put at risk.

The Charity Commission will not intervene in internal disputes where the issue is personal or personality driven. Intervening in these matters is not an effective use of the Commission's resources and will not serve to increase public trust and confidence in charities.

The [Charity Commission's website](http://www.charitycommission.gov.uk) provides information on when we do and don't investigate concerns about the activities of a charity.

(www.charitycommissionni.org.uk/About_us/Complaining/when_we_do_not_get_involved.aspx)

Mediation is an effective way of resolving disputes without going to court. The mediator, as an independent third party, helps both sides in the dispute find an acceptable agreement.

Organisations such as [Mediation Northern Ireland](http://www.mediationnorthernireland.org/cms/) (www.mediationnorthernireland.org/cms/) can provide more information on mediation services.

5. The future of the Charity Commission's regulation

There is no doubt that in the future, the Charity Commission for Northern Ireland will conduct regulatory and statutory investigations using the most stringent of our powers. Indeed some of the live enquiries under assessment at present may well result in statutory or regulatory investigations.

The Commission will use its website to provide regular updates on all of our work including investigations. The closing of statutory and regulatory investigations will often result in the publication of case reports, providing a synopsis of our enquiries, including outcomes and lessons to be learned.

The first 100 concerns demonstrate that as a new regulator the Commission will always seek to work alongside charities to resolve issues and prevent future problems cropping up. This approach ties in with the engagement work undertaken by the Commission. This continuing engagement with charities across the spectrum in Northern Ireland allows the Commission to discuss important issues with charities and share relevant information.

A dynamic and well governed charities sector in which the public can have confidence is critical for all charities, particularly in difficult economic conditions. This is why the regulatory work of the Commission remains a vital element of our overall work.

The forthcoming registration of charities will undoubtedly have a positive impact on the regulatory role of the Charity Commission. Future accounting requirements and the public register of charities will provide easy access to information relating to a charity's purpose and its financial standing.

For now, the Commission remains active in many other statutory functions, including through investigations. The lessons learned from our first 100 concerns received are intended to provide benefits to the charity sector which can in turn only benefit Northern Ireland society as a whole.

For more information on all of our work please see the Charity Commission website

www.charitycommissionni.org.uk or you can contact us on:

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ⁱ Northern Ireland Omnibus Survey 2011: The Charity Commission for Northern Ireland

http://www.charitycommissionni.org.uk/Library/pdf_documents/20111201OmnibusResearchReport.pdf

ⁱⁱ Source Charities Back on track: Themes and Lessons from the Charity Commission's investigations and regulatory casework

ⁱⁱⁱ Northern Ireland Omnibus Survey 2011: The Charity Commission for Northern Ireland

http://www.charitycommissionni.org.uk/Library/pdf_documents/20111201OmnibusResearchReport.pdf