

Inquiry Policy

How OSCR deals with concerns and inquiries

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1. Introduction

OSCR's vision is for a trusted and respected Scottish charity sector which positively contributes to society.

This vision underpins all of our work. We have a duty to encourage compliance with the requirements of charity law, to consider risk to charities and to identify and investigate potential misconduct in the administration of charities and respond appropriately.

Charity trustees are the people who have the general control and management of the administration of a charity. They are responsible for complying with the **charity trustee** duties set out in the **Charities and Trustee Investment (Scotland) Act 2005**. In almost all cases charity trustees do this very well, but when something goes wrong, and they have not addressed the situation effectively, it may be necessary for OSCR to intervene. Sometimes this means that we will use our legal powers to carry out inquiries into a charity. This guidance explains how we go about this area of our work.

1.1 What this guidance covers

- Our role as a regulator
- How we assess risks to charities
- How to contact us about a charity and what to expect if you do
- Inquiries – what to expect if you are a charity trustee
- The end of an inquiry
- How we will communicate about inquiries
- How we use the information obtained in an inquiry.

1.2 Who is this guidance for?

- the general public
- people who have a concern about a charity
- charity trustees
- funders
- the media

1.3 How to use this guidance

In this guidance, we explain the options available to OSCR when we become aware of a concern about a charity, or when we identify that a charity is not operating as it should. The guidance is split into sections to help you find the information most relevant to you, whether you are a person or organisation who is thinking about sharing information with us on concerns you have about a charity or are involved with a charity that is the subject of a concern.

2. Our role as a regulator

Our role as regulator includes supporting charities in complying with the [Charities and Trustees Investment \(Scotland\) Act 2005](#), as well as investigating and taking action where there is evidence of misconduct. We provide [guidance](#) to support charity trustees in their role. We recognise that most charities are doing a good job providing public benefit and the number of charities we have concerns about in any given year is very small.

We receive information about possible issues in charities from many different sources including:

- Members of the public, service users and volunteers
- Notifiable events from charity trustees – we have a [form and guidance](#) available
- Charity employees – if a charity employee has a concern about the charity that they work for and they do not feel it is being dealt with appropriately, they can raise this concern with us under the [Public Interest Disclosure Act 1998 \(PIDA\)](#). PIDA protects paid workers from unfair dismissal or treatment from their employer if they report wrongdoing. Our [Whistleblowing guidance](#) provides further information on what qualifies as a ‘protected disclosure’ and the situations when employees can make these disclosures to OSCR. There is an [online form](#) to submit this kind of concern which is available through our website.
- Auditors and Independent Examiners – who have a duty to report [matters of material significance](#) such as dishonesty including the misuse or theft of a charity’s funds, fraud, money laundering or a failure on internal governance to OSCR. Some matters must be reported while [other matters](#) are at the discretion of Auditors and Independent Examiners.

We act in the interest of the public as a whole and not on behalf of individuals or groups. We focus our energy and resources on the risks and charities that are in our view most likely to undermine public trust and confidence.

In cases where we decide not to act, we hold the information on file for future consideration if necessary. This is a decision for OSCR to take and is not subject to appeal under the 2005 Act.

Not all issues are ones that we can deal with. This could be because:

- the charity trustees are the people that need to deal with the matter because it is their job to run the charity, or
- we do not have the legal authority to deal with the issue.

In the following sections we explain how some of the most common issues that arise with charities should be handled. This is to ensure that those who have a concern about a charity know where to direct that information, to allow trustees

to run their charities appropriately, and to support OSCR in focusing on where regulatory action is needed.

2.1 Concerns that should be raised with charity trustees

There are some types of issues that OSCR does not usually deal with because they should be raised first with charity trustees. Charity trustees are the people who are responsible for the management of the charity. They must deal with issues about the running of the charity such as:

- Issues about a service or activity that a charity provides – for instance a service being stopped, a complaint about an item purchased from a charity shop, prices for the charity’s services being increased.
- Disputes or disagreements – this includes disputes involving trustees, members, people who want to be members, **beneficiaries** and staff. OSCR’s role isn’t to resolve disputes between individuals and charities or come to a concluded view on who is right or wrong. We expect charity trustees to work together to resolve such disputes, wherever possible, seeking advice and using mediation services if necessary.

If you are concerned about this kind of issue, you should contact the charity trustees. If after doing so you remain unhappy with the outcome, this is still not for OSCR to deal with. Decisions taken by the charity trustees that are within the powers set out in the charity’s governing document ¹ and in line with their legal duties as charity trustees cannot be overruled by OSCR even where they are unpopular.

2.2 Issues that OSCR does not deal with

If your concern is about any of the following matters, these are not for OSCR to deal with, and you should refer to the relevant section below that explains the steps you should take instead:

- Fundraising
- Employment issues
- Debts due by a charity or contractual disputes with a charity
- Decisions taken by charity trustees that are within their powers
- Issues that are the responsibility of another Regulator
- Organisations that are not charities

¹ A charity’s governing document is also sometimes known as its constitution and sets out the charity’s purposes and its rules for how it makes decisions, holds meetings, appoints trustees, etc. Charities should provide a copy of their governing document to anyone who requests it

2.2.1 Fundraising complaints

For concerns about fundraising, including the way you've been asked for donations or how fundraisers have behaved, you should contact the charity trustees in the first instance to raise your concerns. If you do not receive a satisfactory response, you should contact the [Scottish Fundraising Adjudication Panel](#).

2.2.2 Employment issues

We do not intervene or act on behalf of individuals in relation to employment issues, which include:

- Unfair dismissal
- Grievances such as discrimination, bullying and harassment
- Terms of employment
- Redundancy

If this affects you, you should take your own legal advice or seek assistance from [ACAS. Citizens Advice Scotland](#) also provide general advice on some employment matters.

If, however, the findings of an Employment Tribunal indicate that there are serious governance issues in a charity, we should be told about this.

2.2.3 Debts due by a charity or contractual disputes with a charity

We do not deal with complaints about money owed by a charity. We cannot intervene where the issue relates to:

- Contracts that a charity has entered into
- Invoices that have not been paid
- The delivery of a contract

If a charity owes you money or there are issues with a contract, you should first contact the charity trustees and if this does not resolve the matter you should seek legal advice.

2.2.4 Decisions taken by trustees that are within their powers

Charity trustees are responsible for the management of the charity. To do this, they must make decisions and take certain actions. Whether you agree with their choices or not, we cannot take action where the charity trustees have made decisions or taken actions that are within the powers set out in the charity's governing document and have acted in accordance with their [legal duties](#) as charity trustees.

2.2.5 Issues that are the responsibility of another Regulator

Even where a body is a registered charity, sometimes the issue you are concerned about is the responsibility of another regulator. For example:

- significant performance failures by a Registered Social Landlord should be addressed to the [Scottish Housing Regulator](#)
- concerns about the standard of care provided by a registered service provider should be raised with the [Care Inspectorate](#)
- where the concern is about a charity that is also registered with the Charity Commission for England and Wales, the concern should be raised with the [Charity Commission for England and Wales](#), as they are the lead regulator for cross-border charities
- Concerns about a charity's tax affairs or gift aid scheme should be directed to [HM Revenue and Customs](#)
- Issues about health and safety in a charity may need to be reported to the Health and Safety Executive or a local authority. [Guidance is provided by the Health and Safety Executive](#) to help you understand where to raise your concern.

The other regulatory body will let OSCR know where there is a breach of charity law so that we can take any necessary action.

2.2.6 Organisations that are not charities

We do not deal with concerns about organisations that are not charities and are not representing themselves as a charity. You can check if an organisation is a charity by searching the [Scottish Charity Register](#).

2.3 Regulatory issues that OSCR may investigate

To support our work, we want you to tell us when it looks like:

- a charity's assets are at risk – for example property held by a charity is not insured or where cash held by a charity is not kept securely
- a charity's assets are not being used for the objects of the charity as displayed on the charity's entry on the [Scottish Charity Register](#)
- a person or organisation is inappropriately profiting from a charity. Our guidance explains the conditions under which [trustees can be remunerated](#) and how OSCR considers [private benefit](#)
- a charity is not complying with its [legal duties](#) under the 2005 Act
- a charity may be putting the people it helps at clear risk of harm. For example, by not having appropriate safeguarding procedures
- a charity trustee has a conflict of interest and this is not being properly managed – our [guidance](#) explains what a conflict of interest is and how it should be managed

- the charity trustees are not working collectively to run the charity as they should do. For example: one charity trustee seems to be in overall control of the charity, an employee seems to be in overall control of the charity, or none of the charity trustees are taking responsibility for the charity – this can result in serious governance problems that could harm the charity
- an organisation is calling itself a charity when it is not (you can check if the organisation is a charity by searching the [Scottish Charity Register](#))
- charity trustees are significantly breaching the requirements of their governing document
- a charity is [unlawfully discriminating](#) in the provision of its services or benefits
- or when you have reported a matter to the police about criminal activity in a charity. The police deal with criminal investigations but you should also report this to us.

2.4 How we assess risk to charities

The law requires us to work in a targeted way. This means making sure that we focus our energy and resources on the issues and charities that are most likely to undermine public trust and confidence.

We consider and keep on record all concerns about charities and decide what steps to take but will not take action in every case.

When making our decisions we consider the issue, the risk involved to the charity and its beneficiaries and the likely impact of our involvement.

Our [risk framework](#) underpins how we consider information about charities and the actions we take.

When someone sends us information expressing a concern about a charity we risk assess it. This risk assessment process allows us to consider the concern more widely alongside other relevant information. We apply the same process to information from other sources.

We consider:

- whether or not the issues relate to risks in our risk framework
- the credibility of the evidence available
- the level of threat to the charity, its assets or the people who benefit from it.

The outcome of the risk assessment helps us to decide what we do next. We operate in accordance with our duties as a regulator, which include acting

independently, fairly and proportionately, and targeting our action where it is needed – see our [Corporate Strategy](#).

Following our risk assessment we may open an inquiry into a charity. We aim to encourage charities to comply with charity law and in many instances we will close an inquiry once we have given guidance, made suggestions or signposted the charity to other sources of help. However, in the course of or at the conclusion of an inquiry we will take enforcement action where we identify a need to do so.

2.5 How to contact us about a charity

If you want to send us information where you have concerns about a charity you should use our [concerns form](#). The form explains where the charity trustees or another regulator should deal with the matter rather than OSCR.

Any concern form submitted to OSCR will receive an automatic acknowledgement.

3. What to expect if you contact us about a charity

We consider and keep on record all concerns about charities and decide what steps to take but will not take action in every case.

When making our decisions we consider the issue, the risk involved to the charity and its beneficiaries and the likely impact of our involvement.

We focus our energy and resources on the greatest risks and on issues that are in our view most likely to undermine public trust and confidence.

We can only take action where it is evidence based and proportionate to do so.

We will consider the information you have provided along with any other information we have about the charity or organisation concerned and decide whether we need to open an inquiry. Even if we decide we do not need to open an inquiry immediately, we will retain the information supplied for 5 years to help us risk assess any additional information we receive about the charity. How we deal with information we store is explained in our [Privacy Policy and GDPR Guidance](#).

We encourage people to submit concerns to us about charities and appreciate it when they do so. We will treat any information supplied to us as intelligence and decide whether that intelligence amounts to a possible regulatory issue. We act in the interest of the public as a whole and not on behalf of individuals or groups. Therefore following acknowledgement that we have received your concern, we will usually only contact you if we require further information from you.

If you have shared information with us about a charity we will not disclose your identity to the charity trustees unless you have given us permission to do so, or we are required to do so by a Court. This is because it is important that people can share information with us expressing concern about charities in confidence. However, in some inquiries the nature of the issues involved may make it obvious who has raised a concern with us.

If you share information with us about a charity but do not wish to provide us with your name or contact details, we will still consider the information provided but we may be constrained in what we are able to do because we will be unable to contact you for further information that may be required.

If you are an employee of a charity that you have a concern about you may find it helpful to read our Whistleblowing Guidance that explains about the protection that paid workers have when they report such concerns.

In some inquiry cases, where we use our enforcement powers, or where in our view it is in the public interest, we will publish an inquiry report on

our [website](#) explaining what has happened, any action we have taken and any learning points for the rest of the charitable sector.

4. What happens during an inquiry?

If we have a concern about a charity we will deal with it in a way that reflects our assessment of the risk to the charity, public and sector.

Sometimes we will find that the best way to deal with issues we have found is by finding ways of working with the charity or supporting it in other ways in order to help charity trustees deal with the issues themselves.

This may involve:

- signposting charities, or those who have raised concerns, to relevant guidance
- making suggestions to charities, or those who have raised concerns, about actions they could take
- flagging up a charity for future review or action – for example, we might actively monitor their finances or other aspects of their activities.

Where we have decided that this kind of engagement is not enough to address the risks we have found, we will generally contact the charity trustees (the people who have the general control and management of the administration of a charity).

Unless it is not appropriate, our initial contact with the charity trustees will be through the charity's Principal Contact listed in OSCR Online. We expect that the Principal Contact will share our communication with all of the charity trustees unless we specify otherwise.

We will explain that we are opening an inquiry and outline what will be involved in the inquiry process. Opening an inquiry does not mean that we have found any wrongdoing by the charity, simply that we need to know more about the situation. We will explain to the charity trustees what the inquiry is about and ask for information in order to give us a better understanding of how the charity operates generally, and of the particular issues we are interested in.

We will not disclose to charity trustees the identity of those who have raised concerns with us unless we have been given permission to do so or are required to do so by a Court. This is because it is important that people can raise concerns about charities with us in confidence. However, in some inquiries the nature of the issues involved may make it obvious who has raised a concern with us.

In the course of our inquiries we may ask for information from any charity trustee or person involved with the charity. This may include written correspondence, telephone calls, virtual or face to face meetings or discussions, and on-site checks of the charity's records.

We may also request more information from those who originally raised the concern and other relevant third parties.

Where we request information from a person to assist us with our inquiries, we expect them to deal with the request in line with the timescale we set out. We expect full co-operation from any person involved in our inquiries – this means that information provided should be complete, comprehensive and honest to the best of the knowledge of the person providing it. It is an offence for anyone to knowingly provide information to us that is false or misleading, or to suppress or conceal information– to do so may result in a fine or imprisonment on conviction.

On some occasions, for example if a case has been particularly complex, we may share our initial findings and observations with the charity trustees to provide an opportunity for the trustees to seek or provide clarification where necessary.

Charity law also provides us with the power to compel any person or organisation to provide information that we consider necessary for the purposes of our inquiries. Failure to comply is an offence and may result in a fine or imprisonment on conviction.

We will take all reasonable steps to minimise disruption to the work and reputation of the charity as well as its staff, volunteers and trustees during our inquiries. However, where we consider that there has been misconduct in the administration of a charity or that we need to protect the charity or its assets we can take protective action. For example we can direct charity trustees not to take certain actions, or direct banks not to part with a charity's assets without our consent.

We will conduct our inquiries as rapidly as we can, consistent with the speed with which we are able to gather information from all relevant parties to the process, and taking into account the risk and complexity of the issues being dealt with.

5. The end of an inquiry

At the end of an inquiry we will assess the information we have obtained.

We will consider whether there has been misconduct in the administration of the charity or mismanagement by the charity trustees, the circumstances of this, any corrective action taken by the charity, and any intended actions of the charity's trustees.

We will also look at any ongoing risk to the charity, its assets or its beneficiaries and the charity sector in general.

We will decide:

- whether we need to take any enforcement action (which might include applying to the Court of Session for it to use its powers in relation to the charity and/or the charity trustees), or
- whether it is more appropriate for us to provide support to the charity's trustees in the form of recommendations for improvement which we may monitor, or
- whether all risks have been addressed and no further action is needed
- whether there are any learning points for the charitable sector as a whole.

When our inquiries are complete, we will write to the charity trustees to let them know our findings and any further action or monitoring we intend to undertake.

Where we have used our enforcement powers, a charity, individual trustee or an organisation representing itself as a charity has the right to ask for a review of that decision and ultimately to appeal under [charity law](#).

In some inquiry cases, where we use our enforcement powers, or where in our view it is in the public interest, we will publish an inquiry report on our [website](#) explaining what has happened, any action we have taken and any learning points for the rest of the charitable sector. Our considerations about what is in the public interest will include:

- whether it is necessary to warn the public about the actions of a charity
- how useful any learning lessons may be for other charities
- where there is interest from the media or a significant number of people who have a connection to the charity
- the potential benefits from greater transparency about OSCR's regulatory work

These considerations will also help us decide at what point in the inquiry it is most beneficial to publish a report.

The charity will receive a copy of our report.

6. Communication and use of information

6.1 How we communicate about inquiries

We do not usually comment or give updates on inquiries while they are ongoing, as this could prejudice the charity or our work. Exceptions include when we take protective action, where information is already in the public domain or where there is a necessity to warn the public about the actions of a charity.

In some inquiry cases, where we use our enforcement powers, or where in our view the public interest requires it, we will publish an inquiry report on our [website](#) explaining what has happened, any action we have taken and any learning points for the rest of the charitable sector.

6.2 How we use information

OSCR has a [Data Protection Policy](#) and a records management policy which set out what information we keep and why and how long we will keep it, in line with [GDPR](#).

OSCR is subject to [Freedom of Information](#) legislation that provides a general right of access to all types of recorded information held by public authorities.

OSCR has legal powers to share information with and obtain information from other regulators and public bodies where it will help them or OSCR to exercise their functions.

The charity will not be told who has raised a concern about a charity without that person's permission.

However, there may be legal circumstances where we have to do so. For example, if we are required to do so by a Court. Additionally, the identity of the person raising the concern may be obvious to the charity because of the type of issues raised.