

# **EQUALITY IMPACT ASSESSMENT FOR THE RISK AND PROPORTIONALITY FRAMEWORK FOR THE COMMISSION'S COMPLIANCE WORK**

## **Risk and Proportionality Framework for the Commission's compliance work**

### **Introduction**

In July 2008 the Charity Commission published its Risk and Proportionality Framework for the Commission's compliance work 'the Framework'. The Framework represents the formal statement of our enhanced approach to risk-based regulation in our compliance work with charities where their assets, services, beneficiaries and reputation are at serious risk of abuse or damage. Its purpose is to ensure that we apply a consistent, proportionate and fair approach to the assessment of risk within our regulatory work.

The Framework is designed to help us make a decision about whether and how the Commission should intervene when there is evidence or an allegation of mismanagement or misconduct or other serious concerns about charities. It helps us to decide what level and intensity of intervention is appropriate. It also allows us to prioritise risks so that higher risk issues are allocated proportionately more of our regulatory resource and decisions made at the right level.

We have carried out an equality impact assessment ('EIA') on the Framework to meet our public authority duty to assess its impact in relation to disability, ethnicity and gender. In the Commission we have voluntarily extended our duties to include an assessment in respect of sexual orientation, age, religion or belief and carers. This EIA covers all seven diversity strands.

This process helps to ensure that:

- the Commission's strategies, policies and services are free from discrimination;
- we give due regard to equality in decision making and any subsequent processes; and
- we identify and can act on opportunities for promoting equality of opportunity.

Following on from the publication of the Framework, in March 2010, we published a second Risk and Proportionality Framework, this time in respect of the Commission's services to charities, their trustees, their advisers and the public. This complements the Compliance Framework.

## **Background**

The Commission's Compliance function is responsible for the delivery of our 'compliance objective' involving regulatory work with charities where their assets, services or beneficiaries are at serious risk of abuse or damage. This includes risks to the reputation of individual charities and, by extension, concerns about public confidence in charities generally and the effective regulation of the sector. This objective is to promote the compliance by trustees with their legal obligations when administering charities.

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

An integral part of compliance work is the assessment of risk to the issues raised with or identified by the Commission in relation to charities in a timely and proportionate manner.

## **Description of the policy**

The Framework uses a flexible traffic light model that categorises risk into Green (low risk), Amber (medium risk) and Red (high risk) issues. This model is used to initially assess how a particular issue of concern will be handled and the level of resource the Commission should devote to it. It sets out a number of 'zero tolerance' issues, which will receive our immediate attention due to the potentially high level of risk they pose to the charity, its beneficiaries, the public and the integrity and reputation of charities generally. It also describes how a risk can be considered more or less serious depending on how it is being managed and controlled by the charity; i.e. how certain factors can modify the risk and therefore our response to it.

The Framework was piloted in the Compliance Assessment Unit ('CAU') in 2007 and we conducted an informal public consultation on the Framework (see below). This Unit is responsible for assessing and evaluating concerns which are raised about the administration of individual charities. The Framework was refined both as a result of the pilot and the public consultation.

We apply the Framework to initially assess all issues of concern arising in charities which are brought to our attention and to establish the most appropriate and proportionate course of action to take. It is used by Charity Commission Direct as a guide to deciding whether to refer a complaint or concern to the CAU. It is also an essential tool which is applied in every case of concern referred to the CAU.

We do not target particular types of charities for compliance work. Typically, cases of concern are brought to us by charity trustees, staff, volunteers, beneficiaries and others connected with or involved in charities. In addition we are notified of concerns and receive complaints through members of local communities and the wider public, MPs and AMs on behalf of their constituents, other regulators, law enforcement and other government departments and agencies. Cases of concern also come to our attention through serious incident reporting by charity trustees and by auditors and independent examiners through statutory whistle blowing procedures. Finally, concerns are raised internally within other parts of the Commission where these arise in the course of our other regulatory work.

In addition to the initial risk assessment, if we decide that we need to engage further with the charity, including throughout the progress of investigations, then we continue to apply the Framework when making decisions on any future action to ensure that our approach remains proportionate, appropriate and fair. Documented procedures ensure that staff are clear on how and when to apply the Framework and record decisions, and specify authorisation levels.

#### *Further sources of information*

The Framework for compliance work can be accessed from our Website <http://www.charity-commission.gov.uk/investigations/riskprop.asp#a>

Our overall approach to regulation is set out in our publication 'The Charity Commission and Regulation' <http://www.charity-commission.gov.uk/spr/regstance.asp>

Our published '*Risk and Proportionality Framework for the services we provide to charities*' sets out our enhanced and risk-based approach for the services the Commission provides to charities, their trustees, their advisers and the public. This work includes providing legal consents, tailored and general advice and dealing with applications to become a registered charity. [http://www.charitycommission.gov.uk/Our\\_regulatory\\_activity/Our\\_approach/pframeserv.aspx](http://www.charitycommission.gov.uk/Our_regulatory_activity/Our_approach/pframeserv.aspx)

#### **The evidence / research base**

In December 2006 the Commission undertook a stakeholder survey 'Sound Strategy for Effective Delivery.' This indicated a strong view across stakeholder groups that we needed to develop our risk framework to alert us to possible illegal and/or improper behaviour at an earlier stage.

In addition, we had received case-specific criticism in the past from some of those involved, and MPs representing them, that our response was sometimes disproportionately rigorous, not taking account of the charity's capacity to comply, while in other cases we appeared to take an inappropriately 'light-touch' approach.

This fed into our on-going process of refining and strengthening our risk-based approach to regulation and in early 2007 the Commission's Board agreed that a revised Framework for Compliance was needed. We considered that the proper articulation and delivery of this Framework would inspire confidence in our approach to compliance issues.

Because the proposed enhanced approach was not a change in policy we took the decision not to carry out a formal consultation. However, we considered that there would be benefit in asking for comments and feedback externally from key stakeholders on the revised Framework.

We published a risk and proportionality public discussion paper on the Commission's website on 11 September 2007 and comments, questions and feedback were invited from the public for a two month period up to 6 November 2007.

We sought public views on three specific questions. We received twelve responses in total, including seven from sector umbrella groups. We summarised these responses, along with a section highlighting key additional points that were made and published these on our Website. In this way, we sought to achieve transparency and to demonstrate that we took on board comments received. We published a summary of those responses on our website

[http://www.charitycommission.gov.uk/Our\\_regulatory\\_activity/Our\\_approach/risksprospresp.aspx](http://www.charitycommission.gov.uk/Our_regulatory_activity/Our_approach/risksprospresp.aspx).

On the basis of the public responses we finalised the Framework which we published in July 2008. Since then, we have continued to monitor the effectiveness of the Framework. Compliance Senior Management and the Head of the CAU continually monitor the effectiveness of the Framework. We also take into account issues identified in any Customer Service cases, Outcome Review Panel cases and reports of the Independent Complaints Reviewer (see below for more detail).

In 2009, PKF, the Commission's internal auditors, undertook an audit into equality and fairness in the work of the CAU (see below for more detail). This was followed up by a further, more wide-reaching audit of the Unit in 2010, which also covered equality and diversity issues.

### **What the evidence / research shows – key facts**

None of the responses we received as part of the informal public consultation raised any issues of concern in respect of the Commission's approach to equality and diversity in our work.

From the testing they carried out in 2009 the PKF audit identified no evidence of bias or unfairness in the work conducted in the CAU.

The purpose of the Framework is to ensure that Compliance assesses risk in a consistent, fair and objective manner, ensuring sufficient flexibility to make informed judgements and decisions in individual cases but without any bias. However, as highlighted by the PKF reports, we do have some more work to do in mainstreaming equality and diversity into our investigatory case work and ensuring that investigators are aware of our diversity policies and obligations and developments under the Single Equality Scheme. In addition, we need to build equality and diversity considerations into our case planning, so for example, we are sensitive in dealing with customers who might have language and cultural differences, or people with disabilities who might need reasonable adjustments to be made.

We have already made good progress in this area since the 2009 PKF audit. We now have procedures in place to ensure that diversity issues are specifically considered both at the outset of each investigation and throughout its life. With respect to our written communication, in letters at the opening of an investigation, we specifically ask trustees and others involved in an investigation if they are not sure what our letters mean, or they need them translated into another language or in another format, such as Braille or audio, or to contact us if they have other requirements. We have also recently decided to repeat this reminder when we use our legal compliance powers to make orders.

We have recently launched an accessibility leaflet to accompany our key Compliance letters. This explains what action customers should take if they have difficulty in understanding our correspondence because of visual, hearing or speech impairment, have other disabilities or if English is a second language.

In addition, we have updated the process by which we authorise the use of our powers. The internal authorisation form now ensures that the referring investigator specifically considers issues of equality, diversity and human rights. Also, we have made changes to the internal authorisation form used when making and recording the decision to escalate a regulatory compliance case to an inquiry under S.8 Charities Act 1993 to specifically include consideration of diversity issues.

Training on unconscious bias is planned for staff we are looking to provide bespoke training for the CAU in their appreciation and application of equality and diversity issues to their work.

As the Framework is issue based, and each investigation assessed, according to the issues of concern there should be no adverse diversity issues. However we do need to be aware that sometimes it is necessary to treat people differently in order to treat them fairly, for example, in making reasonable adjustments referred to above. The Framework leaves some scope for subjective decision making but within a strict structure and therefore should promote equality and help to eliminate any direct or indirect discrimination. However, we are aware of the potential for unintended adverse consequences. As such, we recognise that we need to be aware of

differences and although the outcome of an investigation may not be affected as a result of our taking account of those differences, the way in which we conduct ourselves and communicate might. This is why the modifying factors play such an important role, particularly in considering the extent of a breach of trust and the capacity of the charity trustees to comply/make good.

We are making all efforts to maximise the positive impact and reduce any possible negative impacts by on-going staff awareness raising about equality and diversity and where it fits in the application of the Framework in our investigatory work. All Compliance staff attended diversity training over the last year.

Additionally, we recognise that there is the possibility that in some cases there may be a *perception* of bias because of the nature of the issues that are regarded as zero tolerance, immediate priority issues.

For example, for the following zero tolerance issues there may be a perception that the Commission may focus greater attention on certain types of charities or communities:-

- charity links to or support for terrorism;
- connections to proscribed organisations; and
- misuse of charity to foster criminal extremism.

There may be a perception that the Commission carries out more compliance work on, for example, charities connected with certain religious groups or operating in certain areas of the world, particularly conflict zones where terrorist groups are known to operate. We do not take up complaints, target or choose certain charities to investigate because of what they do or who their trustees are.

However, for reasons external to the Commission, the international and domestic environment is such where the greatest terrorist threat is currently from groups and organisations linked with extremist religious views and that are proscribed under UK legislation and international provisions and this has a high public profile. This may mean complaints and concerns are more likely to be raised from the public and others about certain activities or charities, particularly when some charities are not as transparent about their activities and decisions as they should be.

This risk is taken into account when assessing the nature and source of the concern raised with the Commission but this is also balanced against the seriousness of the allegation, its potential impact if true and the damage to the reputation and public confidence in the charity and charitable sector such an allegation can have, particularly if left unchecked.

We recognise that it is important that we ensure that CAU staff are aware that some charities may be vulnerable to unfounded and/or vexatious complaints being made about them. This risk is taken into account in assessing concerns raised with the Commission.

In addition, we have made clear that an assessment is not in itself to be taken an indication or finding of poor conduct or abuse. Initial enquiries in an assessment or the result of an investigation may establish an allegation or concern is unfounded or not made out. This finding will be reported to the trustees and where appropriate, the complainant. In the case of inquiries, it is also reported and published in a statement of results of the inquiry, or as appropriate and relevant, in a regulatory compliance case report.

However, the majority of our investigatory work comes from complaints that we receive unprompted and therefore over which we have no control. We have a responsibility to ensure it is dealt with consistently, fairly and properly. As a result, it may appear, for example, that we assessed a disproportionately high number of charities from a certain sector, whereas this in fact simply reflects the nature of the complaints that we received.

We are in the process of revising our internal Compliance Quality Review process. Once operational, in addition to other case-handling issues, this will assess whether proper procedures were followed, whether there is any evidence to suggest an investigation may have been conducted or decisions made inappropriately, and ensure that equality and diversity issues have been properly taken into account.

We are amending our customer survey questionnaire to include diversity questions and will monitor the completed survey to assess any differentials in customer satisfaction from particular sections of the community.

When people express dissatisfaction about the level of service they have received, a manager from the responsible holding unit, who was not involved in the case, completes an assessment of the issues. This is known as *Local Resolution*. In 2009 – 10, we assessed two such complaints about our standards of service within Compliance. None was received with respect to the CAU. Of these complaints, one was upheld and one was not upheld. The complaint which was not upheld related to related to diversity/ bias issues.

If a complainant is still unhappy with the outcome of the case following Local Resolution, the outcome may be considered by an *Outcome Review Panel*. This is independent of the original staff conducting the case and led by Customer Services Division, which is independent of Compliance. In 2009 – ten we assessed six such complaints within Compliance. Of these, three related to our Compliance Assessment Unit. Of these, in one instance the original outcome was overturned, in the second, partially overturned and in the third, the original outcome was upheld. None of these cases related to diversity/ bias issues.

## **Recommendation**

As a result of this EIA it is recommended that guidance for staff on what equality and diversity considerations need to be taken into account in the

application of the Risk and Proportionality Framework should be drafted and appended to the Framework.

It is recommended we make clear on our web pages about assessments and also in OG117 that an assessment is not necessarily an indication or finding of abuse or poor conduct.

<b>Negative Impact</b>	Yes	No	Unknown
Age		X	
Disability		X	
Gender		X	
Racial Group		X	
Religion or Belief		X	
Carers		X	
Sexual Orientation		X	

<b>Positive Impact</b>	Yes	No	Unknown
Age	X		
Disability	X		
Gender	X		
Racial Group	X		
Religion or Belief	X		
Carers	X		
Sexual Orientation	X		

This impact assessment is necessarily qualified at the assessment stage because we can base any judgment only in terms of the charity name, its objects and any particular information in the complaint. We cannot assess the impact on individuals. This is the reason why we ask when we first correspond with individuals, if there are any diversity issues which we need to take into account.

## **Decision**

The Framework was adopted in July 2008 and its application in compliance work should continue.

## **Monitoring Arrangements**

The Framework is kept under review so that it can be updated as appropriate in the light of our compliance casework experience. On the basis of feedback received, we have recently updated the Framework to explain more clearly what we mean by public interest, explaining how this may include attention from the media, parliamentarians and members of the National Assembly for Wales, or from the local community.



We continue to collect, review and act on customer satisfaction information on a quarterly basis.