

How OSCR deals with concerns and inquiries

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Introduction

OSCR's vision is of charities that you can trust, and that provide public benefit.

We support this vision in all of our work. We have a duty to consider risk to charities, encourage compliance, identify and investigate potential wrongdoing, and respond appropriately.

Charities 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 most 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.

What this guidance covers

- Our role as a regulator
- The sources of concerns
- How we assess risks to charities
- What to expect if you raise a concern about a charity
- Compliance activity – working with charities

- Formal inquiries – what to expect
- The end of an inquiry
- How we will communicate about inquiries
- How we use the information obtained in an inquiry.

Who is this guidance for?

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

How to use the 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 something 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 has a concern about a charity, or a charity that is the subject of a concern.

Our role as a regulator

Our role as regulator includes encouraging charities to comply with the **Charities and Trustees Investment (Scotland) Act 2005**. 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 small.

We act in the interest of the public as a whole and not on behalf of individuals or groups.

We assess information about charities, including concerns raised with us, and consider it carefully in line with our **risk framework**.

Where we decide it is appropriate to look into a concern in more detail we will do so. In cases where we decide not to take action, we hold the information on file for future consideration if necessary. These are decisions for OSCR to take and are not subject to appeal.

Where do concerns come from?

OSCR receives concerns from many different sources. We apply the same risk assessment process to all concerns.

Sources of concerns include:

- **Members of the public, service users and volunteers**

A member of the public or someone involved with a charity who has a concern can raise this with using the **online concern form** via our website

- **Notifiable events**

Charity trustees often collectively become aware of a situation or event that means there is a risk to the charity, for example reputational damage or financial harm. Where charity trustees are aware of such a situation and are working to address this, they can notify OSCR through the submission of a **notifiable event**.

- **Charity employees - whistleblowing**

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. This is commonly referred to as '**Whistleblowing**' under the **Public Interest Disclosure Act 1998 (PIDA)**. **Whistleblowing guidance** and an **online form** to submit this kind of concern is available through our website.

- **Funders**

Funders may become aware of a concern, perhaps due to a lack of reporting on use of allocated funds, and advise OSCR of the situation.

- **Auditors and Independent Examiners**

Auditors and Independent Examiners 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, **other matters** are at the discretion of Auditors or Independent Examiners.

- **Media**

OSCR may become aware of a potential concern through the media or other publicly available information and determine that further inquiry is required.

- **OSCR concerns identified through targeted and routine monitoring**

Information in annual reports or accounts may prompt OSCR to determine that further action is required.

How we assess risk to charities

Being a targeted regulator 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.

Our **risk framework** underpins how

we consider information about charities and the actions we take.

When we receive 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 Plan & Values**.

We aim to encourage charities to comply with charity law and to support them by giving guidance and making recommendations or signposting them to other sources of help. However, we will take regulatory action where we identify a need to do so.

What to expect if you raise a concern about a charity

We will acknowledge your concern within 15 working days, but this can sometimes take longer. Our initial work will allow us to establish our next steps.

We might:

- ask you to clarify information or provide further detail
- advise you to contact the charity trustees because the issue is something that the charity should deal with in the first instance
- tell you that the matter is not something we will deal with because:
 - it may be something that another regulator or public body should deal with
 - it may not be a matter that is part of OSCR's role as a charity regulator
 - it may be a low risk matter where we decide it is not proportionate or necessary for us to act, but where we will keep the information on file for future reference. How we deal with information we store is outlined in our **Privacy Policy and GDPR Guidance**.
- signpost you to another regulator, public body or source of help
- share with or seek information from other organisations to assist with our inquiries and help us decide the most appropriate course of action:
 - we have **agreements** with other organisations, such as **Police**

Scotland and **HM Revenue & Customs**, to share information where appropriate.

- let you know that we will open an inquiry
- let you know we are working with the charity to resolve the issue

We realise that some of these outcomes may not be what you expect. However, when you report a matter to us, the decision as to how to deal with it is for OSCR to make. There is no right of appeal under **charity law** about our decision on whether to make inquiries into a charity.

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What to expect if you are a trustee of a charity we are concerned about

If we have a concern about a charity we may deal with it formally or informally, depending on our assessment of the risk to the charity, public and sector.

Informal Activity - Compliance

Sometimes we will find that the best way to deal with issues we have found is not through a formal inquiry, but by finding ways of working with the charity or supporting it in other ways in order to help them deal with the issues themselves.

This may involve:

- signposting charities, or those who have raised concerns, to relevant guidance
- making recommendations 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.

Formal Activity - Regulatory Inquiries

Where we have decided that there are grounds to conduct an inquiry,

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.

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 or face to face meetings 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. It is an offence for anyone to knowingly provide information which is false or misleading to us – to do so may result in a fine or imprisonment on conviction.

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.

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.

We will decide:

- whether we need to take any formal 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.

We will write to the charity trustees to let them know the outcome of the inquiry and, where appropriate, any further action or monitoring.

Where we have used our formal 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**.

We will write to the charity trustees to let them know the outcome of the inquiry and, where appropriate, any further action or monitoring.

Communication and use of information

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 formal powers, or where there is a high level of public interest, we will publish an inquiry report on our **website** explaining what has happened and any action we have taken.

When our inquiries are complete, we write to the charity trustees to let them know the outcome of the inquiry and about any action we are taking.

We also tell the person who raised the concern what the outcome is in general terms. We will not usually provide detailed findings on each and every issue.

A person who has raised a concern about a charity does not have any rights of appeal or review under **charity law** about OSCR's decisions in an inquiry.

How we use information

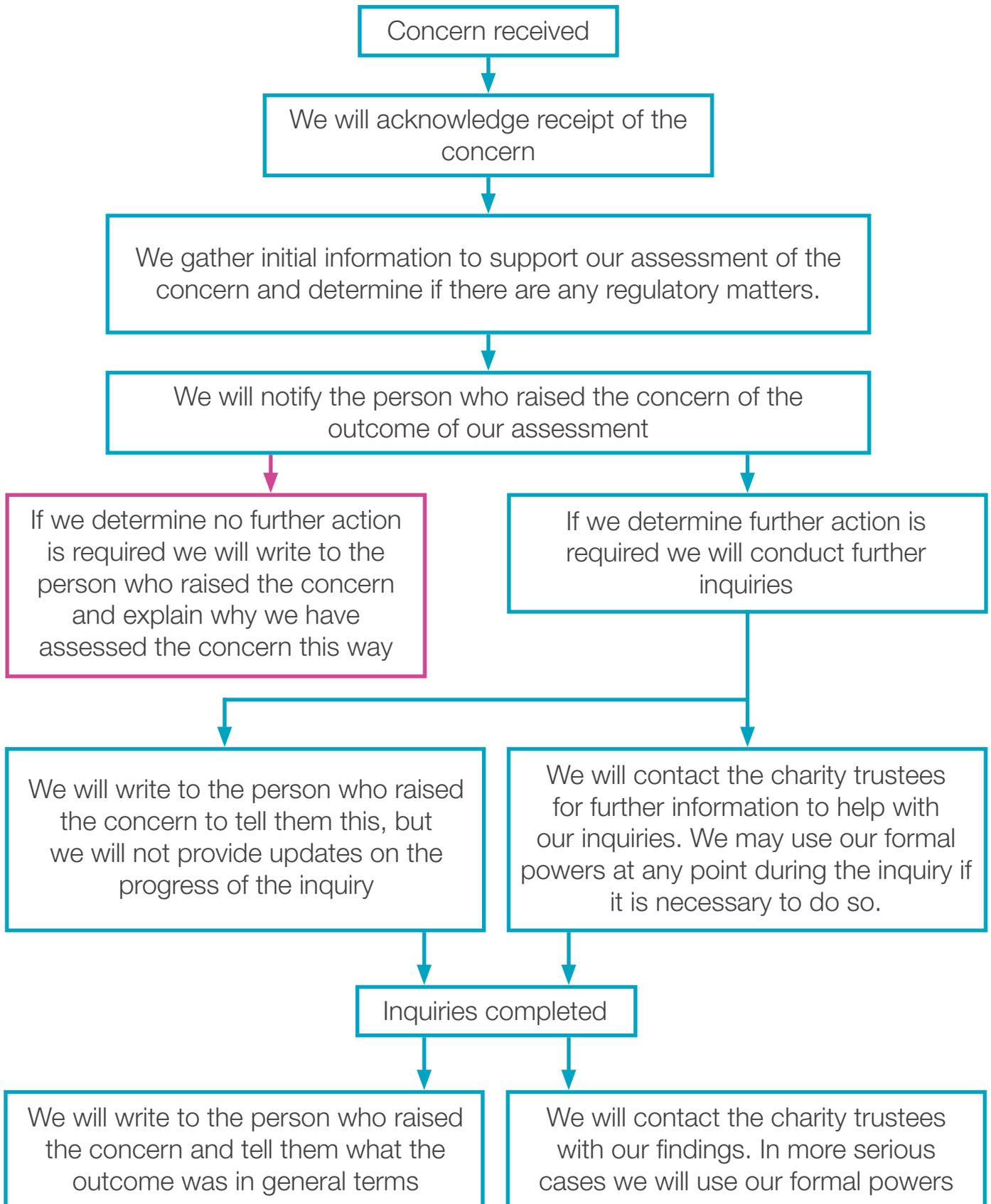
OSCR has a **Data Protection Policy** and a records management policy which set out what information we keep and why and how long we will keep it, in line with **GDPR**.

OSCR 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.

How we deal with concerns flowchart





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This document was first published on 10 January 2020