

Charity Commission

A Hampton Implementation Review Report

March 2010

Charity Commission

This review is one of a series of reviews of regulatory bodies focused on the assessment of regulatory performance against the Hampton principles and Macrory characteristics of effective inspection and enforcement. It was carried out in December 2009 and January 2010 by a Review Team drawn from the Better Regulation Executive, Companies House and the Local Better Regulation Office.

Further information about the reviews can be found at:

<http://bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/implementing-principles-of-better-regulation/reviewing-regulators>

EXECUTIVE SUMMARY AND CONCLUSIONS

<p>Key findings from the review:</p>	<p>The Charity Commission works closely with charities across the sector both in developing guidance and providing advice to help them comply. It is proportionate in the way it acts with charities, considering financial costs/benefits alongside the impacts on perceptions and public confidence.</p> <p>In collecting information from charities the Commission makes an impressive and innovative use of technology to minimise burdens when collecting data and communicating this information and compliance performance to the public to deliver its outcomes.</p> <p>The Commission's approach to enforcement and sanctions is proportionate and risk-based. It communicates its approach to enforcement and sanctions clearly and does not carry out inspections.</p> <p>The Commission has a well-developed performance framework covering outcomes across a range of statutory objectives.</p>
<p>Issues for follow-up identified during the review:</p>	<p>The Charity Commission should seek to ensure its future guidance always complies with the Code of Practice on guidance both in content and timing of delivery.</p> <p>In reviewing the Summary Information Return for large charities the Commission should consider whether this request is necessary and if so, the particular format and content that users, particularly the wider public, would find most useful.</p> <p>It is still early days in the implementation of changes to the public benefit test brought in by the Charities Act 2006. Looking to the future the Commission should continue to work to provide as much certainty as is possible within the legal framework to the sector on meeting this requirement.</p> <p>In developing its performance indicators in the future the Charity Commission may wish to consider how to measure its contribution to the effectiveness of the sector and whether charities find it easy to comply with charity law.</p>

INTRODUCTION

<p>Introductory background information about the regulator such as the rationale for establishing it:</p>	<p>Charities play an important role in civil society. They contribute to the arts, education and research as well as helping vulnerable groups of the socially excluded and providing public services. The charitable sector in England and Wales has an annual income estimated to be over £51 billion¹ (approximately equivalent to 3% of GDP).</p> <p>The Charity Commission is the independent regulator for charitable activity:</p> <ul style="list-style-type: none">• Ensuring legal compliance• Enhancing accountability• Encouraging effectiveness and impact• Promoting the public's trust and confidence <p>In particular it works to ensure:</p> <ul style="list-style-type: none">• charities benefiting from specific legislation are in fact bringing public benefit;• charities are run effectively and to necessary standards of probity and transparency about their activities and financial situation; and• donors, beneficiaries and all others involved in the charitable sector are protected from harm and can have confidence in the sector. <p>Appendix 2 sets out its statutory objectives.</p> <p>Some aspects of its role are similar to those held by Companies House for businesses. The Charity Commission also works across the sector with other regulators on a wide range of issues including the protection of vulnerable individuals, counter-terrorism and financial crime.</p>
<p>The legislation establishing the regulator:</p>	<p>The Charity Commission was established in 1853 with its current corporate structure brought in by the Charities Act 2006. It is an independent, non-ministerial department. Its day-to-day legal decisions may be appealed to the Charity Tribunal and the High Court and it is audited by the Treasury and Parliament regarding its</p>

¹ Charity Commission Facts and Figures at end December 2009 (<http://www.charity-commission.gov.uk/registeredcharities/factfigures.asp>)

	<p>efficiency and funding.</p> <p>The Charity Commission is a corporate body having a non-executive board responsible for the Commission's governance and a chief executive responsible for the Commission's management. The Minister for the Third Sector appoints the members of the non-executive board in line with rules on fair and open competition.</p>
<p>The regulator's statutory remit or objectives:</p>	<p>The Charities Act 2006 set out a number of statutory objectives for the Charity Commission, including:</p> <ul style="list-style-type: none"> • to increase public trust and confidence in charities; • to promote awareness and understanding of the operation of the "public benefit" requirement (required for charitable purposes); • to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities; • to promote the effective use of charitable resources; and • to enhance the accountability of charities to donors, beneficiaries and the general public. <p>(A charity's trustees are the members of the charity's governing board).</p> <p>These statutory objectives are accompanied by a number of statutory general functions of the Charity Commission:</p> <ul style="list-style-type: none"> • to determine whether institutions are or are not charities; • to encourage and facilitate the better administration of charities; • to identify and investigate misconduct or mismanagement; • to permit public charitable collections; • to obtain and disseminate information relating to any of the Commission's statutory functions or objectives, which is defined to include the maintenance of an accurate, up-to-date register; and • to give information and advice to Ministers of the Crown.
<p>The regulator's budget:</p>	<p>The Charity Commission had a budget of £32.3 million in 2008-09, is £30.2m for 2009-10 and is expected to fall to £29.5 million in 2010-2011².</p>
<p>Number of staff (including breakdown of policy and</p>	<p>The Charity Commission has offices in Liverpool, London, Newport and Taunton. According to its annual report for 2008-09, its average workforce in that year was 464, 44% of which were based in Liverpool, 29% in Taunton, 24% in London and 2% in Newport. It</p>

² Charity Commission Annual report 2008-09

frontline staff):

has reduced its staff numbers by approximately a fifth since 2004-05.

The latest breakdown of staff by type of activity is

- Regulatory Activity (services and information to charities and the public): 344 (76.8%)
- Activities in support of Regulation (including Policy Development, Research, communications and so on): 39 (8.7%)
- Infrastructure (including HR, Finance, Governance and so on): 65 (14.5%)

The sectors and number of businesses regulated either directly or indirectly:

There are currently approximately 180,000 registered charities in England and Wales. There are also around 110,000 non-registered charities in England and Wales.

In terms of numbers, nearly half of registered charities have an annual income of less than £10,000. However, about two-thirds of charitable income is directed to the largest 1% of charities. A summary of the income distribution of registered charities is given in Table 1.

Annual income (£)	Proportion of charities (%)	Proportion of charitable income received (%)
0 to 10,000	45.4	0.5
10,001 to 100,000	31.4	3.4
100,001 to 500,000	10.3	7.3
500,001 to 5,000,000	4.8	22.2
5,000,000 +	1.1	66.6
Not reported	7	0

Table 1: distribution of charities by number and by income (as of 31 December 2009)

The charitable sector is characterised by its diversity ranging from small community bodies such as Parent Teacher Associations through to major research institutions like the Wellcome Trust that are more akin to FTSE 100 global organisations.

Of the non-registered charities, about 100,000 are classified as “*excepted*” charities. These charities are regulated by the Charity Commission but have been excused the requirement to register with the Charity Commission either by legislation or by an order of the Charity Commission. Examples of excepted charities include those connected with churches belonging to various Christian

denominations, charitable service funds of the armed forces and scout and guide groups. The recent implementation of certain provisions of the Charities Act 2006 (discussed in the section above relating to the legislative background) has resulted in a requirement for any excepted charity with an annual income over £100,000 now to be registered with the Charity Commission.

In addition, changes to the general registration threshold mean that charities with an annual income between £1,000 and £5,000 are no longer required to register with the Charity Commission, although most that were registered with the Charity Commission have remained on the register voluntarily.

The other non-registered charities are classified as “*exempt*” charities, which are specifically exempted from registration with the Charity Commission by statute, and from most of the Commission’s regulation. Examples of exempt charities include some museums, voluntary and foundation schools and universities.

The regulation of exempt charities is currently changing with the implementation of the Charities Act 2006. In particular, certain exempt charities are sponsored by specific government bodies and the responsibility for regulating such charities from a charity law perspective is being given to the sponsoring government bodies as Principal Regulators. For example, the Principal Regulator for exempt Museums and Galleries will be the Department for Culture, Media and Sport; the Principal Regulator for the Royal Botanic Gardens will be the Department for the Environment, Food and Rural Affairs; and the Principal Regulator for exempt universities in England (apart from the colleges of Oxford, Cambridge and Durham universities) will be the Higher Education Funding Council for England.

Some charities that were previously regarded as being “*exempt*” have no Principal Regulator. They will lose their exemption and become “*excepted*” charities subject to the Charity Commission’s regulation as described above. Those with an annual income of over £100,000 will, therefore, have to register with the Charity Commission. Examples of charities affected by these changes include universities in Wales, the colleges of Oxford, Cambridge and Durham universities and the Museum of London.

Within the sector an increasing number of charities are engaged in the delivery of public services.

Many organisations undertaking charitable activities choose to register as limited companies or as a community interest company (CIC). These are often described as social enterprises although some charities also describe themselves as social enterprises.

THE HAMPTON VISION

“Both the Hampton and Macrory reports are concerned with effective regulation – achieving regulatory outcomes in a way that minimises the burdens imposed on business. Key to this is the notion that regulators should be risk-based and proportionate in their decision-making, transparent and accountable for their actions and should recognise their role in encouraging economic progress.”

<p>Any findings relevant to whether believes the regulator is risk-based:</p>	<p>The Charity Commission applies a risk-based approach throughout its operations and particularly within enforcement and sanctions. A published compliance framework document sets out its approach and internal guidance documents give clear tests to identify the risk levels of incidents or pieces of information brought to the Commission’s attention.</p> <p>The risk-based approach applies firstly to the level of financial resources received by the charity. Larger charities are expected to show higher levels of compliance than small. Secondly it applies to the nature of the risk - on certain issues the Charity Commission applies a zero-tolerance approach whilst with others it offers greater flexibility to individual charities.</p>
<p>Any findings relevant to whether the regulator is transparent and accountable:</p>	<p>The Charity Commission provides a good level of transparency about its operations through several publications on its websites. For example it has published a document setting out its approach to compliance and another on lessons learnt from compliance investigations. The Commission makes available the data it holds on charities on its website as a key lever to encourage trust and compliance from the sector.</p> <p>The Charity Commission has set out its key performance objectives and monitors progress against them regularly. It also reports to Parliament for delivery. In cases of dispute on a legal decision taken by the Charity Commission the Charity Tribunal acts as an avenue for charities to challenge the Commission.</p>
<p>Any findings relevant to whether the regulator encourages economic progress:</p>	<p>As a regulator of charities the Commission is not set up to encourage economic progress <i>per se</i>, though its objective to raise the effectiveness of the sector is broadly equivalent in this context.</p> <p>The Commission recognises the importance of reducing the burden of regulation on charities to enable them to flourish and use their donations with beneficiaries more directly.</p> <p>In areas of legal complexity for compliance, such as the</p>

	<p>public benefit test, and recognising the diversity of the charitable sector, the Charity Commission should consider whether it can provide greater clarity to charities on what they need to do to comply. This has the potential to save time and money spent on advice and guidance and lead to better outcomes overall.</p>
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DESIGN OF REGULATIONS

Hampton Principles

“All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all parties should be consulted when they are being drafted”

“When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed.”

Key findings on Design of Regulations:

The Charity Commission's contribution to the design of regulation gives charities considerable involvement in development and it considers alternative methods to deliver outcomes effectively. The Commission has generally sought to minimise the administrative burdens for compliance for charities, including through technological solutions.

Background information such as the regulator's role in developing regulations:

The Charity Commission has worked closely with the Office of the Third Sector on the implementation of the Charities Act 2006 which, with the Charities Act 1993, forms the main foundation for current charity legislation. Most of the Act's provisions have been implemented over the past three years and will be subject to review in 2011.

This legislation made a number of changes to modernise the legal framework in which charities operate. In particular it made changes to the reporting requirements for certain charities and introduced the concept of a Charitable Incorporated Organisation (CIO) to provide an incorporated form for charities that does not require dual regulation by the Commission and Companies House. The Charity Commission has worked closely with the sector to ensure that changes to the reporting and registration requirements have been implemented correctly and that requirements are proportionate. Stakeholders feel these changes have been implemented in a positive and consistent way.

The Charities Act 2006 defines two conditions for a charitable purpose, namely that it must fall within the list of descriptions of purposes in the Act and that it must be for the public benefit. The second of these is known as the “public benefit requirement” in English law. Previously the law presumed that purposes for the relief of poverty or the advancement of education or religion were for the public benefit, unless there was evidence to the contrary. The Act changed this by specifying that, in determining, whether the public benefit requirement is met, no purpose is to be presumed to be for the public benefit.

Ultimately the courts are responsible for deciding whether the

	<p>public benefit test is met but charity trustees are required to have regard to the Commission’s guidance and the Commission is responsible for enforcement.</p> <p>The Commission has worked hard to interpret and clarify the “public benefit” test in the context of considerable public and media interest. It has published statutory guidance and carried out illustrative assessments of a number of charitable organisations. Stakeholders recognise the value of trustees thinking about the public role of their charity and many are aware of the guidance that has been provided.</p> <p>98% of charity trustees who are aware of the requirement are confident that their charity can demonstrate public benefit. Nonetheless 40% of all charity trustees are not very confident or not at all confident that they understand the public benefit requirement.³ Several stakeholders would appreciate greater clarity on the process going forwards.</p> <p>The Charity Commission’s simplification plans set out the costs and benefits of changes to the reporting and compliance requirements since 2005 as well as the views of different charities on the Commission’s performance. The Charity Commission has delivered a 17% reduction in administrative burden since 2005 but stakeholders have indicated that going further could be counterproductive. Some smaller charities appreciate being able to say that they are “regulated and registered by the Charity Commission” which require the provision of some data to the Commission.</p>
<p>Example(s) of good practice:</p>	<p>Stakeholders appreciate the opportunities for consultation and the genuine desire and determination from the Commission to ensure stakeholders shape guidance. Decisions around thresholds for reporting have been made on the basis both of impact assessments but also considerable consultation with the sector.</p> <p>Similarly stakeholders felt that the Commission generally took a proportionate approach in dealing with issues.</p> <p>The approach taken by the Charity Commission to make the information held on charities publicly available on its website is a cost-effective way to drive outcomes. It acts an enabler for donors, charities or other stakeholders to take decisions without the need for regulatory intervention.</p>

³ Charity Commission (2009), Charities’ awareness and understanding and attitudes towards the public benefit requirement, based on research by FDS international.

<p>Review findings:</p> <p>The extent to which the review team believes the regulator is acting in line with the Hampton principles:</p>	<p>The Charity Commission consults widely in developing guidance, often working hand-in-hand with representative groups to ensure that it is easily understood by charities.</p> <p>Several changes introduced in the Charities Act and implemented through the Charity Commission website have actively sought to minimise the administrative burden imposed on charities. Decisions on reporting and registration requirements have been based on impact assessments and extensive consultation with the sector.</p> <p>The organisation seeks to innovate within its remit and powers, considering alternative approaches to deliver outcomes effectively (e.g. through using the website).</p> <p>For example information made available on the website has the potential to drive public confidence in the charity sector. Realising the full potential of this approach will require an improved understanding of how the website is being used and by whom.</p> <p>With the introduction of the public benefit test the Charity Commission has worked hard to get this change right in consultation with the sector. Looking to the future and recognising that court rulings could help clarify the situation, the Commission should consider how it could provide greater certainty within the legal framework to the sector on meeting this requirement and a sense of a proportionate use of resources to do so.</p>
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ADVICE AND GUIDANCE	
<p><i>Hampton principle</i></p> <p><i>“Regulators should provide authoritative, accessible advice easily and cheaply”</i></p>	
<p>Key findings on Advice and Guidance:</p>	<p>The Charity Commission provides advice and guidance free of charge through various channels and has made a clear distinction between the legal requirements and good practice. The advice and guidance provided is of high quality and receives very high levels of customer satisfaction.</p>
<p>Background information such as the means by which the regulator provides advice and guidance:</p>	<p>The Charity Commission has published a wide range of guidance on many aspects of charity law and good practice which is easily accessible on its website.</p> <p>It is possible for anyone to contact the Charity Commission by telephone through a dedicated team in its call centre, by e-mail or by post. The different channels of communication are shown prominently on the Commission’s website.</p> <p>The more recent guidance makes a clear distinction in the way it is presented between the legal obligations on charities and good practice. Most publications are available in English and Welsh and can be made available in large print, Braille, audio and in alternate languages via a translation service.</p> <p>The review team found that the Commission had developed a significant number of guidance documents, all available through a variety of channels and publicised on its website. Most stakeholders fed back there was a good balance between regulation and advice.</p> <p>The Commission has been mindful of its diverse stakeholder group and provides material in a variety of formats and through a number of channels. In addition it has sought the input of its stakeholders in a number of ways: through consultations, focus groups, dialogue with member organisations, through roadshows and from the feedback on its website.</p> <p>The application form to register a charity contains all relevant information for people new to the sector including “The Essential Trustee” guide. This guide is an invaluable resource for all individuals involved in the charity sector</p>

	<p>and is produced in both a short guide and longer version.</p> <p>The advice and guidance provided by phone, e-mail or letter by the Charity Commission receives very high levels of satisfaction from users. The helpline staff provide a first tier of support with more complicated enquiries generally requiring a letter or e-mail from the charity to enable the Charity Commission to make a more considered response.</p> <p>The Charity Commission has clearly taken a lead in promoting awareness of changes brought in by the Charities Act 2006 to its different sector groups.</p>
<p>Example(s) of good practice:</p>	<p>The layout of individual publications is user-friendly. For example, the publication <i>“Complaints about charities”</i> is structured around a number of specific questions followed by two answers of varying detail, one under the heading <i>“the short answer”</i> and a <i>“in more detail”</i> answer. This publication also contains a plain English and detailed <i>“glossary”</i> section.</p>
<p>Review findings:</p> <p>The extent to which the review team believes the regulator is acting in line with the Hampton principle:</p>	<p>Stakeholders recognised that the Commission had made a great deal of progress in the provision of advice and guidance over the past five years. They cited the separation of the “must do” within the guidance from the “good practice” as both extremely helpful and as excellent practice. The Charity Commission has made a real priority of helping charities comply through advice and guidance.</p> <p>Many of the guidance materials are “best in class” (e.g. the “Essential Trustee”). Whilst the Commission does not follow the current best practice such as the Code of Practice on Guidance to the letter, it follows it in spirit. This includes providing short and long answers. The guidance is structured in such a way that it enables key individuals, like trustees, to know how to comply in broad terms with more detail to dig if necessary.</p> <p>However, the review team felt that some of the other parts of the guidance looked and felt legalistic and lengthy. There was a risk that this would have the effect of alienating some of its stakeholder group such as very small charities or individual trustees.</p> <p>Evidence from the review suggests there may be room for improvement in the timeliness of delivery of the guidance (another element related to the Code of Practice). Good practice is that for new regulation, guidance is issued at least 3 months prior to implementation, except where statutory or other mandatory external requirements (e.g. European law) prevent this approach. This enables</p>

	<p>regulated organisations to prepare for the implementation of legislation. Feedback from stakeholders spoken to by the review team would indicate that this was not the case.</p> <p>The review team received feedback from some stakeholders that there was sometimes confusion over publications endorsed by the Commission, but not written or distributed by them directly. This was particularly the case where Commission staff providing advice and guidance were not able to give access to these publications. The Commission may wish to consider how best to clarify its relationship with third party publications it has endorsed and increase their value to charities by ensuring that they are easily accessible.</p>
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DATA REQUESTS	
<i>Hampton principle</i>	
<i>“Businesses should not have to give unnecessary information or give the same piece of information twice.”</i>	
Key findings on Data Requests:	The Commission makes few direct requests for data from its stakeholders and it uses a sophisticated website whereby pre-population of forms avoids unnecessary duplication of effort. In almost all cases the need for data is clear.
Background information such as the data required by the regulator; the means by which business can return data, etc:	<p>Trustees of registered charities with income exceeding £10,000 in their last financial year are required to complete and submit an Annual Return. For financial years ending before 1st April 2009 they must also submit a copy of the Trustees’ Annual Report and accounts.</p> <p>For financial years ending on or after 1st April 2009, the threshold for submitting a Trustees’ Annual Report and accounts has been increased so that only charities with income above £25,000 need submit copies of these. All required submissions must be made within 10 months of the end of the charity’s financial year.</p> <p>Charities with an annual income of £10,000 or less do not have to submit an Annual Return or a copy of their Trustees’ Annual Report and accounts, but are required to keep their Register details up to date. The Commission can get copies of their reports and accounts if it needs them. To ensure that Register details are up to date and to confirm that they are still operating, the Commission asks smaller charities to submit an Annual Update form.</p> <p>Charities can either submit a paper return or the Commission website allows charities to provide their information in electronic format.</p> <p>Charities with income above £500,000 are required to provide a statutory audit of their accounts. Registered charities with income over £1m must also provide a summary of the charity’s aims, activities and achievements over the past year.</p>
Example(s) of good practice:	<p>The Commission promoted the use of the website for the submission of annual returns in an electronic format in 2008. Within the first year, 70% of charities filed their returns on line.</p> <p>All registered charities need to keep their entry in the register up to date and for 95,000 charities whose income is less than £10,000 this is no more than a one page update (usually of</p>

	<p>financial status). The annual return is a key document and where possible, intelligent scripting from the website ensures that most of the documentation is pre-populated, avoiding additional time and resources being spent by the charities on such submissions.</p> <p>The Commission highlights charities in green or red on their website according to whether they have complied with reporting requirements. Many stakeholders thought that the red/green system of highlighting those charities that had submitted their annual returns late was a useful and low cost way of driving up compliance. Despite some initial concerns stakeholders felt the Charity Commission had implemented this well.</p> <p>Stakeholders found the new website helpful. The ability to offer feedback on the website on services ensures the Commission are alive to concerns and enables them to be responsive to suggestions for improvement.</p>
<p>Review findings:</p> <p>The extent to which the review team believes the regulator is acting in line with the Hampton principle:</p>	<p>The Charity Commission gives a clear rationale behind the data being collected. It uses its website intelligently to collect and display the data.</p> <p>The one area where the purpose and usage of data collection was brought into question by stakeholders was the Summary Information Returns for charities with an income exceeding £1million per year. The Charity Commission has already acknowledged some concerns from the sector about this return and has committed to reviewing it in the next year or so.</p> <p>The purpose of this return is to provide the public with an overview of major charities in a broadly comparable format. However stakeholders indicated that this duplicates information provided in a charity's annual report that could easily be extracted without the need for a separate return. The Review Team saw little evidence that funders or charities are using this to inform their behaviour.</p> <p>Whilst the Commission might only ask once for a piece of information, other agencies and particularly Companies House requests the same information from some of its stakeholders. The Commission should therefore continue to explore, in discussion with agencies and recognising the constraints of the current legal framework, whether there are opportunities for measures to merge requests, removing duplicating and minimising the burden.</p>

INSPECTIONS	
<i>Hampton principle</i>	
<i>"No inspection should take place without a reason."</i>	
Key findings on Inspections:	"Inspections" are only carried out as a result of an ongoing statutory compliance or regulatory compliance case. Therefore no inspection takes place without a reason.
Any relevant background information such as the number of inspections and the number of businesses inspected; the regulator's risk model etc:	<p>Between 2002 and 2007 the Charity Commission undertook 2,500 "Charity Review Visits". These were established to promote effective governance in charities. The "Charity Review Visits" were not designed as an enforcement tool.</p> <p>In November 2007, as part of the Commission's programme of restructuring and reprioritising following the implementation of the Charities Act 2006 and reduced funding settlement for 2008-11, the decision was taken to terminate the programme of review visits.</p> <p>Although the Charity Commission initiated a programme of public benefit assessments of charities in 2008, these were intended to illustrate public benefit assessment. The initial programme of assessments involved twelve individual charities and was a learning experience. The assessment included a visit to each of the selected charity's premises.</p> <p>The Charity Commission deliberately included educational charities and those for the advancement of religion in the set of charities being reviewed as they had previously been presumed to act for the public benefit. As part of the assessment process the charities involved were invited to complete a feedback questionnaire. For further illustrative assessments the Charity Commission expects not to visit charities unless there is disagreement with the final summary of an assessment</p> <p>The Charity Commission has published a "risk and proportionality framework" for its compliance work. This document identifies a number of factors in determining the regulator's compliance work and prioritises the most serious cases. These cases often involve a visit from the Charity Commission - the number of compliance cases is explored in greater detail under "Sanctions".</p>
Review findings: The extent to which	The Charity Commission has clearly given thought to focussing its greatest inspection effort on charities where, after a thorough risk assessment, there is evidence of a

<p>the review team believes the regulator is acting in line with the Hampton principle:</p>	<p>serious breach in regulations. The Commission ceased routine inspections (Charity Visits) in 2007 sufficiently applying the Hampton principles in its approach.</p>
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SANCTIONS

Hampton & Macrory principles

“The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions.”

“Regulators should be transparent in the way in which they apply and determine administrative penalties.”

“Regulators should avoid perverse incentives that might influence the choice of sanctioning response.”

“Regulators should follow up enforcement actions where appropriate.”

Key findings on Sanctions:

The Charity Commission strikes the right balance between a light touch approach to compliance work and a zero tolerance policy for the most serious issues. This overall approach is set out in their document “Risk and Proportionality Framework for the Commission’s compliance work”, which publicly shares what the Commission believes to be the areas of greatest risk to charities and where they target their resources. The Commission makes considerable efforts towards persuading charities to comply with the ten month filing deadline for accounts and other annual returns. Compliance rates have significantly improved over the past few years from 50% to 80%⁴.

Background information such as a summary of sanctions available to the regulator and any data on sanctions imposed by the regulator:

The zero tolerance approach is managed within the context of an overall risk assessment based on a traffic light model. Serious cases are classified as “red” high risk cases and are prioritised. Medium risk cases are classified as “amber” with minor infringements as “green”. This approach determines how a particular case is handled and the level of resource that is devoted to it.

The zero tolerance issues that are identified and escalated for the immediate attention of the Compliance Investigations team include:

- Charity links to or support for terrorism
- Misuse of charity to foster criminal extremism
- Fraud or money laundering
- Abuse of vulnerable beneficiaries or not having

⁴ The compliant charities account for 98% of charitable income in the UK.

	<p>adequate measures in place to protect vulnerable beneficiaries</p> <ul style="list-style-type: none"> ➤ Sham charities <p>The Charity Commission has a number of sanctions available to it (Section 18 of the Charities Act), which include:</p> <ul style="list-style-type: none"> ➤ Suspending or removing a charity trustee or officer. Appointing an additional or replacement charity trustee ➤ Vest property of the charity in an “official custodian” ➤ Freeze charity bank accounts ➤ Make an order to a person holding property of the charity not to part with the property ➤ Prevent payment to the charity by a debtor of the charity ➤ Restrict transactions carried out by the charity ➤ Appoint an interim manager for the charity’s property <p>In 2008/09 the Charity Commission completed 167 non-statutory investigations (regulatory compliance) cases and 21 formal statutory inquiry cases. The Commission used its statutory compliance powers on 707 occasions.</p> <p>The Compliance Investigations team have close links with other regulators to ensure targeted and proportionate enforcement action. The Commission uses and shares intelligence with other enforcement agencies.</p>
<p>Example(s) of good practice:</p>	<p>The Charity Commission operates a risk based approach to enforcement actions and manages this effectively through its traffic light system and zero tolerance approach to serious cases. This approach is clearly proportionate to the seriousness of the breach.</p> <p>The “naming and shaming” policy of highlighting non-compliant charities is a successful example of using an alternative to formal sanctions to achieve regulatory aims.</p> <p>The Charity Commission’s document “Charities Back on Track” identifies themes which helps charities learn from mistakes and is a useful tool in promoting good practice.</p>
<p>Review findings:</p>	<p>It was clear to the review team that the Board were mindful of the varied experience and expertise of trustees (and the</p>

<p>The extent to which the review team believes the regulator is acting in line with the Hampton principles and Macrory characteristics:</p>	<p>sector) and that this has driven a strategic balance between a light touch approach in supporting and encouraging charities; with a zero tolerance policy for serious cases.</p> <p>The zero tolerance policy to serious cases is clearly understood by Charity Commission staff and this enables a swift assessment and escalation process which directs cases to the Compliance Investigations team. All cases are risk assessed using the traffic light model. The Commission's internal Risk Assessment and Referral Form is a useful tool for staff making risk assessments and the Commission may wish to consider making it public to aid transparency and promote compliance.</p> <p>The review team found that the Charity Commission take extensive steps to achieve compliance with the ten month filing rule. This approach ensures that charities that have 98% of charitable income file on time. The policy of "naming and shaming" non-compliant charities through red text on the website is also thought to have made a significant contribution. This is a clear example of an effective alternative to formal sanctions.</p> <p>The extent to which trustees continuously fail to comply with a filing deadline is not measured by the Commission. Individual trustees may have responsibility for various charities and the Commission may find it useful to identify and target trustees that repeatedly flout regulations.</p>
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FOCUS ON OUTCOMES	
<i>Hampton principle</i>	
<i>“Regulators should measure outcomes and not just outputs.”</i>	
Key findings on Focus on Outcomes:	The Charity Commission has a well-developed performance framework with a good mix of outcome and output measures. These are well understood by stakeholders and Commission staff have a clear sense of mission.
Background information such as the regulator’s key objectives:	<p>The Charities Act 2006 set out a number of statutory objectives for the Charity Commission, including:</p> <ul style="list-style-type: none"> • to increase public trust and confidence in charities; • to promote awareness and understanding of the operation of the “public benefit” requirement (required for charitable purposes); • to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities; • to promote the effective use of charitable resources; and • to enhance the accountability of charities to donors, beneficiaries and the general public. <p>The Charity Commission has a well-developed published performance framework. Six Key Performance Indicators lie at the core of this framework:</p> <ol style="list-style-type: none"> 1. Improve the level of public trust and confidence in charities 2. Achieve standards of effectiveness and service delivery acceptable to its customers, whilst increasing use of its online services annually 3. Enhance the accountability and transparency of charities by making key information about individual charities more readily available to the general public 4. Improve the efficiency of formal investigations into charities begun after 1 April 2006 by completing them quickly and with clear reported outcomes 5. Demonstrate its impact on the charitable sector by increasing the sector’s income we directly regulate through its substantive contact with charities 6. Promote awareness and understanding of the public benefit requirement <p>The 6 KPI are broken down into 21 individual sub-indicators</p>

	<p>in the 2008-09 annual report with a mix of outcome and output measures. In particular the first KPI is based on a series of perception surveys of overall confidence in the charitable sector. A survey measuring the public perception and understanding of the public benefit requirements has been carried out for the first time in 2009.</p> <p>The performance framework is broken down further into a series of operational targets used to plan and allocate resources within the organisation.</p>
<p>Example(s) of good practice:</p>	<p>The Charity Commission’s key performance indicator to keep up standards of service and satisfaction whilst raising online delivery is an effective approach to balance the opportunities for the regulator and charities from new technologies with the needs of organisations of different sizes and sophistication.</p>
<p>The extent to which the review team believes the regulator is acting in line with the Hampton principle:</p>	<p>The regulator has a strong performance framework with a good mix of outcome and output measures. The key performance indicators include measures of satisfaction with Charity Commission services, but there is no explicit consideration of how easy it is for charities to comply with charity law. This may be something to consider in the next set of indicators, particularly within the context of increasing alternative structures (such as companies as social enterprises) to carry out charitable activities.</p> <p>The single statutory objective that is least well represented in the measurable performance framework is that of “promoting the effective use of charitable resources”. This could prove difficult to evaluate because the definition of an “effective” use of resources can depend on whether one is interested in innovation or efficiency.</p> <p>Key stakeholders showed a good level of understanding of the Charity Commission’s key desired outcome as “public trust and confidence in the charitable sector”. The organisation has a clear sense of mission with staff particularly focussed on helping charities become more effective.</p> <p>There may be opportunities to simplify the framework to help staff make every day prioritisation decisions⁵. For example, actions in the interests of public confidence through greater</p>

⁵ For example, although the measurement framework for public confidence in charities is robust (see the 2008 Charity Commission study into public trust and confidence in charities - http://www.charity-commission.gov.uk/Library/news_thumbs/pdfs/Charities%20survey.pdf) the output as a mean score out of 10 renders it relatively difficult to understand and therefore may detract from its ability to motivate staff.

	<p>regulation or reporting could hamper the effectiveness of the charity or demotivate volunteers giving their time to benefit others. For example, one staff member described this as the decision whether or not to “crack down on a charity if it’s going to fall apart”. The Commission may consider how to ensure staff make these trade-offs effectively.</p>
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Appendix 1: Review team membership

Dan Roulstone is a Deputy Director in the Better Regulation Executive leading a team to deliver policy projects that improve and simplify legislation, reduce costs for business and help change perceptions of regulation. He has previously worked for the Cabinet Office and as a management consultant.

Stuart Morgan is Head of Enforcement at Companies House and leads teams that administer the late filing penalties appeals regime and compliance functions. He has worked for Companies House for over twenty years in various customer service and enforcement roles.

Carol Brady has over 20 years experience in delivering consumer services. Most recently she was Director for Service Improvement at the Local Better Regulation Office. Before that she was National Operations Manager for Consumer Direct and was a Trading Standards Manager in local authorities in Kent, Northamptonshire and Solihull. She is a Fellow of the Trading Standards Institute.

Appendix 2: Charity Commission's statutory objectives from Charities Act 2006

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

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