Concerns received about charity fundraising

A thematic report from the Charity Commission for Northern Ireland

September 2012

Contents

The Charity Commission for Northern Ireland (CCNI) is the new regulator of charities in Northern Ireland, a non-departmental public body sponsored by the Department for Social Development.

Our aims

- **we aim to develop a regulatory framework in which the public have confidence and in which charities can grow and flourish, clear in the knowledge of their rights and responsibilities;**

And

- **manage the establishment of the organisation to a statutory non-departmental public body following the full implementation of the Charities Act (Northern Ireland) 2008.**

1. Introduction

This report is the second of a series of reports looking at common themes behind concerns about charities received by the Charity Commission for Northern Ireland. It identifies charity fundraising, in all its forms, as a theme behind many of the concerns we receive.

Charities touch the everyday lives of many people and the societal benefits of charities cannot be overestimated. Charitable donations empower the good work of charities and generating income is a critical component of the work of any charity.

The Northern Ireland Council for Voluntary Action's (NICVA) 2012 State of the Sector VI Report documents high levels of charitable giving in Northern Ireland:

"the general public has remained extremely generous to the sector in their financial contribution, with the average donation rising to £16.75 from £14.22 reported in State of the Sector V, despite these being tough economic times".

Charity fundraising can be highly visible and thus an important point of contact between charities and members of the public. Public trust and confidence in charities can be damaged by poor fundraising standards. We are tasked therefore, with increasing standards by ensuring that charities comply with the law, thereby increasing public trust and confidence in charities.

Trustees play a vital role in this and they have ultimate responsibility for directing a charity. Trustees are tasked with ensuring that it is solvent, properly run and delivering the charitable outcomes for which it has been set up. This means complying with charity law, acting in the best interests of the charity, complying with the legal principles of duty of care, duty of prudence and maintaining control of charitable funds.

The public, alongside the Commission, can ensure that charity fundraisers fulfil their responsibilities. This report, particularly the case study examples, illustrates that the vigilance of the public plays a key role in regulating charities and securing public trust.

Charity fundraisers must comply with the law as a minimum standard but they should also meet the reasonable expectations of charity supporters. The public shouldn't be afraid to question a charity collector to ask where donations are going. Genuine charities will welcome this opportunity to engage with charity supporters.

We have produced this report as a resource for charity trustees, volunteers and supporters assisting charities in avoiding common fundraising pitfalls and increasing public trust and confidence in charities by promoting good standards alongside good intention.

2. 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 us 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. The list can be viewed at:

www.charitycommissionni.org.uk

In the nineteen months since February 2011, we have received over 150 concerns about charities with the majority coming from members of the public.

These concerns have covered a cross section of issues and have been received in respect of charities carrying out a range of charitable purposes including working with children and young people, advancing animal welfare, advancing religion and promoting health and community development.

The first report specifically relating to Charity Commission investigations was published in January 2012, following receipt of the 100th concern about a charity. The report identified four common themes behind many of the concerns received by the Commission at that point as:

- poor governance in charities;
- poor financial control;
- lack of transparency;
- the damage of disputes.

We continue to receive a range of concerns about charities. Recent inquiries have brought us into more complex ground often involving multiple charity governance failures.

Statistics compiled since February 2011 demonstrate the investigatory function of the Commission at work:

- 154 concerns received about charities between January 2011 and August 2012;
- 119 progressed to conclusion with 35 remaining open;
- 135 received from members of the public, 19 internally generated or from another statutory agency.

Figure 1: Origin of concerns about charities received since February 2011

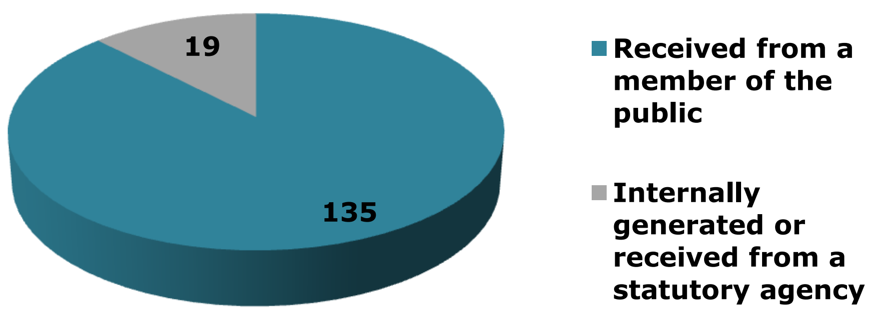
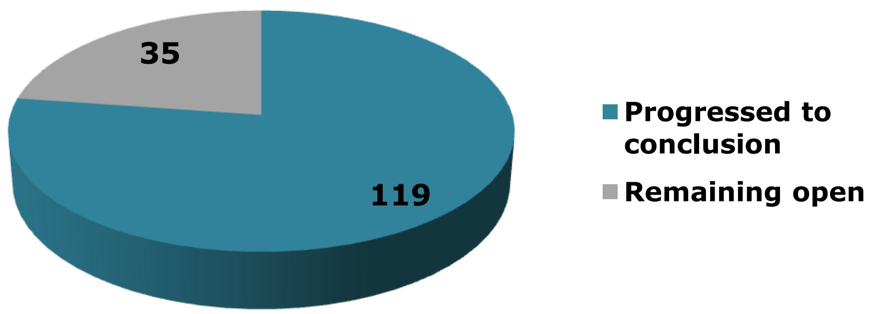


Figure 2: Status of Charity Commission inquiries since February 2011



3. Our approach to concerns about charities

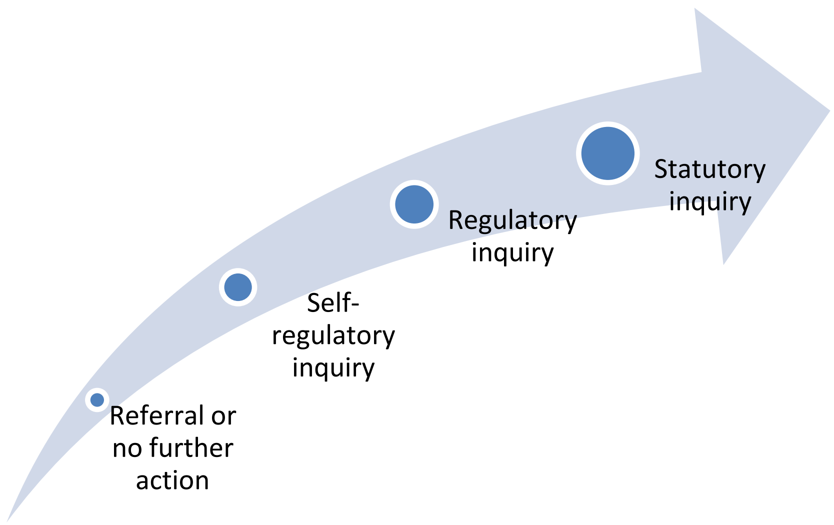
The Charity Commission carries out an initial assessment of every concern we receive about a charity. This allows us to determine the best way to rectify the situation based on the seriousness of the concern and the risk involved.

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 with serious risk of significant harm to or abuse of the charity, its assets, beneficiaries or reputation 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 3: The Charity Commission's regulatory approach following initial assessment.



a. 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 matters to Trading Standards and, on separate occasions, the Police Service of Northern Ireland (PSNI) and Her Majesty's Revenue and Customs (HMRC).

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

b. Self-regulatory inquiries

A self-regulatory inquiry will typically result in the Commission working with the charity to resolve the concern. This will often involve the Commission offering best practice guidance to the charity, for example, by providing guidance and assistance on fundraising best practice or governance issues.

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

c. Regulatory inquiries

A regulatory inquiry can result in a legal order 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.

d. Statutory inquiries

A statutory inquiry sees the Commission use the severest of its powers under the Charities Act (NI) 2008. The Commission will undertake a statutory inquiry if there is serious and substantial risk to the assets or beneficiaries of a charity. Statutory inquiries 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.

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

4. Common themes behind recent concerns and inquiries

Key theme 1: Street and public collections

Street and public collections have become a feature of town and city centres across Northern Ireland. Many charities conduct street and public collections to raise funds and increase the profile of their cause or organisation. These collections are a perfectly legal means by which charities can generate funds.

However, it should be noted that not all collections are for the benefit of charities or for charitable purposes. Other organisations, sports teams, for example, can collect in the street and this situation can create confusion and ambiguity for donors.

Case study 1: Street and public collections

The Charity Commission received a concern from a member of the public about a "charity collector" who had been conducting a local street collection. The individual was concerned that the collection was not a charity collection and thought that the individual's motives could be questionable.

Having been contacted by a member of the public, we worked alongside the PSNI to establish that the individual had not been granted a collection permit and that they had not in fact been collecting on behalf of a charity.

The PSNI, at that point, took the matter on as a potential criminal investigation. This allowed us to conclude our inquiry.

Lessons for other charities

Charities should ensure that street or public collections comply with relatively simple legal requirements. Permits should always be obtained from PSNI before a street or public collection is conducted.

Street collections in Northern Ireland must comply with the Police, Factories, & c. (Miscellaneous Provision) Act 1916 and associated regulations, irrespective of whether they are charitable or not. These regulations, as well as collection best practice, state that if a charity intends to conduct a street collection they should:

- Approach local PSNI for permission to hold the collection. The minimum requirement for notice is the first day of the month preceding the month in which the collection is to be held, but extended notice is advisable;
- On the day of the collection give the public as much information about the charity as possible. Collection boxes/tins should be labelled, sealed and numbered and it should be clear who the beneficiary is, the date of the collection and contact details for the benefitting organisation;
- All collectors should be provided with photographic identification;

- Collectors should not cause annoyance, obstruction, inconvenience or annoyance to any person during the street collection;
- Collection buckets or boxes should be sealed with an opening for donations.

Further information and guidance on best practice in charity fundraising is available from the Institute of Fundraising at:

www.institute-of-fundraising.org.uk/home/

Key theme 2: Trading subsidiaries

A "trading subsidiary" is a company, owned and controlled by one or more charities and set up to trade with the aim of generating income for the charity. Trading subsidiaries can take on many forms such as coffee shops, second hand shops and professional services such as counselling services.

It is worth remembering that trading subsidiaries do not directly advance the charitable purpose(s) of the charity and the interests of a trading subsidiary, its directors, creditors or employees, must all be secondary to those of the charity.

The relationship between trading subsidiaries and charities can sometimes be unclear to members of the public. Indeed many of the concerns received by the Commission are caused by a lack of public awareness in the operation of a trading subsidiary and how it relates to the parent charity.

Case study 2: Trading subsidiaries

The Charity Commission received a concern from a member of the public about a "charity shop" which was located near to a charity's premises.

Our subsequent inquiry established that the charity name was included as part of the shop signage as was its HMRC charitable tax revenue number. The Commission's subsequent inquiry found that the shop was not properly set up as a trading subsidiary and it therefore was giving a false impression of a connection to the charity.

The Commission advised the shop to stop using the charity's details in this way and to remove any reference to the charity on its signage and website. We will ensure that this has been rectified and that the issue does not remain.

Lessons for other charities

The Commission receives many general enquiries from charities in relation to trading subsidiaries. We are planning to publish detailed guidance on trading subsidiaries in response. This will not happen immediately and in the shorter term, guidance produced by the Charity Commission for England and Wales is a useful interim resource.

The trustees of the parent charity must be able to justify financial support for a trading subsidiary as an appropriate investment of the charity's resources. In all cases the interests of the charity must be paramount. Any investment should be consistent with the charity's overall investment policy.

More generally, however, it is critical that the commercial activities of trading subsidiaries do not pose a risk to the assets or reputation of the charity. There should be a clear distinction between the parent charity and the trading subsidiary and there should be transparency around how much of the profit generated by the trading subsidiary goes to the parent charity.

Key theme 3: Financial transparency

Charities should be open and transparent about their financial dealings. This includes being open and accountable to funders and donors. Problems can arise and trust in charities can be eroded when charities and trustees fail to provide adequate financial information to supporters and fundraisers.

Case study 3: Financial transparency

The Commission received a concern about the financial transparency of a named charity. The concern was received from an individual who had fundraised on behalf of the charity.

The individual had been aware of the significant amounts of money that they had collected on behalf of the charity and was surprised to hear that the charity was apparently in some financial difficulty.

The individual asked for access to the charity accounts, including money raised as part of fundraising efforts. This request was refused by the charity.

The Commission provided self-regulatory guidance to the charity on keeping records of income and expenditure and that they should make these available when requested. We also advised, more generally that the charity should take an open and transparent approach to their finances.

Lessons for other charities

Charities rely on the support of the public as fundraisers and donors. Accordingly, they should be open and transparent regarding their income and expenditure. It is also worth remembering that the Charities Act (NI) 2008 will require charities to provide financial accounts to members of the public when requested to do so. However, this requirement has not been commenced at present.

The Association of Chief Executive of Voluntary Organisations has produced a Transparency Manifesto which details how charities can become more transparent in their dealings, particularly in relation to financial matters.

The Developing Good Governance Group, furthermore, has produced a Code of Good Governance as a general guide for charities. The Code includes guidance on how charity boards and committees can be open with and responsible to their stakeholders, including fundraisers.

At a minimum, charities should be preparing annual accounts, presenting these to members and supporters at an Annual General Meeting (AGM) and making them available on request. If the charity has a website, it would be good practice to publish their accounts here, along with an annual report, detailing their activities across the past year.

Following simple procedures when handling money, including cash donations, can also help charities to avoid disputes. This includes:

- Sealing and securing collection boxes during a collection;
- Ensuring that donated cash is collected and recorded by two unrelated individuals, wherever possible;
- Drafting and implementing policies on issuing receipts when fundraising.

The Northern Ireland Institute of Fundraising have published useful guides on fundraising and cash handling. These can be accessed through their website at http://www.institute-of-fundraising.org.uk/groups/national-northern-ireland/

Key theme 4: Fundraising agents and professional fundraisers

Professional fundraisers and agents provide fundraising services to charities. For example, a business may sell a street fundraising appeal service, providing street fundraisers and donation processing to a charity.

Professional fundraisers may provide the infrastructure to launch and conduct fundraising appeals if the charity does not have the capacity to do so. It may make financial sense therefore for the charity and its trustees to engage the services of a professional fundraiser.

Outsourcing fundraising also allows the charity to focus on delivering its charitable purpose(s). It may be a good business decision for a charity to use professional fundraisers.

Case study 4: Fundraising agents and professional fundraisers

The Charity Commission received a concern from a member of the public that a clothing collection bin was positioned in the middle of a footpath in Belfast and was blocking pedestrian access. The bin had a charity's name and HMRC number listed on it.

We made initial investigations and established that the concern was evidence based. When we contacted the charity to request that they move the bin, they weren't aware that it had been placed in that location. The charity was using professional fundraisers who managed their clothing collection activities.

The Commission requested that the charity, nevertheless, arrange for the bin to be moved, irrespective of who had positioned it on the footpath. Our follow up enquiries confirmed that this had been done.

Lessons for other charities

It is perfectly legitimate for a charity to use a professional fundraiser or agent. However it should be considered that a degree of control is relinquished when a charity uses such a service. The reputation of the charity should be at the forefront of the trustees' minds and they should be sure that they are using a reputable service.

Due diligence is essential and charity trustees should have an appropriate contractual arrangement in place between themselves and the professional fundraiser. Bad donor experiences can linger on long after the charity fundraising drive or marketing campaign has come to its conclusion.

The Northern Ireland Council for Voluntary and Community Action (NICVA) provides a useful fundraising advice service which can assist on the issue of professional fundraisers. This can accessed through their website at www.nicva.org

5. Conclusion

The Charity Commission continues to receive concerns about charities on a regular basis. The concerns cover a broad range of areas but where themes and trends emerge, we will try to provide information to charities and the public. Experience tells us that good charity regulation includes tackling issues upstream before they become major problems at a later stage.

This approach involves three tiers. Firstly, we will work proactively with the public and charities to ensure that our role in relation to charity regulation is understood. Secondly, we investigate apparent charity misconduct and maladministration when concerns about charities are expressed to us. And finally, we communicate the lessons learned during our investigations, as is the case with this report, to help charities avoid the common pitfalls.

This report is an example of our transparent approach. Fundraising is a major issue of importance to both charities and members of the public. Public trust and confidence in charities can be won or lost on how an organisation interacts with the public through its fundraising efforts.

We hope and expect that this guidance, therefore, will be of use to charity trustees, volunteers, fundraisers and members of the public. For more information on any aspect of the work of the Charity Commission for Northern Ireland please see our website:

www.charitycommissionni.org.uk

Or, alternatively, you can contact us on:

Charity Commission for Northern Ireland
257 Lough Road
Lurgan
Craigavon
BT66 6NQ
Tel: 028 3832 0220
Fax: 028 3834 5943
TextPhone: 028 3834 7639

Follow us on twitter @CharityCommNI