



ANNUAL REPORT

OF THE INDEPENDENT COMPLAINTS REVIEWER

FOR THE CHARITY COMMISSION

2009/2010

CONTENTS

The Independent Complaints Reviewer	Page 3
Foreword	Page 4
ICR Overview of the year	Page 5
ICR Case studies	Page 8
Complaining to the ICR	Page 12
About the ICR service	Page 14
About the Charity Commission	Page 16

THE INDEPENDENT COMPLAINTS REVIEWER



Jodi Berg is the Independent Complaints Reviewer (ICR) for the Charity Commission. She has a background as a solicitor and is a specialist in proportionate dispute resolution, a mediator, and a Fellow of the Chartered Institute of Arbitrators. She is a Council member of the Administrative Justice and Tribunals Council. Jodi Berg established the ICR office in 1998. The office now reviews complaints about 8 public bodies.

FOREWORD

I am pleased to present my Annual Report as the Independent Complaints Reviewer for the Charity Commission. Most people find that the Commission provides an excellent service and have no cause to complain. When things go wrong, there are robust internal processes and the option of referral to me if standard of service complaints cannot be resolved. Referrals to me this year have been few in number but show a continuing trend for complainants to expect a greater level of regulatory engagement from the Commission than its remit allows or that is proportionate to the circumstances. This colours people's views about the quality of service that they receive from the Commission, so that they turn to me for an unbiased view of the matter. Whether or not I undertake a review at the first point of contact with this office, I aim to resolve matters quickly or progress the 'journey' for the complainant.

In most cases, my investigations of complaints revealed no maladministration in the way that the Commission had acted. In some cases, however, I did find it necessary to criticise what had happened and to make recommendations either for personal redress or service improvement. I am pleased to record that all of my recommendations were accepted, once again demonstrating the Commission's willingness to treat customers well and to learn from the review process.

Part of my role is to offer advice to the Commission about how its complaint processes can be improved. Each year I seek views from complainants and Commission staff to give my comments a wider perspective. It is now an established part of the Commission's response to complaints that complainants can choose to have their complaints considered within the Outcome Review Panel (ORP) process, which offers them the hope of a change of operational decisions that I cannot provide. The option of ORP has been popular with complainants; take up is high and, in many cases, brings matters to a close. This is important because many people's contact with the Charity Commission will not go beyond informal stages, as increasingly the Commission takes a risk based approach to its work and aims to resolve most problems in a proportionate and conciliatory way. People who remain dissatisfied with the Commission's service, including the ORP process, can refer their complaints to me.

As in previous years I note that people continue to look to the Commission to help them with their personal complaints about charities. This always has the potential to end in disappointment, as this is not the role of the regulator. This is a problem that continues to arise in cases I see and that may intensify as the role of the voluntary sector grows. Despite the important part that charities play in our society, this is an area of public life where disputes must be settled through litigation, as there is no other formal mechanism for proportionate complaint settlement. This issue has been recognised within the volunteering community, where people's responsibilities and liabilities continue to grow, without corresponding protection from poor practice and abuse. With this in mind I was pleased to be asked to join Volunteering England's Inquiry into the Rights of Volunteers and I hope that the Inquiry Report will encourage debate on this important issue.

The ICR process remains an integral part of the Commission's response to complaints with the firm backing of the Commission's Board and senior management team to provide complainants with the opportunity for independent and impartial review. I wish to record my personal thanks to Andrew Hind, the Commission's outgoing Chief Executive, for his personal support for the ICR role and the addition of an authoritative voice to final complaint settlement.

The ICR service could not be effective without the help of the Commission's excellent and dedicated Customer Service Team. I record my thanks to the Head of Customer Service and her team members. Finally, my thanks go once again to the ICR team who work hard to ensure that every contact is valued and every complaint is dealt with fairly and efficiently.

As always, I welcome comments on my report, and I hope that it gives readers a valuable insight into the work of my office and my engagement with the Charity Commission.

Jodi Berg

ICR OVERVIEW OF THE YEAR

Charity Commission

This year I have visited Charity Commission offices in London, Taunton and Liverpool to learn about the way that the Commission responds to contact and complaints, and the changes that have been introduced to operational structures and process. These visits also give me an opportunity to underpin the Commission's commitment to customer service and the importance of dealing with complaints fairly and efficiently.

These are challenging times for the Charity Commission. The combined impact of its enlarged regulatory role under the Charities Act 2006, particularly in areas such as registration, together with Government-wide budget cuts, make it necessary to prioritise the use of resources. Increasingly, issues of proportionality shape the way that the Commission responds to complaints about charities and sets limits on its involvement. It is not surprising that this approach can be the cause of dissatisfaction to those hoping for more.

Although the Commission has acknowledged the 'pressure points' it has faced this year, I am pleased to report that there is no evidence to suggest significant increases in the numbers of complaints received about its own service. Rather, the situation has been one of steady state, with the total number of complaints about service standards reduced slightly, and those about outcome of customer contact increased slightly. This is due in no small measure to the efforts that Commission staff make to provide a good service for charities and the public, and to the emphasis the Commission places on effective public communication.

By contrast, this year several people contacted me before the Commission had been given the chance to settle their complaint, who were rather confused about internal process and when to refer matters to me. I am pleased to note that the Commission is now developing a range of guidance materials, to set out the options for complainants clearly and explain how complaint cases progress. I am hopeful that this will help to reduce the frustration felt by some complainants trying to engage with the system.

In order to reduce the need for personal contact, the Commission provides on-line advice and information for registered and would-be charities on issues that matter to them, their trustees and their beneficiaries. It also publishes a wide range of guidance on its own role and activities that help people to know what to expect from contact with the Commission. Whilst internal complaints procedures are robust, commendably, the Customer Service team has not been satisfied with a 'one size fits all' service and has sought to develop a more customised approach to dealing with complaints arising in different business areas, for example, within the Inquiry or Regulatory teams. I welcome these efforts to offer a service tailored to the issues and needs of charities and the public.

First-tier Tribunal (Charity)

In September 2009 the Charity Tribunal was absorbed into the new two-tier tribunal structure and renamed the First-tier Tribunal (Charity). The Tribunal

President, Alison McKenna, and I have agreed a Memorandum of Understanding to ensure that we provide co-ordinated and coherent advice to complainants about our respective roles. This is published on both websites.

Where complaint referrals to me make it clear that people also wish to challenge Commission decisions, I will seek agreement that decision review and appeal routes should be engaged first, in view of the longer time limit allowed for referral to the ICR following the Commission's final complaint response. Although people can appeal directly to the Tribunal without asking the Commission for a Decision Review, this is expected to remain the route of choice in most cases because of the flexibility and relative speed of the process.

Because it takes time to challenge Commission decisions, it is important to ensure that exercising this right does not remove an individual's opportunity to refer a complaint about the way that the Commission has provided a service where necessary. For this reason, should appeal procedures not conclude before the usual 6-month time limit expires, it is helpful that in consultation with the Commission I am able to consider extending the time limit for acceptance of referrals where it is fair and reasonable to do so.

The remits of the Tribunal and the ICR are very different, but recent Tribunal decisions have highlighted a potential for overlap in the areas that we can consider. Whilst I am unable to review legal 'decisions', I am able to consider complaints about the way in which the Commission made such decisions. Examples might be the way in which decisions are made to open statutory inquiries or the way in which further regulatory action is handled.

This year I have received 1 referral from a complainant whose case the Tribunal considered but who also wished to complain about maladministration in the way the Commission acted. This case was ongoing at year-end. However, given the Commission's focus on dealing with complaints in more proportionate ways, I expect few referrals to be about the engagement of the Commission's statutory decision-making powers, and most to relate to what happens during the more informal stages of Commission involvement.

In my experience, the Commission is very open to learning from complaints how it can improve process that is found to be wanting. As well as clarifying legal principles, the Tribunal can also offer opportunities for wider learning and thus support the Commission's commitment to service improvement, in line with best practice encouraged by the Administrative Justice and Tribunals Council.

ICR office

In October 2009 the ICR office held its inaugural forum for senior complaint handlers from across all of the organisations about which the ICR reviews complaints. This was an opportunity for representatives from those organisations to meet, discuss issues of mutual interest and share best practice. All attendees agreed it was a worthwhile event, which will now be held on an annual basis.

My annual survey of Commission staff is carried out to gauge levels of awareness about the ICR service; to identify potential gaps in knowledge; and to pick up suggestions of how the service might be improved. I was heartened to note that

this year, every respondent knew about the ICR role and was familiar with the complaints process. Most respondents found my visits to the Commission useful, and some suggested sharing the lessons learned from my reviews with a wider audience. In the coming year I will be discussing how this can be achieved with the Commission, so that key messages are disseminated.

My impression is that complaints about the Charity Commission are becoming more complex to resolve and often this is because of the number of internal and external complaint and appeal procedures that have already been tried, without a satisfactory outcome as far as the complainant is concerned. Whilst this is perhaps inevitable, particularly in the case of complaints about formal or informal decisions made by the Commission, it is always important to try to reduce the numbers of hoops that people have to go through. For this reason I welcome the Commission's recognition that fast-track procedures to progress complaints to the ICR can be helpful in some cases.

Once again this year the ICR office has sought independent accreditation of our complaint handling processes. I am pleased to record that we were successful in retaining the BSI award for the quality of our Complaint Management System.

ICR CASE STUDIES

'I am so grateful for such a prompt response. I did realise without going all the way through their internal complaints procedure that the ICR could not investigate. I am so appreciative that you picked up on my concerns and frustrations and seek clarification on my behalf with their Customer Service Team. You are doing more than I dared hoped for, and so quickly too. Your intervention is very much appreciated'.

Comment to ICR

The following are anonymised extracts from the complaints I reviewed this year, which give a flavour of the type of issues that complainants refer to me.

Communication

Mrs A was party to a dispute between new and former trustees of a community-based charity. The new trustees commenced legal proceedings against former trustees for repayment of a loan made from charity funds. In turn, the former trustees disputed the validity of the appointment of the new trustees and accused them of financial mismanagement.

The Commission viewed the loan to the former trustee as a potential breach of the charity's constitution, but was satisfied that the funds were not at risk, as they had been paid into a bank account in the charity's name. Following enquiries, the Commission decided that there were no properly appointed trustees in place and that it was necessary to appoint interim trustees to hold a valid election. After lengthy negotiation, all parties agreed this course of action. However, relationships broke down and the charity's financial situation became critical. In due course, the new trustees resigned and the Commission authorised the former trustees to wind up the charity and distribute its assets.

Mrs A was unhappy that the Commission did not take regulatory action regarding the loan and the opening of a bank account in the charity's name. The ICR found that the Commission acted in accordance with its policies and procedures in reaching decisions on how best to progress matters. However, she found that the Commission had not explained its position clearly to the new trustees and this poor communication had allowed side issues to rumble on, distracting everyone from the urgent need to appoint interim trustees. She recommended that the Commission's staff training and guidance should address the need for clear communication of its role and purpose. The recommendation was accepted.

Early Resolution

Mr B had a personal right of way over charity land. He wanted to build a car park on his own land, but the trustees of the charity opposed his plan and would not allow him to use his right of way as a general access route. He complained to the

Commission about the trustees' behaviour. The Commission took the view that this was a personal complaint against the charity in which it could not become involved and advised Mr B to seek independent legal advice.

Mr B complained that the Commission should have contacted Land Registry to check the position regarding the validity of his right of way. Although the Commission may have no specific role in the dispute, he felt that it would be relevant to any future legal proceedings if the Commission acknowledged that Land Registry had agreed that he had a legal right to use the land.

Having considered the complaint, the ICR sought to agree a mutually acceptable resolution of the matter. The ICR office contacted Land Registry and asked it to assist Mr B by writing to confirm its position on his right of way. Land Registry agreed to do so. In turn, Mr B copied Land Registry's letter to the Commission, which acknowledged receipt. Mr B was satisfied with this outcome.

"You responded very well to my complaint and your actions have allowed me to draw a 'line in the sand'. Please thank your colleagues on my behalf."

Comment to ICR

Delay

Mr C had been a trustee of an international health charity for several years but was removed shortly before the end of his term of office. He contacted the Commission to raise concerns about the charity including: poor financial controls; the sidelining of trustees by the Secretary and the Chair; non-compliance with good practice and the charity's governing document; and unauthorised trustee benefit. Other former trustees and representatives of the charity's member organisations wrote to the Commission to support his complaints.

The Commission assessed the complaints and decided that the issue of unauthorised trustee benefit merited further investigation. Other than this, it concluded that its involvement should be limited to providing the charity with advice on financial controls and reporting, which it subsequently did. The Commission also corresponded with the charity about payments made to its Secretary over a two-year period. The charity initially argued that it had power to make these payments, but the Commission disagreed with this and in due course the charity agreed to stop making payments and to take legal advice on the best way forward. The Commission then closed its case.

Mr C was dissatisfied with the Commission's actions. He complained that there had been delays and a failure to thoroughly investigate his concerns. The ICR did not uphold most of his complaints, however she found that there had been delay and noted long periods during which there had been had no contact with the charity and the trustees were not asked to respond to Commission enquiries. A cause of this lack of action was the operational team's decision to close its case without referring the unauthorised benefit issue on for follow-up action. The ICR recommended that the Commission take steps to review its staff guidance to

ensure that significant issues identified but not resolved by the initial investigation of a complaint were passed on for further action. The recommendation was accepted.

Managing customer expectations

Mr D had been the independent examiner of charity accounts for an educational charity. He complained to the Commission that the charity's new accounts contained errors and inaccuracies. The Commission assessed his complaint and decided that no regulatory action was required on its part, however, it informed Mr D that it would wait to receive the next set of accounts to ensure that the trustees had taken appropriate action to rectify the problems he had identified.

Mr D was not satisfied with this response and continued to raise concerns and to challenge the Commission's position. In an effort to resolve his complaint the Commission entered into lengthy correspondence with him about the charity's accounts and copied him into correspondence with the charity. Despite these efforts, Mr D was not happy with the presentation of the following year's accounts and he complained again. The Commission refused to take any further action, on the basis that to do so would be disproportionate.

Mr D complained to the ICR about the Commission's handling of his complaints. He asserted that the Commission failed to take appropriate action in relation to the charity's accounts, despite acknowledging that they contained errors. The ICR did not uphold the complaint. However, she found that the Commission had given Mr D the impression that it would intervene to ensure that errors in the accounts were remedied, when in reality this was unlikely. She noted also that the Commission's continued engagement with Mr D had given him the mistaken impression that he could influence the acceptance of the charity's accounts.

The ICR concluded that Mr D's complaint stemmed from misplaced expectations of the Commission's general role in relation to accounts activity, which is not to act as an auditor but to gather information about the financial position of charities and their income and expenditure; and to facilitate the publication of this information for public scrutiny.

She recommended that the Commission review the advice and guidance for charities and the public to ensure that the purpose and nature of its accounts practice is understood. The recommendation was accepted.

Complaints Handling

Mr E represented the former CEO of a care charity at an Employment Tribunal, which found unfair dismissal. The charity subsequently appealed this decision and lost. Before the appeal, Mr E complained to the Charity Commission about the misuse of charity assets. In particular, he was concerned about the costs that the charity incurred due to the trustees' decision to dismiss the CEO and defend their actions at Tribunal. The Commission assessed the complaint and decided not to intervene.

Following receipt of further complaints from Mr E, the Commission made enquiries with the charity to ensure that the trustees were following proper decision-making procedures and acting collectively, when deciding to pursue the employment action. The Commission concluded that the trustees took decisions relating to the Tribunal and appeal in an appropriate manner. It took account of the costs incurred by the trustees in the period covered by the Tribunal hearing and appeal, but not before, and concluded on this basis that the costs incurred were not disproportionate. The Commission informed Mr E that there were no grounds to become involved.

Mr E complained about various aspects of the Commission's case and complaint handling and his complaints were referred to an Outcome Review Panel. He was dissatisfied with the ORP decision and opted to refer his complaints about the way things were handled to the ICR. Amongst other things, he complained that the definition of a Commission 'decision' was ambiguous and that he was wrongly denied a Decision Review of the case and the Commission's case handling.

The ICR explained to Mr E that the case was not eligible for Decision Review because no formal decision, direction or order had been made. Rather the matter had been dealt with informally through case assessment and management, which had brought the Commission's involvement to a conclusion. She criticised the Commission for not sending Mr E a copy of the relevant guidance, which may have helped him to understand the position better.

She found that the distinction that the Commission had made between costs incurred by the trustees in the period before the Tribunal and appeal and those incurred afterwards was confusing, and noted that the Commission was able to legitimately consider costs in the round. She recommended the Commission apologise for any confusion caused by its approach. She did not uphold other points of complaint. The ICR's recommendation was accepted.

COMPLAINING TO THE ICR

My role as Independent Complaints Reviewer is to act as an honest broker in investigating complaints against the Charity Commission made by members of the public or organisations affected by the Commission's actions or decisions. I aim to achieve impartial and fair settlement of complaints, and to make a positive difference for Commission customers now and in the future. If people are dissatisfied with the Commission's final response to their complaint, they can refer it to me at no cost to them.

I cannot act as an appeal route against statutory decisions or case outcomes; nor do I have any authority to recommend overturning decisions. My remit is to look into complaints about maladministration on the part of the Commission. Put simply, this means complaints about the way in which the Commission has handled things. This can include delay or discourtesy or allegations that the Commission failed to follow its own policies and procedures or to treat customers properly and fairly.

The Parliamentary and Health Service Ombudsman's publication *Principles of Good Administration*¹ is a helpful guide to what delivering good standards of service means for public bodies. The concepts contained within the Principles are not new in themselves but articulate the kind of service that people can reasonably expect from public bodies, in a way that is easy to understand. The Commission is committed to service delivery based on these Principles. The Principles are not legally binding and failure to live up to their high standards does not automatically mean that there has been maladministration. The test I apply is always that of fairness and reasonableness, taking into account the circumstances of each particular case. All complaints are decided on their merits.

I am also able to offer people advice and assistance to help them to resolve matters informally or to explain how they can take forward their complaints in the appropriate way. We welcome contact from anyone who needs our help to progress their complaints and ICR office contact details are published by this office, by the Charity Commission itself and by the First-tier Tribunal (Charity).

ABOUT THE ICR SERVICE

When people complain to the ICR's office they can expect to be treated with:

◆ Respect

We treat people as individuals and take their concerns seriously.

◆ Courtesy

We communicate in an open and friendly manner. We expect similar responses from complainants and do not accept abusive or inappropriate behaviour.

◆ Honesty

¹ The Parliamentary and Health Service Ombudsman's Principles of Good Administration
www.ombudsman.org.uk

We are clear about the limitations of our role from the outset and will discuss the likely outcomes that can be achieved from ICR review.

◆Objectivity

The ICR reaches decisions after careful consideration of the evidence provided by the complainant and the Charity Commission. We compare what has happened against the Commission's published standards of service.

◆Flexibility

We recognise that a 'one size fits all' approach is inappropriate when dealing with individuals and tailor our service to meet people's legitimate needs.

◆Plain Language

We try to communicate in language that the complainant is comfortable with to ensure our messages are understood.

ICR SERVICE PRINCIPLES

As an associate corporate member of the British and Irish Ombudsman Association (BIOA), the ICR's office lives up to BIOA's Principles of Good Complaint Handling in the course of its work. These principles are:

Clarity of purpose A clear statement of the ICR's role, intent and scope

Accessibility A service that is free, open and available to all who need it

Flexibility Procedures, which are responsive to the needs of individuals

Openness and transparency Clear and helpful information about our service

Proportionality Process and resolution that is appropriate to the complaint

Efficiency Meeting challenging standards of good administration

Quality outcomes Complaint resolution leading to positive change

More information about BIOA and other complaint handling bodies can be found at: www.bioa.org.uk

Facts and figures

ICR Referrals

In 2009/10 the ICR office received 20 new complaint referrals, an increase of approximately a third on last year.

I accepted 7 complaints for investigation (one was later withdrawn by the complainant). As always there were cases undergoing investigation at the start of the reporting year and I settled 10 complaints during the year. These incorporated 40 individual elements of complaint.

Allegations of maladministration

Category	Total no. of issues	Upheld	Partially upheld	Not upheld
Advice				
Bias	1			1
Communication	5	1		4
Complaint handling	9		1	8
Cost				
Delay	4	1		3
Discourtesy				
Discrimination				
E-failure/IT				
Other	8	1		7
Practice and procedure	7 (including 1 resolution*)			7
Register errors				
Responsiveness	6			6
Total	40	3	1	36

*resolution allows a complaint to be settled in a less formal manner, usually by reaching an agreement that specific action will be taken by the Charity Commission.

The table above shows that most complaints are about practice and procedure, responsiveness and complaint handling. This conforms with previous years' statistics.

I am pleased to report that the Commission has continued to act on my reports and implement recommendations I have made. The interest in complaints and the lessons that can be learned goes to the highest level within the Commission.

"Thank you for your extremely comprehensive report into the complaint from XX, regarding our involvement with this charity.....we will be arranging for the shortfalls you have highlighted to be fed back to the relevant area of the business, so that we can learn from them and help prevent a similar situation from happening again"

Charity Commission Chief Executive to the ICR

Speed of service

The ICR office has challenging speed of service targets. Although we try to deal with matters as quickly as possible, some investigations can take longer than the average target date, depending on the complexity of the issues raised and the amount of information to be considered.

Aspect of service	Target
Telephone calls	1 day
Acknowledgement	1 week
General correspondence	5 days
Complete review	26 weeks

This year the average clearance time achieved was 22 weeks. This was an encouraging result given that for certain periods of the year seconded members of staff were not quickly replaced when moving on from the ICR office.

'I would like to express my sincere appreciation for her laborious efforts to undertake the task of uncovering the full history of the ongoing problems of our charity'

Complainant to ICR

Internal complaints

Each ICR report issued explains to complainants how they can raise a service complaint about the ICR office or, if they remain dissatisfied with the outcome of review, how they can refer their complaint to the Parliamentary and Health Service Ombudsman. During the reporting year, across our work for 8 public bodies, we received 1 complaint about our service. In line with normal arrangements, a review was undertaken by an ICR with no previous involvement in the case and the lessons learned from her review were disseminated within the office.

This year the Parliamentary and Health Service Ombudsman has accepted no complaints about the ICR service following ICR review about the actions of the Charity Commission.

ABOUT THE CHARITY COMMISSION

The Charity Commission is the independent regulator of charities in England and Wales. It employs over 400 full time equivalent staff, spread across 4 offices in England and Wales.

The Commission's role is to ensure that charities are accountable, well run and meet their legal obligations. In order to increase charities' effectiveness and public trust and confidence in the sector, the Commission provides a wide range of advice and guidance to charities and trustees, and has powers to intervene in the affairs of a charity where things have gone wrong if it is both necessary and proportionate to do so.

There are currently over 190,000 charities registered with the Charity Commission, with total incoming resources of nearly £51 billion, over 660,000 paid staff and over 925,000 trustee positions. Charities range from small groups meeting local needs, to large national and international organisations providing services to millions of people. All are required to be accountable, independent and operate for the benefit of the public.

More information about the Charity Commission and its complaint handling, together with a range of guidance for charities can be found on its website: www.charitycommission.gov.uk, or by contacting Charity Commission Direct:

Telephone: 0845 300 0218
Minicom: 0845 300 0219
By Post: Charity Commission Direct
PO Box 1227
Liverpool
L69 3UG

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