

Seeking a Fair Resolution

Independent Complaints Reviewer to the Charity Commission

Annual Report 2004-05

About the Independent Complaints Reviewer

Who is the ICR?

Jodi Berg is the ICR for the Charity Commission, Land Registry, The National Archives and the Housing Corporation. She is also Independent Case Examiner for the Child Support Agency and the Northern Ireland Social Security Agency. Mrs Berg is a solicitor and a Fellow of the Chartered Institute of Arbitrators. The ICR is not a civil servant, an employee of the Charity Commission or any other public body.

The ICR service

The ICR service was first established in 1998. The Charity Commission opted to become part of the ICR's remit in 2001. The ICR reviews complaints made by people dissatisfied with the Charity Commission's response to their concerns. The service is managerially independent from the Charity Commission and it operates from offices in Southampton Row in central London. The service is free to complainants.

Finding out about us

The ICR's leaflet *Seeking a Fair Resolution* explains the role of the office and contains a complaint referral form. The leaflet is available from all

Charity Commission offices or direct from the ICR's office. It is also available on-line.

Complainants can contact us by telephone, fax, e-mail, or in writing. The Charity Commission is required to signpost our service in its final response to a complaint. It also provides information about us on its website (www.charitycommission.gov.uk)

Our own website (www.icrev.demon.co.uk) contains information about our work and copies of past and current annual reports. The website also provides an on-line version of Seeking a Fair Resolution and a printable version of the complaint referral form. It has links to websites of other complaints handling and ombudsman services.

You can find out about us and other complaint handling organisations by visiting the British and Irish Ombudsman Association website (www.bioa.org.uk). We promote the work of the office through external bodies such as the Citizens Advice Bureaux and the Consumers Association.

The ICR Team

Team members are civil servants. They are either permanent staff at the ICR office or seconded for a limited time from other public bodies, including those for which Jodi Berg is the ICR. During the reporting year, our team members were:

Senior Investigations Officer and Office Manager:

Andrew Robertson

Investigations Officers:

David Davies

Joe Scott

Fiona Stevenson

Contents

Foreword	1
Seeking a fair resolution	3
Our Mission Statement	
Terms of Reference	
Making a complaint to the ICR	
Implementing systemic recommendations	
Next steps	
Year overview	5
The role of a regulator	
The Commission's customer	
Customer service	
Publicity	
Looking to the past	
Facts and figures	8
Referrals and recorded complaints	
Reviews and outcomes	
Complaints by category	
Our performance	
Recommendations	
Implementing ICR recommendations	
Customer comment	
Complaints about our service	
Referral to the Ombudsman	
Casework review	11
Raising expectations	
Discourtesy	
Comments and decisions	
Political activity	
Inquiries and publicity	
Answering the question	
Acting promptly	
Harassment	
Following guidelines	
Taking firm action	

Foreword



Jodi Berg

I am pleased to present my annual report for the year 2004-2005. Following my appointment as Independent Complaints Reviewer for the Charity Commission in 2001, this office quickly became a recognised and accepted further step for complainants dissatisfied with the Charity Commission's own response to their complaints about its service.

The Commission's approach to complaints handling is well structured, and provides a clear path for complainants to follow. In general, it is able to resolve most complaints internally so that people do not need to take the extra step of asking me to carry out a review. As a result, referrals to my office remained low during the reporting year.

The Charity Commission has done much to instil a service culture which is sensitive to the needs of customers and more alive to expressions of dissatisfaction than was the case a few years ago. Despite this, complaints referred to me show that people are not always happy with the way that the Charity Commission handles matters. Some complaints centre on relatively straightforward allegations of poor service such as delays or discourtesy, however, as in

previous years a significant number arose from a misunderstanding of the Charity Commission's regulatory role. These complaints reveal a mismatch between people's initial expectations and the way that the Commission goes about evaluating concerns about individual charities and deciding what to do.

The Commission has gone some way to addressing this problem by publishing clear explanations about its approach to reported problems within charities. However, the fact remains that decisions about proportionality and the right course of action to take are always matters of judgement. There is no magic formula which makes it clear to everyone that discretion has been exercised appropriately.

In some cases, people who turn to me appear to have justifiable complaints about particular charities, if not about the Charity Commission itself. In general, the Charity Commission has no authority to intervene in personal disputes with charities, or order a charity to provide redress, and this can lead to disappointment on the part of complainants whose only recourse is to the courts, where potential costs act as a strong disincentive. As one complainant wrote to me:

"The wrong could only be redressed in the High Court. No ordinary person could afford that sort of money to obtain justice."

In a society where the distinction between public and voluntary services is becoming blurred and where, to a greater or lesser extent, charities touch all of our lives, the lack of any alternative and more informal system for resolving such disputes is regrettable. There is a strong argument for the provision of an ombudsman for charities, with authority to consider complaints about individual charities and provide redress. The Charity Commission is continuing to consult on this proposal and I hope that more progress can be made in the coming year.

The Charity Commission has seen a year of considerable development, and it seems clear that there is more to come. The establishment of new governance arrangements to separate the roles of Chair and Chief Executive has added a new dynamism to the Board. This paved the way for a wide-ranging strategic review, looking to the future and to meeting the needs of the sector in more customer-facing and innovative ways. I welcome this new focus and I will be

commenting on this and other matters in my Year Overview later in this report.

The re-introduction of the Charities Bill has also led to renewed interest in the Charity Commission's role and authority. As an interested observer, I am aware that there has been some Parliamentary debate about my own role. In particular, an argument has been made for a new statutory office of Independent Complaints Reviewer, changing the basis of appointment and affording the office holder the power to award substantive compensation to those adversely affected by the Commission's actions or omissions.

My personal view is that some caution needs to be exercised in relation to this proposal. There is already a statutory avenue for complaints about the Charity Commission, that being the Parliamentary and Health Service Ombudsman, who is able to award redress for financial loss where she deems it necessary to do so. It is doubtful whether a potentially overlapping office would add anything for the citizen other than confusion. My own role, in common with other similar offices, is based on agreed terms of reference

which underline my independence and authority. As well as helping people to achieve a fair outcome to their complaints, I am able to identify areas where process can be improved. In this way it is complementary to that of the Parliamentary Ombudsman, but does not seek to replace the authority or the independence of that office, which is derived directly from Parliament. The Ombudsman remains the final avenue of complaint if all other more informal interventions or processes have failed.

It is fair to say that the desire to see a change in Commission practice is often a strong motivator for people who refer complaints to me. My recommendations are drawn from individual complaints, but are also based on the knowledge and understanding that I gain through regular contact with the Commission. During my time as ICR for the Charity Commission, recommendations have resulted in substantial changes to the way in which the Commission carries out its regulatory role, providing greater clarity and consistency of approach.

Independent complaints review is most effective in those organisations that have an interest in the views of their

customers and look for ways to do things better. Together, the Charity Commission's Chair Geraldine Peacock and Chief Executive Andrew Hind have continued the constructive relationship between my office and the Commission and I look forward to playing my part in adding value to the service offered to our mutual customers in the coming year.

This year my office faced the challenge of a complete turnaround of Investigations Officers. Nevertheless, I am pleased to report that the service provided to Charity Commission customers did not diminish. In great measure, this was due to the efforts of my Office Manager, Andrew Robertson. I thank him and all of the team, past and present, for their enthusiasm and commitment.

I hope that you find my report interesting and informative.



Jodi Berg
Independent Complaints Reviewer

Seeking a Fair Resolution

Our Mission Statement

The ICR will be fair and impartial in the review of complaints made by individual members of the public or organisations.

The ICR aims to achieve a reasonable settlement of complaints made by Charity Commission customers. We also try to make a difference to the service provided to future customers by recommending system changes that will prevent problems identified by complaints from recurring.

From the initial contact with us, we ensure that complainants understand our role and how we go about our work. We communicate with people in a clear and polite manner and in ways that meets their needs and preferences. To this end, upon request, we can provide information leaflets in a number of languages and formats.

Complainants can expect from us:

- Courtesy
- Honesty
- Respect
- Accessibility
- Objectivity
- Flexibility
- Plain language

In addition, we are always open to suggestions and comments and seek views about our service from complainants and Charity Commission staff.

Terms of Reference

The ICR reviews complaints about the way that the Charity Commission dealt with things. This may involve:

- Failure to follow proper procedure
- Discourtesy, discrimination or injustice
- Excessive delay
- Not answering complaints fully and promptly
- Failure to apologise properly for mistakes or provide appropriate redress

The ICR cannot adjudicate on Charity Commission decisions, although she can consider complaints about the way in which they have been made. We expect the Commission to be given a chance to sort things out before complaints are referred to the ICR. However, because memories fade and information is only kept for a certain time period, referrals should be made within six months after the Charity Commission's final response to a complaint.

Making a complaint to the ICR

People can refer their complaints to the ICR by telephone, post, fax, e-mail or in person. When we receive a referral, initially we consider whether it is possible to negotiate an agreement between the Charity Commission and its customer. In cases where this appears feasible, we will explore the potential for agreement to any immediate action on the part of the Charity Commission that will resolve matters. For example, this may include action to provide information, to apologise for problems that occurred, or to make a consolatory payment.

In cases where resolution is not possible or appropriate, we agree a summary of complaint with the complainant, which sets the framework for our investigation. Once agreed, a copy of the summary is sent to the Charity Commission, which then sends its case files to us. A detailed chronology is drawn up from the files and from the information provided by the complainant. The ICR then decides whether she has sufficient information to be able to consider whether the complaints raised are justified, or whether further enquiries

Seeking a Fair Resolution

(such as interviews with complainants or members of staff) are required prior to issuing her report.

The ICR may make recommendations within her reports. These are usually aimed at providing reasonable redress for the complainant, such as an apology from the Charity Commission or specific action that will put things right. She may also recommend a consolatory payment. Such payments are made in line with Treasury guidance and, whilst not large, they are intended to constitute a tangible apology for the anxiety and distress caused by the maladministration that has occurred. Whilst the ICR has no authority to recommend the award of a specific sum in respect of financial loss, where appropriate she can recommend that the Charity Commission itself consider this issue.

The ICR can also make systemic recommendations aimed at improving procedures or customer service for the future.

In cases where the ICR has made recommendations, the Charity Commission has undertaken to implement them

immediately. However, if the Commission decides not to do so, it must provide a written explanation.

Implementing systemic recommendations

The ICR's recommendations for the review and change of practice or for improvements in service are referred to the Charity Commission's Customer Service Team, which is responsible for taking them forward to implementation.

Next steps

In cases where the ICR's report has not resolved a complaint, there is a further avenue of complaint available by asking an MP to refer matters to the Parliamentary and Health Service Ombudsman. In cases where a complainant is dissatisfied with the way in which we have dealt with their complaint, we have an internal complaints procedure under which their concerns are investigated and the ICR will issue a personal response.

This year, the ICR and Ombudsman's offices reviewed liaison processes for cases where complainants have

approached or might approach both offices. It is important to ensure that people understand that complaints cannot be referred to the ICR following an investigation by the Ombudsman, so that they can make informed choices about the appropriate route to redress.

Year Overview

The role of a regulator

My office continues to receive complaints from people disappointed with the way that the Charity Commission has carried out its regulatory role in relation to individual charities. A number of these complaints come from trustees or beneficiaries who complain about the heavy-handed approach and lack of understanding of their own position. Others, who have reported their concerns about a charity to the Charity Commission, feel that it has not gone far enough to intervene in the charity and 'discipline' trustees.

As a regulator, the Charity Commission has to expect that its decisions will not please everyone and, indeed, may generate hurt and anger in those who believe they have been adversely affected. Nevertheless, this cannot deter it from taking unpopular or contentious decisions when these are warranted by the circumstances. Whatever decisions are taken, the Commission has a duty to consider relevant information and approach the task in a reasoned and proportionate manner. This means that it must be able to provide objective evidence that it has

acted properly and responsibly, in line with its published procedures.

In recent times, the Commission has placed particular emphasis on considerations of proportionality in its decision-making. However there can be a tension between this approach to regulation and the public perception of that role. The consultation carried out to inform the Charity Commission's recent strategic review demonstrated this. Feedback suggested that the sector is keen to see the Commission taking decisive action against the worst performing charities. On the other hand, the general view was that it should be less demanding of smaller charities than larger ones. In my experience, it is often in the smaller charities that problems arise which lead to complaints made to the Charity Commission and which provide its most difficult regulatory dilemmas.

The Commission's customer

It is the Charity Commission's stated intention to be more proactive and outward-facing in relation to the charitable sector than in the past. It has been argued that the Commission's key customer is the public and

that it must be receptive to public opinion. I welcome the Charity Commission's more open approach to public accountability, which is demonstrated by its policy of holding board meetings in public; through the publication of easily accessible and forthright information and guidance; and by its commitment to sector-wide consultation.

However, in terms of its role as a regulator, the public is often not the Charity Commission's primary customer. In these situations its focus will be on the best interests of a charity, regardless of how this affects individual trustees or members of the public. The issue of 'whose side' the Commission is on is one that often arises in complaints referred to me, and it clearly has a tightrope to walk between not interfering in the administration of a particular charity and the performance of its public duty. In forging a new relationship with the sector and the public, the Charity Commission must find a successful balance between the two.

Customer service

The Commission's Customer Service Team completed its second year of operation in 2004-2005, during which it raised its profile both internally and publicly. A customer network was launched involving stakeholders from across the charitable sector, with the aim of giving the sector a real voice in the wider development of Commission policy and encouraging a meaningful contribution towards customer service issues. The Team also continued its programme of staff feedback on customer service and complaints handling issues in a series of presentations and discussions across each of the Commission's offices.

This is a welcome indication of the Charity Commission's intention to place customer service at the heart of its day-to-day activities. In order to continue the valuable contribution already made by the Customer Service Team, it must retain its objectivity and the authority to provide a truly discerning voice.

Publicity

The Charity Commission has a considerable role to play in promoting public confidence in

the charitable sector. Its own reputation is also enhanced when it is seen to play a proactive part in facilitating charitable endeavours, for example in response to international disasters such as the Asian tsunami, when it handled applications for registration of dedicated charities at record speed and issued timely public warnings about bogus fundraising.

Despite the old adage that there is no such thing as bad publicity, a theme that continues to emerge in complaints that I see is the place of publicity in relation to regulatory intervention in a charity, particularly where there has been criticism of the conduct of a charity trustee or employee. It is the Charity Commission's practice to use such publicity to draw attention to lessons that the charitable sector can learn from problems that have occurred within individual charities and to highlight the role that the Commission can play in addressing such problems.

This is in itself a laudable objective and the Charity Commission's approach has no doubt helped many charities to understand the standards expected of them. However, publicity of this kind may not

be so welcome to the charity concerned or to individuals who have been 'named and shamed'. This can lead to far-reaching consequences for those affected. The Commission needs to be alive to this, and to ensure that it uses the power of publicity in a positive manner. I am pleased to note that the Charity Commission has recently reviewed its guidance on its practice in this important and sensitive area.

Looking to the past

The Charity Commission has undergone significant change in the last few years, not least in how it deals with complaints and contentious cases. It is fair to say that some of these changes were prompted by the review of some high-profile cases, which identified that past practice was not always administratively sound. On occasion, the action taken was disproportionate and resulted in considerable unfairness to those involved. Since Charity Commission decisions could only be challenged judicially, people were left with a stark choice of expensive and risky court action or acceptance of injustice. To some extent, the echoes of these cases are still felt in criticism made of the Charity Commission today.

Year Overview

Although it is understandable that the hurt and distress caused by such cases may linger, the Charity Commission is not the same organisation that it was years ago. It deserves credit for the progress that it has made in recent years, both in terms of the changes made to its regulatory processes and to its complaint and redress procedures. Whilst it is important to keep the lessons of the past in mind going forward, the Commission must take care not to dwell on 'institutional guilt' for events that are now quite distant in time.

Facts and Figures

Referrals and recorded complaints

The reporting year 2004-2005 represents the 12-month period from April 2004 to March 2005. We received 32 complaints in 2004-2005, fewer than the 39 referrals noted in our previous annual report which covered a 15-month period. The Charity Commission's Customer Service team dealt with 103 complaints, compared with 94 in the previous year. During the same period the Commission recorded 547 compliments, a significant reduction on the 695 recorded in 2003-2004.

Reviews and outcomes

We conducted 18 reviews, incorporating between them 110 individual allegations of maladministration. The great majority of complaints were not upheld. The ICR was satisfied that in most cases the Commission's internal complaints procedure had been implemented appropriately and that, in general, it was rigorous and effective. As a consequence, in several of the cases reviewed, although the ICR found that there had been maladministration in the Commission's earlier case handling, this had been recognised by the Commission and steps had been taken to

provide redress to complainants. In these circumstances, complaints are not upheld.

Allegations	110
Fully/Partially Upheld	15 (14%)
Not Upheld	95 (86%)

Complaints by category

The pattern of complaints remained largely unchanged from previous years, with the largest number relating to concerns about Commission practice and procedure. Most of these complaints arose because people were unhappy with the way that a decision was made or felt that the Commission did not act in accordance with its published procedures in responding to the reported situation within a charity.

We are pleased to report that complaints about the personal conduct or attitude of Commission staff were rare in 2004-2005. Nevertheless, the total number of complaints concerning communication and complaints handling issues increased and these areas will be monitored over the coming year.

The ICR's office dealt with some very complex and contentious complaints in 2004-2005. On average, each complaint

reviewed included 6 distinct allegations of maladministration, roughly twice the average of previous years. Long-standing or high public profile cases can give rise to particular problems in conducting a review and reaching a fair settlement. This highlights the importance of resolving complaints internally at as early a stage as possible. Failure to do so can mean that the causes for concern quickly multiply.

Category	2004-05	2003-04
Advice	2	5
Bias	4	6
Communication	12	4
Complaints Handling	14	8
Delay	3	7
Discourtesy	3	2
Discrimination	2	0
Mistakes	1	2
Other	3	0
Practice and Procedure	63	44
Responsiveness	3	9

Our performance

The average time taken to complete our reviews in 2004-2005 was 21 weeks from the date of agreement of the summary of complaint, well within our published target of 36 weeks. This is a welcome decrease on the average time

reported last year, which was 37 weeks. This was achieved in spite of 100% turnover of our Investigations Officers in 2004-2005.

Despite this success, there is little room for complacency as some cases still took longer to review than our target. These tended to be complex and long-running complaints, which take longer to investigate because of the amount of material that needs to be considered and the sensitive nature of the issues. Feedback that we receive suggests that greater value is attached to thoroughness rather than to speed, but we will continue to consider ways in which these kinds of cases can be concluded more quickly.

Recommendations

The ICR can make a number of types of recommendations. For example, she can recommend an apology, an explanation, specific action, a consolatory payment, or make recommendations about the Commission's systems and procedures.

During the year, the ICR made a number of systemic recommendations, including the following examples:

- The Commission should not act outside of its complaint

policy and procedure, which is designed to give a timely, full and appropriate response and to ensure consistency in complaints handling.

- The Commission should ensure that reasons for decisions are recorded on file. These reasons should be capable of explanation to interested parties.
- It is not 'general policy' to name individuals in Inquiry reports, although this can be considered by the Commission in appropriate circumstances. Commission guidance should clarify the decision-making and recording process. Its policy and guidance should be publicly available.

Implementing ICR recommendations

The Commission has responded positively to all of the systemic recommendations that the ICR made. It accepted all but one of her recommendations for customer redress. This was a recommendation for an apology for what the ICR considered to be an unreasonable delay. The Commission did not agree that

there had been a delay, and explained in detail why it considered this to be the case.

This was disappointing, however, in subsequent discussions the Commission has clearly re-stated its commitment to implementing all recommendations.

Customer comment

We asked every complainant to complete quality questionnaires following review. Most people were satisfied with our published guidance and nearly all understood and accepted that the ICR is independent of the Charity Commission. As in previous years, people's assessment of whether our reviews had resolved matters corresponded directly with the outcome of the ICR's investigations.

However, some interesting comments were made about the ICR service. Some people were complimentary:

"I am grateful to you for the part that you have played in this dreadful matter"

"It is obvious that you have read the whole of the correspondence supplied to you by the Charity Commission and have very carefully considered all of the issues. It helps me enormously...that the major opinions I express are entirely supported by the findings in your report."

Others were not so happy:

"I do not feel that there was a proper understanding of our difficult circumstances and situation."

We value all feedback and regularly consider ways in which our service can be improved for the benefit of all of our customers. As a result of the above comment we are carrying out a review of our communication with complainants to ensure that they are given every opportunity to tell us their story.

We also ask a sample of Charity Commission staff about their views of the ICR service. All respondents knew about our service and understood our role. Importantly, everyone surveyed confirmed that they knew that the ICR was independent of the Charity Commission and felt that she deals with complaints in an impartial way.

Although most people confirmed that reports they had seen represented a fair outcome to complaints, feedback from some Charity Commission officers suggested that they would have preferred more direct opportunity to comment on cases in which they were personally involved. One officer rather worryingly commented: *"In my case, key documents and plans that I had written were never seen by the ICR - nor did we speak before she upheld a complaint against my team."*

In the main, our review involves a detailed examination of files and documents supplied by the Charity Commission and complainants. The ICR does not always speak with officers involved in a case, rather she relies on those who liaise with our office to have done so at an earlier stage and to provide her with all of the relevant papers and case history. The Commission has a number of opportunities to comment on the complaints raised and this places a duty of care on the Commission to ensure that its staff are properly involved at an early stage. However, she may seek comments from staff where there is direct allegation of poor behaviour or discourtesy, or where there is a conflict between different

accounts of what happened that cannot be resolved by examination of the paper evidence.

The vast majority of respondents welcomed the visits that the ICR makes to Charity Commission offices and felt that they helped to raise awareness about her role. In turn, the ICR also welcomes the opportunity to learn about the Charity Commission at first hand.

Complaints about our service

During 2004-2005, we received one complaint about our service from a Charity Commission customer. This complaint was related to dissatisfaction with the ICR's review findings, rather than the way in which we had dealt with matters.

Referral to the Ombudsman

People who are dissatisfied with the outcome of ICR review can ask their MP to refer their complaint to the Parliamentary and Health Service Ombudsman. During the reporting year, no complaints dealt with by this office were referred on to the Ombudsman.

Casework Review

Complaints represent opportunities to learn about the Charity Commission's service from a customer perspective. This can be true even of complaints that are not justified, if they are a reflection of the impression that has been given to a customer or demonstrate the potential for misunderstanding the Charity Commission's role and authority. The low number of complaint referrals to the ICR demonstrates that most people are satisfied with the service that they receive. Nevertheless, each referral to this office represents a failure to resolve a customer's concerns within the internal complaints process. Inevitably, they number amongst the most difficult and contentious cases for the Charity Commission.

The following are anonymised summaries of complaints that the ICR reviewed in 2004-2005.

Raising expectations

Mr A was asked to join a fundraising group set up by a charity's trustees. He raised concerns about the charity's constitution with the Chair and claimed that he was then prevented from raising these points at the AGM. Later on after Mr A had been nominated as a trustee, he raised further

concerns about the election procedure. Following this, the trustees held a meeting at which Mr A was not present at which it was decided to withdraw his membership of the charity. Mr A protested to the Charity Commission. He later complained that it had refused to act to ensure that the trustees abided by the charity's constitution or to criticise the trustees' conduct.

The ICR found that the Commission had not refused to address the concerns that Mr A had raised. The evidence showed that the information he provided had been evaluated, and the Commission had subsequently contacted the charity and conducted a review visit. Recommendations were then made to improve the charity's governance. Overall, the ICR was satisfied that the Commission had not ignored the reported concerns and had taken action that it considered was proportionate to the issues raised.

The ICR was critical of the Commission for giving a misleading impression in early correspondence with Mr A that it could compel the charity to agree to Mr A's preferred course of action. The ICR noted that the Commission had already apologised to Mr A for raising

his expectations about this. She found that this response was appropriate and made no further recommendations.

The complaint was not upheld.

Discourtesy

Mrs B contacted the Commission to report a dispute that had arisen between a charity's trustees and a committee member. She later complained that the Commission had failed to investigate her complaint; that it had been biased in its handling of the case; and that Commission officers had treated her with contempt and behaved unprofessionally.

The ICR accepted that some of the Commission's dealings with Mrs B were curt and, on occasion, insensitive. However, she found no evidence of bias in the Commission's handling of the case. She did not consider that the officers in question had been unprofessional in the way they dealt with matters. She noted that they had responded to all of the parties involved in a timely manner and had investigated all of the various concerns that had been raised.

Finally, the ICR was satisfied that the Commission's consideration of this matter within its internal complaints procedure had been comprehensive. The response had recognised Mrs B's depth of feeling in the matter and offered appropriate apologies for the offence that she had been caused.

The complaint was not upheld.

Comments and decisions

Ms C complained to the Commission about financial irregularities within a charity, which had instituted a review into her conduct as a member of one of its committees. She complained that the Commission had failed to look into these matters properly and that Commission staff had been discourteous and dismissive towards her. She said that the Commission had not acted even-handedly and that this was evidenced by the fact that the Commission had been dealing with a charity official who was a previous employee at the Commission.

The ICR found no objective evidence that the Commission had disregarded the matters raised by Ms C. The files showed that it had considered all of the issues raised at a

senior level, however it had decided that it had no authority to address the reported problems.

The ICR criticised the Commission for failing to record a full explanation of its decision. She recommended that the Commission review its procedures to ensure that reasons for decisions are properly recorded on file. The ICR found that there was no evidence of the Commission having acted improperly in its dealings with the ex-employee, but she recommended that the Commission considered enhancing its internal guidance relating to cases in which its staff find themselves in this situation. The ICR was satisfied that the Commission's overall approach had not been discourteous or dismissive.

She drew the Commission's attention to remarks noted on the file in internal communications that she considered inappropriate. She recommended that the Commission apologise to Ms C for this.

The complaint was partially upheld.

Political activity

Mr D contacted the Commission to complain that a charity of which he was a member was involved in trade unionism and was promoting a policy he considered to be political in nature. Mr D complained that by rejecting his complaint, the Commission suppressed the evidence he had provided. He also complained that the Commission did not respond to his request for a review in a timely way and that its responses to his complaint were decided on the basis of prejudice.

The ICR found that when Mr D submitted views, assertions as to the facts or documentary evidence, the Commission took these matters seriously. She found no indication that the Commission suppressed evidence. The ICR could not find any objective evidence in the files to indicate that the Commission approached this case in a biased way and the files did not support the contention that the Commission came to a prejudged view on the merits of Mr D's complaints. She was satisfied that there was a thorough consideration, discussion and analysis of the complaints Mr D made.

She noted that the Commission did not keep Mr D up to date with the progress on the examination of his complaints, and the final response to his complaint was well outside its time target. However the Commission apologised for this. The ICR was satisfied that the responses given to Mr D contained appropriate explanations and apologies.

The complaint was not upheld

Inquiries and publicity

Ms E was a senior employee of a charity. The Commission opened a statutory Inquiry into various issues concerning the charity, including the payment of expenses to Ms E and her remuneration. Ms E complained that the Commission's Inquiry had been closed too quickly despite her representations that a number of matters required reassessment. She also complained about the way that the Commission had publicised its Inquiry report, without regard for the implications that this might have on her reputation.

The ICR found that Ms E and her advisors had not been informed about the closure of the Inquiry when that actually

occurred. This had caused a misunderstanding to arise about the status of the Inquiry so that representations were continuing well after the Inquiry was closed. The ICR was critical of this failure in communication on the Commission's part.

The ICR found that the Commission's internal guidance had not been followed with regard to the decision to name Ms E in the Inquiry report. As a consequence she had been singled out for comment in an unfair manner.

The ICR noted that the Commission had given this case special attention with regard to publicity. Although it is the Commission's usual practice to publish Inquiry reports to highlight useful lessons for the charitable sector, in this case, the Commission was unable to demonstrate that it had followed guidance to consider the effect that the publicity would have on Ms E. She recommended that the Commission apologise to Ms E and offer her a consolatory payment. She also recommended that the Commission review its internal guidance to clarify the process leading to naming individuals in Inquiry reports and giving

publicity to their publication. The Commission's policy should be made publicly available.

The complaint was partially upheld.

Answering the question

Mr F wrote a letter to a national newspaper about charities being removed from the register of charities with assets still remaining, which was critical of the Commission. The Commission responded by letter to the same newspaper. This led to correspondence between Mr F and the Commission, in which Mr F pressed the Commission for information from its records regarding this issue. Mr F complained that the Commission had not responded properly to his requests for information and had not given truthful answers to his queries.

The ICR found that in early responses to Mr F, the Commission had sought to explain the procedures used when removing charities from the register, rather than giving a direct answer to his questions as to the information retained. This gave the impression of evasiveness on the Commission's part. However, the ICR was

satisfied that correct information about the data held in its records had subsequently been provided. The ICR noted that the Commission had apologised to Mr F for the delay in answering his questions.

The complaint was not upheld.

Acting promptly

Mrs G and Mr H were trustees of a charity that was the subject of a statutory Inquiry by the Commission into alleged fundraising improprieties. They were removed as trustees but were later reinstated. They subsequently resigned and Mrs G complained that the Commission had withheld from them the date on which the Inquiry was opened and that it improperly allowed a long period of time to lapse whilst conducting it. She asserted that the Commission chose to focus on the wrong issues, and deliberately overlooked the possibility that the charity could have been victims of external fundraisers.

The ICR found no evidence that the Commission had informed the trustees when it opened the Inquiry. However, there did not appear to be any identified reason for not telling the trustees about the Inquiry and this appeared to be an

oversight on the Commission's part. The ICR was critical of this failure.

The ICR found that no action was then taken to progress matters for some considerable time. She commented that if the Commission had concerns that were sufficiently serious to warrant a statutory Inquiry, then it followed that swift action should be taken to deal with the problems that had been identified. The ICR criticised the delay that had occurred. The ICR recommended that the Commission offer an apology to Mrs G and Mr H.

The complaint was partially upheld.

Harassment

Mr I contacted the Commission to ask for copies of accounts and to seek advice with regard to the administration of a charity, after he stepped in to deal with problems resulting from alleged previous mismanagement. In particular, he alleged that the charity had suffered financial losses at the hands of the previous trustees.

His contact with the Commission led to the opening of a statutory Inquiry into the charity, when it came to light

that the trustees had not been validly appointed and it appeared that no charitable activity had occurred in a long time. The focus of this Inquiry was on resolving these issues. Mr I complained about the way that the Commission had responded to the problems he had sought to iron out. He said that a number of the questions and letters that he sent to the Commission went unanswered and that the Commission had sought to harass and intimidate him.

The ICR found no objective evidence of any of the Commission's officers behaving inappropriately towards Mr I. She was satisfied that they had proceeded in accordance with usual practice in dealing with the serious issues that had been identified in the Inquiry. She accepted that the officers had taken a firm line to ensure that these matters were addressed and resolved and that this was appropriate to the circumstances.

Overall, the ICR was satisfied that the Commission had responded to Mr I's communications and had given adequate consideration to the information that he had submitted. The ICR noted one occasion when the Commission had failed to give a timely

response to Mr I when he was known to be out of the country. The ICR was critical of this delay, since Mr I spent considerable time abroad and had told the Commission that he had arrangements in place to forward correspondence to him.

During her investigation, the ICR noted that the Commission had not looked into Mr I's allegations that the charity had suffered financial losses at the hands of the original trustees. The ICR was critical that the Commission had failed to investigate this serious matter, in accordance with its responsibilities as a regulator.

The complaint was partially upheld.

Following guidelines

Mr J wrote to the Commission about serious concerns that he had about the running of a small charity. These included an allegation of personal benefit to a trustee. Mr J complained that the Commission had failed to look into his concerns properly and had issued 'standard' responses to individual complaints when he wrote to a senior officer.

On investigating the case, the ICR found that no steps had been taken to look into Mr J's allegations. This did not conform with Commission guidance. In this case, the information provided to the Commission related to the governance of a charity, rather than to a personal problem. The Commission had identified no reason to ignore the concerns that had been raised and it should have taken action to satisfy itself that the charity was keeping accurate records of meetings and decisions concerning trustee benefit. The ICR recommended that the Commission apologise to Mr J. She also recommended that consideration be given to raising the alleged problem with the charity and bringing the Commission's good practice requirements to the attention of the trustees.

The ICR did not accept that the 'standard' administrative responses issued were inappropriate and the Commission had properly explained how matters would be taken forward. In the event it was appropriate for the matter to be dealt with by the Customer Services team under

the internal complaints procedure, rather than by more senior officers.

The complaint was partially upheld.

Taking firm action

Mr K contacted the Commission about an advertisement placed in his local newspaper regarding bed and breakfast accommodation offered by a charity from a property that it owned. Mr K claimed that this activity was in breach of the charity's objects. He complained that the Commission had not conducted a sufficiently robust investigation into this matter or into other concerns that he had raised about payments made to former employees and trustees of the charity.

The ICR found that the Commission had looked into the charity's activities within the limit of its remit and had also taken into account all of the information that Mr K had provided. The Commission had raised the issue with the trustees but there had been a long delay on the part of the trustees in responding to the Commission's enquiries and the

ICR found that the Commission was not assertive in requiring the charity to act promptly.

The ICR was concerned to note that, given the serious nature of the allegations, advice on how to progress matters had not been sought at an early stage from senior and specialist staff within the Commission. However, the ICR was satisfied that by the time that Mr K complained to her, the Commission had undertaken a thorough review of pertinent issues and reached a considered view. Nevertheless, she was not satisfied that the Commission's complaint response had recognised the extent of the problems Mr K had faced in persuading the Commission to take firm action. The ICR recommended that Mr K receive an apology.

The complaint was partially upheld.

Notes

Notes

About the Charity Commission

The Charity Commission for England and Wales is the regulator of charities. It employs approximately 600 staff in offices in London, Taunton, Liverpool, and Newport.

Charities range from small groups meeting local needs, to large national and international professional bodies. An essential requirement of charities is that they operate for the public benefit and independently of government or commercial interests.

The Commission fulfils its role by:

- Securing compliance with charity law, and dealing with abuse and poor practice;
- Enabling charities to work better with an effective legal, accounting and governance framework, keeping pace with developments in society, the economy and the law; and
- Promoting sound government and accountability.

Further information about the Charity Commission can be obtained from

General Enquires: 0845 300 0218

Website: www.charitycommission.gov.uk



Independent Complaints Reviewer
New Premier House
150 Southampton Row
London WC1B 5AL

Telephone: 020 7278 6251
Fax: 020 7278 9675
Email: enquiries@icr.gsi.gov.uk