

# Charities Back on Track

Themes and lessons from the Charity Commission's compliance work

2008-09



## The Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public trust and confidence. Most charities must register with the Commission, although some special types of charity do not have to register. There are some 180,000 registered charities in England and Wales. In Scotland the framework is different, and the Commission does not regulate Scottish charities.

The Commission provides a wide range of advice and guidance to charities and their trustees, and can often help with problems. Registered charities with an annual income of over £10,000 must provide annual information to the Commission. The Commission has wide powers to intervene in the affairs of a charity where things have gone wrong.

More information about the Commission together with a range of guidance for charities can be found on our website [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk), or by contacting Charity Commission Direct:

Telephone: **0845 300 0218**

Typetalk: **0845 300 0219**

By post: **Charity Commission Direct**  
PO Box 1227  
Liverpool  
L69 3UG

# Contents

A. Introduction	2
B. Our statutory role and responsibilities	3
C. The role of Compliance	4
D. Summary of the year	6
E. Illustrative case studies	8
F. Compliance policy and other developments	24
G. Annexes - Key Statistics from the Commission's compliance work – 2008-09	35

## A. Introduction

Last year, for the first time, we published a report highlighting the key themes and wider issues for charities arising from the Commission's compliance work. This, our second report, covers the period from April 2008 to March 2009. Using case studies to illustrate each of the key compliance themes, we aim to improve trustees' awareness of how to avoid similar situations in their charities, and highlight what they need to do to ensure they fulfil their legal duties in exercising control and management in the administration of their charities.

Abuse and harm in charities is low in comparison to the size of the sector, and we are uniquely placed to deal with it when it occurs, and to assist trustees in strengthening safeguards to minimise the risks involved. Ensuring effective compliance is at the core of our regulatory role, making sure that charities operate within the law and meet their statutory requirements - a vital part of maintaining

and building public trust and confidence. Where we do have evidence or suspicions of serious abuse involving charities we will act swiftly and decisively.

We want this report to continue to build a better public understanding of the Commission's investigatory work, demonstrating the sort of regulatory action we can take and the impact it has in protecting charities from abuse and harm. It also provides information on our compliance investigations and performance in this area, making comparisons with the previous year and drawing out key trends. We also include an outline of relevant compliance policy related developments and our key priorities for the future.

We are always keen to receive feedback and suggestions about our compliance work, so please contact us at: [ComplianceOutreach@charitycommission.gsi.gov.uk](mailto:ComplianceOutreach@charitycommission.gsi.gov.uk)

### Compliance Division leadership team



Back row (left to right):  
Iain Hewitt (Investigations London), Lynn Killoran (Investigations Liverpool), Sophie Bell (Forensic Accountant)

Front row (left to right):  
Dave Walker (Outreach and Development), Grahame Barker (Monitoring, Assessment and Intelligence), Kenneth Dibble (Executive Director, Legal Services and Compliance), Michelle Russell (Head of Compliance), Nicola Edwards (Investigations London)

## B. Our statutory role and responsibilities

The Commission has a dual role as both regulator and enabler for charities and the charitable sector and this underpins the approach to our compliance and investigatory work. The Compliance Division sits within the Legal Services and Compliance Directorate. It is responsible for the delivery of the Commission's compliance function involving investigatory and regulatory compliance work with charities where their assets, services, beneficiaries or reputation are at serious risk of abuse or harm.

The Commission is a risk-based and proportionate regulator. This means that we target our resources where the risks are highest and where they are most likely to have the greatest impact. We engage with charities in a way which will make most difference to them and those who benefit from them. Our overall approach emphasises the provision of regulatory guidance and advice, the promotion of good practice, and ensuring that charities and their trustees comply with their legal obligations.

The Commission's objectives, contained in the Charities Act 2006, are to:

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

One of the Commission's specific functions in the Act is to identify and investigate apparent misconduct or mismanagement in the administration of charities, and to take appropriate remedial or protective action.

## C. The role of Compliance

The role of the Compliance Division is to identify and investigate apparent misconduct or mismanagement in the administration of charities and to resolve difficulties encountered. We do this either by providing regulatory advice and guidance to trustees or, where necessary, intervening to protect the charity by using the Commission's legal powers.

We aim to deliver an expert and cutting-edge modern investigatory and compliance function that investigates and deals rigorously with abuse of charities, and activities carried out in the name of charity. Our priority is always to help put charities back on a proper footing and to meet their legal requirements, confidently taking robust remedial and protective action where this is appropriate and it is proportionate to do so.

We both detect and prevent abuse, and disrupt the activities of those seeking to abuse charities. An important part of our role is to help charities protect themselves by raising awareness of risks to the sector and compliance requirements, and by providing effective targeted advice, guidance and support.

Our work directly helps to create an environment where the public can, and do, have trust and confidence in the activities and probity of charities.

### Using our knowledge

To regulate a diverse sector as effectively as possible, we have built effective strategic and operational relationships with a range of other regulators, law enforcement and other government departments and agencies.

We use the knowledge we gain to undertake proactive detection in key areas and carry out targeted monitoring and compliance visits, continually assessing key strategic risks and amending operational priorities accordingly.

### Adapting our approaches to different risks

The Commission conducts two kinds of investigation cases. Most concerns are dealt with through non-statutory investigations called 'regulatory compliance cases'. In these cases the risk is usually more limited and able to be resolved through providing supervision, regulatory advice and guidance to trustees, without the need to intervene by using our powers. Where we think it helpful to other charities, or where there has been a high level of public interest, we publish a regulatory case report when these cases are concluded.

However, in cases of significant risk and more serious regulatory concern we may open a statutory inquiry under section 8 of the Charities Act 1993. The decision to open a statutory inquiry will be based on a number of factors, including evidence or serious suspicion of misconduct or mismanagement in the administration of the charity and/or risk to property. The criteria we use are set out in our *Risk and Proportionality Framework for the Commission's compliance work*. We publish a Statement of Results of Inquiry into each of these cases when they are concluded.

Whichever kind of intervention is decided upon we use a multi-disciplinary team approach, and our investigation teams are supported, for example, by in-house accountancy and legal professionals.

Based on our casework experience in recent years, we continue to believe that the most serious issues and areas of greatest risk for charities, in no order of priority, include:

- significant financial loss to the charity;
- serious harm to beneficiaries and, in particular, vulnerable beneficiaries;

- threats to national security, specifically terrorism;
- criminality and/or illegal activity within or involving a charity;
- sham charities set up for an illegal or improper purpose;
- charities deliberately being used for significant private advantage;
- where a charity's independence is seriously called into question;
- issues that could damage the reputation of an individual charity or class of charities or the wider charity sector; and
- issues that could damage public trust and confidence in charities or in the Commission as an effective regulator.

Such issues of concern in the management and administration of charities can come to our attention through various means including from:

- charity trustees and employees;
- charity beneficiaries;
- charity donors;
- the general public;
- other regulators, and law enforcement and other government agencies;
- statutory whistleblowers, including charities' auditors and independent examiners; and
- MPs, the media and local communities.

We also proactively identify concerns in charities through our other compliance work or contact with individual charities.

## D. Summary of the year

Overall, the performance of our Compliance function has improved over the last year. This is largely a result of having a strengthened management team, a full staff complement in place, and closer supervision of performance. We made further progress in reducing the time taken to complete investigations and continued to work through a number of long-running and complex cases. Effective co-operation with other regulators and law enforcement agencies continued to be a key feature of much of our compliance work.

### *Our performance headlines for 2008-09 include:*

- carrying out 1,504 assessments into concerns raised by the public and other complainants;
- opening 168 new investigation cases, of which 19 were formal statutory inquiries;
- completing 21 statutory inquiry cases;
- publishing 23 inquiry reports on our website;
- completing 167 non-statutory investigations (regulatory compliance) cases;
- publishing 4 regulatory case reports;
- completing 188 cases in total, ending the year with 77 ongoing investigations; and
- opening 211 compliance monitoring cases;

### *The positive impact of this work included:*

- directly protecting over £47m of charity assets at risk;
- directly monitoring a total of £461m of charity income through either statutory inquiry or regulatory compliance cases;
- 38 cases where the impact of our involvement protected vulnerable beneficiaries;

- 70 cases where the impact of our involvement protected the reputation of individual charities;
- 41 cases which helped protect the reputation of the sector;
- 36 cases successfully resolving conflict of interest issues;
- 47 cases where we provided regulatory advice and guidance to ensure the charity's governance improved as a result of our engagement;
- 24 cases where we addressed serious concerns about charity fundraisers;
- 30 cases where an internal dispute in a charity was resolved and the charity is properly functioning again; and
- using our statutory compliance powers on 707 occasions, including use of our information gathering powers.

### **Key themes**

A number of **key themes** emerged this year from our published statutory inquiry and regulatory case reports.

#### *Financial mismanagement*

Our investigations highlight that poor financial management and reporting remain significant problems. We regularly see a lack of financial controls, inadequate accounting and record keeping and failures to submit accounts. Fraud, theft and significant loss of funds were also common features. Good financial management and meeting accounting and reporting requirements are vital so that charities can be properly accountable to donors and the public for how they collect and spend funds.



### *Trustee duties and responsibilities*

Trustee and governance issues frequently occur in charities that we investigate. These include cases where individuals were unsuitable to be trustees – in some cases trustees were not legally eligible to act – and where there was inadequate management oversight by trustees of charities. We also saw failures in the performance of both individual trustees and trustee boards to ensure effective governance and proper controls were in place. Trustees must comply with their legal duties in the administration of a charity and run it solely with the charity's interests at heart - taking reasonable steps to assess and manage the risks to their charities activities, beneficiaries, property, work or reputation.

### *Vulnerable beneficiaries*

We remain concerned that the way in which charities manage procedures for safeguarding vulnerable beneficiaries continues to be a key issue this year. There was an overall increase in the number of such cases we completed in the year – while there were slightly fewer statutory inquiries, there was a significant increase in the number of regulatory compliance cases closed (34 compared to 12 last year). This may be a reflection, in part, of a growing awareness of these issues and of our 'reporting serious incidents' regime (see section F1).

Cases included concerns where individuals on the Sex Offenders Register were either proposed, or were acting, as trustees. We also found cases where checks on the suitability of trustees were either not in place or were insufficiently rigorous, as well as allegations of child abuse in an overseas orphanage run by a local partner charity.

Safeguarding vulnerable beneficiaries must be a key priority of all trustee boards of charities that work with, or run activities for, children or vulnerable adults. Procedures to ensure this happens must be properly and consistently applied without exception; otherwise trustees are failing in their legal duty of care to the charity and its beneficiaries.

### *Political activities and campaigning*

There were several significant investigations involving concerns of inappropriate political activities and campaigning in charities this year. In addition to the statutory inquiry into the Smith Institute (which is profiled at section E6), there were four regulatory compliance cases involving concerns of inappropriate political activities.

While lawful campaigning and political activity *can* be undertaken by a charity it must be to support the delivery of its charitable purposes and cannot compromise the charity's independence. Trustees of charities which engage in any political activity must pay particular attention to the inherent risks involved, in particular to possible reputational risk, and ensure that they do not compromise the charity's independence.

It is a fundamental principle of charity law that a charity, including its trading subsidiary, cannot make political donations or give other financial support, or support in kind, to a political party.

More information on issues arising from our compliance casework and the regulatory action we have taken is presented in the *Key Statistics* section later in this report.

## E. Illustrative case studies

In the previous section we highlighted some of the key themes arising from our compliance work this year. Here we include more detailed examples for some of these themes, taken from published statutory inquiry reports. We have highlighted the action we took, which demonstrates the impact of our intervention, and have provided guidance for trustees on how to avoid similar situations. All the case studies here relate to statutory inquiries where we published the statement of results of inquiry in 2008-09. They are high level summaries only. Full details are given in each inquiry report, available from our website or on request.

### E1. The importance of good governance in funding decisions

*Charity trustees must be able to make their own independent decisions about how the charity's funds are spent – they cannot delegate their discretion and responsibilities to another organisation. They also need to be open and accountable, keeping proper records to show where the money goes.*

#### **The World Children's Fund**

This charity was set up to relieve suffering and educate children worldwide, with annual income of over £3million. We had previously opened a statutory inquiry into the charity in 2005, following complaints about its appeal literature and high fundraising costs. We closed the Inquiry on the basis that the charity would take action to address these concerns.

However, our proactive follow-up monitoring showed these issues were unresolved. We opened a second Inquiry, during which we found that the charity was essentially handing over all its donations to a foundation, the World Children's Fund Europe, based in Switzerland. We were also concerned about the charity's record keeping of expenditure on projects funded by the Swiss Foundation and how thoroughly these projects were being monitored by the trustees.

The ability of the charity to operate independently and manage conflicts was made more difficult because two of its three trustees were also two of the three directors of the Swiss Foundation.

We found that the agreement between the charity and the Swiss Foundation was not in the best interests of the charity and seriously impeded the trustees from making independent decisions or controlling how charitable funds were spent.

The charity terminated the agreement with the Swiss Foundation and two of its trustees resigned, to be replaced with new trustees with no involvement in the Swiss Foundation.

The money raised by the charity is now properly accounted for and the charity's trustees are back in charge of deciding how it is spent.

## Relevant issues for other charities

It is the responsibility of charity trustees to ensure their charity's money is spent properly to support the charity's purpose. If trustees agree to arrangements that restrict their ability to decide how that money is spent then they have failed in that responsibility.

While it is up to trustees to decide how the charity fundraises, they also have a responsibility to make sure that the charity's reputation and that of charities generally, is not tarnished by their activities.

Conflicts of interest can be a common occurrence within trustee boards – the point is for trustees to manage them properly and effectively, and to make sure that their decisions are in the charity's interests.

Finally, all charities should have a complaints procedure in place. These show not only that the charity is open and accountable but can be a very effective way to help an organisation evaluate and improve its services. Of course, for complaints to be managed effectively, everyone working in the charity needs to know both the complaints procedure and their role in delivering it.

For more information on managing complaints see our guidance *Cause for Complaint? How charities manage complaints about their services* - <http://www.charity-commission.gov.uk/Library/publications/pdfs/rs11text.pdf>

## E2. Failures in fundraising

*Trustees must make sure that they comply with the law when it comes to fundraising, including obtaining the necessary licences to collect in public and ensuring material asking for funds meets the fundraising regulations. Any fundraising agreement with a professional fundraiser or commercial participator should be managed by the charity and be in its best interests. Organisations that fundraise claiming to be registered charities when they are not are breaking the law.*

### **Children's Welfare Foundation**

The Children's Welfare Foundation was registered as a charity in 2006 but never produced any accounts, nor did it file any annual returns with us.

We received many complaints from different sources about clothing collections being made in the charity's name without licences and with unclear fundraising literature.

The trustees did not co-operate with us and, given the scale of the complaints and extent of the collections, we opened a statutory inquiry.

The trustees had never kept proper records and could not provide any evidence that the charity had actually undertaken any charitable activity. Virtually all the money in its accounts had been paid to the trustees as expenses, for which the trustees did not provide any records.

We found that the trustees had entered into a commercial agreement with a clothing collection company, Fortune International Ltd. Fortune leafleted local areas asking for donated clothes, and the charity's agreement with Fortune stated it would receive £600 a month, regardless of the number of collections actually undertaken. The charity received around £9,600 in this way but, having failed to monitor the agreement, the trustees did not know how many collections took place or how much Fortune had made from them. The agreement itself did not meet legal requirements.

The lack of any activity or charitable expenditure and the fundamental lack of financial controls and records kept for the charity amounted to misconduct and mismanagement by the trustees. The Inquiry itself took longer than it should have due to their persistent refusal to co-operate with us. As the charity had ceased to operate, the trustees dissolved the charity and we removed it from the Register of Charities in October 2008. This ensured that the charity's name could not lawfully be used by anyone to solicit donations or collect "charity" clothing. If the trustees had not decided to dissolve the charity, the Commission would have considered taking further regulatory action on account of their serious failures, including the suspension and removal of trustees.

We have continued to liaise with trading standards departments and the police over complaints we received about leafleting for clothing collections being undertaken in the ex-charity's name. This has led to the arrest of a clothing collector making unauthorised collections. We will ensure any further reports of such inappropriate activity are also reported to the police and trading standards departments.

## Relevant issues for other charities

Charities exist to provide benefit to the public, so fundraising must be undertaken solely to support the delivery of this benefit. Fundraising itself is not actually a charitable activity so it must not become the charity's main focus or activity. If it did, it would be a fundraising organisation not a charity.

While trustees can create a wholly owned trading subsidiary to run fundraising on the charity's behalf the same principles apply – this fundraising must support the charity's aims, and not exist as an end in itself. Trustees cannot afford to ignore the performance of trading subsidiaries – they should monitor their performance regularly to be satisfied that they remain a proper investment for their charities and be able to take decisions about their continued existence if necessary.

The same principles apply to trustees who use professional fundraising businesses to fundraise for their charity. It is the trustees' responsibility to ensure proper agreements are in place that comply with fundraising regulations. Employees of fundraisers who ask for donations must tell

each donor how much of the donation or selling price is being taken for expenses. Guidance has recently been published on the new provisions in the Charities Act 2006: [www.cabinetoffice.gov.uk/third\\_sector/law\\_and\\_regulation/fundraising\\_and\\_collections](http://www.cabinetoffice.gov.uk/third_sector/law_and_regulation/fundraising_and_collections)

A charity's reputation is a precious commodity and losing it can impact not only on an individual charity but on the public's confidence in the charity sector as a whole. Bearing in mind that the Commission's number one priority is maintaining public trust and confidence in charity we take very seriously activities which put this at risk.

Finally, the Courts have made clear the expectation that trustees **must** co-operate with the Commission in its compliance role. If trustees do not co-operate, we will take that as evidence of misconduct or mismanagement and will take appropriate regulatory action. We expect trustees to want the best possible outcome for their charity, just as we do.

## E3. Preventing financial mismanagement

*The risks of financial mismanagement are invariably greater where trustee boards fail to exercise effective collective oversight and ensure that robust financial controls are consistently implemented. For some charities, the result of these failures can lead to crisis.*

### **African Legal Advisory Services (ALAS)**

This charity was set up to provide welfare and immigration advice to the African Congolese community seeking asylum in the UK.

We received a report from the Office of the Immigration Services Commissioner (OISC) identifying serious financial malpractice at the charity and misuse of charitable funds by the charity's founding trustee and chair, Mr A. The Immigration Services Tribunal upheld these findings and prohibited the charity and Mr A from providing these services indefinitely. Essentially, this meant the charity could no longer carry out its main objects. We were also contacted by two former trustees who alleged their signatures had been forged on minutes and accounts sent to the Commission by Mr A.

Due to the seriousness of the findings and the risk to the charity's future, we opened a statutory inquiry. The Inquiry found that Mr A had been the dominant trustee of the charity and had regularly used the charity's bank account for his personal use; these transactions were unauthorised by the charity's other trustees.

While Mr A told us he had put £17,000 of his own money into the charity's account to help start it up, there was no supporting documentation specifying the terms of this. Mr A had borrowed money from the charity's account to pay off a personal loan, withdrawn nearly £18,000 in cash and spent a further £4,700 on personal business travel – unauthorised trustee benefits received in breach of trust. The Inquiry was made more complex by the lack of sufficient books and records to allow accounts for the relevant year to be produced.

The Inquiry found that Mr A had been responsible for mismanagement and misconduct in the charity. To protect the charity's assets we froze its bank account, ensuring no payments could be made without our prior approval. We also suspended Mr A, with a view to further consideration being given to his permanent removal as a trustee, and informed the police of his provision of false information to us – which is potentially a criminal offence. The police later cautioned him under the Fraud Act 2006. The Commission has appropriate procedures in place to monitor any potential risks should Mr A become involved in charities in future.

We established that there were no remaining active trustees. Given the charity's lack of funding, the limited nature of the work it was now allowed to carry out, and the fact that it had ceased operating, we concluded it no longer had a viable future. We closed the Inquiry and removed the charity from the Register of Charities.

## Relevant issues for other charities

Allowing too much control to be in the hands of any one trustee is not a good idea for a number of reasons, but it can become a genuine threat to a charity's survival when there are insufficient checks, balances and financial controls in place, and sufficient accounting records are not kept. Trustees have a duty to make sure that adequate financial controls are in place to mitigate any risks to the charity. Our guidance, *Internal financial controls for charities* (CC8), gives a good grounding in the basics.

Trustees who simply defer to the opinions of a dominant trustee are not carrying out their legal duty to the charity, and where a dominant trustee effectively deprives a charity of the judgement of other trustees it is such poor governance that it amounts to mismanagement.

The voluntary principle of trusteeship means that, while it is completely legitimate for trustees to recoup reasonable expenses incurred on charity business, no trustees can benefit from their position without authority either contained in the charity's governing document or from the Commission. Our guidance *Trustee expenses and payments* (CC11) explains the position.

Conversely, trustees making loans to charities is generally not good practice; conflicts of interest can arise which must be carefully managed. If there is a real need to make such a loan, the loan terms should be clearly specified and documented, including repayment timetables and terms.

## E4. Putting vulnerable beneficiaries first

*Charity trustees have a legal duty of care to protect their charity. This includes a fundamental responsibility to ensure that vulnerable beneficiaries are protected from harm. Good intentions can be circumvented – it is vital that effective policies are in place and implemented. There can be no exceptions.*

### A faith-based charity<sup>1</sup>

This charity, a branch of a worldwide religion, undertakes a range of religious activities including the provision of a place of worship and other facilities. Its trustee board appointed a member of its congregation as a fellow-trustee of the branch charity.

This individual was subsequently arrested and convicted of gross indecency and indecent assault on a number of child members of two other branches of the religious organisation, which had been committed prior to him joining this branch.

The Commission was made aware of the conviction by press coverage. Given the serious nature of these concerns and the potential risks to the charity's vulnerable beneficiaries, including children, we opened a statutory inquiry.

We found that, while the individual was still listed as one of the charity's trustees he had, in fact, been removed as a trustee by the other trustees when he was arrested.

The trustees also assured us that, while the individual was allowed to remain as a member of the congregation, they had ensured that he had no unsupervised access to children, young people or vulnerable adults in the congregation. They also explained that his actions were closely supervised and monitored.

Other charities might have decided to ask an individual in this position to remove themselves from the congregation, at least temporarily. This charity told us the religion places a high importance on personal redemption and thus the individual was allowed to remain with the safeguards in place.

Subsequently, the individual left the area and ceased to be a member of the charity's congregation. The trustees had informed the congregation nearest to his new home of his conviction and that congregation, in turn, has put in place supervisory measures.

The Commission required the charity to produce a child protection policy as the charity had no written policy in place. We are currently working with the charity's umbrella body to produce a full child protection policy which, when agreed, will be binding on all of the branches of the charity it represents.

<sup>1</sup> We have not named this charity as we are working with its umbrella body to produce a full child protection policy.



## Relevant issues for other charities

Trustees have a general duty to take reasonable steps to assess and manage the risks to their charity, and this includes risks to the charity's beneficiaries. Where trustees – and others, including volunteers – have direct contact with vulnerable users, they must carry out appropriate checks. In some cases, failure to do so is a criminal offence. Charity trustees are at risk of being in breach of their duties of care and to act in the interests of their charity if they fail, without good reason, to carry out appropriate Criminal Records Bureau ('CRB') checks. CRB checks are a reliable way of knowing whether someone has convictions which means they are disqualified from occupying certain roles within charities. Our guidance, *Finding New Trustees: What charities need to know* (CC30) provides details.

Trustees must ensure they react immediately and responsibly to allegations of suspected abuse of beneficiaries involving someone associated with the

charity to ensure no beneficiaries are at risk. Again, we consider trustees risk being in breach of their duties and responsibilities if they fail, without good reason, to address these incidents and act appropriately – by investigating allegations and contacting the police where appropriate.

Part of this involves providing us with information about serious incidents as soon as possible, not just when completing the charity's Annual Return. As good practice, any serious incident which results, or could result, in a significant loss of funds, risk to a charity's property, work, beneficiaries or reputation should be reported to us immediately – we want to work with trustees to help put things right before they escalate. More information can be found in our guidance *Reporting Serious Incidents: Guidance for Trustees*.

## E5. Tackling allegations of links to terrorism

*Any links between a charity and terrorism activity are totally unacceptable and corrode public confidence in charities. It is the trustees' responsibility, and theirs alone, to properly assess and manage risks to ensure that a charity's premises, assets, staff, volunteers or other resources cannot be used for activities that may, or appear to, support or condone terrorist activities. Trustees must have adequate safeguards in place and implemented to demonstrate that they are properly managing those risks, including robust due diligence and monitoring procedures. Where allegations of links to terrorism arise, trustees must take rigorous steps to investigate and deal properly with the concerns.*

### **Palestinians Relief and Development Fund (Interpal)**

Interpal delivers aid and charitable relief to Palestinians, mainly in the Occupied Palestinian Territories, Jordan and Lebanon, sending funding to partner organisations working on the ground. A television programme alleged that some of these partners had promoted the ideology of Hamas which had been designated as a terrorist organisation by the European Union and subsequently by the UK government.<sup>2</sup>

Our Inquiry looked at a number of issues, including whether these local partners did promote Hamas' ideology and would be inappropriate partners for the charity. We also looked into the charity's membership of and links with the 'Union for Good', a group comprising a number of UK and foreign organisations working with Palestinians and in the Occupied Palestinian Territories. The regulatory issues were whether the trustees were acting appropriately and fulfilling their legal duties and responsibilities, in particular by ensuring that the charity and its assets were protected from any association with terrorist or inappropriate political activities.

The Inquiry could not verify the material suggesting that certain local partners funded by the charity may be promoting terrorist ideology or activities, so the material was of insufficient evidential value to support the allegations.

However the Inquiry concluded that the charity's relationship with the Union for Good had not been adequately managed, and was not appropriate given that its members included designated entities, allowing a link to be made between the charity and designated entities through membership of, and association with it. Given the lack of clarity surrounding the constitution, structure and membership of the Union for Good, we also concluded that the charity's trustees would not be able to satisfy themselves in the future that they had discharged their legal duties and responsibilities to the charity if that relationship continued.

We found that the charity's trustees had not taken sufficiently rigorous steps to investigate allegations about some of their local partners and did not have adequate due diligence and monitoring procedures to satisfy themselves that these partners were not directly or indirectly promoting terrorist ideologies or activities.

We consequently took action by using our powers of remedy to legally direct the trustees to end the charity's membership of the Union for Good. We also legally directed the trustees to carry out a review of their due diligence and monitoring procedures.

A timetable was set for the charity to complete these actions, to deal with our concerns, and progress is being made by the trustees, with whom we are actively engaging.

<sup>2</sup> An individual, organisation or group (referred to as entities) can be 'designated' in the UK under the Terrorism Orders where there are reasonable grounds to suspect that the entity commits, attempts to commit, participates in or facilitates the commission of acts of terrorism. These orders impose financial restrictions on persons or entities specified by UN Resolutions, European Union Regulations, and the UK Treasury which are all effective in the UK.

## Relevant issues for other charities

Charities frequently undertake work around the world in complex and often chronic emergency situations, whether caused by natural disasters or as a result of political and social unrest or armed conflict. Charities make a vital contribution to supporting communities in desperate need and the value and impact of their work cannot be overstated.

### *Allegations of terrorist abuse within charities*

Proven instances of terrorist involvement in and abuse of charities are extremely rare but are completely unacceptable. It is the responsibility of charity trustees to safeguard their charity from the risk of abuse, including terrorist abuse. The Commission will support them to do this, and will also support charities carrying out legitimate and vital humanitarian and other work, within the law.

We expect trustees to be vigilant to ensure that a charity's premises, assets, staff, volunteers or other resources cannot be used for activities that may, or appear to, support or condone terrorist activities. We also expect trustees to take all necessary steps to minimise the risk that their charity's activities could be misinterpreted as promoting or supporting terrorism by ensuring that they are transparent about the work they do and the rationale behind their decisions. The Commission holds trustees accountable for ensuring that effective procedures are put in place and properly implemented to prevent terrorist organisations taking advantage of a charity's status, reputation, facilities or assets.

It is particularly important to ensure that the charity is not used to commit any criminal offences under terrorism legislation. Trustees must also ensure that they fulfill any obligations under UK or international law regarding the reporting of suspicions of terrorist or criminal activity.

### *Acting as a trustee*

A charity is entitled to the independent and objective judgment of its trustees, acting solely in the interests of the charity. Trustees must ensure

that they do not permit any personal associations to interfere inappropriately with their judgment as charity trustees. They should also ensure that their personal interests or conduct do not place them in a position of conflict with their charity's interests.

### *Managing risk*

Trustees have a duty of care towards their charity. Trustees can take calculated risks but it is their responsibility, and theirs alone, to protect the charity's assets, to use those assets only for their charity's purposes and to account for the proper application of their charity's funds, particularly when the charity works in or sends funds to regions where terrorist groups are known to operate.

### *Working with partners*

When working overseas, charities often operate through local partners and this can be an effective way of delivering significant benefits direct to a local community. It does not, however, alleviate or shift responsibility for ensuring the proper application of the charity's funds by the local partner. That responsibility always remains with the charity trustees, forming part of their duties and responsibilities under charity law.

As part of their due diligence processes, trustees should conduct checks on prospective (and existing) partners to satisfy themselves that their partnership would not expose the charity's assets or reputation to undue risk. These processes, which can be described as 'know your partner', may also apply to a charity's donors or beneficiaries.

More information on charities and terrorism can be found in our *Counter-terrorism Strategy*, our forthcoming *Compliance Toolkit: Protecting Charities from Harm*, our guidance *Reporting Serious Incidents* and *Charities Working Internationally*.

## E6 Keeping it neutral

*Charities are expected to be independent from external control and this includes the need to be balanced and unbiased when it comes to party politics. This year has seen a number of cases where charities have risked their independence and reputation, requiring our involvement.*

### The Smith Institute

The Smith Institute advances education in the field of study and research into the economy of the United Kingdom. It does this by holding interactive seminar events, conducting research and publishing material such as transcripts, speeches and collections of essays on its website.

In late 2006 concerns were raised by the media about the work undertaken by the Institute. Additionally, a newspaper article implied that the work of the Institute was being used as a basis for policy formation by advisers who supported the then Chancellor of the Exchequer. Further concerns were subsequently raised publicly, implying connections with the Labour Party.

Similar public concerns had also been raised previously in 2001. We had, at that time, discussed these concerns with the charity and provided regulatory advice highlighting the need to safeguard the Institute's independence.

Due to the high profile, potentially serious and recurrent nature of the concerns and the risk to the Institute's reputation, the Commission opened a statutory inquiry. The purpose of the Inquiry was to consider whether the Institute was both established and operating as a charity in accordance with its charitable purpose. The Inquiry also looked into whether the Institute was carrying out political activities inappropriate for a charity.

The Inquiry reconfirmed that the Smith Institute is a charity and is capable of operating for the public benefit. The Inquiry also found that the Smith Institute was producing work which falls within its charitable purposes, was of educational value and was freely available to the public. However, due to the volume and nature of party political content in some of its events and publications, we concluded that the Institute's work was not always as sufficiently balanced and neutral as charity law requires.

The Inquiry concluded that the trustees were not sufficiently engaged to ensure the proper supervision of the charity, given the nature of its activities, work programme and the political environment in which it operates. The trustees did not adequately manage the risks to the independence of the Institute and its reputation. This meant that the Institute was vulnerable to the perception that it was involved in party politics – never acceptable for a charity.

We used our powers to legally direct the trustees to put new systems in place to ensure the charity manages the risks of party political bias while continuing to make its work available to the public. We set the charity a timetable for doing this and have been monitoring progress by actively engaging with the trustees to ensure the actions have been fully implemented.

## Relevant issues for other charities

Charities must safeguard their independence. Trustees of educational research charities, which include think tanks working close to the political environment, need to pay particular attention to the inherent risks involved in the nature of their work.

These charities cannot be involved in directly promoting government policy for political advantage, the policies of a particular political party or individual, or be involved in party politics in any way. They must ensure the political neutrality of the work they do - which means a charity cannot champion or support the Government, one political party and/or discredit another. It can, however, express support for particular policies which will contribute to the delivery of its own charitable

purposes as long as it maintains its independence and perceptions of that independence are not negatively affected.

Trustees have a fundamental responsibility to ensure their charity's activities further their charitable purpose. As part of an ongoing risk assessment trustees should regularly re-evaluate the charity's work, consider whether its activities successfully fulfil the original aim and if the work furthers their charity's purpose.

Although it was not the case with the Smith Institute, a charity, or its trading subsidiary, must not give financial support to a political party, nor to a candidate or politician.

## E7. The fallout from disputes

*Charities need to be careful and aware of the risks when making important strategic decisions if there is an ongoing dispute about the identity of the validly appointed trustees. Those involved should act to resolve the dispute and focus efforts on delivering charity services, not internal squabbles.*

### **A London-based charity<sup>3</sup>**

In this case there was a dispute about the identity of the validly appointed charity trustees. The different parties did not cooperate or work with the Commission, despite a variety of solutions being suggested to achieve a properly elected body for the charity and enable the charity to move forward.

Subsequently the unelected management committee proceeded to exchange contracts on a property which was on the market for £1,500,000, using a non-refundable deposit from the charity of £150,000. The intention was that the purchase should be funded by £500,000 of the charity's funds, together with a £1m mortgage. An allegation was made to the Commission that they were purchasing this property to establish a breakaway charity, and it was not clear that the property would be used in practice to further the aims of the charity.

The Commission opened a statutory inquiry and investigated the circumstances of the purchase, including details of the professional advice which had been received. As a precaution the Commission had used its statutory powers to ensure that the solicitors acting for the charity did not part with any more charity funds, but on investigation found that the purchase was value for money and in the interests of the charity.

As soon as the property purchase was completed, the Commission vested the property in the Official Custodian for Charities ('OC'), whose purpose is to hold the title to land on behalf of charities. This meant that the property could not be sold without the OC being a party and without the Commission authorising any disposal. This was to ensure the property's subsequent sale would be in furtherance of the aims of the charity.

The Commission is working to resolve the issue of ensuring that there is a validly appointed trustee body, and a statutory inquiry report will be published in due course once proper elections for a new trustee body have been held.

<sup>3</sup> We have not named this charity as it is the subject of an ongoing statutory inquiry.

## Relevant issues for other charities

It is the responsibility of charities to ensure that their trustees are validly appointed in accordance with the terms of the governing document. The Commission will not generally become involved in internal disputes in this area because this is the responsibility of trustees. Our publication *Conflicts in your charity: a statement of approach by the Charity Commission* clarifies our role in disputes and provides guidance to help trustees resolve them.

If there are properly appointed trustees in place we will not become involved in a dispute. It is the responsibility of the trustees to ensure any complaints are addressed. We will usually become involved only if there is sufficient evidence that:

- there are no validly appointed trustees; and
- all other methods of resolving the dispute have failed.

Where, as in this case, the Commission does become involved we will advise the charity as appropriate, and we will use our statutory powers proportionately and effectively with a view to protecting charity assets. Where necessary we will vest charity property in the Official Custodian for Charities to protect and safeguard it for the use of future beneficiaries.

## E8. Ethical and legal requirements at odds

*There can be tensions for organisations between meeting ethical requirements and other legal requirements. Charities which find themselves in this position should consider carefully the implications of these when they initiate change.*

### The SS John and Elizabeth charity

The charity runs an independent hospital and hospice, and its governance and activities are closely linked with another charity, the Brampton Trust. This Trust uses its income to support the hospital charity and leases some of its properties to the hospital at a peppercorn rent. The hospital charity is required to carry out its purposes in accordance with the spiritual and ethical principles of Roman Catholic teaching.

Both charities had previously come to us for authorisation to mortgage their property to raise funds to redevelop part of the hospital, to be part-financed by sub-letting part of the Trust's premises to an NHS GP practice. Assured that the hospital charity would ensure compliance with its religious ethical requirements we authorised the request. At the same time, the hospital charity began a review of its Code of Ethics to ensure compliance with these ethical requirements.

Subsequently, we received complaints that, under the terms of the sub-lease, the GP Practice would not be bound by the ethical requirements. Disagreements also arose within the hospital charity about the practical viability of the new Code of Ethics, which had been approved but not implemented. This in turn raised concerns about the ability of the hospital charity to comply with its ethical requirements and the ways in which both charities were taking decisions about the hospital redevelopment.

The GP practice was bound to provide a broad range of NHS services, including contraceptive advice, which may have been a breach of the ethical requirements. A number of the charity's trustees resigned in protest. Given the imminent entry of the GP practice, we opened a statutory inquiry.

The Inquiry dealt with complex issues but successfully resolved the situation. It concluded that the hospital charity's ethical requirements involved it taking all *reasonable* steps to comply with the ethics of the Roman Catholic Church, rather than all *possible* steps. This meant that the sub-lease could have been consistent with these requirements. The hospital charity has also agreed and implemented a new Statement on Ethics and produced a revised business plan to secure the hospital's future. The Commission required that the trustees strengthen their governance procedures, which they subsequently did.



## Relevant issues for other charities

While the facts of this case were quite unique, it is a good example of how trustees can find themselves in circumstances where one set of requirements in their governing document may cause tension with other requirements.

The particular needs of individual charities and the judgements required of trustees can be very challenging with difficult implications to consider.

Trustees have to act at all times within both the terms of their governing document and within the general law. So it is essential that they keep fully informed and understand the requirements and implications of the rules in their charity's governing document if they are to take good decisions. Having robust procedures in place to record the decisions trustees have made will also help to demonstrate that they have acted properly.

## F. Compliance policy and other developments

This part of the report covers key developments in our work during the year.

### F1. Reporting Serious Incidents

We aim to ensure our regulation is proportionate and focused on risk. Serious incident reporting by trustees is one of our key tools. By trustees alerting us to concerns, it ensures that we can provide assistance at the earliest opportunity, targeting our resources where the risks are highest and helping to put charities back on a secure footing where necessary.

As a result of additional stakeholder feedback in 2008 and again this year, we further revised our guidance for trustees on reporting serious incidents. This clarifies our approach to issues of serious concern, detailing what we consider to be serious or significant, the actions trustees should take and the legal requirements placed upon them; and what our response may be. The guidance, which is part of the Annual Return for Charities (AR09) can also be found on our website <http://www.charity-commission.gov.uk/investigations/rsi.asp> which also provides further information under 'Frequently Asked Questions.'

Trustees should, as a matter of good practice, report serious incidents to the Commission as soon as they are aware of them.

However, trustees of charities with an income over £25,000 must also, as part of the charity's Annual Return, confirm that there are no serious

incidents or other matters which they should have brought to our attention but have not. Failure to provide this confirmation would be a breach of legal requirements.

Our response will depend on the particular circumstances of the incident, what the charity has already done, and the charity's (or its trustees') ability to resolve it without our intervention. Our overall approach focuses on providing support and guidance and promoting good practice as well as ensuring that charities comply with their legal obligations.

If trustees have handled serious incidents properly and responsibly and have taken appropriate action, the Commission is unlikely to intervene. Reporting serious incidents should therefore provide some reassurance.

During the year the Commission received 255 Reports of Serious Incidents ('RSIs'). Of these, 57 were identified as not being 'serious incidents' i.e. incidents that needed a report under our guidance; 176 were dealt with by teams in the Compliance Division.

Of the total 255 received, 57 were subject to an investigation by the police or another agency.

We have analysed the reports into the following categories which reflect the zero tolerance issues identified in the Commission's risk and proportionality framework for compliance work, and the issues highlighted in the RSI guidance for the Commission's Annual Return for 2009:

Fraud/Theft/Misappropriation/Significant loss of funds	142
Allegations/suspicious/actual incidents of abuse against vulnerable beneficiaries	37
No policies for safeguarding vulnerable beneficiaries	11
Other criminal activity	5
No vetting procedures	5
Links to terrorism/proscribed organisations	2
Sham charities	2
Money laundering	2
Disqualified from acting as a trustee	1
Donations from an unverifiable source	1
Other (including health and safety issues, employment tribunals, fires, and complaints following OFSTED reports)	53

**Note:** In some instances an RSI fell into more than one category; the figures also include those reports that were subsequently considered not within the guidance's definition of 'serious incidents'.

## F2. Development and implementation of our Counter-terrorism Strategy

Our *Counter-terrorism Strategy* was published in July 2008, along with a summary of the public responses to our consultation on the draft strategy and a commentary from the Commission on some of the key issues raised. The *Counter-terrorism Strategy* is the Commission's formal statement of approach to tackling terrorist involvement or abuse in the charitable sector, meeting our commitment to "publish, promote and invite feedback on the strategy".

Our strategy has a four-strand approach for identifying and minimising the risk of terrorist exploitation of charities:

1. *Awareness* – working in close co-operation with the sector to build on charities' existing safeguards to minimise the risk of terrorist abuse;
2. *Oversight* – taking a more proactive approach to monitoring the sector in order to identify those charities that may be facing problems so we can alert them, at an early stage, to the risks and provide them with regulatory advice and support;
3. *Co-operation* – in addition to maintaining close links with the charitable sector, we will work closely with other government regulators and law enforcement agencies to better ensure the disruption of those that seek to exploit charities for terrorist ends;
4. *Intervention* – dealing proactively, robustly, effectively and swiftly when we have evidence or serious suspicion of terrorist abuse involving charities.

We have made the following progress under each strand.

### *Awareness*

Our priority this year has been to establish our Compliance Outreach programme and to focus our efforts on engaging with the charity sector. We launched the programme at a key London event in June 2008 involving representatives from the sector, law enforcement and other government agencies. We explained our *Counter-terrorism Strategy* and our regulatory approach, and underlined our commitment to work with the sector to produce the *Compliance Toolkit: Protecting Charities from Harm*. This is intended to be practical guidance to help charities understand their legal obligations in relation to terrorism legislation and charity law, and to minimise the risks from terrorist and other abuse.

Since the launch event we have held a total of 10 outreach events across England and Wales up to April 2009 inviting 900 charities. In total, almost 200 charities attended, including small and medium charities as well as the larger household names, many of which work internationally.

Later in 2009 we will publish a summary of the feedback on the new compliance pages on our website together with an index of the toolkit chapters and a timetable for their production and delivery.

### *Oversight*

We have established a Compliance Monitoring Unit and this has been fully operational since December 2008. This Unit monitors and profiles the sector in areas we recognise as high risk in order to identify, at an early stage, those charities that may be facing problems and intervening where necessary. The Unit began a programme of monitoring visits to charities in September 2008. Some of the 14 visits carried out involved terrorism related concerns. We were able to provide regulatory advice and guidance to help the trustees better manage the specific risks to their charities.

### *Co-operation*

We have continued our work to strengthen strategic and operational relationships with other regulators, law enforcement and government agencies including those which are involved in counter-terrorism work. Our engagement with Whitehall counter-terrorism committee structures is also stronger and more effective.

Other creative and practical collaboration during the year included a joint inward secondment of a senior accountancy manager from the forensic department at Grant Thornton, split between ourselves and the police. This was a new initiative between the Commission, one of our key compliance partners and the private sector.

### *Intervention*

It is vital that we build and maintain high standards in our terrorism related investigations as

we often work closely with other agencies. We aspire to add value to other agencies' investigations as part of the joined-up approach to tackling cases.

We have been investing in various types of training so that our staff are professionally accredited to industry standards. This includes, for example, accredited counter-fraud training that builds skills in investigation procedures, and a National Police Improvement Agency (NPIA) accredited course on Financial Intelligence which enhances skills in financial investigation.

Out of our total caseload in 2008-09, 16 investigations included dealing with allegations of links to terrorist related activities or organisations. Ten of these were completed during the year: eight were regulatory compliance cases and two were statutory inquiries.

In the ten completed investigations involving terrorism issues we used a wide range of our powers of protection and remedy.

#### **Use of Charity Commission Powers – all completed terrorism related investigations 2008-09**

s.9 powers ordering the charity or associated institutions to provide information	10
s.8 powers to direct the charity or its representatives to respond to questions	4
s.18 powers to suspend / remove a trustee	2
s.19(A) specific direction to protect charity	1

Our experience from these cases last year reinforces our view that the most effective way for charities to minimise their exposure to the risk of links to terrorism is through implementing robust governance arrangements, financial controls and risk management policies and procedures.

Precedents and wider lessons from counter-terrorism cases continue to feed into our counter-terrorism policy development and the compliance toolkit guidance for outreach work. This flow of information continues to strengthen our knowledge, regulatory approach and the advice and guidance we provide.

### F3. Development of our monitoring and analysis capability

The Compliance Monitoring Unit was fully established and operational by the end of 2008. The Unit's aims include the exercise of greater oversight over non-compliance concerns among charities, and using information, knowledge and experience to detect and deter serious abuse, and disrupt the activities of those seeking to abuse charities.

The Unit also encourages self-regulation and good practice by providing regulatory advice and guidance, at an early stage, to charities identified as being at the highest risk, including guidance on putting adequate systems in place for minimising and managing risks.

In September 2008, we began a new initiative of undertaking compliance visits to selected charities, providing us with the opportunity to examine the nature and seriousness of the concerns which have come to our attention and allowing us to assess the charity's risk management policies and practices. It also enables us to provide regulatory support and guidance to charities.

Although compliance visits are still at a relatively early stage in their development, they are proving to be an effective and direct regulatory tool. In the year, we made 14 compliance visits, dealing mainly with issues relating to governance, accounting, and Reports of Serious Incidents.

### F4. Working with other regulators

Effective and credible joined-up working with other regulators, law enforcement and other government agencies is essential for detecting, deterring and preventing abuse from taking place in charities, and rectifying problems when they arise. During the year, we continued to strengthen our strategic and operational relationships with an increasing number of agencies by putting in place formal protocols, memoranda of understanding (MOUs), or operational arrangements. We now have nine MOUs in place with key agencies and a further five under development.

The Charities Act 1993 (section 10) allows a two-way exchange of information between the Commission and other regulators or government agencies where this will further the statutory purposes of either organisation. As a public authority and data controller under the Data Protection Act 1998, the Commission must comply with the proper and safe collection, handling and use of personal data. This is something we are required under law to do but which in any event we take extremely seriously.

The growing effectiveness of the Commission's relationship with other agencies, and of its information sharing, is demonstrated by the increase in the number of information exchanges in each direction. The number of exchanges received by the Commission in the year was 111 (89 in the previous year), and the number of exchanges provided to other bodies was 641 (417 in the previous year).

The Commission's contact and collaboration with other agencies – including the exchange of information through section 10 - increasingly produces successful and effective case outcomes.

## F5. Reporting concerns about charities - complaints and whistleblowing

It is not just trustees who report concerns about charities through RSIs and other means. The Commission received approximately 800 complaints last year about the way charities were being managed or operated. The majority of these were dealt with in Charity Commission Direct, though around 350 (including RSIs, whistleblowing cases, and other complaints) were referred for further assessment to the Compliance Assessment Unit because they posed a potentially serious regulatory concern for us.

Concerns may be raised either by statutory whistleblowers (accountants, auditors and independent examiners) or by others connected to the charity (such as employees, volunteers, beneficiaries and funders). Concerns are also brought to our attention by the general public and the media.

Our revised guidance published last year, *Complaints about charities* (CC47) <http://www.charity-commission.gov.uk/publications/cc47.asp> explains the process of making a complaint about a charity to the Commission and clarifies what we can and cannot look into. It also provides an extensive list of other sources of help so that complainants can raise their concerns with the appropriate organisation.

This year, in collaboration with the Office of the Scottish Charity Regulator ('OSCR'), we published whistleblowing guidance for auditors and independent examiners on their legal duty to report matters of material significance to the Charity Commission and OSCR.

This guidance can be found on our website <http://www.charity-commission.gov.uk/investigations/whstl.asp>

There were 49 whistleblowing reports received by the Commission in the year (RSIs were also received for six of the whistleblowing reports), the vast majority of which were dealt with by the Assessment Unit. The key themes in these reports were as follows:

Misappropriation/Financial mismanagement/Financial irregularities	30
Fraud/Theft/Money laundering (including criminality)	11
Trustee/Governance issues (including one disqualified trustee)	9
Other (Funding a political organisation; sexual harassment; unspecified staffing issues)	3

**Note:** in some cases more than one issue was reported.

## F6. Fair and effective investigations

We are committed to providing a high standard of service. When carrying out our investigations we place the very highest importance on following legal due process, ensuring that our investigatory procedures are at all times fair, reasonable and transparent, and that we act in a manner which is compatible with our obligations under Human Rights legislation. This ensures that we make proper decisions and exercise our regulatory powers correctly in achieving the best possible outcome for a charity. However, we may receive complaints about our standard of service, the outcome of a case, or a decision we made. When we do it is essential that we examine the complaint seriously and objectively and, if things have gone wrong, put them right quickly and effectively. We also

strive to respond appropriately when we receive freedom of information requests in relation to our investigations.

### **Standards of Service**

When people now express dissatisfaction about the level of service they have received, an individual from the responsible division, who was not involved in the case, completes an assessment into the issues. This is known as *Local Resolution*. If the complainant still remains dissatisfied there are a number of ways concerns can be progressed, depending on the nature of the complaint.

The complaint can be referred to the Commission's Customer Service Team, who will examine the case and judge whether we provided an appropriate standard of service. The table below shows the number of **Standards of Service** cases for Compliance in 2008/09

Standards of Service complaints	Upheld	Partially upheld	Not upheld	Total
	1	2	4	7

### **Outcome Reviews**

If a complainant is still unhappy with the outcome of the case following Local Resolution, for example if it is believed that we have come to the wrong conclusion, the outcome may be reconsidered by an **Outcome Review Panel**. This is made up of

senior, experienced officers who have had no previous input into the case. The table opposite shows the number of Outcome Review Panels for Compliance in 2008/09.



Outcome Review Panel	Upheld	Partially upheld	Not upheld	Total
	1	1	2	4

There is a final stage of complaint review where the customer has the right for their dissatisfaction with the Commission to be examined by the **external Independent Complaints Reviewer (ICR)**. The ICR dealt with four compliance cases over the year: none of these complaints was upheld. The ICR's annual report in relation to the Commission may be found at [http://www.icrev.org.uk/cc\\_report2009.shtml](http://www.icrev.org.uk/cc_report2009.shtml)

Details of our complaints procedure can be found on our website: <http://www.charitycommission.gov.uk/tcc/complaints.asp>

### **Challenges to decisions**

Sometimes the complainant's concern is about decisions we have made during a case, rather than the standard of service we have provided. Given the sensitive and difficult nature of much of our compliance work, it is not uncommon for us to receive complaints that we have made an incorrect decision.

Through a **Final Decision Team** the decision is re-examined by a group of Commission staff, and sometimes a member of the Commission's Board, who are independent from the case. They will assess whether we have exercised our powers fairly and properly and whether the reasons for our decisions have been clearly communicated. In the Compliance Division, typical decisions entering the review process are those involving the use of our powers as part of a statutory inquiry. Other reviews have involved our decisions to refuse to provide information requested under the Freedom of Information Act 2000 where we judged that relevant exemptions under the Act applied.

The table below shows the numbers of Final Decision reviews for Compliance and their outcomes in 2008/09.

Final Decision Cases	Number of new cases opened	Closed cases			Board Member Review
		Number of cases closed	Decision upheld	Decision partially upheld	
	21	19	12	4	3

The Final Decision Team process is the Commission's final decision. If the complainant remains dissatisfied then the next step may be to take it to the **First-tier Tribunal (Charity)**. The Tribunal provides an independent route of appeal for charities which have exhausted the Commission's decision review process.

### ***Freedom of Information***

Our approach to Freedom of Information has mirrored our long-standing commitment to openness and transparency and we aim to disclose wherever this is possible. One Freedom of Information request which went before the **Information Commissioner** and the **Information Tribunal** involved compliance work. The Information Commissioner's Office is a UK independent supervisory authority reporting directly to Parliament. The Information Commissioner oversees both the Freedom of Information Act 2000 and the Data Protection Act 1998.

The decision of the Tribunal confirms that we have been adopting the correct approach to Freedom of Information requests relating to statutory inquiries and legal advice. Further details are available on the Information Tribunal's website at [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

In 2008, the Commission dealt with over 500 Freedom of Information requests and one quarter of these related to compliance work. We provided information, either in full or in part, in two thirds of the 500 cases. In respect of statutory inquiries, the protection confirmed by the Information Tribunal is vital in order to maintain public trust

and confidence in our compliance work and to ensure our investigations are conducted properly and effectively. All external sources who play a part in the Commission's investigations need to be confident that the Commission treats the information it holds in an appropriate, careful and sensitive manner.

## **F7. Review of Interim Managers**

The Charity Commission has the power to appoint an Interim Manager to act in the administration of a charity. We can use this power only after opening a statutory Inquiry under section 8 of the Charities Act 1993 if we consider that there has been serious misconduct or mismanagement in the administration of a charity, or if it is necessary or desirable to protect the charity's property.

We usually appoint an Interim Manager to manage a charity to the exclusion of the existing trustees. The charity normally pays the Interim Manager's fees as in the case of receiver or liquidator appointments by the court. The appointment of an Interim Manager is only ever a temporary and protective step. We therefore appoint an Interim Manager only after very careful consideration of other possible solutions to the problems the charity in question faces. Appointments are usually made under a two-stage tender process. Although we can make appointments with the agreement of the charity trustees, most are taken forward without consent because in our view the problems facing the charity are sufficiently serious and the trustees are either unwilling or unable to put matters right themselves.

We have recently undertaken and completed a review of our work with Interim Managers. This involved revising and improving the way we use and supervise Interim Manager appointments, undertaking a national tendering exercise to establish a new approved list of providers, and publishing revised operational guidance - OG5 *Appointment of Interim Managers*. Further detail about the outcome of the review and a summary of the Interim Manager cases we concluded in 2008-09 can be found on our website. <http://www.charity-commission.gov.uk/investigations/receiver0607.asp>

## F8. Improving transparency – changes to the Register of Charities

As part of the Commission's drive to make information about charities more accessible, we have recently added more information to the online Register of Charities, to show where a statutory inquiry report or regulatory case report has been published and is available on our website, or where the Commission has appointed an Interim Manager. Where a statutory inquiry report or a regulatory compliance case report has been published, a link from the charity's entry on the online Register of Charities leads to that report on the Commission's website. The link will remain for six months; the length of time that inquiry and regulatory case reports stay on the website.

The Register of Charities now also shows when we have appointed an Interim Manager to a charity. This provides their name and contact details, additional information about their function and indicates whether the appointment is to the exclusion of other trustees. When Interim Managers are appointed for a charity, they generally administer it without input from the trustees, so providing information about an Interim Manager ensures that the Register details are accurate.

## F9. Guidance

It is important that trustees continue to have clear guidance to help them safeguard their charities and ensure they keep pace with new developments in reporting. During the year we produced the following new, or significantly updated, guidance to help them do this.

*Complaints about charities* (CC47) (June 2008)

*Conflicts in your charity* - A statement of approach by the Charity Commission (June 2008)

*Risk and Proportionality Framework for the Commission's compliance work* (July 2008)

*The Commission's Counter-terrorism Strategy* (July 2008)

*Charities Back on Track: Themes and lessons from the Charity Commission's compliance work 2007-08* (September 2008)

*Revised Reporting Serious Incidents* guidance and FAQs

In the next year we will publish:

- the *Compliance Toolkit: Protecting Charities from Harm* (further details provided in section F2. above);
- *Statutory Inquiries into Charities: guidance for charities and their advisers* (CC46);
- *Regulatory Compliance Cases: guidance for charities and their advisers* (CC45);
- statutory inquiry reports and regulatory case reports;
- an online search facility for the register of removed trustees; and
- sector alerts and bulletins covering key compliance messages.

## F10. Our key priorities for 2009-10

We will:

- ensure our work is effective and proportionate from an external perspective, including explaining better our impact and the difference we make;
- continually monitor and improve the quality of our work and how we go about it through a quality improvement initiative and redesigning our quality review processes; and
- provide a high standard of service to all those we come into contact with, ensuring our investigations are conducted properly and effectively, and responding fairly and appropriately when we receive complaints about the standard of service, the outcome of investigations, or the decisions we make.

# G. Annexes - Key Statistics from the Commission's compliance work – 2008-09

## Annex 1 – Performance headlines and impacts

Compliance performance headlines	2008-09	2007-08
Number of assessment cases opened	1504	799
Number of investigations opened <sup>4</sup>	168	170
Number of statutory inquiries opened	19	19
Number of statutory inquiries completed	21	29
Average duration of statutory inquiries (days)	358	414
Number of statutory inquiries completed which had significant involvement from other regulators	5	5
Average duration of statutory inquiries involving other regulators (days)	457	351
Number of statutory inquiry reports published	23	42
Percentage of statutory inquiry reports published within 3 month target	74%	31%
Number of regulatory case reports	4	-
Number of regulatory compliance cases opened	149	153
Number of regulatory compliance cases completed	167	171
Average duration of regulatory compliance cases (days)	158	149
Total number of investigations completed	188	200
Number of active investigations at year end	77	104
Number of compliance monitoring cases opened <sup>5</sup>	211	-
Number of compliance monitoring cases completed	81	-
Number of compliance monitoring visits	14	-
Number of compliance accounts scrutinies	320	-

<sup>4</sup> ie the total of statutory inquiries and regulatory compliance cases.

<sup>5</sup> These final four rows show performance relating to the first full year of the new Compliance Monitoring, Assessment and Intelligence function.

<b>Compliance performance impacts</b>	<b>2008-09</b>	<b>2007-08</b>
Charity assets directly protected	£47m	£16m
Charity income directly overseen through investigations - statutory inquiry and regulatory compliance cases	£461m	£106m
Number of investigations where Commission action protected vulnerable beneficiaries	30	9
Number of investigations protecting the reputation of individual charities	70	38
Number of investigations protecting the reputation of the sector	41	27
Number of investigations dealing with issues arising from conflicts of interest	21	26
Number of investigations where advice and guidance provided to ensure the charity's governance improved	47	61
Number of investigations involving concerns about fundraisers	11	9
Number of investigations where an internal dispute was resolved and the charity is properly functioning again	21	11
Number of occasions where Commission's statutory compliance powers were used, including extensive use of information gathering powers	707	490

These impacts relate to investigations completed during the year.

### Key Performance Indicators ('KPIs')

We had two KPIs for our statutory inquiries which were agreed with HM Treasury and which came into effect in April 2006. We modified one of these at the beginning of the year to report on the average duration of all statutory inquiries against a target. There is often a substantial variation between cases in terms of their complexity which results in marked differences in their duration. The revised KPI takes this into account and allows cases to be completed within timescales that are appropriate to their particular circumstances rather than a 'one size fits all' time frame. The KPIs are:

- complete all statutory inquiries in an average of 9 months (274 days)
- 95% of inquiry reports published within 3 months of completing the proactive investigation process

We applied the same principle of reporting on average duration to the targets we set ourselves for management performance indicators for our non-statutory investigations (which we call regulatory compliance cases):

- complete all regulatory compliance cases in an average of 6 months (183 days)

Our actual performance for 2008-09 was:

- *Statutory Inquiries*: in 2008-09, the average duration of cases was 11.8 months (358 days), compared to 13.6 months (414 days) in 2007-08.

- *Regulatory Compliance Cases*: in 2008-09, the average duration of cases was 5.2 months (158 days), compared to 4.9 months (149 days) in 2007-08.
- 74% of *statutory inquiry reports* were published within 3 months of case closure, compared to 31% for 2007-08.

Although we have not achieved our target, there has been a marked reduction in the time taken to complete statutory inquiries despite the fact that the smaller number of inquiries we undertake now are increasingly complex, sensitive and difficult to resolve. When even a small number of cases overrun the target this has an impact on overall achievement. We were able to surpass the case duration target for regulatory compliance cases, and made a very significant improvement in the time taken to publish inquiry reports.

We open statutory inquiries only for the most serious cases of regulatory concern, and this is reflected in the fact that the number of formal inquiries opened during the year remained relatively low. At the same time, the overall use of our powers has very markedly increased.

The use of our powers falls into one of three categories; information gathering, temporary and permanent. This year again, the majority of the orders and directions we made were for information gathering purposes. In summary, we used our formal powers to make a total of 707 statutory orders or directions (compared to 490 in 2007-08 and 329 in 2006-07). Full details of the use of powers are provided in Annex 6.

## Annex 2 – Published statutory inquiry reports 2008-09

This table highlights key issues of concern in these cases; notes the use of Charity Commission powers; and records the duration of each statutory inquiry.

Note these examples of the following issues of concern:

Charity	Issue											Statutory Powers						Statutory inquiry durations Months		
	Accounting issues	Disputes	Fraud allegations	Fund-raising	Governing document compliance	Land/Property	Political activities	Terrorism allegations	Trading/commercial	Trustee benefits/conflicts of interest	Trusteeship and governance issues	Vulnerable beneficiaries	Orders/Directions for information/evidence	Suspend trustees	Remove trustees	Freeze bank accounts	Interim manager		Other Orders + schemes	No powers used
1 African Legal Advisory Services (1078075)	✓		✓							✓	✓		✓	✓		✓				20
2 African Mental Health Community Support & African French Speaking Council (1094563/1104823)											✓			✓	✓			✓		7.5
3 Association for Reaching and Instructing Children in Africa (AFRICA) (1079952)	✓										✓	✓	✓							5
4 Al Ikhlas Foundation (1047844)							✓				✓		✓	✓	✓					12
5 Bath Holiday Trust (1005460)	✓								✓	✓	✓		✓			✓	✓			60.5
6 Children's Welfare Foundation (1113250)	✓			✓					✓	✓	✓		✓			✓				9.5
7 Diabetes Foundation (292317)			✓			✓				✓	✓		✓	✓	✓	✓	✓			19
8 Diabetes Help Limited (not registered)			✓	✓						✓	✓		✓	✓	✓	✓	✓	✓		84.5
9 El Shaddai Charitable Trust Limited (1076768)											✓	✓							✓	14
10 Footballers Further Education & Vocational Training Society (277501)			✓								✓								✓	31.5
11 Greater Life Foundation & Greater Life Trust Foundation (1076688/1106280)	✓			✓							✓		✓			✓				9
12 Jigsaw Children's Support Foundation (1107040)				✓						✓	✓		✓			✓				19

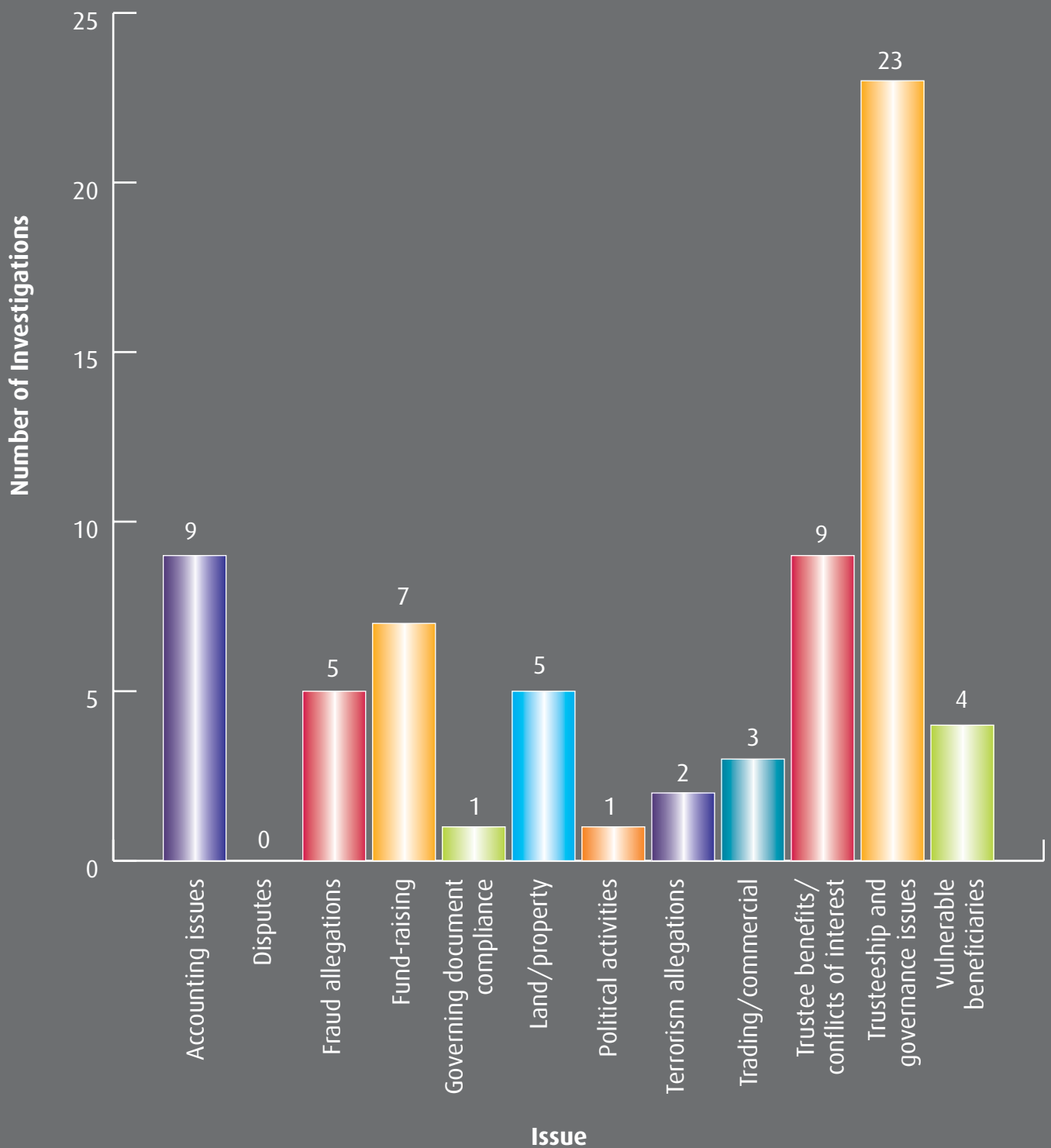


- *Accounting issues* – includes inadequate record keeping and taxation issues.
- *Fundraising* – includes non-compliance with the fundraising regulations, and the failure to properly apply or account for funds collected.
- *Trusteeship and governance issues* – details of these cases are set out in Annex 2.2.

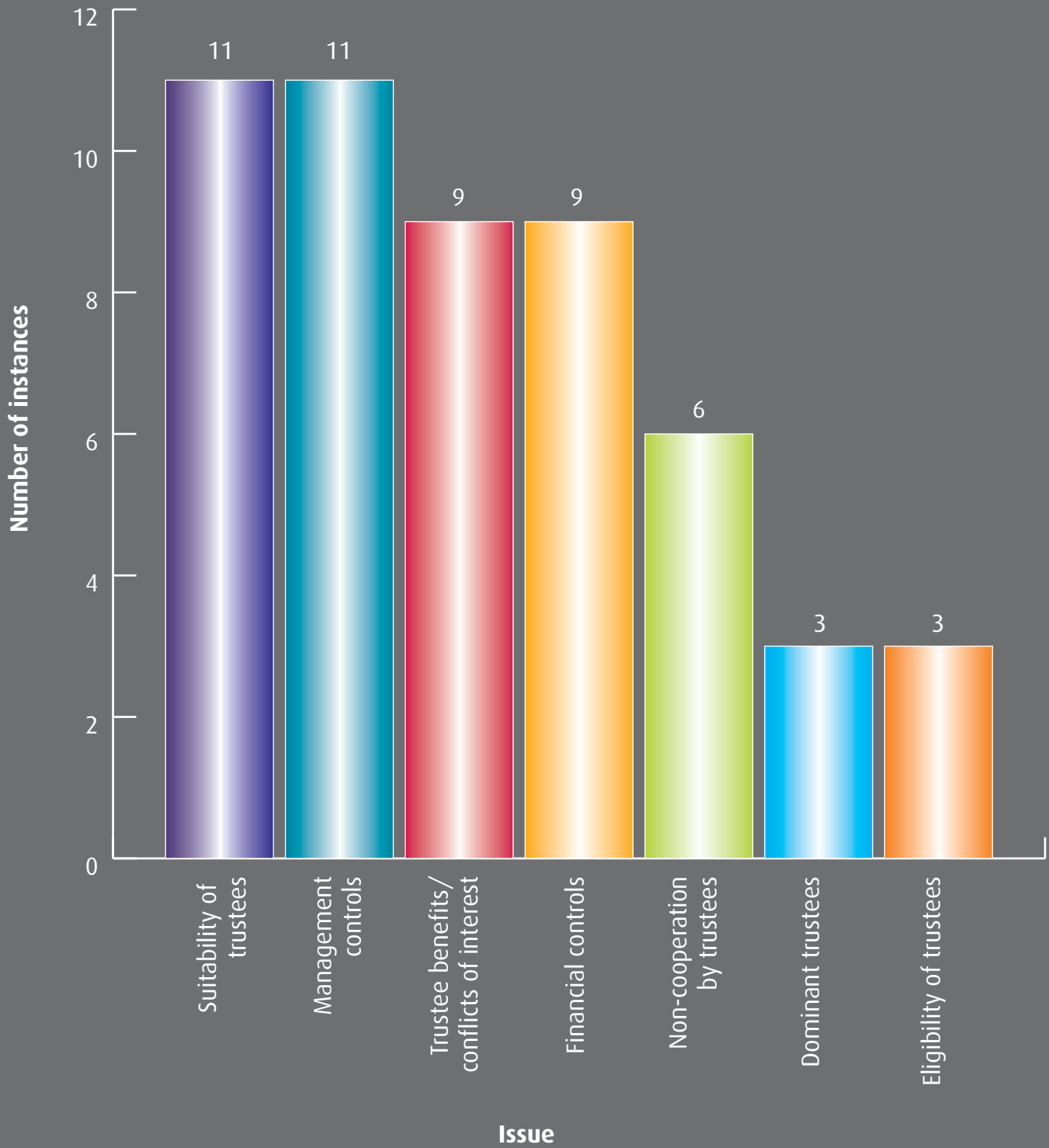
Charity	Issue													Statutory Powers								Statutory inquiry durations
	Accounting issues	Disputes	Fraud allegations	Fund-raising	Governing document compliance	Land/Property	Political activities	Terrorism allegations	Trading/commercial	Trustee benefits/conflicts of interest	Trusteeship and governance issues	Vulnerable beneficiaries	Orders/Directions for information/evidence	Suspend trustees	Remove trustees	Freeze bank accounts	Interim manager	Other Orders + schemes	No powers used	Months		
13 London Mill Hill Congregation of Jehovah's Witnesses (1065638)											✓	✓							✓	11		
14 Mama East African Women's Group (1080481)						✓					✓		✓			✓				7.5		
15 Manacare Foundation Limited (1108701)				✓							✓								✓	5		
16 Palestinian Relief and Development Fund (Interpal) (1040094)								✓			✓		✓					✓		26.5		
17 SS. John and Elizabeth Charity & Brampton Trust (235822/242326)						✓					✓		✓					✓		9		
18 Shema Yisrael Messianic Synagogue (1055784)	✓									✓	✓		✓		✓		✓			42		
19 Shiloh Pentecostal Fellowship Trust (507798)											✓	✓							✓	7.5		
20 Smith Institute (1062967)							✓				✓		✓					✓		19.5		
21 Tom Amos Charity (1080954)	✓				✓	✓				✓	✓		✓					✓		16.5		
22 Wings for Wildlife (1040423)	✓		✓	✓		✓			✓	✓	✓		✓			✓		✓		24		
23 World Children's Fund (1079124)	✓			✓							✓		✓							12		
<b>TOTALS</b>	<b>9</b>	<b>-</b>	<b>5</b>	<b>7</b>	<b>1</b>	<b>5</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>9</b>	<b>23</b>	<b>4</b>	<b>16</b>	<b>6</b>	<b>4</b>	<b>10</b>	<b>3</b>	<b>8</b>	<b>5</b>			

## Annex 2.1 - Published statutory inquiry reports - 2008-09 – the type and frequency of issues of concern arising in the 23 statutory inquiry reports

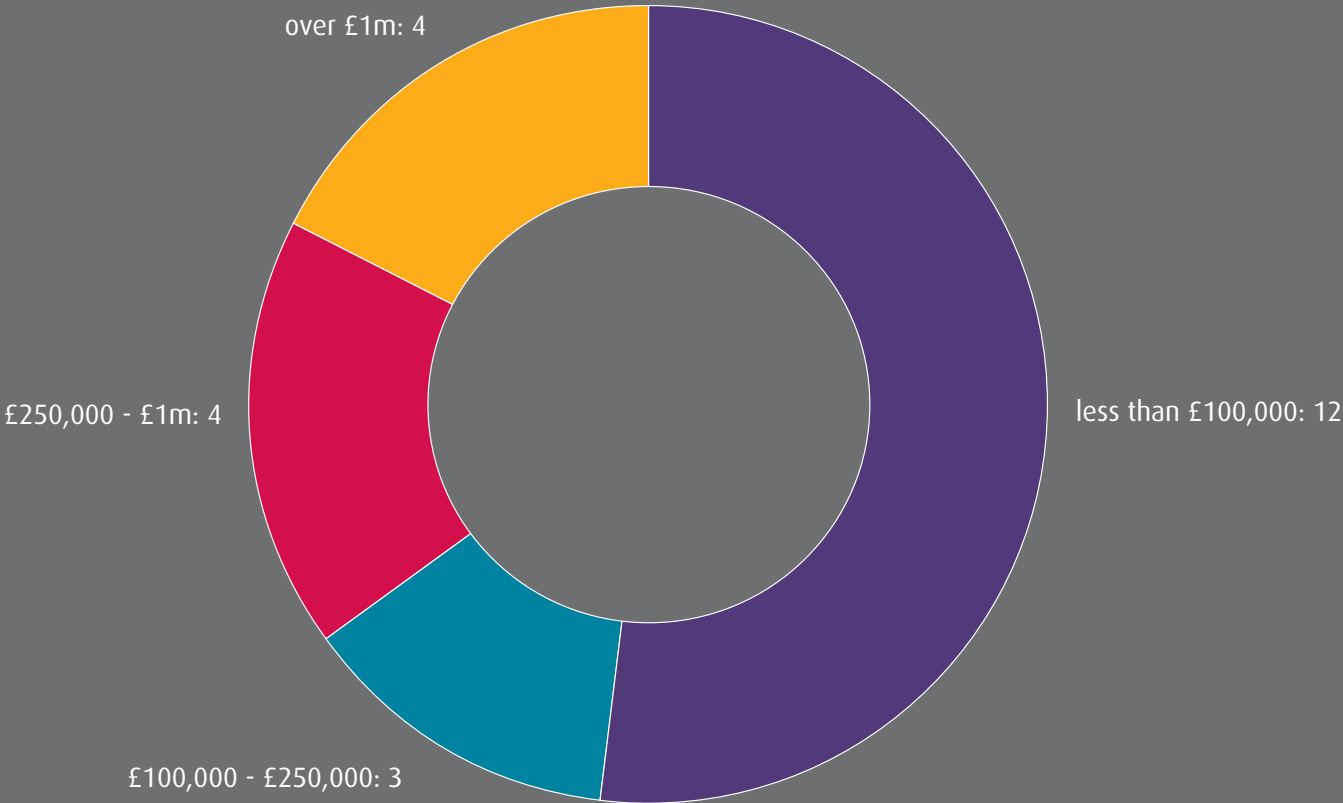
Note that most statutory inquiries involve more than one issue.



## Annex 2.2 - Trusteeship and governance issues in statutory inquiries 2008-09

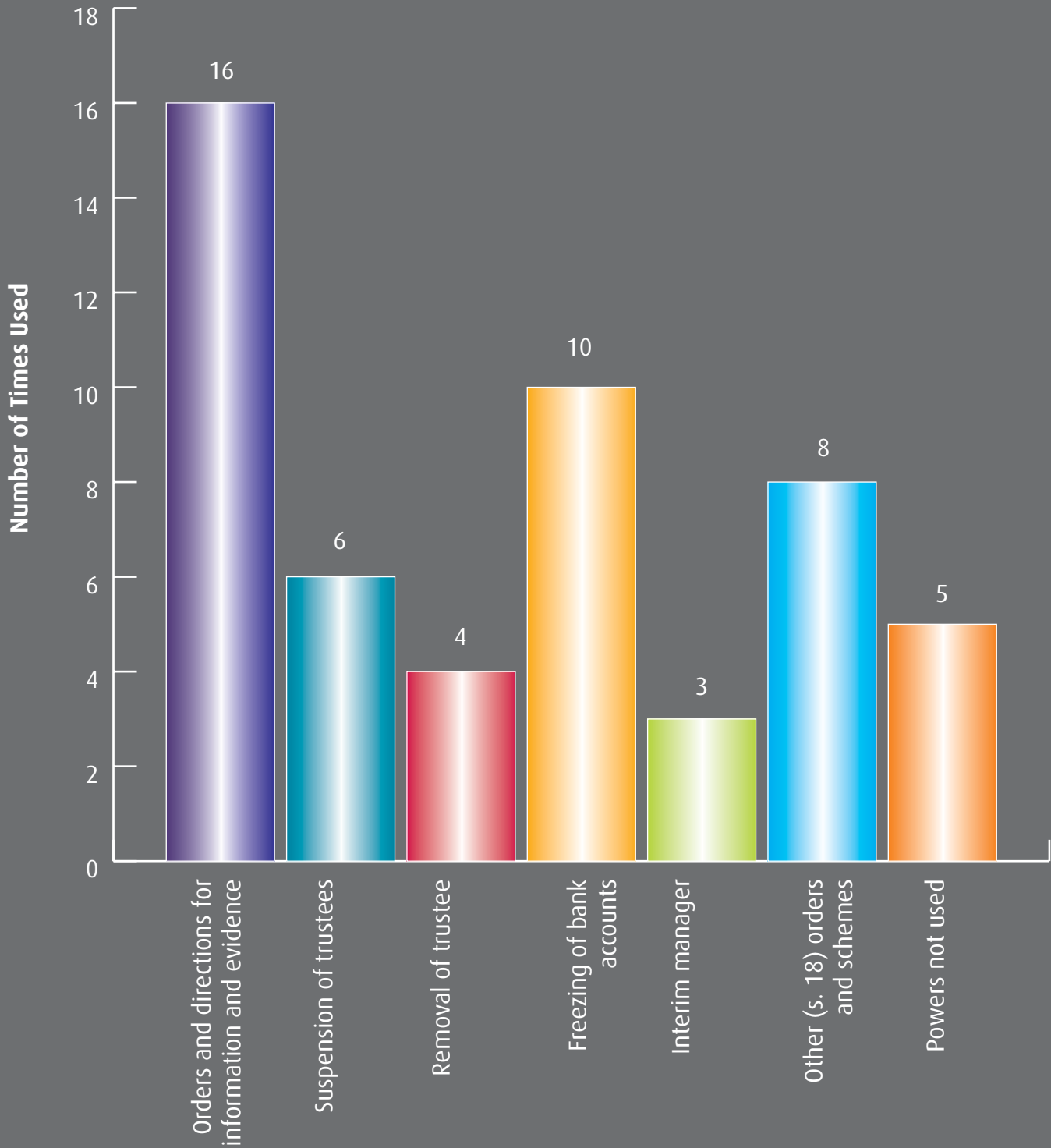


Annex 2.3 - Published statutory inquiry reports 2008-09 – the number of charities by income bands



## Annex 2.4 Published statutory inquiry reports 2008-09 – the frequency of use of different Charity Commission powers

Note that more than one power is used in most cases.



## Annex 2.5 – Published statutory inquiry reports (supplementary reports)

In 2008-09 we also published the following supplementary reports to SORIs in order to highlight follow-up issues.

Charity	SORI publication date	Supplementary report publication date
1. The Thomas Morley Trust	12/07/07	12/11/08
2. Smart Kids at No 1 Playgroup	24/08/07	21/10/08
3. Watford & District Gingerbread	12/06/07	05/09/08
4. Stevenage Muslim Community Centre	12/07/07	06/06/08

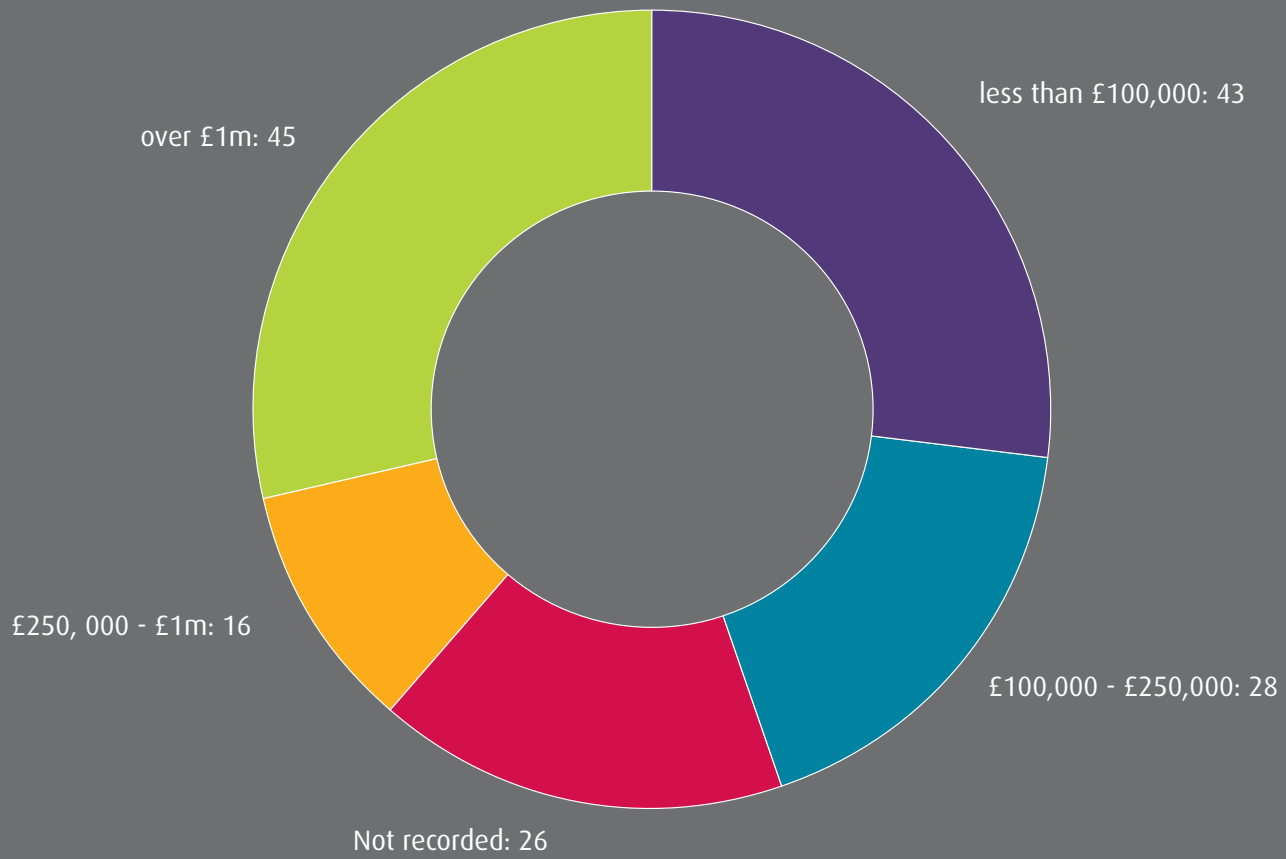
## Annex 3 Regulatory case reports

We now publish regulatory case reports on non-statutory inquiry work where there is significant public interest in the issues involved and the outcome, and where there are lessons that other charities can learn from them.

Charity	Issue											Statutory Powers									
	Accounting issues	Disputes	Fraud allegations	Fund-raising	Governing document compliance	Land / Property	Political activities	Terrorism allegations	Trading / commercial	Trustee benefits / conflicts of interest	Trusteeship and governance issues	Vulnerable beneficiaries	Orders / Directions for information / evidence	Suspend trustees	Remove trustees	Freeze bank accounts	Interim manager	Other Orders + schemes	No powers used		
1 Catz Club							✓		✓											✓	
2 Civitas Limited							✓														✓
3 Policy Exchange							✓														✓
4 Reform Research Trust							✓														✓
TOTALS <sup>6</sup>							4		1												4

<sup>6</sup> A regulatory case report was also published in respect of a case conducted by the Commission's Large Charities Division, regarding the National Council on Ageing (Age Concern England) – the main issues were accounting, trading/commercial, and trusteeship and governance.

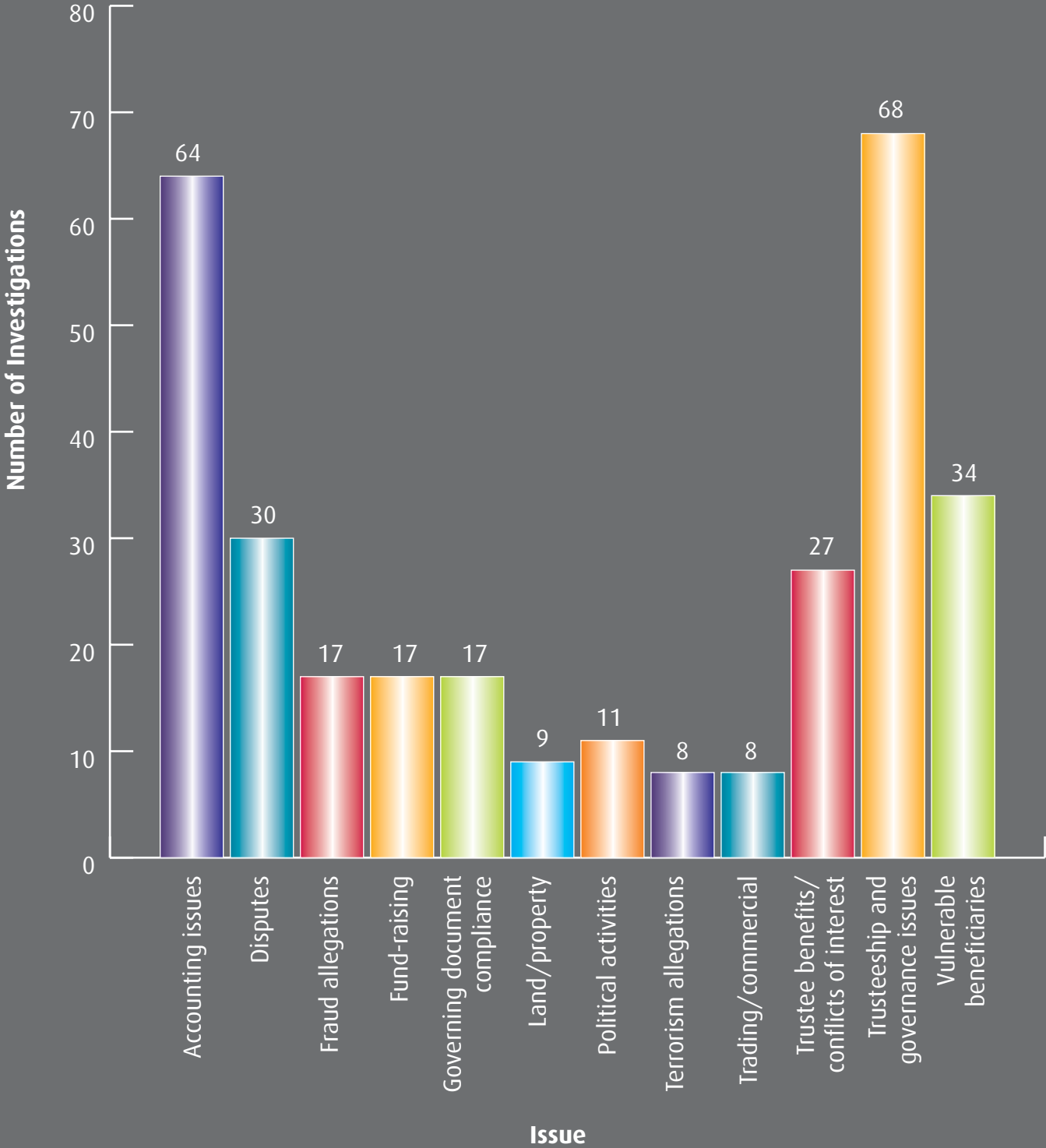
#### Annex 4 – Regulatory compliance cases 2008-09 - the number of charities by income band



Baseline: 167 regulatory compliance cases

**Annex 5 – Regulatory compliance cases 2008-09 – the type and frequency of issues of concern**

Note that most cases involve more than one issue.



Baseline: 167 regulatory compliance cases



## Annex 6

Use of Charity Commission powers – All Compliance cases (Statutory Inquiry and Regulatory Compliance Cases) – showing breakdown of the number of individual orders or directions under the Charities Act	2008 - 09	2007-08
S8 (3) – (a) Furnish information / answers	9	40
S8 (3) – (b) Furnish copies / documents	3	25
S8 (3) – (c) Attend and give evidence	7	5
S9 (1) – (a) Furnish information	75	50
S9 (1) – (b) Furnish copies / documents	543	246
S18(1) – (i) Suspend trustee, officer, etc.	1	7
S18(1) – (ii) Appoint additional trustee	1	3
S18(1) – (iii) Vest property in the Official Custodian for Charities	1	0
S18(1) – (iv) Not to part with property.	11	18
S18(1) – (v) Not to make payment	0	0
S18(1) – (vi) Restrict transactions	0	10
S18(1) – (vii) Appoint Interim Managers	2	2
S18(2) – (i) Remove trustee, officer, etc.	1	6
S18(2) – (ii) Establish a scheme	1	0
S18(5) Appoint trustee(s)	11	9
S19 (a) Specific Direction to protect charity	4	0
S26 Regulatory consent	9	8
Others (including Discharge Orders)	28	61
TOTAL Orders / Directions issued in period	707	490

**Erratum** – Annex 2 of last year's Charities Back on Track wrongly indicated that no statutory powers had been used in the Mariam Appeal case. In fact we issued Orders/directions for information/evidence.



This publication can also be accessed at the Charity Commission's website: [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

© Crown copyright 2009. This publication may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

This publication is printed on paper obtained only from sustainable resources and is totally chlorine free.

xxxxxx xx/2009

You can obtain large-print versions  
of this publication from the Charity  
Commission on 0845 300 0218

**Charity Commission**

Telephone: **0845 300 0218**

Typetalk: **0845 300 0219**

By post: **Charity Commission Direct**

PO Box 1227

Liverpool

L69 3UG

Website: **[www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)**