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**Response to the Cabinet Office consultation paper**  
**Extending the Charity Commission's powers to tackle abuse in**  
**charities**

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February 2014

# **EXTENDING THE CHARITY COMMISSION'S POWERS TO TACKLE ABUSE IN CHARITIES**

**Response submitted on 12 February 2014 by the Fraud Advisory Panel to the Cabinet Office consultation paper 'extending the Charity Commission's powers to tackle abuse in charities' published in December 2014.**

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## INTRODUCTION

1. The Fraud Advisory Panel (the 'Panel') welcomes the opportunity to comment on the consultation 'extending the Charity Commission's powers to tackle abuse in charities' (the 'Consultation'), published by the Cabinet Office on 04 December 2013, a copy of which is available from this [link](#).

## WHO WE ARE

2. The Fraud Advisory Panel is a registered charity and membership organisation which acts as the independent voice and leader of the anti-fraud community in the United Kingdom.
3. Established in 1998 the Panel works to encourage a truly multi-disciplinary perspective on fraud. It has almost 300 corporate and individual members, drawn from the public, private and voluntary sectors and across a variety of professions.
4. The Panel works to raise awareness of the immense damage fraud does to individual lives, the national economy and society at large and to encourage everyone, in every walk of life, to play their part in reducing it.
5. This response has been prepared on behalf of the Fraud Advisory Panel by a special project group of interested members including John Burbidge-King, Barbara Hart, Nick Marcar, Everton Merchant, Steve Redhead, Alan Shenton, Satnam Tumani, Carl Watson and Brendan Weekes. It was chaired by Rosalind Wright, the chairman of the Fraud Advisory Panel and a former director of the Serious Fraud Office.

## GENERAL POINTS

6. Effective regulation of charities is essential to a sector which in England and Wales comprises over 163,700 registered charities with an annual income in excess of £61.4 billion.<sup>1</sup> Regulation promotes both trust and confidence in the charity sector, which is essential to continued fund-raising and operation, and the application of funds for their intended purpose.

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<sup>1</sup> Charity Commission (2014). *Sector facts and figures: 31<sup>st</sup> December 2013*. Available from <http://www.charitycommission.gov.uk/about-charities/sector-facts-and-figures/>

7. The Fraud Advisory Panel has two major concerns about the effectiveness of the regulatory powers of the Charity Commission (the 'Commission'):
  - it is strongly felt that the Commission does not use its existing powers as effectively as possible, and
  - there are deficiencies in the Commission's powers.
8. We believe that there is no point in increasing the Commission's powers without challenging and changing the way in which its powers are used. Otherwise, further powers will add to the armoury but not to the effectiveness of regulation itself.
9. The Commission is a regulatory body and needs to emphasise this role in its allocation of resources, particularly as it deals with a reducing financial budget, which will probably result in a decreased advisory role. This general view expressed by the Panel is in line with paragraph 41 of the Consultation which draws upon the recommendations of Lord Hodgson of Astley Abbots in the statutory review of the Charities Act 2006.
10. In carrying out its regulatory role the Commission needs to be more proactive in dealing with fraud and abuse. In this, the Panel agrees with paragraph 42 of the Consultation which also draws upon the above mentioned recommendations.
11. We note that the Commission does not currently have enough investigatory resources to fulfil a more active regulatory role.
12. Of underlying concern is that the Commission's track record is one of being reactive to fraud and abuse. Its *'Report of Charity Commission's investigations and compliance work, 2012-13'* cites numerous case studies indicating how it deals with problems. In the great majority of those cases the reason given for 'why we got involved' comes under the general categories of self-reporting by the charity, whistle-blowing, media reporting or complaints by a third party; all of these involve reaction to a known problem.
13. The Panel suggests that the Charity Commission could bring far more enforcement actions of its own, outside the criminal process, to shut down charities where fraud or

financial misconduct (or association with terrorist activities) have been demonstrated. This would serve as an effective safeguard for the public and also act as a deterrent.

14. It is apparent to the Fraud Advisory Panel that effective and prompt use of powers will require re-focussing the resources of the Commission which means a significant rethinking of its aims and delivery model.
15. We recognise that imposing requirements and obligations on charities to respond to particular issues may involve charities in considerable cost, which might well come from donated funds. However failure to address issues immediately may prove a greater risk to present and future donors and the charity as a whole.

### **DISQUALIFICATION OF CHARITY TRUSTEES (QUESTIONS 1 – 14)**

#### **Proposal 1: Extending the list of criteria that trigger automatic disqualification from trusteeship (Q1 – Q3)**

16. The Fraud Advisory Panel agrees that unspent convictions for the range of offences listed at paragraph 55 in the Consultation should automatically disqualify a person from charity trusteeship.
17. In addition, there are many other serious offences not listed in the Consultation which should also automatically disqualify a person from acting as a charity trustee. Examples include offences of violence against the person (such as assault), and offences of a sexual nature (such as paedophilia).

#### **Proposal 2: There are other circumstances where rather than being automatic, disqualification from charity trusteeship should be left to the Charity Commission's judgement on a case by case basis (Q4 – Q7)**

18. The Fraud Advisory Panel agrees that the Commission should have a new power to disqualify someone whose behaviour means that they are unsuitable to act as a charity trustee. Our preference is for this to be a broad power (option 2), subject to an appeal process. Such an approach is more flexible and would allow the Commission to respond quickly to individual situations. It also matches what has been the model for company directors for many years.

19. The Panel notes that additional criteria could be specified under secondary legislation in relation to option 1 (a limited power) but is concerned about the extra time this would take and fears that it could also lead to a disjointed list of criteria for disqualification.
20. The Panel agrees with the proposals for a waiver of disqualification following the current arrangements provided that there is access to a tribunal process.

**Proposal 3: Removal from trustee body and notification of other trustees (Q8)**

21. The Fraud Advisory Panel agrees that existing powers should be amended to enable the Commission to remove a disqualified trustee.

**Proposal 4: Dealing with disqualification where only one or two trustees remain (Q9)**

22. It is unclear to the Fraud Advisory Panel what is envisaged by proposal 4 or how such an amendment to the existing section 80 and 81 powers would work in practice if the objective is to enable a charity to continue to operate. Consequently the Panel has no comments to make on this proposal at this time until further detail is provided.

**Proposal 5: Preventing disqualified trustees acting in another position of power in a charity (Q10)**

23. The Fraud Advisory Panel believes that a distinction needs to be drawn between:
  - a disqualified trustee who seeks (possibly with the agreement of other trustees) to effectively exercise all the authority of a trustee, and
  - a disqualified trustee who takes a genuine role as a consultant or employee elsewhere.
24. In the first case, the Panel agrees with the proposal. In the second case, the Panel has concerns about whether the proposal could be used to prevent a previously disqualified trustee from taking *any* senior role in a charity at some time in the future. It would depend on how long the trustee was disqualified and for what role he or she was intending to take in the charity.

**Proposal 6: Where a disqualified person is a director of a corporate trustee of another charity, preventing them from participating in decisions about the charities affairs (Q11)**

25. Like proposal 5, proposal 6 highlights how a disqualified trustee could continue to exercise authority over a charity as if he or she were a trustee. The Panel believes that it may be beyond the authority of the Commission to prevent a director of a corporate trustee participating in decisions about a charity's affairs. In particular, it would not have the authority to remove him or her as a director. Assistance from Companies House would be necessary.

**Proposal 7: Extend the existing power to remove a trustee (or other office holder) so that it can be exercised where there is misconduct or mismanagement or a need to protect charity property (Q12)**

26. The Fraud Advisory Panel supports the proposed change to extend the existing power to remove a trustee (or other office holder) so that it can be exercised where there is misconduct or mismanagement or a need to protect charity property.

**Proposal 8: Preventing trustee resignation as a means to avoid disqualification (Q13)**

27. The Panel supports the proposal to close the existing loophole which enables trustees to resign from their position in order to avoid disqualification. The loophole is detrimental to the sector as a whole since it enables an unfit person to serve as a trustee of another charity as well as allowing him or her to be reappointed as a trustee of the charity where mismanagement or misconduct occurred at a later date.

**Proposal 9: Misconduct or mismanagement in any charity can be used as evidence (Q14)**

28. The Fraud Advisory Panel agrees that issues of misconduct or mismanagement in any charity should be used as evidence by the Charity Commission.

**PROPOSED CHANGES TO OTHER CHARITY COMMISSION COMPLIANCE POWERS  
(QUESTIONS 15 - 22)**

**Proposal 10: Amend the existing power to direct specific action when an inquiry is open and there is misconduct/mismanagement OR there is a risk to property so that the Commission can exercise it without opening an enquiry (Q15)**

**Proposal 11: Extend existing powers to enable direction to prevent acts of misconduct/mismanagement or acts in breach of fiduciary duty taking place (Q16)**

**Proposal 12: Power to direct application of charity money to another charity when individuals are unable to apply money properly (currently the power can only be exercised if they are 'unwilling') (Q17)**

**Proposal 13: Where an inquiry has been instigated, the Commission can restrict/prevent actions (for example, preventing the use of premises for unlawful purposes) as well as financial/land transactions and enable the Commission to direct, for example, that a speaker does not speak at a charity event or on charity premises where to do so would amount to the trustees committing misconduct or mismanagement (Q18)**

**Proposal 14: Extend an existing power to enable the Commission to direct a bank to notify the Commission of certain movements on a bank account (Q19)**

**Proposal 15: Breach of a Commission order or direction is in itself an act of misconduct which can result in use of Commission's other compliance powers including disqualification (Q20)**

**Proposal 16: Ability to issue official warnings, which if not heeded could result in the Commission using its other powers (Q21)**

**Proposal 17: A new power for the Charity Commission to direct a charity to wind up and apply all of its net assets for charitable purposes by direction or scheme where necessary (Q22)**

29. The Fraud Advisory Panel agrees with all of the proposed changes to the Charity Commission's compliance powers.

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