

Key lessons in charity governance

A thematic report from the Charity
Commission for Northern Ireland

July 2013



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The Charity Commission for Northern Ireland is the 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 has 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

There is no doubt that charities across Northern Ireland are doing great work, from helping to build and regenerate local communities, supporting the vulnerable and saving lives through to advancing religion, health, sport, culture, heritage and science – to name but a few. Charities are touching the lives of many thousands of people, both directly and indirectly, and our society is a better one for their involvement.

Of course, none of this good work could be done without charity trustees. Sometimes known as trustees, managing trustees, governors, directors or committee members or some other title, these are the people who hold legal responsibility for the charity; for its property, finances and direction as well as for its staff and volunteers.

As a trustee you are at the heart of a charity, helping to plan its strategic future, to protect its reputation and resources and to encourage staff, volunteers and beneficiaries to achieve their best. Not only are you supporting, encouraging and helping to build and develop your charity but, in many cases, you are also playing a role in driving social change locally, regionally and, perhaps, nationally.

That such a role comes with obligations is a given. Trustees are tasked with ensuring the charity is solvent, properly run and delivering the charitable purposes for which it has been set up. This means complying with charity law, acting in the charity's best interests and maintaining control of charitable funds and resources. As a trustee, you are accountable to the charity's beneficiaries, to the Charity Commission and to the public in general, ensuring they retain trust and confidence in you as a trustee, in the charity itself and in the wider charitable sector.

As a trustee you are also likely quickly to become knowledgeable about your charity's governance, which includes decisions and policies around your charity's purposes and overall administration. Good governance is essential for the success of any charity and, in today's tough economic climate, it is more important than ever that trustees take the time to ensure they are operating the right systems and processes.

Being a charity trustee can be hard work but key to the success of the role, and indeed the effectiveness of the charity itself, is good governance. The Commission aims to support good governance by providing guidance and information. As an example of our open and transparent ethos, this report is aimed as becoming a guide for trustees, taking the lessons learned from some of our investigative work to help trustees to make the right decisions around common areas of concern. We hope it will be a beneficial reference for trustees and for the many others, from staff to volunteers to donors, who give their time, money and commitment to charities.

Frances McCandless

**Chief Executive
Charity Commission for Northern Ireland**



2. Background

About the Charity Commission for Northern Ireland

The Charity Commission for Northern Ireland is the regulator of charities in Northern Ireland. Our vision is for a dynamic and well governed charitable sector in which the public has trust and confidence, underpinned by the Commission's effective delivery of its regulatory and advisory role.

One of the key steps in the regulation process – and a first for Northern Ireland – will be the registration of all charities in Northern Ireland, creating a comprehensive and definitive list of charities. This list will be publicly available on the Commission website, www.charitycommissionni.org.uk, providing the public with an online information resource detailing Northern Ireland charities of all sizes and forms.

As regulator, the Commission also helps ensure Northern Ireland's charities are well run and working effectively within the correct legal, accounting and governance framework. One element of this work is our statutory function to identify and investigate alleged misconduct and mismanagement in charities, following up on concerns we receive about charities and taking the necessary action to resolve any issues.

Charity registration and charitable status

All charities in Northern Ireland are required, under the Charities Act (Northern Ireland) 2008, to register with the Commission, including, for example, charities promoting religion or sport, preventing or relieving poverty or advancing animal welfare.

Later this year the Commission will begin registration of all charities. This will allow the Commission to definitively designate organisations as charitable in law, a new development for Northern Ireland. Once registered, organisations will be given a unique Northern Ireland Charity Registration Number (a NIC number) and will be required to complete an annual return, including their annual accounts and reports, and submit these documents to the Commission for inspection.

It is, however, important to note that registration will not happen overnight. It is estimated that there are between 7,000 and 12,000 charities in Northern Ireland so this will be a managed process, ultimately providing Northern Ireland with its first, official register of charities.

Current regulatory and advisory powers

In February 2011, the Commission gained powers to investigate charities within Northern Ireland where a risk exists to its assets or beneficiaries. This allowed us to identify and investigate apparent charity misconduct and mismanagement for the first time.

At present, those powers extend only to organisations that had been granted charitable tax status by Her Majesty's Revenue & Customs (HMRC). These organisations number over 6,500 and the list, called the "deemed list" and activated on 18 February 2011, is published on the Commission website www.charitycommissionni.org.uk. The number of charities which the Commission can investigate will increase once registration begins later this year, ensuring that ultimately the Commission will have the authority to investigate complaints or allegations of mismanagement within any charity operating in Northern Ireland.

While the Commission has powers to intervene when things do go wrong, the majority of charities in Northern Ireland are well run, successful and operating as they should be. One of the Commission's main objectives will remain the promotion of public trust and confidence in charities and, where possible, we will work closely with charities to ensure they are accountable and meeting their legal obligations.

To help meet that commitment, and in addition to its compliance and investigations work with charities, the Commission's other important regulatory powers include:

- providing advice and guidance to charity trustees when an application for advice is made
- requiring a charity to change its name if it is offensive or misleading
- giving specific directions to protect a charity, such as suspending or removing a trustee
- authorising special payments, for example facilitating the payment of creditors when a charity is wound up.

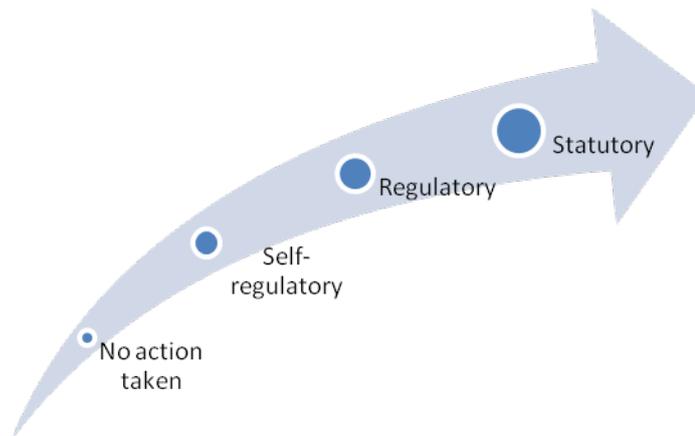
3. Our approach to concerns

As the figures in this report indicate, the Commission receives a steady caseload of concerns from a range of sources throughout the year, with the public proving to be our largest source of concerns.

In line with our agreed processes, we carry out an initial assessment of each concern we receive about a charity in Northern Ireland. 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.

We have found that many problems or issues within charities can be resolved by the trustees themselves, sometimes with the assistance of a mediation service or advice on the best course of action to take. However, serious problems do occur within charities and serious risk of significant harm to, or abuse of, the charity, its assets or beneficiaries can be apparent. When this is the case, the Commission will intervene using its powers under the Charities Act (Northern Ireland) 2008.

The Commission is committed, in all its actions, to meeting its key values of proportionality, fairness, transparency, consistency and independence. This means that our actions are measured to fit the seriousness and scale of what has occurred as well as to take account of the potential for further risk to the charity and the capacity for the charity to comply with any requirements for change. This approach gives rise to four possible outcomes when a concern is received by the Commission:



1. No action taken

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. If there is no evidence to support a 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 the charity, its activities, its users and beneficiaries.

The Charity Commission can only use the powers detailed in the Charities Act (NI) 2008. While some concerns received do not breach this Act, it may be apparent that there has been a breach of another piece of legislation. To ensure the matter is dealt with, the

Commission can refer the concern to another statutory agency. For example, often people think that bogus charity fundraising or clothes collections are matters for the Charity Commission to deal with. The Commission does have strong concerns around both areas and is exploring ways in which we can support other agencies, such as the Police Service of Northern Ireland (PSNI), in responding to the issue. However, our jurisdiction covers charities only and, as the people or organisations who are undertaking these actions are not charities, they don't fall under our remit as regulator. That is why, when we receive a concern of this nature, we may refer the matter to the PSNI or suggest the person who made the concern contact another agency, such as Consumerline, which deals directly with these issues.

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 enquiry

Our experience has shown that the majority of concerns received about Northern Ireland's charities can be resolved through self-regulation in the first instance. A self-regulatory enquiry will usually result in the Commission working with the charity to resolve the concern raised. In practice this often involves the Commission offering best practice guidance to the charity, for example by providing governance guidance on records management or book keeping.

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

3. Regulatory enquiry

A regulatory enquiry will often result in a legal order or direction which makes it compulsory for a charity to do something, or to stop doing something. The Commission will monitor the charity following a regulatory case to make sure that the direction or order is complied with.

4. Statutory inquiry

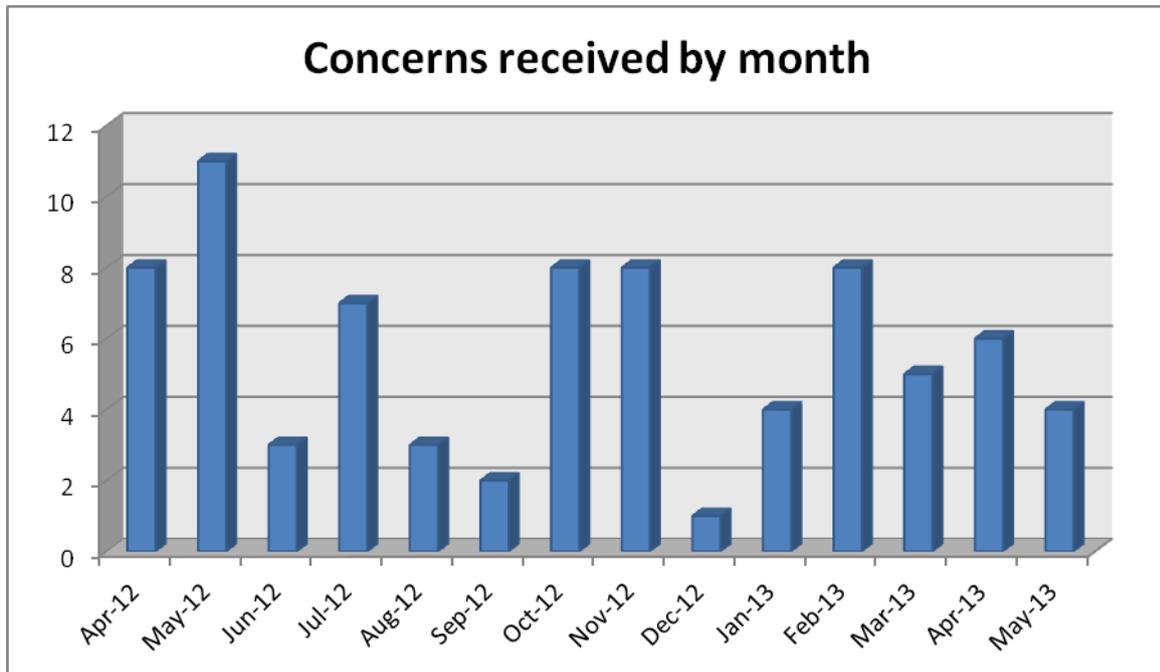
A statutory inquiry sees the Commission use its most stringent powers under the Charities Act (NI) 2008. The Commission will undertake a statutory inquiry if there is serious and substantial risk to the assets or beneficiaries of a charity. Statutory inquiries can, for example, result in the Commission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

Number of concerns received

The Commission has had statutory powers to investigate charities within Northern Ireland for just over two years, since 18 February 2011. From that date, up to the end of May 2013, the Commission has received 195 concerns about charities from a wide range of sources. More information on concerns we have received is available in our thematic reports, *One hundred lessons to be learned* (January 2012) and *Concerns received about charity fundraising* (September 2012)

As the chart below highlights, we are continuing to receive a regular caseload of new concerns each month. Between 1 April 2012 and 31 May 2013, 78 concerns were submitted to the Commission's inquiries team. The majority (68) of those concerns have now been progressed to conclusion.

As always, the concerns received cover a cross section of issues, from fundraising to poor governance, and relate to charities carrying out a range of charitable purposes.



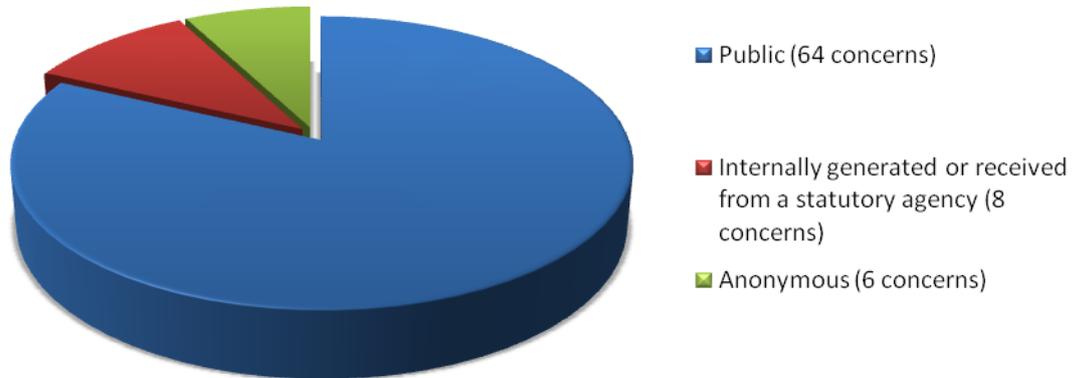
Origins of concerns received

As the chart below indicates, the Commission receives concerns from a wide range of sources, including members of the public, charity trustees and government agencies such as Her Majesty's Revenue and Customs (HMRC).

The Commission is developing a number of memoranda of understanding (MOUs) with a range of other government agencies. These MOUs are aimed at simplifying the information sharing process if, for example, the PSNI receive a complaint from a member of the public which the Charity Commission can clearly deal with.

In addition, the Commission's Board members, Chief Executive and staff are continuing to engage with charities, elected representatives and members of the public to increase understanding and awareness of the Commission's role.

Origin of concerns received, 1 April 2012 to 31 May 2013



How do I submit a concern to the Charity Commission for Northern Ireland?

We aim to make the process for submitting a concern about a charity as straightforward as possible. Our website www.charitycommisisonni.org.uk includes details of the types of concerns the Commission will investigate and how members of the public can complete and submit a Concerns Form. This form can be downloaded from our website and returned via email to concernsaboutcharities@charitycommissionni.org.uk or printed and posted back to us at:

The Charity Commission for Northern Ireland
257 Lough Road
Lurgan
Craigavon
Northern Ireland
BT66 6NQ

4. Common themes behind recent concerns

The vast majority of the concerns opened are self regulatory cases, with the Commission providing the charity with advice or guidance on the best way to resolve an issue or better manage their operations. On the other end of the spectrum, the Commission is continuing to conduct a number of more serious investigations, which relate to allegations of mismanagement within local charities.

The information and case studies presented below are aimed at providing charities and their trustees with advice and guidance on issues experienced by others within the charitable sector, along with key lessons on how they can improve and develop their own management processes and policies.

- **Key theme 1: Transparency**
- **Key theme 2: Conflicts of interest**
- **Key theme 3: Defining membership**
- **Key theme 4: Closing a charity**

Key theme 1: Transparency

Charities across Northern Ireland are playing a vital role, bringing numerous benefits and advantages to a wide section of the population. It is equally important that, in carrying out their duties, charity trustees take steps to ensure the public has easy access to accurate and relevant information about their organisation. This includes information on the charity's financial position and performance, organisational structure, policies, priorities, activities and achievements.

Providing information through annual reports, public meetings and publication of accounts not only helps build public trust and confidence in charities but also ensures charities are accountable for their actions.

Case study

The Commission opened an initial assessment into the activities of a charity after receiving a concern that the charity in question was operating poor financial practices.

In that assessment, the Commission looked at a number of governance issues and found that there was poor segregation of duties, with a single charity trustee overseeing the majority of work to control and manage the charity. There was also a lack of transparency within the organisation with inadequate communication to members around decisions, minutes of meetings and accounts. This had created concerns that the charity was not operating proper financial practices and had undermined trust and confidence in the charity.

The Commission subsequently provided self-regulatory guidance on the following areas.

- The charity should hold Annual General Meetings (AGMs) with minutes documented and easily accessible to the public, providing an accurate record of what took place.
- To increase transparency, charity income and expenditure should be clearly documented with regular disclosure of accounts to trustees.

- More than one trustee should oversee the work of the charity, with each trustee having a clear understanding of their individual and collective responsibilities and duties.

The charity agreed to take on the advice of the Commission and work to increase transparency around governance issues. This included ensuring charity stakeholders, such as trustees, directors, beneficiaries and the public, were kept involved and informed where possible.

The Commission will continue to monitor the situation to ensure the organisation's system of internal controls, performance reporting, policies and procedures are fit for purpose.

Lessons for other charities

It is the responsibility of all charities to identify those with a legitimate interest in their work (stakeholders) and ensure there is regular and effective communication with them about the organisation. This will help the charity meet its obligations to be open, responsive and accountable. Similarly, trustees should work to encourage and enable the engagement of key stakeholders in the organisation's planning and decision-making, providing an opportunity for two-way communications with those directly affected by the charity's work.

The production of annual reports and accounts is one of the main ways a charity can provide relevant and reliable information in a form which is free from bias, comparable and focused on stakeholders' legitimate needs. Other examples of communication resources, providing stakeholders with a way of keeping updated on the charity's work, include AGMs, website updates, media and other public work.

A high level of transparency and good communication with stakeholders is an essential part of good governance, providing a number of benefits to both the charity and its trustees, including:

- demonstrating that resources, including donations, are being used wisely and for the stated purpose
- showing that the charity is organised and managed properly
- raising awareness of the good work of the charity, its trustees, staff and volunteers.

Key theme 2: Conflicts of interest

Trustees are under a legal obligation to act in the best interests of the charity with a duty to the charity which must take precedence over any outside interests. Conflicts of interest occur when the personal interests of trustees seem to conflict with those of the charity. This personal interest can be direct or indirect and can include interests of parties connected to the trustee, for example family members, business partners or corporate bodies which the person is connected to.

Trustees should be aware of conflicts of interests, what they could mean for the charity and how they should be managed to ensure the charity is protected. All charities, no matter what size or function, should have a conflict of interest policy to include a code of conduct for trustees, a register of interests and a written procedure for identifying and managing conflicts.

Case study

The Commission received a concern in relation to a potential conflict of interest within a charity. The concern centred on a trustee whose family members had also become involved in the work of the charity.

An assessment by the Commission found that the charity itself was running well, however, when the additional family members had become involved in the management of the charity, the concern was raised. There was a perception that the involvement of other family members would be beneficial for the trustee in question, increasing their influence over the charity. This had created mistrust in the public perception of the charity.

The Commission subsequently provided self-regulatory guidance to the charity, including information on how to identify situations in which trustees may be benefitting inappropriately from charities and how to record and manage conflicts of interest.

To increase its transparency and accountability, the charity agreed to record the decision making process as well as to hold AGMs and follow the process outlined in the charity's governing document on how directors should be elected. The Commission will continue to monitor the situation and will revisit the matter in the short term if it becomes apparent that problems within the charity remain unresolved or are increasing.

Lessons for other charities

Charities hold a strong place in the public's heart and are often very personal to the people involved in them, from those benefitting from the work or aims of the charity to the trustees who have ultimate responsibility for managing the charity. While in many ways a personal attachment and a desire to work for the benefit of your community can help to encourage and inspire, it can also mean it is easy to bring personal interests or ambitions into the work of the charity.

In all cases, conflicts of interest should be quickly identified and managed in such a way as to promote accountability and transparency in the charity and avoid any adverse effect. To ensure this, all possible or perceived conflicts need to be considered as well as any actual conflicts. Once it has been identified, a conflict of interest should be declared at the earliest opportunity and action taken to protect the charity's interests. This, for example, could include the trustee in question absenting themselves from all or part of the meeting when the conflicting activity is being discussed, with this action accurately recorded in the meeting minutes. The conflict may be of such a low level that it can be tolerated or, if conflicts are serious or frequent, the trustee may need to cease the conflicting activity or resign from their post.

The entire process followed should be clearly minuted and a register of interests should be held where trustees can record their interests, ensuring the charity remains as accountable and transparent as possible.

Key theme 3: Defining membership

Many charities across Northern Ireland operate a membership system of some kind, and membership of a charity can bring a wide range of benefits both for members and the charity as a whole. However, given the large numbers of people which can be involved in membership charities, charity governance can be complex to oversee and, as with all

charities, difficulties can arise if proper attention is not paid to governance arrangements.

Potential difficulties which may arise within a membership charity include the following.

- Trustees are not clear about their individual role within the charity, and their legal responsibilities towards members.
- Members are not clear about the role and responsibilities they have within the charity (including voting members and non-voting members).
- The governance structure does not provide clear guidance on the charity's relationship with its members, for example how the charity communicates decisions or information to members.
- The trustee body restricts membership involvement in the charity, deliberately or inadvertently.
- The membership list, including membership names and contact details, is not kept updated.
- Membership and the trustee board lack diversity and are unrepresentative of charity beneficiaries.

Case study

The Commission received a concern relating to internal membership of a charity. The concern highlighted issues around governance, specifically that the charity's articles of association did not clearly define the membership criteria.

During an initial assessment, the Commission found that, under the charity's articles of association, everyone living within a wide, named geographical area was a de facto member of the charity. This meant it was extremely difficult to designate who exactly was a member, with added confusion over what voting rights members had and what their roles could be within the organisation.

With such a broad and undefined membership criteria and no provision made for residents who did not wish to be a member of the charity, it was proving difficult for the charity to proceed with its business.

The Commission advised that it was inappropriate for everyone within the named geographical area to be de facto members as this made management of the membership body an almost impossible task. The Commission recommended the charity consider restructuring its membership criteria. It is now the responsibility of the trustees to consider the organisational structure and the membership issue in line with the good practice recommendations made.

Lessons for other charities

For a membership charity to operate effectively, members should act in the best interests of the charity, using their activities and voting rights to further the work and aims of the charity. In turn, the charity can bring a number of benefits to members, including an opportunity to play an active role in their local community, helping to raise funds for a good cause and gaining valuable work experience within the charitable sector.

A charity's governing document should define who is entitled to be a member and the role they can play in the charity. However, it is important to remember that as the charity develops and time goes on, it can be necessary to revisit the membership structure to ensure it is still fit for purpose within today's world. A charity which restricts

members to one sex, for example, may wish to open its membership criteria to include both men and women to ensure it is offering equal opportunities. Similarly, it is important to ensure that a charity does not take the form of a private members' club, unduly restricting its membership to a select few individuals.

The trustee body and charity governance should also allow for proper management of the membership structure, with strong and clear policies and procedures in place. This might cover a number of factors, such as how members are kept updated on charity business, details on membership fees, including rates and if there are any additional benefits to members, and whether or not the Board is drawn solely from the membership body.

A charity that identifies a need to restructure its membership to ensure it remains effective and compliant may require the help of the Commission to consent to an amendment of their governing document.

Key theme 4: Closing a charity

There are a number of reasons a charity may decide it is time to close, such as a loss or reduction in funds, a lack of members or the fulfilment of all the objectives within the charity's governing document.

Case study

The Commission received a concern regarding a charity which had recently moved premises.

The charity in question had moved to a more rural location but had failed to receive planning permission for the necessary buildings they required to achieve their objectives. This had caused some concern amongst neighbouring properties, particularly as the charity was intending to use agricultural land for a different purpose than it was designated and had not received the proper permissions.

Following guidance from the local Council and the Commission, the charity decided the best option was to close. The Commission provided the charity with advice on the best way to close its operations, including ensuring that all charitable assets were disposed of in accordance with the governing document and all relevant stakeholders were informed of the closure.

Lessons for other charities

In a situation where a charity has decided to close, care should be taken to ensure that all legal obligations and responsibilities are met. As one of the first steps in the process, trustees are advised to read the charity's governing document to see if it contains a 'dissolution clause' ie special instructions for what you should do to close your charity. This might include how decisions on closing or dissolving an organisation should be made. For example is it a decision which can be made by the trustees alone or should it be opened up to membership for wider discussion?

The dissolution clause is also likely to specify how any charitable assets should be disposed of. A review of the charity's current financial situation and assets should be undertaken, including considering factors such as debts, both owed to and by the charity, as well as any permanent endowments, donations provided for a specific cause and membership fees. While closing a solvent organisation may be relatively straight

forward, it is advisable to seek professional advice in the case of insolvency, ensuring the charity trustees are following the right processes for dissolution and limiting any risk of personal liability. Normally debts and liabilities should be paid off as a priority, with the governing document perhaps stipulating that remaining assets should be transferred to another organisation with similar purposes. The Commission may have to become involved at this point in making a cy-près scheme in order to redistribute the assets if the dissolution clause does not provide not sufficiently clear direction.

Other factors which come into play might include ensuring you comply with employment legislation in relation to any employees who will be affected, as well as assisting beneficiaries in finding another organisation or service which could provide similar support.

In all cases, it will be necessary for the charity to let the Commission know they have closed and, if the charity is a company, the directors should also read Companies House guidance on dissolution and insolvency as well as notify Companies House of the decision.

5. Conclusion

This year is set to be a particularly memorable one for the Charity Commission for Northern Ireland. In January, Royal Assent was granted on the Bill to amend the Charities Act (Northern Ireland) 2008. This development allows for registration of charities in Northern Ireland to begin this year, heralding a new chapter for the Commission itself and for all charities across Northern Ireland.

In addition to preparation work for the beginning of registration, we continue to receive concerns on a regular basis. The concerns we receive cover a broad range of areas but where themes and trends emerge, we are committed to providing information to charities, and to the public in general. This approach enables us to keep the public informed of our ongoing work as charity regulator, as well as allow others to learn and develop from the experiences of our investigations work.

The majority of charities in Northern Ireland are run well and have a strong, trusted place within their community. However, when concerns of charity misconduct and maladministration are expressed to us, we will investigate that concern and, if required, work with the charity to set it back on the right track. On the rare occasion we are required to use more stringent powers under the Charities Act (NI) 2008, we will be strong in our resolution to take those steps and we will continue, as always, to adhere to our values of independence, accountability, proportionality, fairness, transparency and consistency.

This report is aimed at providing trustees with advice and guidance on key elements of good charity governance, providing case study based advice to ensure your charity is managed well and continues to hold the public's trust. We hope you will find it a valuable resource, to help and guide you in the management of your charity.

For more information on any aspect of the work of the Charity Commission for Northern Ireland please see our website:

www.charitycommissionni.org.uk